



TOWN OF OCCOQUAN
Circa 1734 • Chartered 1804 • Incorporated 1874

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Occoquan Town Council
Work Session Meeting
January 15, 2019 | 7:00 p.m.

- 1. Call to Order**
- 2. Regular Items**
 - a. Approval of Town code Recodification
 - b. FY 2020 Budget Work Session
 - c. Occoquan Elementary School Boundary Discussion
 - d. Visitor Center Kiosk Discussion
- 3. Adjournment**



TOWN OF OCCOQUAN
TOWN COUNCIL MEETING
Agenda Communication

2. Work Session Regular Agenda	Meeting Date: January 15, 2019
2A: Approval of Town Code Recodification	

Explanation and Summary:

This is the final part of a two-part project that included a legal review and update of the Town's zoning and subdivision ordinance, and a complete recodification of the Town Code. The zoning and subdivision ordinance revision was completed and approved September 5, 2017. The entire project is expected to result in a completely recodified Town Code with updated and legally compliant zoning and subdivision ordinances, all accessible and searchable in an online database. This is an opportunity for Town Council to update the current Town Code.

Town Staff placed the proposed recodified Town Code on the Town's website on January 8, 2019. Once the recodified Town Code is approved the Town Council and Staff can begin systematically updating chapters in the Town Code, holding Public Hearings for updates and changes.

Town Staff's Recommendation: Recommend Approval

Cost and Financing: N/A
Account Number: N/A

Proposed/Suggested Motion:
Ordinance to be provided at Meeting.

OR

Other action Council deems appropriate

Attachments: (1) Proposed Recodified Town Code

CHARTER OF THE TOWN OF OCCOQUAN, VIRGINIA

CHARTER*

Section

- 1 [Continuation of town]
- 2 [Town boundaries]
- 3 [Town council]
- 4 [Continuation of officers]
- 5 [Appointment of clerk, sergeant]
- 6 [Mayor]
- 7 [Vice-mayor]
- 8 [Filling vacancy in office of mayor]
- 9 [Election of pro tempore]
- 10 [Emergency powers of mayor]
- 11 [Enactment of ordinances]
- 12 [Duty of clerk to keep record of council proceedings]
- 13 [Town treasurer]
- 14 [Town sergeant]
- 15 [Council control over clerk, treasurer, officer]
- 16 [Council meetings]
- 17 [Ordinances, bylaws]
- 18,19 [Reserved]
- 20 [Right of council regarding sidewalks]
- 21 [Right of council to regulate building construction]
- 22 [Reserved]
- 23 [General powers, authority of town council]
- 24 [Retention of existing ordinances]
- 25 [Separability]
- 26 [Repeal of conflicting acts]

Editor's note:

Printed herein is the town Charter, as adopted by the Virginia General Assembly and signed by Governor L. Douglas Wilder, to be effective on March 28, 1993. Amendments to the Charter are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original Charter. Obvious misspellings have been corrected without notation. For stylistic purposes, a uniform system of headings, catchlines, and citations to state statutes has been used. Additions made for clarity are indicated by brackets. Sections 18, 18a, 19 and 22 of the Charter have been repealed by the act that adopted the current Charter.

Sec. 1. [Continuation of town.]

The Town of Occoquan, in the County of Prince William, shall continue to be a town corporate, in the name style of the Town of Occoquan, and as such shall have and exercise all the powers conferred upon towns in this Commonwealth by the general laws of this Commonwealth concerning towns now in force, or that may hereafter be enacted for the government of towns.

Sec. 2. [Town boundaries.]

The following are hereby declared to be the bounds of the town: Beginning at a prominent stone, marked X on the south bank of Occoquan River, one hundred fifty feet above the northwest corner of the old cotton factory building, and running thence in a direct line through Janney's land, in a southeast direction to a forked white oak and stone marked X, on Janney's land and on the north side of a small branch; running thence in a direct line southeasterly, to the corner of Janney and Selecman, on the west side of the Deep Hole Road; thence running with Janney and Selecman's lines to Occoquan River; and thence with Occoquan River to place of beginning. The corporation shall embrace all of Occoquan River opposite to the bounds above named.

Sec. 3. [Town council.]

The government of the town shall be vested in a town council which shall be composed of the mayor and five councilmen, each of whom shall be a qualified voter within the town.

Sec. 4. [Continuation of officers.]

Those councilmen and mayor in office on April 1, 1972, shall continue in office until July 1 of the year following termination of their respective terms or until their respective successors shall have been duly elected and qualified. On the first Tuesday in May of even-numbered years, there shall be elected by the qualified voters of the town, five councilmen and a mayor who shall be electors of the town and who shall hold office for terms of two years, each beginning on July 1 following the date of their election and thereafter until their respective successors have been duly elected and qualified.

Sec. 5. [Appointment of clerk, sergeant.]

The council shall appoint a clerk and town sergeant, and if they deem it advisable a deputy town sergeant, a town treasurer and such other officers as the council may deem necessary and proper, all of whom shall hold office at and during the pleasure of the council, and said officers shall qualify and execute bonds in the manner prescribed by resolution of the council; and the council shall have power to fill vacancies in any of these offices created by death, resignation, removal or otherwise. The council shall not appoint any officer for a term extending beyond the council's term in office.

Sec. 6. [Mayor.]

The mayor shall be the chief executive officer of the town and shall preside over the meetings of the council. The mayor shall be a member of the council but shall have no right to vote in the council except that, in every case of a tie vote of council, the mayor shall be entitled to vote. The mayor's vote in case of a tie does not increase the number of votes required for a majority of all members elected to

the council, which is three affirmative votes, as required by Section 7 of Article VII of the Constitution of Virginia, or for any other purpose, and the mayor's vote does not increase the number of votes required for a three-fourths majority of all members elected to the council, which is four affirmative votes, as required by Section 9 of Article VII of the Constitution of Virginia.

Sec. 7. [Vice-mayor.]

At its first meeting following the regular municipal election for members of the council, the council shall elect one of its members as vice-mayor. In the absence of the mayor or during vacancy in his office, the vice-mayor shall have and exercise the same jurisdiction and authority, including presiding at council meetings, and shall continue to have the right to vote in the council.

Sec. 8. [Filling vacancy in office of mayor.]

In case a vacancy shall occur in the office of the mayor the same shall be filled by appointment of the council of any one eligible to such office.

Sec. 9. [Election of pro tempore.]

If the mayor and vice-mayor are absent during any meeting of the council it shall elect one of its members as president pro tempore to preside at such meeting, which member shall continue to have the right to vote in council.

Sec. 10. [Emergency powers of mayor.]

If at any time the mayor shall believe that an emergency exists or that it is necessary for the good order and preservation of the laws that additional police be provided, the mayor shall have the power to furnish and qualify such additional police, their compensation to be fixed by the council.

Sec. 11. [Enactment of ordinances.]

All ordinances, appointments or resolutions of the Town, including ordinances or resolutions appropriating money exceeding the sum of \$500.00, imposing taxes, or authorizing the borrowing of money, shall become effective only upon the affirmative vote of a majority (three) of all members elected to the council. Notwithstanding the above, all ordinances or resolutions enacted pursuant to Section 9 of Article VII of the Constitution of Virginia, including authorizing the sale of the rights to public property or a public utility system, shall become effective only upon the affirmative vote of three-fourths (four) of all of the members elected to the council. No penalty shall be imposed under any ordinance enacted by the council until such ordinance shall have been posted for a period of thirty days in one or more conspicuous places in the said town.

Sec. 12. [Duty of clerk to keep record of council proceedings.]

It shall be the duty of the town clerk to keep a correct and proper record of the proceedings of the council and to publish in such manner as the council may indicate the bylaws, ordinances and resolutions that may from time to time be adopted. The clerk shall issue licenses to all persons engaged in a pursuit, business, occupation, or profession for which a license shall be required, shall prepare the tax tickets and shall perform such other duties as may be required by the council and by the provisions of this Charter, for which services the clerk shall receive such compensation as the council may determine,

Sec. 13. [Town treasurer.]

The treasurer of the town shall be the disbursing agent of the town and have the custody of all monies and securities belonging thereto; he shall collect all taxes and assessments, light bills, water bills, and other charges payable to the town, and for that purpose he is hereby vested with all powers which are now or may hereafter be vested in county and city treasurers for the collection of county, city and state taxes under general law. The treasurer shall keep an accurate account of all receipts from all sources and of expenditures of all departments of the town government.

- a. No money shall be paid out by the treasurer except by order of the council and upon a warrant of the clerk of the council countersigned by the mayor.
- b. The treasurer shall annually at the end of each fiscal year publish, either in a newspaper published in Prince William County or by posting in front of his office, a statement showing all receipts and income of the town and from what source derived, and all disbursements made and for what purpose.
- c. The treasurer shall make such other reports from time to time as may be required by ordinance or by resolution of the council.
- d. The treasurer's compensation shall be fixed by the council, but in no case shall it exceed five per centum of all monies collected from all sources; provided the treasurer shall receive no commission or compensation on bonds issued or money borrowed by the town.

Sec. 14. [Town sergeant.]

The town sergeant shall be a conservator of the peace and [sic] in civil cases that may arise within the corporate limits of the town and shall be invested with all the powers which the general laws of this state confer upon sheriffs. The sergeant shall possess the like right of distress and power in collecting municipal taxes possessed by sheriffs in the collection of state and county taxes. He shall receive the same fees as a sheriff, and such other compensation as may be prescribed by the council.

Sec. 15. [Council control over clerk, treasurer, officer.]

The clerk, treasurer and sergeant shall be under direct control of the council and in addition to the duties required of them under this Charter they shall perform such other duties as may be required by the council. They shall be subject to removal for incompetence, misconduct or negligence of duty by the affirmative vote of a majority (three) of all members elected to the council. If required by the council, they shall execute bond in such penalty as may be prescribed by the council, surety to be approved by the mayor. The town council shall have the right to pay the premiums of the official bonds of its officers.

Sec. 16. [Council meetings.]

The council shall hold regular or stated meetings once a month at such time as shall be fixed by their body. Extra or special meetings may be called by the mayor or by three members of the council; but the purpose for which a special meeting is called shall be stated in writing. Three councilmen and the mayor, or in the absence of the mayor, three councilmen shall constitute a quorum for the transaction of business. If any member of the council shall be voluntarily absent from three regular meetings of the council consecutively, his seat may be deemed vacant by resolution approved by a majority vote (three) of all members elected to the council, and thereupon his unexpired term shall be filled according to the provisions of this Charter.

- a. The council shall have the power to fill all vacancies in its own body and in any other office of the town. It may elect such committees for the various departments of the town as it may desire.

Sec. 17. [Ordinances, bylaws.]

The town council may make ordinances and bylaws for carrying into effect the provisions of this Charter; may prescribe fines and other punishment for the violation of any of the ordinances of the town; may levy and collect privilege and other kinds of taxes not prohibited by general law; may prevent animals and fowl from running at large on the streets of the town; may prohibit cruelty to animals; may restrain and punish beggars, peddlers and vagrants; may prevent and disperse riots, disturbances and unlawful or disorderly assemblages; may suppress houses of ill fame and bawdy houses; may abate as a nuisance any house or other place upon evidence of general reputation that the same is being used for the purpose of lewdness; may prohibit and punish gaming and betting, regardless of the amount won or lost; may prevent indecent or lewd conduct, pictures and exhibitions; may prevent and prohibit immoral and lewd picture shows, or motion pictures calculated to injure the morals of the town; may prohibit the coming into town of persons having no ostensible means of support and of persons who may be dangerous to the peace and safety of the town; may offer rewards for the apprehension of persons committing felonies in the town; may prescribe rules and regulations for the orderly building of blacksmith shops, garages and other shops and structures; may control or prevent the storage of firecrackers, gunpowder and other works manufactured or prepared therefrom, kerosene oil, gasoline or other combustible materials.

The council may compel the abatement and removal of nuisances within the town, at the expense of the person or persons causing the same, or at the expense of the owner or occupant of the ground or premises wherein the same may be found; may require all lands and lots and other premises within the town to be kept clean and sanitary and free from stagnant water, weeds, filthy and unsightly deposits; may regulate or prevent slaughterhouses or other noisome and offensive business within the town, and may generally prohibit, abate and suppress and prevent all things detrimental to the health, morals, safety, convenience and welfare of the inhabitants of the town.

The council shall also have the right to license and regulate the holding and location of shows, circuses, public exhibitions, carnivals and similar shows or fairs and to prohibit the holding of the same, or any of them, within the town. The council may require a license tax for anything for which a state license tax is required, and for which under the general laws of the Commonwealth a license tax may be required by a town, and in addition thereto may impose a license tax on any business or thing carried on or done in the town, for which under the general laws of the Commonwealth a license tax may be required by a town, whether a license tax is required therefor by the Commonwealth or not.

Secs. 18, 19. [Reserved.]

Sec. 20. [Right of council regarding sidewalks.]

The council shall have the right to require the owners of real estate abutting upon paved or other improved sidewalks to remove the snow therefrom, and the council shall also have the right to prohibit skating and riding of bicycles thereon and of all other improper uses thereof, and to enforce the regulations and ordinances with reference thereto by fine.

Sec. 21. [Right of council to regulate building construction.]

The council may prohibit the erection of frame buildings in any part of the town designated by it as the fire area; may prescribe and locate building lines and regulate the height and construction of buildings; may require building permits and may make reasonable rules and regulations regarding the

building and construction of houses in the town.

Editor's note:

Certain powers in this section are limited by building regulations under VA Code §§ 36-97 et seq.

Sec. 22. [Reserved.]

Sec. 23. [General powers, authority of town council.]

The town council shall have all powers and authority that are now or may hereafter be granted to councils of towns by the general laws of this Commonwealth, and the recital of special powers and authority herein shall not be taken to exclude the exercise of any power granted by the general laws of the Commonwealth of Virginia to town councils, but not herein specified.

Sec. 24. [Retention of existing ordinances.]

All ordinances now in force in the town of Occoquan not inconsistent with this Charter shall be and remain in force until amended or repealed by the town council.

Sec. 25. [Separability.]

If any clause, sentence, paragraph or part of this Charter shall for any reason be adjudged by any court of competent jurisdiction to be invalid[,] that judgment shall not affect, impair or invalidate the remainder of the Charter, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Sec. 26. [Repeal of conflicting acts.]

All acts or parts of acts in conflict with the provisions of this Charter are hereby repealed; provided that the officers of the town of Occoquan shall continue in office until their successors have been elected and qualified.

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§ 10.01 HOW CODE DESIGNATED AND CITED.

The ordinances embraced in this and the following titles and chapters shall constitute and be designated "The Code of the Town of Occoquan, Virginia", and may be so cited and may be referred to herein as "this code of ordinances" or "this code". Such ordinances may also be cited as "Occoquan Town Code".

(1998 Code, § 1-1)

§ 10.02 DEFINITIONS AND RULES OF CONSTRUCTION.

For the purpose of this code, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Also, in the interpretation and construction of this code and of all ordinances and resolutions of the town, the following rules of construction and definitions shall be observed unless otherwise specifically provided or unless they are inconsistent with the manifest intent of the Town Council or the context clearly requires otherwise.

ALLEY. A permanent service right-of-way providing a secondary means of access to abutting properties, which shall be construed to include, but not be limited to, rights-of-way known as Poplar Alley, Center Lane, Cooper’s Alley, and Hill Alley.

BOND. When a bond is required, an undertaking in writing with such surety, if any, as the Town Council may direct, shall be sufficient.

CHARTER. The Charter of the town as it now exists or as it may be amended in the future.

CODE. Whenever the term “code” or “this code” is referred to without further qualification, it shall mean the Code of the Town of Occoquan, Virginia, as designated in § 10.01.

CODE OF VIRGINIA. The Code of Virginia of 1950, as now or hereafter amended.

COMPUTATION OF TIME. The time within which an act is to be done shall be computed by excluding the first and including the last day; and if the last day is Saturday, Sunday, or a legal holiday, that day shall be excluded.

COUNCIL or TOWN COUNCIL. The Council of the Town of Occoquan, Virginia.

COUNTY. The County of Prince William, Virginia.

FOLLOWING. When used by way of reference to any section, shall be construed to mean next following that in which such reference is made.

GENDER. A word importing the masculine gender only may extend and be applied to the feminine and neuter genders as well as to the masculine gender.

HEALTH DEPARTMENT. The Health Department of Prince William County or the duly authorized agent of such department.

HEALTH OFFICER. The Health Director of the Prince William County Health Department, or his or her duly authorized agent.

IN THE TOWN. Any territorial jurisdiction for which the exercise of its regulatory power has been conferred on the town by public or private law.

MAY. The act referred to is permissive.

MONTH. A calendar month.

NUMBER. A word importing the singular number only may extend and be applied to several persons or things, as well as to one person or thing; and a word importing the plural number only may extend and be applied to one person or thing, as well as to several persons or things.

OATH. Includes an affirmation in all cases in which by law an affirmation may be substituted for an **OATH**.

OCCUPANT or **TENANT**. As applied to a building or land shall mean any person who holds a written or oral lease of or actually occupies the whole or part of such building or land, either alone or with others.

OFFICERS or **AGENCIES**. Whenever a reference is made to a particular officer, employee, department, board, commission, or agency, such reference shall be construed as if followed by the words “of the Town of Occoquan, Virginia”.

OFFICIAL TIME STANDARD. Whenever particular hours are specified in this code relating to the time within which any act shall or shall not be performed by any person, the time applicable shall be official United States Eastern Standard Time, or Daylight Saving Time, whichever may be in current use in the town.

OWNER. As applied to a building or land, shall include any part owner, joint owner, tenant in common, joint tenant, or tenant by the entirety, of the whole or a part of such building or land.

PERSON. Includes any individual, firm, corporation, partnership, association, company, business, trust, joint venture, organization, or other legal entity, by whatever term customarily known.

PRECEDING. When used by way of reference to any section, shall be construed to mean next preceding that in which such reference is made.

PROPERTY. Includes any real and personal property and any right or interest therein.

PUBLIC GROUNDS. The parks and all public lands owned by the town, and those parts of public places which do not form traveled parts of streets.

SHALL. The act referred to is mandatory.

SIDEWALK. Any portion of a street between the curblines, or the lateral lines of a roadway where there is no curb, and the adjacent right-of-way or easement line intended for the use of pedestrians.

SIGNATURE, SUBSCRIPTION. Includes a mark when the person cannot write, his or her name being written near it and being witnessed by a person who writes his or her own name as a witness.

STATE, THE STATE, COMMONWEALTH, or THE COMMONWEALTH. The Commonwealth of Virginia.

STREET. Includes avenues, boulevards, highways, roads, bridges, and the approaches thereto and all other public thoroughfares, but not alleys, in the town, and shall mean the entire width thereof between abutting property lines.

SWEAR or **SWORN**. Equivalent to the term **AFFIRM** or **AFFIRMED** in all cases in which by law an affirmation may be substituted for an oath.

TENSE. Words used in the past or present tense shall include the future, as well as the past and present.

TOWN or **THE TOWN**. The Town of Occoquan, in Prince William County, Virginia.

VA CODE. See **CODE OF VIRGINIA.**

WRITTEN or **IN WRITING.** Includes typewriting, printing on paper, and any other mode of representing words, letters, or figures.

YEAR. Unless otherwise expressed, shall be construed to mean a calendar year; and the term “year” alone shall be equivalent to the expression “year of our Lord”.
(1998 Code, § 1-2)

§ 10.03 PROVISIONS CONSIDERED AS CONTINUATIONS OF EXISTING ORDINANCES.

The provisions appearing in this code shall be considered as continuations of the previously enacted ordinances of the town and not as new enactments.
(1998 Code, § 1-3)

§ 10.04 EFFECT OF REPEAL OF ORDINANCES.

(A) The repeal of an ordinance shall not revive any ordinances in force before or at the time the ordinance repealed took effect.

(B) The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect nor any suit, prosecution, or proceeding pending at the time of the repeal, for any offense committed under the ordinance repealed.
(1998 Code, § 1-4)

§ 10.05 SEVERABILITY OF PARTS OF CODE.

It is declared to be the intention of the Town Council that the sections, divisions, sentences, clauses, and phrases of this code are severable; and if any phrase, clause, sentence, division, or section of this code, or its application to any persons or circumstances, shall be declared unconstitutional or otherwise invalid by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, divisions, and sections of this code, or their application.
(1998 Code, § 1-5)

§ 10.06 SECTION CATCHLINES AND OTHER HEADINGS.

The catchlines of the several sections of this code are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be titles of such sections, nor as any part of the section; nor, unless expressly so provided, shall they be so deemed when any of such sections, including the catchlines, are amended or reenacted. No provision of this code shall be held invalid by reason of deficiency in any such catchline or in any heading or title to any chapter, subchapter, section, or division.
(1998 Code, § 1-6)

§ 10.07 HISTORY NOTES.

The history notes appearing in parentheses after sections in this code are not intended to have any legal effect but are merely intended to indicate the source of matter contained in the sections.
(1998 Code, § 1-7)

§ 10.08 EDITOR'S NOTES AND REFERENCES.

The editor's notes, Charter references, cross-references, and state law references in this code are not intended to have any legal effect but are merely intended to assist the user of this code.
(1998 Code, § 1-8)

§ 10.09 CERTAIN ORDINANCES NOT AFFECTED BY CODE.

Nothing in this code or the ordinance adopting this code shall affect any ordinance:

(A) Promising or guaranteeing the payment of money by or for the town or authorizing the issuance of any bonds or any evidence of indebtedness;

(B) Authorizing or otherwise relating to any contract;

(C) Granting any franchise or right;

(D) Appropriating funds, relating to any annual budget, or imposing any tax that is consistent with this code;

(E) Establishing fees that are consistent with this code;

(F) Authorizing, providing for, or otherwise relating to any public improvement;

(G) Making any assessment;

(H) Establishing, extending, or contracting the corporate limits of the town;

(I) The purposes of which have been accomplished;

(J) Which is temporary, although general in effect;

(K) Which is special, although permanent in effect; and

(L) Pertaining to Zoning Map amendments or subdivision plats; and all such ordinances are recognized as continuing in full force and effect to the same extent as if set out at length in this code.
(1998 Code, § 1-9)

§ 10.10 CODE DOES NOT AFFECT PRIOR ACTS, OFFENSES, OR RIGHTS.

Nothing in this code or in the ordinance adopting this code shall affect any offense or act committed or done, or any penalty or forfeiture incurred, or any contract or right established or accruing, before the effective date of this code.

(1998 Code, § 1-10)

§ 10.11 AMENDMENTS TO CODE.

(A) Amendments to any of the provisions of this code shall be made by amending such provisions by specific reference to the section number of this code in the following language: “That section _____ of The Code of the Town of Occoquan, Virginia (or the Occoquan Town Code), is hereby amended to read as follows:_____”. The new provisions shall then be set out in full as desired.

(B) In the event a new section not heretofore existing in the code is to be added, the following language shall be used: “That The Code of the Town of Occoquan, Virginia (or the Occoquan Town Code), is hereby amended by adding a section, to be numbered _____, which said section reads as follows: _____.” The new section shall then be set out in full as desired.

(C) All divisions, sections, subchapters, chapters, or other provisions desired to be repealed shall be specifically repealed by division, section, subchapter, or chapter number, as the case may be.

(1998 Code, § 1-11)

§ 10.12 SUPPLEMENTATION OF CODE.

(A) By contract or by town personnel, supplements to this code shall be prepared and printed whenever authorized or directed by the Town Council. A supplement to the code shall include all substantive permanent and general parts of ordinances adopted during the period covered by the supplement and all changes made thereby in the code. The pages of a supplement shall be so numbered that they will fit properly into the code and will, where necessary, replace pages that have become obsolete or partially obsolete; and the new pages shall be so prepared that, when they have been inserted, the code will be current through the date of the adoption of the latest ordinance included in the supplement.

(B) In preparing a supplement to this code, all portions of the code that have been repealed shall be excluded from the code by their omission from reprinted pages.

(C) When preparing a supplement to this code, the codifier (meaning the person, agency, or organization authorized to prepare the supplement) may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:

(1) Organize the ordinance material into appropriate divisions;

(2) Provide appropriate catchlines, headings, and titles for sections and other divisions of the code printed in the supplement, and make changes in such catchlines, headings, and titles;

(3) Assign appropriate numbers to sections and other divisions to be inserted in the code and, where necessary to accommodate new material, change existing section or other division numbers;

(4) Change the words “this ordinance” or words of the same meaning to “this chapter”, “this subchapter”, “this section”, “this division”, and the like, as the case may be, or to “sections _____ to _____” (inserting section numbers to indicate the sections of the code that embody the substantive sections of the ordinance incorporated into the code); and

(5) Make other nonsubstantive changes necessary to preserve the original meaning of ordinance sections inserted into the code; but in no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the code. (1998 Code, § 1-12)

Statutory reference:

Authority to supplement code, see VA Code § 15.2-1433

§ 10.13 COLLECTION AND DISPOSITION OF FINES.

All fines and penalties imposed under this code or the ordinances of the town shall be for the use of the town, except as elsewhere provided. Fines may be collected by execution returnable within 30 days after the date of issue. The officer levying such execution shall sell the property upon which a levy has been made at auction, for cash, at some public point within the town, after advertising the time and place of such sale for ten days by posting notices at three conspicuous places within the town. (1998 Code, § 1-14)

§ 10.14 FEE CHARGED FOR PASSING BAD CHECKS TO TOWN.

Every person who shall utter, publish, or pass any check or draft to the town in payment of taxes or any other sums due that is subsequently returned for insufficient funds or because there is no account, or the account is closed, shall pay to the town for each such check or draft a fee of \$50 in addition to the tax or other sum due and for which the check or draft was uttered, published, or passed. Such fees shall be collectible and disposed of as all other fines and penalties.

(1998 Code, § 1-15) (Ord. O-2006-02, passed 11-8-2005)

Statutory reference:

Authority for above section, see VA Code § 15.2-106

§ 10.15 RIGHT OF ENTRY FOR PURPOSES OF INSPECTION.

Whenever any officer or employee of the town or of the state is required or authorized by statute, the provisions of this code, or any ordinance or rules and regulations or orders issued under this code, in order to carry out his or her duties under this code, to enter any premises or vehicle for the purpose of making an inspection or anything contained in such premises or inspection, such officer or employee shall have the right to enter any such premises or vehicle at any reasonable time in pursuance of such duties.

(1998 Code, § 1-16)

§ 10.16 VIOLATIONS OF RULES, REGULATIONS, AND ORDERS.

Except as otherwise provided in this code, the violation of any rule, regulation, or order promulgated by any officer or agency of the town under authority vested in him, her, or it by law, the provisions of this code, or any ordinances or resolution shall be unlawful.

(1998 Code, § 1-17)

§ 10.17 LIABILITY OF ORGANIZATIONS AND AGENTS FOR VIOLATIONS.

(A) Any violation of this code by any officer, agent, or other person acting for or employed by any corporation or unincorporated association or organization, while acting within the scope of that office or employment, shall in every case also be deemed to be a violation by such corporation, association, or organization.

(B) Any officer, agent, or other person acting for or employed by any corporation or unincorporated association or organization shall be subject to and liable for punishment for the violation by such corporation or unincorporated association or organization of any provision of this code, where such violation was an act, omission, or order, or the result of an act, omission, or order of any such person.

(1998 Code, § 1-18)

§ 10.99 GENERAL PENALTY.

(A) Whenever in this code or the ordinances of the town any act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or the doing of any act is required, or the failure to do any act is made or declared to be unlawful or an offense or a misdemeanor, the violation of any such provision of this code or the ordinances of the town shall be deemed to be a misdemeanor and shall be punished as follows.

(1) Whenever a misdemeanor is declared to be a class 1 misdemeanor, such misdemeanor shall be punished by confinement in jail for not more than 12 months or a fine of not more than \$2,500, either or both.

(2) Whenever a misdemeanor is declared to be a class 2 misdemeanor, such misdemeanor shall be punished by a fine of not more than \$1,000 or confinement in jail for not more than six months, either or both.

(3) Whenever a misdemeanor is declared to be a class 3 misdemeanor, such misdemeanor shall be punished by a fine of not more than \$500.

(4) Whenever a misdemeanor is declared to be a class 4 misdemeanor, such misdemeanor shall be punished by a fine of not more than \$250.

(5) Whenever punishment for a misdemeanor is specifically prescribed by this code or a town ordinance without specification as to the class of the misdemeanor, such misdemeanor shall be punished according to the provisions of this code or such ordinance.

(B) Whenever the penalty for a misdemeanor is prescribed by stating that the misdemeanor is punishable as provided for in this section, or whenever no specific penalty is provided for a misdemeanor, the misdemeanor shall be deemed to be a class 1 misdemeanor.

(C) Such penalties shall not exceed the penalties prescribed by general law for a like offense.

(D) Except where otherwise provided, each day any violation of this code or the ordinances of the town shall continue shall constitute a separate offense.

(1998 Code, § 1-13)

Charter reference:

Punishment for violation of ordinances, see § 17

TITLE III: ADMINISTRATION

Chapter

30. GENERAL PROVISIONS

31. TOWN COUNCIL

32. TOWN OFFICERS

33. TOWN BOARDS AND COMMISSIONS

34. TOWN FIRE DEPARTMENT

35. TAXATION

Charter reference:

Powers generally, see § 1

Statutory reference:

Counties, cities, and towns, see VA Code Title 15.2

State and Local Government Conflict of Interests Act, see VA Code §§ 2.1-639.1 et seq.

State Public Procurement Act, see VA Code §§ 11-35 et seq.

State Public Records Act, see VA Code §§ 42.1-76 et seq.

The State Freedom of Information Act, see VA Code §§ 2.2-3100 through 2.2-3131

CHAPTER 30: GENERAL PROVISIONS

Section

- 30.01 Fiscal year
- 30.02 Form of budget

§ 30.01 FISCAL YEAR.

The fiscal year of the town shall begin on July 1 and end on June 30 of the following year.
(1998 Code, § 2-1)

§ 30.02 FORM OF BUDGET.

The form of the budget for the town shall be the standard municipal budget form recommended by the Auditor of Public Accounts of the state and the State Municipal League.
(1998 Code, § 2-2)

CHAPTER 31: TOWN COUNCIL

Section

General Provisions

- 31.001 Powers, duties, and functions
- 31.002 Use of *Robert's Rules of Order*
- 31.003 Records of proceedings

Meetings Generally

- 31.015 Date and time of regular meetings
- 31.016 Special meetings
- 31.017 Quorum
- 31.018 Mayor to preside; voting and veto powers of Mayor
- 31.019 President Pro Tempore
- 31.020 Introduction of ordinances and resolutions
- 31.021 Recognition of members
- 31.022 Question of order
- 31.023 Limitation on debate
- 31.024 Citizen time
- 31.025 Excusing members from meetings
- 31.026 Adjourned sessions
- 31.027 Executive or closed meetings

Privileges of the Floor

- 31.040 Members of Council
- 31.041 Members of town staff
- 31.042 Members of the public

Attendance of Officers and Employees

- 31.055 Town Manager
- 31.056 Town Clerk
- 31.057 Town Attorney

- 31.058 Town Treasurer
- 31.059 Town Sergeant

Order of Business and Agenda Items

- 31.070 Order of business
- 31.071 Procedure for adding items
- 31.072 Preparation; delivery to members
- 31.073 Items to be included

Charter reference:

Town Council, see §§ 3 et seq. and 15 et seq.

GENERAL PROVISIONS

§ 31.001 POWERS, DUTIES, AND FUNCTIONS.

The powers, duties, and functions of the Town Council shall be as set out in the Charter, town ordinances, and state law.
(1998 Code, § 2-36)

§ 31.002 USE OF ROBERT'S RULES OF ORDER.

The meetings of the Town Council, except as its own rules of procedure may otherwise provide, shall be conducted according to *Robert's Rules of Order, Newly Revised*.
(1998 Code, § 2-37)

§ 31.003 RECORDS OF PROCEEDINGS.

The Town Council shall keep an accurate record of its proceedings, which record shall be open to inspection by members of the public during the regular office hours of the Town Clerk.
(1998 Code, § 2-38)

MEETINGS GENERALLY

§ 31.015 DATE AND TIME OF REGULAR MEETINGS.

The Town Council shall meet in regular session on the first Tuesday of each month at 7:00 p.m., or

at such other times as may be fixed by resolution; provided that at least one regular meeting per month shall be held as required by § 16 of the Charter. When the first Tuesday of a month falls on a legal holiday, or the town election day, the Town Council shall advance the regular meeting to the next day following, and notice of such advancement shall be published at the Town Hall in an area accessible to the public and by such means as the Town Council may select. When a regular or special meeting cannot be held at the scheduled time due to inclement weather, the Mayor shall fix a date and time for the meeting to occur. Matters advertised for a meeting rescheduled due to inclement weather need not be re-advertised if the advertisement stated that the meeting may be rescheduled in the event of inclement weather.

(1998 Code, § 2-61) (Ord. O-2004-12, passed 4-13-2004; Ord. O-2007-07, passed - -; Ord. O-2011-04, passed 6-14-2011)

§ 31.016 SPECIAL MEETINGS.

Special meetings of the Town Council may be called, in accordance with § 16 of the Charter, at any time provided that all members are duly notified in writing a reasonable time prior to such meeting as to the time and place for the meeting and the business to be considered during such meeting.

(1998 Code, § 2-62)

§ 31.017 QUORUM.

In accordance with § 16 of the Charter, a quorum for the transaction of business shall consist of three members of the Town Council and the Mayor, or in the absence of the Mayor, three members of the Town Council. If a quorum cannot be obtained, there shall be no meeting.

(1998 Code, § 2-63)

§ 31.018 MAYOR TO PRESIDE; VOTING AND VETO POWERS OF MAYOR.

In accordance with § 6 of the Charter, the Mayor shall preside at all meetings and sessions of the Town Council. The Mayor shall have no right to vote; except in every case of a tie vote, the Mayor shall be entitled to vote and speak as other members of the Town Council, but shall not have power of veto.

(1998 Code, § 2-64)

§ 31.019 PRESIDENT PRO TEMPORE.

(A) If the Mayor is absent, or if his or her office is vacant, during any meeting of the Town Council, the Vice-Mayor shall serve as presiding officer.

(B) In the absence of the Vice-Mayor, the Town Council shall elect one of its members to serve as President Pro Tempore to preside at such meeting.

(C) Such member shall continue to have the right to vote in the Council.
(1998 Code, § 2-65)

§ 31.020 INTRODUCTION OF ORDINANCES AND RESOLUTIONS.

Ordinances and resolutions and their amendments shall be introduced in writing.
(1998 Code, § 2-66)

§ 31.021 RECOGNITION OF MEMBERS.

Recognition of members of the Town Council shall be requested by addressing the Chair. When recognized by the Chair, a member shall confine remarks to the question under debate, avoid personalities, and refrain from impugning the motives of any other member's argument or vote. No member shall address the Chair or demand the floor while any vote is being taken.
(1998 Code, § 2-67)

§ 31.022 QUESTION OF ORDER.

Any member may interrupt Town Council proceedings to raise a point of order. The pending business shall be suspended thereupon, and the Chair shall rule on the point of order after affording both sides an opportunity to be heard. Such ruling shall be subject to being overruled by majority vote upon a duly made and seconded motion. A tie vote sustains the ruling of the Chair.
(1998 Code, § 2-68)

§ 31.023 LIMITATION ON DEBATE.

No member shall be allowed to speak more than once upon any one subject until every other member choosing to speak on the subject shall have spoken. The total time during which any business shall be considered may be limited by a majority vote of members present and voting. A motion to so limit debate is in order at any time.
(1998 Code, § 2-69)

§ 31.024 CITIZEN TIME.

Members of the public may present in writing or appear and be heard briefly, not to exceed five minutes, under the agenda item entitled "Citizen Time", for the purpose of directing attention to or requesting action on matters not included on the prepared agenda. Such appearances shall be limited to a short resume of the situation or problem involved and the action desired. At the conclusion of such appearances, all matters discussed shall be duly recorded and made a part of the official record by the Town Clerk and referred to appropriate town officials for investigation and report. Citizens may

address issues when they come up on the agenda if advance notice is given during “Citizen Time”.
(1998 Code, § 2-70)

§ 31.025 EXCUSING MEMBERS FROM MEETINGS.

No member shall be excused from attendance at a Town Council meeting after the meeting has been called to order unless he or she has been excused by the presiding officer.
(1998 Code, § 2-71)

§ 31.026 ADJOURNED SESSIONS.

Any meeting of the Town Council may, by majority vote, be continued or adjourned to any future time certain which occurs prior to the beginning of the next succeeding regular meeting.
(1998 Code, § 2-72)

§ 31.027 EXECUTIVE OR CLOSED MEETINGS.

An executive or closed meeting of the Town Council may be held in accordance with the State Freedom of Information Act, VA Code §§ 2.2-3700 through 2.2-3714.
(1998 Code, § 2-73)

PRIVILEGES OF THE FLOOR

§ 31.040 MEMBERS OF COUNCIL.

During Town Council meetings, Council members shall observe order and shall not delay or interrupt the proceedings nor refuse to obey the orders of the presiding officer or the rules of the Council. Every Council member desiring to speak shall address the Chair and, upon recognition by the presiding officer, shall limit remarks to the question under debate and shall avoid indecorous language. Every Council member desiring to direct questions to the administrative staff shall first seek recognition from the Mayor.
(1998 Code, § 2-96)

§ 31.041 MEMBERS OF TOWN STAFF.

Members of the town staff shall observe the same rules of procedure and decorum applicable to members of the Town Council. The presiding officer shall have the authority to preserve decorum in meetings as far as staff members and town employees are concerned. Any staff member desiring to

address the Town Council may be recognized by the presiding officer. When recognized, remarks shall be limited to the matter under discussion. No staff member, other than the staff member having the floor, shall enter into any discussion without permission of the presiding officer.

(1998 Code, § 2-97)

§ 31.042 MEMBERS OF THE PUBLIC.

(A) Any member of the public desiring to address the Town Council may be recognized by the presiding officer. Name and address shall be stated in an audible tone for the record, and remarks shall be limited to the question under discussion. Once a motion is made, the floor shall be closed to further citizen discussion.

(B) Citizens attending Town Council meetings shall observe the same rules of propriety, decorum, and good conduct applicable to members of the Town Council. Any person making personal, impertinent, and slanderous remarks or who becomes boisterous while addressing the Town Council or while attending the Council meeting may be removed from the room by the Police Department upon request of the presiding officer. Aggravated cases may be prosecuted on appropriate complaint signed by the presiding officer. If the presiding officer shall fail to act, any member of the Council may move to require the presiding officer to act to enforce the rules.

(1998 Code, § 2-98)

ATTENDANCE OF OFFICERS AND EMPLOYEES

§ 31.055 TOWN MANAGER.

(A) The Town Manager shall attend all meetings, hearings, and sessions of the Town Council.

(B) The Town Manager shall advise and make recommendations to the Council on all agenda items as requested by the presiding officer and shall be afforded floor privileges in the same manner as Council members.

(1998 Code, § 2-121)

§ 31.056 TOWN CLERK.

The Town Clerk shall be the Clerk of the Council and shall perform the duties in connection with such office. The Town Clerk or his or her designee shall attend all meetings, hearings, and sessions of the Council as requested.

(1998 Code, § 2-122)

§ 31.057 TOWN ATTORNEY.

(A) The Town Attorney shall attend meetings, hearings, and sessions of the Council as requested, either in person or by a deputy.

(B) Any member of the Council may call upon the Town Attorney, through the Mayor, for an oral or written opinion on any question of law, but not on any question of parliamentary procedure.

(C) The Town Attorney shall be afforded the privilege of the floor to explain any matter of legal significance to the pending business.
(1998 Code, § 2-123)

§ 31.058 TOWN TREASURER.

The Town Treasurer shall attend meetings of the Council when requested by the Mayor or the Council and provide monthly reports of the receipts and disbursements in the town's accounts.
(1998 Code, § 2-124) (Ord. O-2014-02, passed 8-5-2014)

§ 31.059 TOWN SERGEANT.

The Town Sergeant or his or her designee shall attend regular meetings of the Council and other meetings as requested.
(1998 Code, § 2-125)

ORDER OF BUSINESS AND AGENDA ITEMS

§ 31.070 ORDER OF BUSINESS.

The business of all regular meetings of the Town Council shall be transacted in the following order, except that the Town Council by a majority vote of members present and voting may change the order:

- (A) Citizen time;
- (B) Approval of minutes;
- (C) Staff, Mayor, and Council reports;
- (D) Reports of boards, commissions, and committees;
- (E) Agenda items; and

(F) Adjournment.
(1998 Code, § 2-146) (Ord. O-2011-04, passed 6-14-2011)

§ 31.071 PROCEDURE FOR ADDING ITEMS.

No item that does not appear on the agenda for a regular Council meeting may be proposed for consideration unless a member of the Town Council determines that it is a matter of such nature that its consideration cannot be postponed to the next regular Town Council meeting.
(1998 Code, § 2-147)

§ 31.072 PREPARATION; DELIVERY TO MEMBERS.

The Town Clerk and the Mayor shall prepare a written agenda for each meeting of the Town Council. All items to be considered shall appear on the written agenda, which shall be available to each member of the Council not later than Friday prior to the regular meeting.
(1998 Code, § 2-148)

§ 31.073 ITEMS TO BE INCLUDED.

(A) The Town Clerk shall place on the agenda for each Town Council meeting all items which, after consultation with the Mayor, are determined to be required or are appropriate for Council consideration.

(B) The Mayor and each member of the Council shall have the right to have included on any prepared agenda such items as they deem appropriate for Council consideration. The Mayor and members of the Town Council desiring to submit items for inclusion on the prepared agenda shall notify the Town Clerk of the nature of the matter they wish considered in sufficient detail as to enable the item to be properly researched. Such notification shall be written and shall be delivered to the Town Clerk's office by Wednesday prior to the regular Town Council meeting. All materials pertinent to items in the agenda shall be distributed to members with the prepared agenda.

(C) The Mayor has the right to defer agenda items with the concurrence of the Council member presenting the item.
(1998 Code, § 2-149)

CHAPTER 32: TOWN OFFICERS

Section

- 32.01 Duties, powers, and functions of Mayor
- 32.02 Duties, powers, and functions of Vice-Mayor
- 32.03 Duties, powers, and functions of Town Manager
- 32.04 Duties of Town Clerk
- 32.05 Duties of Town Treasurer
- 32.06 Duties of Town Sergeant/Deputy Town Sergeant/police officers
- 32.07 Duties, powers, and functions of Town Engineer
- 32.08 Duties, powers, and functions of Zoning Administrator
- 32.09 Duties, powers, and functions of Building/Code Official

Charter reference:

Town officers, see §§ 5 and 16

§ 32.01 DUTIES, POWERS, AND FUNCTIONS OF MAYOR.

(A) The Mayor shall have such duties, powers, and functions as set out in the Charter, the town ordinances, and in state law.

(B) In cases of litigation in which the town is interested, the Mayor, with the concurrence of the Council, shall execute, in association with such other persons as may be procured, appeal bonds, injunction bonds, suretyship for costs, and all other legal obligations that may be necessary for the due protection of the interests of the town in such cases before the courts; and the faith of the town is pledged for the due indemnification of the parties who make such engagements or obligations on its behalf.

(C) All deeds, leases, contracts, conveyances, and agreements of any description, in order to be true and binding instruments of the town, must be authorized by the Council, approved and signed by the Mayor and attested by the Clerk of the Council.

(D) Whenever the seal of the town is required for any writing, the Clerk of the Council shall have authority to affix the seal to such writing.

(E) Any duly authorized writing executed as provided by this section shall be the true and binding

act and instrument of the town.

(1998 Code, § 2-181)

Charter reference:

Mayor, see §§ 3, 4, 6, and 8 through 10

§ 32.02 DUTIES, POWERS, AND FUNCTIONS OF VICE-MAYOR.

At its first meeting following the regular municipal election for Council members, the Council shall elect one of its members as Vice-Mayor, who shall preside at meetings in the absence of the Mayor and may discharge any other duty of the Mayor during the Mayor's absence or disability.

(1998 Code, § 2-182)

Charter reference:

Vice-Mayor, see §§ 7 and 9

§ 32.03 DUTIES, POWERS, AND FUNCTIONS OF TOWN MANAGER.

(A) The Town Council may appoint a Town Manager, fix a salary, and delegate such administrative duties, powers, and responsibilities as it believes to be in the best interest of the town.

(B) The Town Manager shall serve an indefinite term and shall be removable from office by the Town Council. The Town Manager shall be chosen by the Council without regard to political beliefs and solely on the basis of executive and administrative qualifications.

(C) No member of the Council shall, during the term for which elected, be chosen as Town Manager.

(D) In meetings of the Town Council, the Town Manager shall:

(1) Have the responsibility to counsel and advise but with no voting rights;

(2) Have the right to attend and participate in the proceedings of but not to vote in the meetings of all boards, commissions, and committees;

(3) Recommend to the Council such measures as deemed necessary or desirable; and

(4) Keep the Council advised as to present and future needs and policies of the town and as to operation of its government.

(1998 Code, § 2-183)

§ 32.04 DUTIES OF TOWN CLERK.

The Town Clerk, who shall be appointed by the Council and hold office at and during the pleasure of the Council, or in the absence of the Town Clerk a designee of the Mayor, shall attend the meetings of the Town Council and shall keep a correct and complete record of the proceedings of the Town Council. The Clerk shall have charge of the records of the town, faithfully preserve such records, and perform such other services and functions as may be directed by the Town Council. The Town Clerk shall be required to give bond in the amount of \$5,000, with surety approved by the Mayor, payable to the town, for the faithful performance of duties.

(1998 Code, § 2-184)

Charter reference:

Clerk, see §§ 5, 12, and 15

§ 32.05 DUTIES OF TOWN TREASURER.

(A) The Town Treasurer, who shall be appointed by the Council and hold office at the pleasure of the Council, shall receive all taxes and other money and revenues belonging to the town, and deposit them in such bank as the Town Council may direct. The Treasurer shall keep the bank books and checkbooks so that they will accurately reflect the state of accounts. Each check shall be drawn payable to the order of the person for whose benefit it is drawn and shall contain a notation on its face that will indicate the purpose for which it is drawn. All checks and vouchers shall be carefully preserved.

(B) The Treasurer shall also so keep the books that all receipts and disbursements and their source and character may appear, and so that a true and accurate understanding of the financial affairs and conditions of the town may be readily ascertained. All of the Treasurer's books and records shall be open to the inspection of the Mayor and any member of the Town Council, or such persons as the Town Council may direct.

(C) No funds shall be disbursed by the Town Treasurer except by order of the Council and upon a warrant of the Town Clerk, countersigned by the Mayor. No funds in excess of \$500 shall be disbursed without order of the Council, taken in open session, duly and fully recorded. Each disbursement shall be itemized by date, amount, and payee and appear in the Treasurer's monthly financial report to the Council. For purposes of this division (C), the term "order" shall include the award of a contract by the Council for services performed on a one-time or reoccurring basis (during the life of the contract).

(D) An audit of the books of the Town Treasurer shall be made annually, as soon as practical after the close of the fiscal year, but not later than six months after, by such persons as the Town Council may designate for the purpose, assisted by the Treasurer, and a report of such audit made to the Town Council. This report shall also indicate the amount of uncollected assets of the town in the hands of the Treasurer for collection.

(E) Before entering upon the duties of this office, the Town Treasurer shall execute a bond with surety approved by the Mayor in the penalty of not less than \$50,000 conditioned upon the faithful performance of the duties of the office, for the proper collection of and accounting for all money that shall come into the Town Treasurer's hands or that it shall be his or her duty to collect and for the payment of all money, on proper order of the Town Council, to those entitled to receive the money.

(1998 Code, § 2-185)

Charter reference:

Town Treasurer, see §§ 5, 13, and 15

§ 32.06 DUTIES OF TOWN SERGEANT/DEPUTY TOWN SERGEANT/POLICE OFFICERS.

(A) The Town Sergeant, Deputy Town Sergeant, and police officers of the town shall have the powers and duties of enforcing this code and other town ordinances, and all other powers and duties vested in them by the laws of the state.

(B) The Town Sergeant shall serve as the senior officer with such duties, powers, and responsibilities as the Town Council believes to be in the best interest of the town.

(C) The Town Sergeant, Deputy Town Sergeant, and police officers shall have the power to arrest without warrant and carry before the proper authority to be dealt with as the law provides, any and all persons who shall violate any provision of this code or other ordinances of the town in their presence.

(D) The Town Sergeant, Deputy Town Sergeant, and police officers shall be required to give bond in the amount of \$5,000 with surety approved by the Mayor, payable to the town, for the faithful performance of their duties.

(E) All officers of police force shall read, sign, and agree to abide by Police Department general orders.

(1998 Code, § 2-186)

Charter reference:

Additional police during emergency, see § 10

Town Sergeant, Deputy Town Sergeant, see §§ 5, 14, and 15

§ 32.07 DUTIES, POWERS, AND FUNCTIONS OF TOWN ENGINEER.

(A) The Town Engineer shall be appointed by and serve at the pleasure of the Council.

(B) The Town Engineer shall be registered as a professional engineer by the state and shall have five years experience in development engineering.

(C) The Town Engineer shall:

(1) Review final site plans for compliance with requirements for grading, paving, stormwater drainage and retention, traffic circulation, utilities, and floodproofing and coordinate reviews of other agencies and recommend final approval or disapproval to the Town Council;

(2) Inspect ongoing construction work for compliance with the approved site plan permits and applicable town regulations;

(3) Provide oversight of contractors engaged in construction projects for the town, including review of payment requests;

(4) Serve as subdivision agent for the review of subdivision plats;

(5) Administer Chapter 152 of this code;

(6) Provide information, reports, approvals, or other information to the Town Clerk as necessary for issuance of various construction-related permits;

(7) Provide the Zoning Administrator with technical support on the Chesapeake Bay Preservation Act (VA Code §§ 10.1-2100 et seq.);

(8) Investigate such matters of an engineering nature as may be assigned by the Mayor and/or Council and report findings and recommendations;

(9) Assist the Mayor and/or Town Council in obtaining required professional services or bids from contractors;

(10) Coordinate with other town officials and outside agencies as appropriate to ensure that town regulations are not circumvented or overlooked; and

(11) Perform such other engineering tasks as may be assigned by the Mayor and/or Council. (1998 Code, § 2-187)

§ 32.08 DUTIES, POWERS, AND FUNCTIONS OF ZONING ADMINISTRATOR.

(A) The Zoning Administrator shall be appointed by and serve at the pleasure of the Council.

(B) The Zoning Administrator shall have five years experience in writing, enforcing, and/or interpreting zoning regulations, either as an employee of a local government or as a consultant to a local government.

(C) The Zoning Administrator shall:

(1) Enforce the provisions of Chapter 157 of this code;

(2) Interpret Chapter 157 of this code and the Zoning Map;

(3) Review site plans and subdivision plans for compliance with Chapter 157 of this code and the Chesapeake Bay Preservation Act (VA Code §§ 10.1-2100 et seq.);

(4) Serve as administrator for the local program under the Chesapeake Bay Preservation Act;

(5) Consult with the Town Engineer concerning any technical matters subject to the Zoning Administrator's evaluation under the Chesapeake Bay Preservation Act;

(6) Maintain the Zoning Map in the Town Clerk's office, including recording such changes in zoning districts as may be approved by the Town Council within 30 days of Council action and notifying the county;

(7) Provide advice and assistance to the Town Council regarding applications for zoning changes or special use permits;

(8) Provide records and staff reports to the Board of Zoning Appeals as requested or required;

(9) Coordinate with other town officials or outside agencies as appropriate to ensure that town regulations are not circumvented or overlooked; and

(10) Investigate alleged violations of Chapter 157 of this code and take such steps as are authorized under the state code to prevent or abate violations that are found to exist.

(D) The Council may appoint a Deputy Zoning Administrator whose qualifications and duties shall be set by the Council.

(1998 Code, § 2-188) (Ord. O-2004-11, passed 4-13-2004)

§ 32.09 DUTIES, POWERS, AND FUNCTIONS OF BUILDING/CODE OFFICIAL.

(A) The Town Building Official shall be appointed by and serve at the pleasure of the Council. The Town Building Official shall be a certified building official in accordance with the State Department of Housing and Community Development (DHCD).

(B) The Town Building Official shall:

(1) Review building plans for compliance with appropriate building codes;

(2) Perform inspections of building construction within town;

(3) Issue appropriate occupancy permits for both commercial and residential structures;

(4) Consult with Town Engineer, Town Zoning Administrator, Town Attorney, and Town Manager on Building Code matters;

(5) Coordinate with other town officials and outside agencies as appropriate to ensure that town regulations are not circumvented or overlooked; and

(6) Perform such other building official tasks as may be assigned by the Mayor and/or Council.

(C) The Council may appoint a deputy building official whose qualifications and duties shall be set by the Council.

(1998 Code, § 2-189) (Ord. passed 5-13-1997; Ord O-2015-03, passed 6-2-2015)

CHAPTER 33: TOWN BOARDS AND COMMISSIONS

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PLANNING COMMISSION

§ 33.01 ESTABLISHMENT.

The Planning Commission for the Town of Occoquan (the "Commission") is created pursuant to authority contained in the Code of Virginia, and is governed by the Code of Virginia and Occoquan Town Code.

(1998 Code, § 2-242) (Ord. O-2018-01, passed 5-2-2018)

§ 33.02 PURPOSE.

The general purpose of the Commission shall be to guide and promote the efficient, coordinated development of the town in a manner which will best promote the health, safety, and general welfare of its people; preserve and protect the town and its natural resources; to address the goals and recommendations of the Comprehensive Plan; and to serve in an advisory capacity to the Town Council.

(Ord. O-2018-01, passed 5-2-2018)

§ 33.03 QUALIFICATIONS, APPOINTMENT, REMOVAL, TERMS, TRAINING, COMPENSATION OF MEMBERS.

(A) *Membership requirements.* Qualifications for membership shall be set by state law, membership of the Commission shall consist of not less than five nor more than 15 members appointed by Town Council. Members of the Commission shall be residents of the town, qualified by knowledge and experience to make decisions on questions of community growth and development; provided, that at least half the members so appointed shall be owners of real property. One member of the Commission may be a member of the Town Council and one member may be a member of the administrative branch of government of the town, the term of each of these two members shall be coextensive with the term of office to which they have been elected or appointed unless the Council, at the first regular meeting each year, appoints others to serve as their representatives.

(B) *Terms.* Terms for members are set by state law. Each member shall be appointed to hold office for four year term. Vacancies shall be filled by the Town Council for the unexpired term within 60 days.

(C) *Certified Planning Commissioners' training.* The Planning Commission recognizes that all members should understand their roles and responsibilities as defined by the Code of Virginia. All newly appointed members to the Planning Commission are expected to complete a Certified Planning Commissioners Program and become certified within 24 months of appointment. The Town Council may waive this training requirement.

(D) *Absences.* In accordance with the Code of Virginia, more than four consecutive or absences at 25% of all meetings in any one fiscal year shall be considered nonperformance of duty and cause of removal from the Commission.

(E) *Removal.* Members of the Commission may be removed by the Town Council for nonperformance of duty, misconduct in office, or upon failure to declare a conflict of interest upon vote by the majority, after written charges have been prepared and a hearing conducted.

(F) *Resignation.* A member may resign from the Commission by sending a written notice of resignation to the Town Council or Commission chairperson.

(G) *Compensation.* The Council may provide compensation to Commission members for:

- (1) Reimbursement of actual expenses incurred by members of the Commission;
- (2) Compensation to such members, or any of them, for their services; or
- (3) Both.

(1998 Code, § 2-243) (Ord. passed 5-13-1997; Ord. O-2002-2, passed 2-12-2002; Ord. O-2018-01, passed 5-2-2018)

§ 33.04 MEETINGS.

(A) *Regular meetings.* Regular meetings of the Commission shall be held monthly in the Town Hall on the fourth Tuesday of each month. The dates and times shall be posted at the Town Hall and a notice should be published in accordance with the Code of Virginia. Any changes in the date or time of the regular meetings shall be posted and noticed in the same manner as originally established. When a regular meeting date falls on or near a legal holiday, the Commission shall select suitable alternate dates in the same month, in accordance with the Code of Virginia.

(B) *Meeting notices.* All meetings shall be posted at the Town Hall according to the Code of Virginia. The notice shall include the date, time and place of the meeting.

(C) *Special meetings.* Special meetings of the Commission may be called by the chairperson or by two members upon written request to the chairperson. The business which the Commission may perform shall be conducted at a public meeting of the Commission held in compliance with the Code of Virginia. Public notice of the time, date, and place of the special meeting shall be given in a manner as required by the Code of Virginia. In accordance with the VA Code § 15.2-2214, the staff liaison shall notify all Commissioners, in writing, at least five days in advance of a special meeting, of the time and place of the meeting and the purpose thereof. Written notice of a special meeting is not required if the time of the special meeting has been fixed at a regular meeting, or if all members are present at the special meeting or file a written waiver of notice.

(D) *Open meetings.* In accordance with the Virginia Freedom of Information Act, all meetings of the Commission shall be open to the public and held in a place accessible to the general public. All deliberations and decisions of the Commission shall be made at a meeting open to the public. A person shall be permitted to address a hearing of the Commission in accordance with the meeting's written agenda. A person shall not be excluded from a meeting of the Commission except in accordance with the law.

(E) *Public record.* All meetings, minutes, records, documents, correspondence, and other materials of the Commission shall be open to public inspection in accordance with the Freedom of Information Act, except as may otherwise be provided by law.

(F) *Quorum.* In order for the Commission to conduct business or take any official action, a quorum consisting of the majority of the voting members of the Commission shall be present. When a quorum is not present, members of the Commission may discuss matters of interest, but can take no action until a quorum of the Commission is established. All public hearings without a quorum shall be rescheduled for the next regular or special meeting, and notice thereof shall be provided in accordance with the Code of Virginia. The Commission, by resolution adopted at a regular meeting, may also fix the day or days to which any meeting shall be continued if the Chairperson, or Vice Chairperson if the Chairperson is unable to act, finds and declares that weather or other conditions are such that it is hazardous for member to attend the meeting. Such finding shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised for such meeting shall be conducted at the continued meeting and no further advertisement is required. The Commission shall cause a copy of such resolution to be inserted in a newspaper having general circulation in the locality at least seven days prior to the first meeting held pursuant to the adopted schedule.

(G) *Voting.* By law, no action of the local Planning Commission shall be valid unless authorized by a majority vote of those present and voting in the presence of a quorum. Voting shall ordinarily be voice vote; provided, however, that a roll call vote shall be required if requested by any Commission member or directed by the chairperson. Any member abstaining from a vote shall not participate in the discussion of that item.

(H) *Agenda.*

- (1) A written agenda for all regular meetings shall be prepared as follows:
 - (a) Call to order.
 - (b) Roll call.
 - (c) Approval of agenda.
 - (d) Approval of minutes.

agenda. (e) Public comments and communications concerning items not on the

(f) Scheduled public hearings.

(g) Unfinished business.

(h) New business.

(i) Administrative items.

(j) Adjournment.

(2) Any Commissioner may request that an item be placed on the regular meeting agenda for discussion provided such request is made not less than one week prior to the next regular meeting and provided that such request is approved by the chairperson. The Commission may, by majority vote or unanimous consent, amend or adjust the order of any agenda at any point during the meeting.

(I) *Rules of order.* Except as otherwise provided by law or these bylaws, meetings of the Commission will be governed by the current edition of "Robert's Rules of Order, Newly Revised."

(J) *Public hearings.* Hearings shall be scheduled and due notice given in accordance with the Code of Virginia. Public hearings conducted by the commission shall be run in an orderly and timely fashion. This shall be accomplished by the establishing hearing procedures.

(1) Open public hearing.

(2) Read chairman's statement.

(3) Applicant presentation and staff presentation (order shall be determined by the Commission at the meeting).

(4) Public testimony/comments.

(5) Applicant rebuttal.

(6) Planning Commission questions.

(7) Close public hearing.

(8) Planning Commission discussion.

(9) Planning Commission action.

(10) Advise public of next step in the process.

(K) *Notice of decision.* A written notice containing the decision of the Commission will be sent. (1998 Code, § 2-244) (Ord. O-2004-12, passed 4-13-2004; Ord. O-2018-01, passed 5-2-2018)

§ 33.05 FACILITIES FOR HOLDING OF MEETINGS AND PRESERVATION OF DOCUMENTS.

The Town Council shall provide the Commission with facilities for the holding of meetings and the preservation of plans, maps, documents and accounts. (1998 Code, § 2-246) (Ord. O-2018-01, passed 5-2-2018)

§ 33.06 ROLES AND RESPONSIBILITIES.

(A) *Members.* All members of the Commission shall:

- (1) Regularly attend all scheduled meetings as well as special or called meetings.
- (2) Prepare for each meeting by familiarizing themselves with the meeting agenda beforehand.
- (3) Follow the rules of procedures and contribute to meetings in a constructive manner.
- (4) Uphold the prestige of the office by conducting themselves in a respectful and ethical manner.
- (5) Always seek to ascertain the public interest and how to further the interests of the community as a whole.

(B) *Officers.* The officers of the Commission are appointed members of the Commission and shall consist of a chairperson, vice-chairperson, and secretary.

(C) *Duties of the chairperson.* The chairperson shall preside at all meetings, appoint committees, and perform such duties as may be delegated by the Commission or Town Council. The Commission chairperson shall have the right to appoint new committee members at any time to fill a vacancy.

(D) *Duties of the vice-chairperson.* The vice-chairperson shall act in the capacity of the chairperson in his or her absence. In the absence of both the chairperson and the vice-chairperson, the Commission shall elect one of its members as president pro tem to preside at the meeting.

(E) *Duties of the secretary.* The secretary shall serve as the liaison between the Commission and

the Town Clerk who is responsible for the execution of documents in the name of the Commission, performing the duties hereinafter listed below, and performing such other duties as the Commission may determine.

(1) *Minutes.* Commission minutes shall be prepared by the secretary of the Commission. The minutes shall contain a brief synopsis of the meeting, complete statement of the conditions or recommendations made on any action; and recording of attendance. All communications, actions, and resolutions shall be attached to the minutes. The official records shall be deposited with the Town Clerk. The Town Clerk shall be responsible for a permanent record of the minutes of each meeting and shall have them preserved in suitable permanent records.

(2) *Correspondence.* The Town Clerk shall be responsible for the issuance of formal written correspondence with other groups or persons, as directed by the Commission. All communications, petitions, reports, or other written materials received by the Town Clerk shall be brought to the attention of the Commission.

(3) *Attendance.* The Secretary shall be responsible for maintaining an attendance record for each Commission member and report those records annually to the Commission for inclusion in the Annual Report to the Town Council.

(4) *Notices/agendas.* The Town Clerk shall issue such notices and prepare the agendas for all meetings, as may be required by the Commission.

(F) *Duties of the Town Council representative.* The Town Council representative to the Commission shall report the actions of the Town Council to the Commission and update the Commission on actions by the Town Council that relate to the functions and duties of the Commission

(G) *Duties of the Architectural Review Board representative.* The Architectural Review Board (ARB) representative to the Commission shall report the actions of the ARB to the Commission and update the Commission on actions by the ARB that relate to the functions and duties of the Commission.

(H) *Elections.*

(1) At the January meeting, the Commission shall select from its membership a chairperson, vice-chairperson, and secretary who shall serve for a 12-month period and who shall be eligible for re-election.

(2) A candidate receiving a majority vote shall be declared elected.

(3) Newly elected officers will assume their office immediately after the election.

(I) *Terms.* All officers shall serve a term of one year, or until their successors are selected and assume office. Officers may be re-elected

(J) *Vacancies.* Vacancies in offices shall be filled immediately by regular election procedure with the term expiring in accordance with division (H)(1) above.
(Ord. O-2018-01, passed 5-2-2018)

§ 33.07 DUTIES.

The Commission shall perform the following duties:

(A) Draft, conduct hearings, and recommend a Zoning Ordinance, and subsequent amendments thereto, to the Town Council.

(B) Assist the Town Council in the adoption of a Comprehensive Plan as provided in VA Code Title 15.2, which, with accompanying maps, plats, charts and descriptive matter, shall show the Commission's recommendations for the development of the territory covered by the Plan. In the preparation of such Plan, the Commission shall make careful and comprehensive surveys and studies of existing conditions and trends of growth, and of the probable future requirements of its territory and inhabitants. The Plan shall be made with the general purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the town and its environs that will, in accordance with present and probable future needs and resources, best promote the health, safety, morals, order, convenience, comfort, prosperity and general welfare of the inhabitants, as well as efficiency and economy in the process of development. The Plan shall be reviewed regularly, and necessary updates made as required.

(C) Promote public interest in and an understanding of the Comprehensive Plan, and to that end may publish and distribute copies of the plan or of any report and may employ such other means of publicity as it may determine, within its budget.

(D) Make recommendations and prepare an Annual Report to the Town Council in November concerning the operation of the Commission and the status of planning within its jurisdiction. A draft version of the document will be prepared for the October meeting, with a possible work session following that same month to finalize the document in time for a joint meeting with the Town Council in November to discuss and inform the Council's November work session meeting later that month.

(E) Review and take action or recommend appropriate actions to the Town Council on site plans, and special land use permits.

(F) Review and take action on subdivisions proposals.

(G) Review and comment to the Town Council on all proposed zoning changes.

(H) Prepare, publish, and distribute special studies and plans, as deemed necessary by the Commission or Town Council and for which appropriations of funds have been approved by the Town Council, as needed.

(I) Attend training sessions, conferences, or meetings as needed to properly fulfill the duties of a

member of the Commission (hereinafter "commissioner"), and for which appropriations of funds have been approved by the Town Council, as needed.

(J) Perform other duties and responsibilities as may be requested by the Town Council.

(K) Conduct such site visits as deemed necessary to evaluate the application and supporting material. Site visits shall be conducted individually unless otherwise scheduled by the Commission, obeying all requirements of the Code of Virginia.

(L) Keep a complete record of the Commission's proceedings;

(M) Supervise the Commission's fiscal affairs and responsibilities, under rules and regulations as prescribed by the Town Council;

(N) Prepare and submit an annual budget in the manner prescribed by the Town Council; and

(O) Perform the duties provided in VA Code § 15.2-2221.
(1998 Code, § 2-248) (Ord. O-2018-01, passed 5-2-2018)

§ 33.08 EXPENDITURES; GIFTS AND DONATIONS.

The Commission may expend, under regular town procedure as provided by law, sums appropriated to it for its purposes and activities. The town may accept gifts and donations for Commission purposes. Any moneys so accepted shall be deposited with the Town Treasurer in a special non-reverting local commission fund to be available for expenditure by the Commission for the purpose designated by the donor. The Town Treasurer may issue warrants against such special fund only upon vouchers signed by the Mayor, Town Clerk, and the chairman of the Commission. The expenditures of the Commission, exclusive of gifts or grants, shall be within the amounts appropriated for such purpose by the Town Council.

(1998 Code, § 2-249) (Ord. O-2018-01, passed 5-2-2018)

§ 33.09 AMENDMENTS.

The Planning Commission may consider bylaw amendments at any regular meeting, after at least 15 days' notice. The Planning Commission may then recommend such amendments. Once approved by the Commission, all amendments shall be forwarded to the Town Council for its approval. The amendments to the bylaws shall be effective upon approval by the Town Council.

(Ord. O-2018-01, passed 5-2-2018)

§ 33.10 NEW MEMBER ONBOARDING.

New members of the Commission will be provided a copy of the Commission By-Laws, Town Comprehensive Plan, and the latest edition of the book Zoning 101: A Practical Introduction: by Carl

Stephani and Marilyn Stephani, or such other book as the Zoning Administrator may determine to be the best introduction, to become familiarized with the role of the Commission, zoning terminology, and town priorities.

(Ord. O-2018-01, passed 5-2-2018)

BOARD OF ZONING APPEALS

§ 33.20 ESTABLISHMENT.

The Board of Zoning Appeals created pursuant to authority contained in the VA Code shall continue in force under the provisions of this subchapter.

(1998 Code, § 2-271)

§ 33.21 MEMBERSHIP.

The Board of Zoning Appeals shall consist of five residents of the town, who shall be appointed by the Circuit Court of the county for a five-year term. Appointments shall be made for such terms that the term of one member shall expire each year. An appointment to fill a vacancy shall be only for the unexpired portion of that term. Members may be reappointed to succeed themselves. A member whose term expires shall continue to serve until his or her successor is appointed and qualifies.

(1998 Code, § 2-272)

§ 33.22 CONDITIONS OF TENURE, CONFLICT OF INTEREST, REMOVAL FROM OFFICE.

Members of the Board of Zoning Appeals shall hold no other public office in the town, except that one member may be a member of the Planning Commission. They must have certification within one year. Any member of the Board having an interest in property related to an appeal to the Board shall be disqualified to vote on that matter. Any Board member may be removed for just cause by the court that appointed him or her, upon written charges and after a public hearing.

(1998 Code, § 2-273) (Ord. passed 5-13-1997)

§ 33.23 VACANCIES.

The Secretary of the Board of Zoning Appeals shall notify the Circuit Court whenever a vacancy occurs and shall also provide the court notice at least 30 days in advance of the expiration of any term of office. Concurrently with any notice to the court, the Secretary shall transmit to the Mayor and Council any recommendation the Board may have with respect to a replacement. The Council shall forward its recommendation to the Circuit Court.

(1998 Code, § 2-274)

§ 33.24 ORGANIZATION.

The Board of Zoning Appeals shall conduct an annual organizational meeting in the month of January, if possible, to elect a Chairperson, Vice-Chairperson, Secretary, and such other officers as it deems necessary for the remainder of that calendar year. Officers may be reelected to succeed themselves. An officer vacancy may be filled by special election. Meetings of the Board shall be held at the call of its Chairperson or Acting Chairperson and at such times as the majority of the Board may determine. When a regular or special meeting cannot be held at the scheduled time due to inclement weather, the Chairperson shall fix a date and time for the meeting to occur. Matters advertised for a meeting rescheduled due to inclement weather need not be re-advertised if the advertisement stated that the meeting may be rescheduled in the event of inclement weather.
(1998 Code, § 2-275) (Ord. O-2004-12, passed 4-13-2004)

§ 33.25 QUORUM.

A quorum shall be at least three members unless as otherwise provided for by the State and Local Government Conflict of Interests Act (VA Code §§ 2.1-639.1 et seq.).
(1998 Code, § 2-276)

§ 33.26 RULES AND REGULATIONS.

(A) The Board of Zoning Appeals may make, alter, or rescind such rules, regulations, and forms as it may consider necessary, consistent with the ordinances of the town and general laws of the state.

(B) Except for deliberating an appeal, all meetings of the Board and voting shall be open to the public and shall otherwise conform to The State Freedom of Information Act (VA Code §§ 2.2-3700 through 2.2-3714).

(C) The Board shall keep minutes of its proceedings, which shall reflect the vote of each member upon each question, or if absent or failing to vote, indicating such fact.

(D) The Board shall keep records of its examinations, minutes of its proceedings, public hearings, public advertising, and other official actions, all of which will be immediately filed with the Town Clerk and shall constitute a public record.

(E) All advertisements for public hearings and other notices shall conform to the requirements of the VA Code.

(F) Except as otherwise provided in the State and Local Government Conflict of Interests Act (VA Code §§ 2.1-639.1 et seq.), a favorable vote of three members of the Board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official or to decide in favor of the applicant on any matter upon which the Board is required to act.

(1998 Code, § 2-277)

§ 33.27 RECORDS AND REPORTS.

In addition to records required by § 33.26, the Board of Zoning Appeals shall submit, each January, an annual report of its activities to the Mayor and Town Council.

(1998 Code, § 2-278)

§ 33.28 COMPENSATION AND SUPPORT SERVICES.

Board of Zoning Appeals members may be compensated for their services at the discretion of and in such amounts as the Town Council may determine. Within the limits of funds appropriated by the Council, the Board may employ or contract for secretaries, clerks, legal counsel, consultants, and other technical and clerical services when such services are not provided by or available from the town.

(1998 Code, § 2-279)

§ 33.29 POWERS AND DUTIES.

The Board of Zoning Appeals shall have the following powers and duties:

(A) To hear and decide appeals from any order, requirement, decision, or determination made by an administrative officer in the administration or enforcement of this subchapter or of Chapter 157 of this code;

(B) To authorize upon appeal or original application in specific cases such variance as defined in VA Code § 15.2-2201, from the terms of Chapter 157 of this code as will not be contrary to the public interest, when, owing to special conditions a literal enforcement of the provisions will result in unnecessary hardship; provided that the spirit of Chapter 157 of this code shall be observed and substantial justice done, as follows:

(1) When a property owner can show that his or her property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size, or shape of a specific piece of property at the time of the effective date of Chapter 157 of this code, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, or of the condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of Chapter 157 of this code would effectively prohibit or unreasonably restrict the utilization of the property or where the Board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of Chapter 157 of this code;

(2) No such variance shall be authorized by the Board unless it finds that:

(a) The strict application of Chapter 157 of this code would produce undue hardship;

(b) Such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and

(c) The authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

(3) No such variance shall be authorized except after notice and hearing as required by VA Code § 15.2-2204. However, when giving any required notice to the owners, their agents, or the occupants of abutting property and property immediately across the street or road from the property affected, the Board may give such notice by first-class mail rather than by registered or certified mail;

(4) No variance shall be authorized unless the Board finds that the condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to Chapter 157 of this code; and

(5) In authorizing a variance, the Board may impose such conditions regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with.

(C) To hear and decide appeals from the decision of the Zoning Administrator after notice and hearing as provided by VA Code § 15.2-2204. However, when giving any required notice to the owners, their agents, or the occupants of abutting property and property immediately across the street or road from the property affected, the Board may give such notice by first-class mail rather than by registered or certified mail. No such appeal shall be heard except after notice and hearing as provided by VA Code § 15.2-2204;

(D) To hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by any such question, and after public hearing with notice as required by VA Code § 15.2-2204, the Board may interpret the map in such way as to carry out the intent and purpose of Chapter 157 of this code for the particular section or district in question. However, when giving any required notice to the owners, their agents, or the occupants of abutting property and property immediately across the street or road from the property affected, the Board may give such notice by first-class mail rather than by registered or certified mail. The Board shall not have the power to change substantially the locations of district boundaries as established by ordinance. No provision of this section shall be construed as granting to the Board the power to rezone property;

(E) To hear and decide applications for such special exceptions as may be authorized in Chapter 157 of this code. The Board may impose such conditions relating to the use provided for in the

authorized special exceptions for which a permit is granted as it may deem necessary in the public interest, including limiting the duration of a permit, and may require a guarantee or bond to ensure that the conditions imposed are being and will continue to be complied with. No such special exception may be granted except after notice and hearing as provided by VA Code § 15.2-2204. However, when giving any required notice to the owners, their agents, or the occupants of abutting property and property immediately across the street or road from the property affected, the Board may give such notice by first-class mail rather than by registered or certified mail; and

(F) To revoke a special exception if the Board determines that there has not been compliance with the terms or conditions of the permit. No special exception may be revoked except after notice and hearing as provided by VA Code § 15.2-2204. However, when giving any required notice to the owners, their agents, or the occupants of abutting property and property immediately across the street or road from the property affected, the Board may give such notice by first-class mail rather than by registered or certified mail.

(1998 Code, § 2-280)

§ 33.30 APPEALS TO BOARD.

(A) *Generally.* An appeal to the Board of Zoning Appeals may be taken by any person aggrieved or by any officer, department, board, or bureau of the town affected by any decision of the Zoning Administrator or from any order, requirement, decision, or determination made by any other administrative officer in the administration or enforcement of VA Code §§ 15.2-2280 et seq., or Chapter 157 of this code. Notwithstanding any Charter provision to the contrary, any written notice of a zoning violation or a written order of the Zoning Administrator dated on or after July 1, 1993, shall include a statement informing the recipient that he or she may have a right to appeal the notice of a zoning violation or a written order within 30 days in accordance with this section, and that the decision shall be final and unappealable if not appealed within 30 days. The appeal period shall not commence until the statement is given.

(B) *Application and fees.* An appeal must be taken within 30 days after the decision appealed from by filing, on the form provided, a notice of appeal with the Zoning Administrator and the Board of Zoning Appeals, which appeal shall specify the grounds of the appeal, together with the fees as established in the current fee schedule. The application and accompanying maps, plans, and other documentation constituting the record upon which the action appealed from was taken shall be transmitted promptly to the Secretary of the Board, who shall place the matter on the docket. An appeal shall stay all proceedings in furtherance of the action appealed from unless the Zoning Administrator certifies to the Board that by reason of facts stated in the certificate a stay would in his or her opinion cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order granted by the Board or by a court of record, on application and on notice to the Zoning Administrator and for good cause shown.

(C) *Notice and hearing required; Planning Commission recommendation.* After entering the appeal on the docket, the Secretary of the Board shall advertise a public hearing, give written notice to the parties in interest, and request the Zoning Administrator to transmit a copy of the application and

his or her staff report to the Planning Commission; the Planning Commission may send a written recommendation to the Board to appear as a party at the public hearing.

(D) *Burden of proof.* The applicant for a variance has the burden of proving that denial of a variance will result in unnecessary hardship, of proving that his or her hardship is due to Chapter 157 of this code itself, and of proving, to the satisfaction of the Board, requirements for a variance stipulated in the VA Code.

(E) *Findings required.* The Board shall fix a reasonable time for the hearing of an application or appeal, give public notice as well as due notice to the parties in interest, and make its decision within 90 days of the filing of the application or appeal. In exercising its powers, the Board may reverse or affirm, wholly or partly, or may modify an order, requirement, decision, or determination appealed from. The concurring vote of a majority of the membership of the Board shall be necessary to reverse any order, requirement, decision, or determination of an administrative officer or to decide in favor of the applicant on any matter upon which it is required to pass under Chapter 157 of this code or to effect any variance from Chapter 157 of this code. The decision of the Board must be based on the evidence adduced at a public hearing and must include findings of fact disclosing the evidence relied upon by the Board and otherwise state the business and grounds for its decision to assure that the provisions of the VA Code and this subchapter have been met.

(F) *Board to issue order.* Whenever the Board shall grant a variance, the Secretary of the Board shall cause an order to be issued evidencing the grant and furnish copies of the order to the applicant, to the Zoning Administrator, to the Town Clerk, and to such other parties as deemed necessary.

(G) *Limitation on change.* In no event shall a written order, requirement, decision, or determination made by the Zoning Administrator or other administrative officer be subject to change, modification, or reversal by any Zoning Administrator or other administrative officer after 60 days have elapsed from the date of the written order, requirement, decision, or determination where the person aggrieved has materially changed his or her position in good faith reliance on the action of the Zoning Administrator or other administrative officer unless it is proven that such written order, requirement, decision, or determination was obtained through malfeasance of the Zoning Administrator or other administrative officer or through fraud. The 60-day limitation period shall not apply in any case where, with the concurrence of the Town Attorney, modification is required to correct clerical or other nondiscretionary errors.

(1998 Code, § 2-281)

§ 33.31 JUDICIAL REVIEW AND RELIEF.

(A) *Certiorari to review decision of Board.* Any person aggrieved by any decision of the Board of Zoning Appeals, or any aggrieved taxpayer or any officer, department, board, or bureau of the town may present to the Circuit Court of the county a petition specifying the grounds on which aggrieved within 30 days after the filing of a decision in the office of the Board.

(B) *Parties aggrieved entitled to writ.* Upon the presentation of such petition, the court shall allow a writ of certiorari to review the decision of the Board and shall prescribe the time within which a return must be made and served upon the relator's attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from; but the court may, on application, on notice to the Board, and on due cause shown, grant a restraining order.

(C) *Other parties to suit.* If the petition is presented by the Town Council, the Council shall be party to the suit. The court may, likewise, admit as a party to the suit any person who, if the decision had been adverse, would have been authorized under this division (C) to present a petition in the first instance.

(D) *Board to make return.* The Board shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies of the papers or of such portions of the papers as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified.

(E) *Costs not allowed.* Costs shall not be allowed against the Board unless it shall appear to the court that the Board acted in bad faith or with malice in making the decision appealed from.
(1998 Code, § 2-282)

ARCHITECTURAL REVIEW BOARD

§ 33.45 ESTABLISHMENT.

The Architectural Review Board heretofore created shall continue in force under the provisions of this subchapter.
(1998 Code, § 2-401)

§ 33.46 MEMBERSHIP.

The Architectural Review Board (ARB) shall consist of nine members, appointed by the Town Council, of whom seven shall be appointed as regular members and two as alternate members to vote in the absence of any regular member. A quorum shall be four members. One regular member shall be a member of the Town Council, one regular member shall be a member of the Planning Commission, and one regular member may be a business owner in the town who shall be designated as the business representative. The business representative shall act as a liaison between town businesses and the ARB. Other members shall be appointed primarily on the basis of a knowledge and demonstrated interest in the historical heritage and architecture of the town. All members shall be residents of the town, except the business representative, who need not be a resident but shall be: a business owner in the town; and licensed and operating his or her business in accordance with all applicable laws and ordinances. All candidates for ARB membership (other than the Council member and Planning Commission member) shall submit a written application to the Town Council.
(1998 Code, § 2-402) (Ord. passed 5-13-1997; Ord. O-2003-03, passed 12-2-2014)

§ 33.47 TERM OF OFFICE; REMOVAL; VACANCIES.

The term of office of the members of the Architectural Review Board shall be for three years, except that the terms of the Council member and Planning Commission member shall correspond to their official tenure of office. Appointed members of the Board serve at the pleasure of the Council. Upon notice that the business representative no longer owns a business in the town, the Council may remove that person from the Board. Appointments to fill vacancies shall be only for the unexpired portion of the term and shall be done within 60 days. Members may be reappointed to succeed themselves. Recommendations to fill vacancies may be made by the Board to the Mayor and approved by the Council.
(1998 Code, § 2-403)

§ 33.48 OFFICERS.

The Architectural Review Board shall elect its Chairperson, Vice-Chairperson, and Secretary from its membership.
(1998 Code, § 2-404)

§ 33.49 PROCEDURE FOR MEETINGS.

(A) The Chairperson shall conduct the meetings of the Architectural Review Board and report action taken at the regular monthly meeting of the Town Council. In the absence of the Chairperson, the Vice-Chairperson shall preside.

(B) The Secretary shall keep the minutes of the meetings and a permanent record of all resolutions, motions, transactions, and determinations.

(C) All members of the Board, with the exception of nonvoting consultants, shall be entitled to

vote; and the decision of the Board shall be determined by a majority vote.

(D) A quorum of four members present is required before the Board can take any official action. When serving in the absence of a regular member, an alternate counts toward the quorum.

(E) Meetings shall be conducted according to *Robert's Rules of Order, Newly Revised*.

(F) The Board shall meet in regular session on the second Tuesday of each month at 7:30 p.m., if an application has been filed for its consideration, and may meet in special session as called by the Chairperson and deemed necessary for the conduct of business. When a regular or special meeting cannot be held at the scheduled time due to inclement weather, the Chairperson shall fix a date and time for the meeting to occur. Matters advertised for a meeting rescheduled due to inclement weather need not be re-advertised if the advertisement stated that the meeting may be rescheduled in the event of inclement weather.

(G) The meetings of the Board shall be open to the public, and a full and impartial hearing shall be granted.

(H) When voting on any question, no proxy shall be allowed.

(I) The Board shall vote and announce its decision on any matter properly before it not later than 14 days after the conclusion of the hearing on the matter unless the time is extended by mutual agreement between the Board and the applicant.

(J) The Board shall not reconsider any decision made by it except in cases where an applicant appears within 90 days with an amended application as hereinafter provided.

(K) In case of disapproval of the erection, reconstruction, alteration, restoration, or razing of a building or structure, the Board shall briefly state its reasons in writing and may make recommendations to the applicant with respect to the appropriateness of design, arrangement, texture, material, color, location, and the like of the building or structure involved. In case of disapproval accompanied by recommendations, the applicant may be heard before the Board if, within 90 days, the applicant comes before the Board with an amended application so as to comply with the recommendations of the Board.

(L) In matters regarding the procedure for meetings not covered by this section, the Board may establish its own rules, provided they are not contrary to the spirit of this chapter and are consistent with the ordinances of the town and the VA Code.

(1998 Code, § 2-405) (Ord. O-2003-03, passed 5-13-2003; Ord. O-2004-12, passed 4-13-2004; Ord. O-2011-06, passed 10-4-2011; Ord. O-2018-01, passed 5-2-2018)

§ 33.50 DUTIES.

The duties of the Architectural Review Board shall be to:

(A) Administer §§ 157.175 through 157.182, and §§ 157.300 through 157.309, 157.320 through 157.322, and 157.335 through 157.339;

(B) Prescribe rules pertaining to the administration of its affairs;

(C) Keep a complete record of its proceedings and make provisions for the custody and preservation of its papers and documents in the Town Hall;

(D) Assist and advise the Town Council, Planning Commission, and other town departments, agencies, and property owners in matters involving historically significant sites and buildings, such as appropriate land usage, parking facilities, and signs;

(E) Formulate recommendations to the Town Council regarding the Old and Historic District and signage;

(F) Prepare and recommend for adoption a design manual based upon the criteria set forth in §§ 157.175 through 157.182, and §§ 157.300 through 157.309, 157.320 through 157.322, and 157.335 through 157.339; and

(G) Promote public interest in and an understanding of the history of the town.
(1998 Code, § 2-406) (Ord. O-2004-05, passed 2-10-2004; Ord. O-2012-01, passed 2-7-2012)

CHAPTER 34: TOWN FIRE DEPARTMENT

Section

Fire Marshal

- 34.01 Office created; deputies; appointments
- 34.02 Oaths of office
- 34.03 General powers and duties
- 34.04 Fire Marshal to be summoned to scene of fire, explosion, and the like
- 34.05 Right of entry to investigate releases of hazardous material, hazardous waste, or regulated substances
- 34.06 Power to arrest, to procure and serve warrants, and to issue summons
- 34.07 Police powers of Fire Marshals

- 34.99 Penalty

FIRE MARSHAL

§ 34.01 OFFICE CREATED; DEPUTIES; APPOINTMENTS.

(A) The Town Council shall appoint the Chief Fire Marshal (the Fire Marshal).

(B) The Deputy Fire Marshal(s) and assistant fire marshals shall be appointed by the Chief Fire Marshal, whose powers and duties shall be as set forth in this subchapter and as authorized by the VA Code.

(1998 Code, § 22-1) (Ord. O-2013-04, passed 4-2-2013)

§ 34.02 OATHS OF OFFICE.

The Fire Marshal, Deputy Fire Marshal, assistant fire marshals, and members of the Fire Marshal's staff, before entering upon their duties, shall, respectively, take an oath, before any officer authorized to administer oaths, faithfully to discharge the duties of their offices.

(1998 Code, § 22-1.1) (Ord. O-2013-04, passed 4-2-2013)

§ 34.03 GENERAL POWERS AND DUTIES.

The Fire Marshal and deputies or assistants shall have such powers and duties as are prescribed by state law and by this subchapter and other ordinances of the county.

(1998 Code, § 22-1.2) (Ord. O-2013-04, passed 4-2-2013)

§ 34.04 FIRE MARSHAL TO BE SUMMONED TO SCENE OF FIRE, EXPLOSION, AND THE LIKE.

The Fire Department officer-in-charge of any fire, explosion, or incident to which fire apparatus or equipment responds shall immediately summon the Fire Marshal to the scene to investigate the circumstances involved. Such Fire Marshal shall make an investigation, or cause to be investigated, the origin and cause of every fire and explosion occurring within the town.

(1998 Code, § 22-2) (Ord. O-2013-04, passed 4-2-2013)

§ 34.05 RIGHT OF ENTRY TO INVESTIGATE RELEASES OF HAZARDOUS MATERIAL, HAZARDOUS WASTE, OR REGULATED SUBSTANCES.

The Fire Marshal shall have the right to enter upon any property from which a release of any hazardous material, hazardous waste, or regulated substance, as defined in VA Code §§ 10.1-1400 or 62.1-44.34:8, has occurred or is reasonably suspected to have occurred and which has entered into the ground water, surface water, or soils of the county, city, or town in order to investigate the extent and cause of any such release. If, in undertaking such an investigation, the Fire Marshal makes an affidavit under oath that the origin or cause of any such release is undetermined and that he or she has been refused admittance to the property, or is unable to gain permission to enter the property, any magistrate of the city or county where the property is located may issue an investigation warrant to the Fire Marshal authorizing him or her to enter such property for the purpose of determining the origin and source of the release. If the Fire Marshal, after gaining access to any property pursuant to such investigation warrant, has probable cause to believe that the release was caused by any act constituting a criminal offense, he or she shall discontinue the investigation until a search warrant has been obtained or consent to conduct the search has otherwise been given.

(1998 Code, § 22-4) (Ord. O-2013-04, passed 4-2-2013)

§ 34.06 POWER TO ARREST, TO PROCURE AND SERVE WARRANTS, AND TO ISSUE SUMMONS.

The Fire Marshal and his or her assistants appointed pursuant to VA Code § 27-36 shall have the authority to arrest, to procure and serve warrants of arrest, and to issue summons in the manner authorized by general law for violation of the fire prevention and fire safety laws and related

ordinances.

(1998 Code, § 22-5) (Ord. O-2013-04, passed 4-2-2013)

§ 34.07 POLICE POWERS OF FIRE MARSHALS.

In addition to such other duties as may be prescribed by law, the Fire Marshal and his or her assistants appointed pursuant to VA Code § 27-36 shall have the same police powers as a sheriff, police officer, or law enforcement officer. The investigation and prosecution of all offenses involving hazardous materials, fires, fire bombings, bombings, attempts, or threats to commit such offenses, false alarms relating to such offenses, possession and manufacture of explosive devices, substances, and fire bombs shall be the responsibility of the Fire Marshal or his or her designee.

(1998 Code, § 22-5.1) (Ord. O-2013-04, passed 4-2-2013)

§ 34.99 PENALTY.

(A) Unless otherwise specified in §§ 34.01 through 34.07, any person, firm, or corporation who shall violate any of the sections of §§ 34.01 through 34.07, or any provisions of the Fire Prevention Code adopted in accordance with §§ 34.01 through 34.07, shall separately for each and every such violation and noncompliance respectively, be guilty of a violation of §§ 34.01 through 34.07, and shall, upon conviction, be punishable as a class 1 misdemeanor.

(B) A violation of §§ 34.01 through 34.07 shall be construed to be an infringement, breach, or failure to comply with any provision of §§ 34.01 through 34.07 or any order made thereunder, or any act of building in violation of any detailed statement, specifications or plans submitted and approved thereunder, or any certificate or permit issued thereunder, and from which no appeal has been taken, or any failure to comply with such an order within the time fixed therein.

(C) Each day that a violation continues after a service of notice as provided for in this code shall be deemed a separate offense.

(1998 Code, § 22-27) (Ord. O-2013-04, passed 4-2-2013)

CHAPTER 35: TAXATION

Section

In General

- 35.001 Amount of real estate tax; due date of real estate taxes; when same deemed delinquent
- 35.002 Tax relief for the elderly and handicapped
- 35.003 Lien for delinquent real estate taxes; certificate as to inability to collect taxes and levies
- 35.004 Certificates of unpaid taxes
- 35.005 Tax on net capital of banks located in town

Consumer Utility Tax Other than Electricity and Natural Gas

- 35.020 Definitions
- 35.021 Rate; levy; procedure as to payment
- 35.022 Collection
- 35.023 Records
- 35.024 Exemptions
- 35.025 Exceptions; pay telephones; long distance and the like

Tax on Meals Served in Restaurants or by Caterers

- 35.040 Definitions
- 35.041 Levy
- 35.042 Collection of tax by seller
- 35.043 Report of taxes collected; remittance of tax
- 35.044 Discount
- 35.045 Procedure when tax not reported or collected
- 35.046 Preservation of records
- 35.047 Cessation of business; tax due immediately
- 35.048 Advertising payment or absorption of tax prohibited
- 35.049 Gratuities and service charges
- 35.050 Exemptions; limits on application
- 35.051 Enforcement

Consumer Utility Tax on Electricity and Natural Gas

- 35.065 Definitions
- 35.066 Consumer utility tax on electricity
- 35.067 Consumer utility tax for natural gas
- 35.068 Conflicts

Tax on Transient Room Rentals

- 35.080 Definitions
- 35.081 Levy of tax on transient room rentals; collection generally
- 35.082 Collection from transients; when payable
- 35.083 Report of collection and remittance of tax
- 35.084 Discount
- 35.085 Failure to collect and report tax
- 35.086 Preservation of records
- 35.087 Cessation of business; tax due immediately
- 35.088 Exceptions for governmental employees on official business
- 35.089 Enforcement

- 35.999 Penalty

Charter reference:

Collection of taxes, see §§ 13, 14, and 17
Preparation of tax tickets, see § 12

Statutory reference:

Enforcement, collection, refunds, remedies, and review of local taxes, see VA Code §§ 58.1-3900 et seq.
Local bank franchise tax, see VA Code §§ 58.1-1208 et seq.
Local sales and use taxes, see VA Code §§ 58.1-605 et seq.
Local taxes generally, see VA Code §§ 58.1-3000 et seq.
Priority of taxes in distribution of assets of person or corporation, see VA Code §§ 58.1-6 et seq.
Setoff Debt Collection Act, see VA Code §§ 58.1-520 et seq.
Taxation generally, see VA Code §§ 58.1-1 et seq.

IN GENERAL

§ 35.001 AMOUNT OF REAL ESTATE TAX; DUE DATE OF REAL ESTATE TAXES; WHEN SAME DEEMED DELINQUENT.

(A) There shall be and is hereby levied a tax at a rate to be set by the Town Council per each \$100 of the assessed value, as established by the county, of real property located in the town January 1 of each year.

(B) All taxes assessed on real estate in the town shall be due and payable to the Town Treasurer on or before February 15 of the following year.

(1998 Code, § 58-1) Penalty, see § 35.999

§ 35.002 TAX RELIEF FOR THE ELDERLY AND HANDICAPPED.

(A) Real estate within the town that meets the requirements for relief as established by the county shall not be subject to taxation by the town.

(B) The list of eligible taxpayers shall be provided by the county.

(1998 Code, § 58-2)

Statutory reference:

Exemptions for elderly and handicapped, see VA Code §§ 58.1-3210 et seq.

§ 35.003 LIEN FOR DELINQUENT REAL ESTATE TAXES; CERTIFICATE AS TO INABILITY TO COLLECT TAXES AND LEVIES.

(A) *Real estate taxes.* Real estate within the town shall be subject to a lien in favor of the town to secure the payment of taxes assessed against the property.

(B) *Collection of delinquent taxes and levies.* Pursuant to VA Code §§ 58.1-3921 et seq., the Town Treasurer, after using due diligence to collect taxes and levies due the town, shall, before the first regular meeting of the Town Council in April of each year, prepare lists of the taxes and levies that have not been collected, which lists the Treasurer shall certify by oath as follows: “I, _____, Treasurer of the Town of Occoquan, after having been duly sworn, do certify that I have used due diligence to collect the foregoing taxes and levies and that I have been unable to collect them.” Such certificate shall be acknowledged before an officer qualified to administer oaths.

(1998 Code, § 58-3)

Statutory reference:

Tax to constitute lien, see VA Code § 58.1-3340

§ 35.004 CERTIFICATES OF UNPAID TAXES.

(A) The Treasurer of the town shall issue, on or before May 1, to any applicant, a certificate setting forth the entire amount of unpaid taxes assessed against any real estate within the town, by or on behalf of the town, up to and including the last day of the calendar month preceding the date of the certificate. A separate certificate shall be issued for each separate piece of property as it appears upon the current tax records of the town. A fee of \$1 shall be charged for each certificate.

(B) The facts as set forth in each certificate shall be binding upon the town. No taxes other than those reported as unpaid in the certificate shall thereafter constitute a lien upon the real estate referred to in the certificate.

(C) The certificate provided for in this section shall be designated “Certificates of Unpaid Taxes” and shall be substantially in the following form:

<p>I hereby certify that the records in the office of the Treasurer for the Town of Occoquan, Virginia, show that all town taxes due against the following property known as lot _____, block _____, and currently assessed in the name of _____, are paid in full to _____, with the exception of the following: _____</p> <p style="text-align: right;">Treasurer</p>

(1998 Code, § 58-4)

§ 35.005 TAX ON NET CAPITAL OF BANKS LOCATED IN TOWN.

(A) There is imposed a tax in the amount of 80% of the state rate of taxation on each \$100 of net capital of any bank located within the town.

(B) If any bank described in division (A) above has a branch located outside the town, the tax imposed shall be upon such proportion of the taxable value of the net capital as the total deposits of the bank or offices located in the town bear to the total deposits of the bank as of the end of the preceding year.

(1998 Code, § 58-5)

Statutory reference:

Bank franchise tax, see VA Code §§ 58.1-1200 et seq.

CONSUMER UTILITY TAX OTHER THAN ELECTRICITY AND NATURAL GAS

§ 35.020 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

COMMERCIAL OR INDUSTRIAL USER. The owner or tenant of property used primarily for commercial or industrial purposes, who pays for utility service for the property.

DWELLING UNIT. One or more rooms designed or intended for occupancy by a single family.

MULTIPLE-FAMILY DWELLING. A building or portion thereof containing two or more dwelling units, but not including hotels or motels.

PERSON. Includes individuals, firms, partnerships, associations, corporations, and combinations of individuals of whatever form and character.

PURCHASER. Every person who purchases a utility service.

RESIDENTIAL USER. The owner or tenant of property used primarily for residential purposes, who pays for utility service in or for the property, and includes, but not by way of limitation, apartment house and other multiple-family dwellings.

SELLER. Every person, whether a public service corporation or a municipality, or private corporation or not, who sells or furnishes a utility service.

UTILITY SERVICE. Includes a local exchange telephone service, electric service, and gas furnished within the town.

(1998 Code, § 58-31) (Ord. passed 5-13-1975)

§ 35.021 RATE; LEVY; PROCEDURE AS TO PAYMENT.

(A) On every bill sent for services, there is hereby imposed and levied by the town a tax upon each and every purchaser of a utility service for general purposes in the amount of 15% of the charge, exclusive of any federal tax thereon, made by the seller against the purchaser with respect to each utility service, which tax in every case shall be collected by the seller from the purchaser and shall be paid by the purchaser unto the seller for the use of the town at the time that the purchase price of such charge shall become due and payable under the agreement between the purchaser and the seller. Provided, however, that in case any monthly bill submitted by any seller for residential service shall exceed \$15 for a residential user, there shall be no tax computed on so much of such bill as shall exceed \$15.

(B) In the case of any multiple-family dwelling served by a master meter or meters, the tax is limited to the lesser of 15% of the net bill or 15% of an amount calculated at \$15 times the dwelling units served. If any monthly bill submitted by any seller for commercial or industrial service shall exceed \$60, there shall be no tax computed on so much of such bill as shall exceed \$60.

(C) If a bill is submitted by the seller for more than one month's utility service, then the amount of the bill excluded in computing the tax shall be the monthly exclusion allowed in this section, multiplied by the number of months for which the bill is submitted. Bills shall be considered monthly bills if submitted 12 times per year for periods of approximately one month each.

(1998 Code, § 58-32) (Ord. passed 5-13-1975)

§ 35.022 COLLECTION.

(A) It shall be the duty of every seller in acting as the tax collecting medium or agency in the town to collect from the purchaser for the use of the town the tax imposed and levied in this subchapter at the time of collecting the purchase price charged, and the taxes collected during each calendar month shall be reported by each seller to the Treasurer of the town and each seller shall remit the amount of tax shown by such report to have been collected to the Treasurer on or before the last day of the first

calendar month thereafter, together with the name and address of any purchaser who has refused to pay the tax.

(B) The required reports shall be in the form required by the Treasurer.
(1998 Code, § 58-33) (Ord. passed 5-13-1975) Penalty, see § 35.999

§ 35.023 RECORDS.

Each and every seller shall keep complete records showing all purchases in the town, which records shall show the price charged against each purchaser with respect to each purchase, the date thereof and the date of payment thereof, and the amount of tax imposed under this subchapter, and such records shall be kept open for inspection by the duly authorized agents of the town at reasonable times, and the duly authorized agents of the town shall have the right, power, and authority to make the transcripts thereof.

(1998 Code, § 58-34) (Ord. passed 5-13-1975) Penalty, see § 35.999

§ 35.024 EXEMPTIONS.

The United States of America, the state, and the political subdivisions, boards, commissions, and authorities thereof and all churches and hospitals are exempted from the payment of the tax imposed and levied by this subchapter with respect to the purchase of utility service used by such governmental agencies, churches, and hospitals.

(1998 Code, § 58-35) (Ord. passed 5-13-1975)

§ 35.025 EXCEPTIONS; PAY TELEPHONES; LONG DISTANCE AND THE LIKE.

The tax imposed and levied by this subchapter on purchases with respect to telephone service shall apply to all charges made for local telephone exchange service except as follows.

(A) *Coin box telephone.* No tax shall be imposed on telephone service paid for by inserting coins in coin-operated telephones.

(B) *Flat rate service.* With respect to flat rate and flat message rate service, the tax shall apply only to the amount payable for local area service and shall not apply to any specific charge payable for local area service and shall not apply to any specific charge for calls to points outside the county or to any general charge or rate differential payable for the privilege of calling points outside the town.

(C) *Message rate service.* Where purchases of telephone service are charged on a message rate basis, the tax shall apply only to the basic charge for such service and shall not apply to any charge for additional message units.

(1998 Code, § 58-36) (Ord. passed 5-13-1975)

TAX ON MEALS SERVED IN RESTAURANTS OR BY CATERERS

§ 35.040 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CATERER. A person who furnishes food, beverages, or both, on the premises of another for compensation.

COLLECTOR. The Treasurer of the town or designee.

FOOD. All food, beverages, or both, including alcoholic beverages, purchased in or from a food establishment, whether prepared in such food establishment or not, and whether consumed on the premises or not, and without regard to the manner, time, or place of service.

FOOD ESTABLISHMENT. Any place in or from which a meal, food, or food products are prepared, packaged, sold, or distributed in the town including, but not limited to, any restaurant, dining room, grill, coffee shop, cafeteria, café, snack bar, lunch counter, convenience store, movie theater, delicatessen, confectionery, bakery, eating house, eatery, drugstore, ice cream/yogurt shops, lunch wagon or truck, pushcart or other mobile facility from which food is sold, public or private club, resort, bar, lounge, or other similar establishment, public or private, and shall include private property outside of and contiguous to a building or structure operated as a **FOOD ESTABLISHMENT** at which food or food products are sold for immediate consumption.

MEAL. Any prepared food or beverage, including alcoholic beverages, offered or held out for sale by a food establishment or caterer for the purpose of being consumed by any person to satisfy the appetite and is ready for immediate consumption. All such food and beverage, unless otherwise specifically exempted or excluded herein shall be included, whether intended to be consumed on the seller's premises or elsewhere, whether designated as breakfast, lunch, snack, dinner, supper, or by some other name, and without regard to the manner, time, or place of service.

SELLER. Any food establishment or caterer selling meals or food, or the person operating such business.

TREASURER. The Treasurer of the town and any duly designated deputies, assistants, inspectors, or other employees.

TOWN. The Town of Occoquan, Virginia, a municipal corporation of the Commonwealth of Virginia.

(1998 Code, § 58-38) (Ord. O-2000-02, passed 6-13-2000)

§ 35.041 LEVY.

In addition to all other taxes and fees of any kind now or hereafter imposed by law, there is hereby imposed and levied by the town on each person a tax at the rate of 3% on the amount paid for every meal or food purchased from any food establishment or caterer, whether prepared in such food establishment or not, and whether consumed on the premises or not.

(1998 Code, § 58-39) (Ord. O-2000-02, passed 6-13-2000; Ord. O-2006-08, passed 9-26-2006)

§ 35.042 COLLECTION OF TAX BY SELLER.

Every person receiving any payment for a meal or food with respect to which a tax is levied hereunder shall collect and remit the amount of the tax imposed by this subchapter from the person on whom the same is levied or from the person paying for such meal or food at the time payment for such food is made; provided, however, no blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Visually Handicapped and located on property acquired and used by the United States for any military or naval purpose shall be required to collect or remit such taxes. All tax collections shall be deemed to be held in trust for the town.

(1998 Code, § 58-40) (Ord. O-2000-02, passed 6-13-2000; Ord. O-2015-02, passed 6-2-2015)
Penalty, see § 35.999

§ 35.043 REPORT OF TAXES COLLECTED; REMITTANCE OF TAX.

It shall be the duty of every person required by this subchapter to collect and remit to the town the taxes imposed by this subchapter to make a report for each calendar month thereof setting forth such information as the Treasurer may prescribe and require, including all purchases taxable under this subchapter, the amount charged the purchaser for each such purchase, the date thereof, the taxes collected thereon, and the amount of tax required to be collected by this subchapter. The monthly reports shall be delivered to the Treasurer on or before the twentieth day of the calendar month following the month being reported. Each report shall be accompanied by a remittance of the amount of tax due, made payable to the town and sent to the Treasurer. When the report deadline and payment deadline falls on a Saturday, Sunday, or legal holiday, then any return required by this chapter may be filed or such payment made without penalty or interest on the next succeeding business day.

(1998 Code, § 58-41) (Ord. O-2000-02, passed 6-13-2000; Ord. O-2015-02, passed 6-2-2015)
Penalty, see § 35.999

§ 35.044 DISCOUNT.

For the purpose of compensating sellers for the collection of tax imposed by this subchapter, every seller shall be allowed 3% of the total amount of the tax due and accounted for in the form of a deduction on his or her monthly return; provided, the amount due is not delinquent at the time of payment.

(1998 Code, § 58-42) (Ord. O-1999-03, passed 6-18-1999)

§ 35.045 PROCEDURE WHEN TAX NOT REPORTED OR COLLECTED.

If any person whose duty it is to do so shall fail or refuse to collect the tax imposed under this subchapter and make within the time provided herein any report and remittance required, the Treasurer shall proceed in such manner as he or she may deem best to obtain facts and information on which to base an estimate of the tax due. As soon as the Treasurer has secured whatever facts and information he or she is able to obtain upon which to base the assessment of any tax due and payable by any person who has failed or refused to collect such tax and make such report and remittance, he or she shall proceed to determine and assess against such person the tax and penalty and interest provided for in this subchapter and shall notify such person by registered mail, sent to his or her last known address, of the amount of such tax and penalty and interest. The total amount thereof shall be payable within ten days of the mailing of such notice. The Treasurer shall have the power to examine such records for the purpose of administering and enforcing the provisions of this subchapter as provided by law.

(1998 Code, § 58-44) (Ord. 1999-03, passed 6-8-1999)

§ 35.046 PRESERVATION OF RECORDS.

It shall be the duty of every person liable for collection and remittance of the taxes imposed by this subchapter to keep and preserve for a period of five years suitable records as may be necessary to determine the amount of purchases taxable under this subchapter, the amount charged the purchaser for each such purchase, the date thereof, the taxes collected thereon, and the amount of tax required to be collected by this subchapter. The Treasurer or his or her duly authorized agents shall have the power to examine such records, at reasonable times and without unreasonable interference with the business of such person, for the purpose of administering and enforcing the provisions of this subchapter, and to make transcripts of all or any parts thereof.

(1998 Code, § 58-45) (Ord. O-2000-02, passed 6-13-2000) Penalty, see § 35.999

§ 35.047 CESSATION OF BUSINESS; TAX DUE IMMEDIATELY.

Whenever any person required to collect and pay to the town a tax imposed by this subchapter shall cease to operate, go out of business, or otherwise dispose of his or her business, any tax then payable to the town shall become immediately due and payable, and such person shall immediately make a report and pay the tax due to the Treasurer.

(1998 Code, § 58-46) (Ord. 1999-03, passed 6-8-1999) Penalty, see § 35.999

§ 35.048 ADVERTISING PAYMENT OR ABSORPTION OF TAX PROHIBITED.

No seller shall advertise or hold out to the public in any manner, directly or indirectly, that all or any part of a tax imposed under this subchapter will be paid or absorbed by the seller or by anyone else, or that the seller or anyone else will relieve any purchaser of the payment of all or any part of the

tax.

(1998 Code, § 58-47) (Ord. 1999-03, passed 6-8-1999) Penalty, see § 35.999

§ 35.049 GRATUITIES AND SERVICE CHARGES.

(A) Where a purchaser provides a gratuity for an employee of a seller, and the amount of the gratuity is wholly in the discretion of the purchaser, the gratuity is not subject to the tax imposed by this subchapter, whether paid in cash to the employee or added to the bill and charged to the purchaser's account; provided, in the latter case, the full amount of the gratuity is turned over to the employee by the seller.

(B) An amount or percentage, whether designated as a gratuity or a service charge, that is added to the price of a meal by the seller and required to be paid by the purchaser, as a part of the selling price of the meal, is subject to the tax imposed by this subchapter.

(1998 Code, § 58-48) (Ord. 1999-03, passed 6-8-1999)

§ 35.050 EXEMPTIONS; LIMITS ON APPLICATION.

The following classes of meals shall not be subject to tax under this subchapter.

(A) The tax imposed under this subchapter shall not be levied on factory-prepackaged candy, gum, nuts, and other items of essentially the same nature served for on- or off-premises consumption.

(B) The tax imposed under this subchapter shall not be levied on the following items when served exclusively for off-premises consumption:

(1) Donuts, ice cream, crackers, nabs, chips, cookies, and factory-prepackaged items of essentially the same nature;

(2) Food sold in bulk. For the purposes of this division (B)(2), a **BULK SALE** shall mean the sale of any item that would exceed the normal, customary, and usual portion sold for on-premises consumption (e.g., a whole cake, a gallon of ice cream); a bulk sale shall not include any food or beverage that is catered or delivered by a food establishment for off-premises consumption;

(3) Alcoholic and non-alcoholic beverages sold in factory sealed containers;

(4) Any food or food product purchased with food coupons issued by the United States Department of Agriculture under the Food Stamp Program or drafts issued through the state's Special Supplemental Food Program for Women, Infants, and Children; and

(5) Any food or food product purchased for home consumption as defined in the federal Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, except hot food or hot food products ready for immediate consumption. For the purposes of administering the tax levied hereunder, the following items whether or not purchased for immediate consumption are excluded from the said definition of food in the federal Food Stamp Act: sandwiches; salad bar items sold from a salad bar; prepackaged single-serving salads consisting primarily of an assortment of vegetables; and non-factory-sealed beverages. This division (B) shall not affect provisions set forth in divisions (D)(3), (D)(4) and (D)(5) below.

(C) A grocery store, supermarket, or convenience store shall not be subject to the tax except for any portion or section therein designated as a delicatessen or designated for the sale of prepared food and beverages.

(D) The tax imposed hereunder shall not be levied on the following purchases of food and beverages:

(1) Food and beverages furnished by food establishments to employees as part of their compensation when no charge is made to the employee;

(2) Food and beverages sold by day care centers, public or private elementary or secondary schools, or food sold by any college or university to its students or employees;

(3) Food and beverages for use or consumption and which are paid for directly by the state, any political subdivision of the state or the United States;

(4) Food and beverages furnished by a hospital, medical clinic, convalescent home, nursing home, home for the aged, infirm, handicapped, battered women, narcotic addicts or alcoholics, or other extended care facility to patients or residents thereof;

(5) Food and beverages furnished by a public or private nonprofit charitable organization or establishment or a private establishment that contracts with the appropriate agency of the state to offer meals at concession prices to elderly, infirm, blind, handicapped, or needy persons in their homes or at central locations;

(6) Food and beverages sold on an occasional basis by a nonprofit educational, charitable or benevolent organization, church, or religious body as a fund-raising activity, the net proceeds of which are to be used by such organization exclusively for nonprofit educational, charitable, benevolent, or religious purposes; and

(7) Food and beverages sold through vending machines.
(1998 Code, § 58-49) (Ord. O-2000-02, passed 6-13-2000)

§ 35.051 ENFORCEMENT.

(A) It shall be the duty of the Treasurer to ascertain the name of every person operating a restaurant in the town, liable for the collection of the tax imposed by this subchapter, who fails, refuses, or neglects to collect such tax or to make the reports and remittance required by this subchapter. The Treasurer may have issued a summons for such person, and the summons may be served upon such person by any town police officer in the manner provided by law. One return of the original summons shall be made to the general district court for the town.

(B) In the event the purchaser of any meal refuses to pay the tax imposed by this subchapter, the seller may call upon the Police Department for assistance; and the investigating officer may, when probable cause exists, issue the purchaser a summons returnable to the general district court as provided by law.

(1998 Code, § 58-50) (Ord. O-1999-03, passed 6-8-1999) Penalty, see § 35.999

CONSUMER UTILITY TAX ON ELECTRICITY AND NATURAL GAS

§ 35.065 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CCF. The volume of gas at standard pressure and temperature in units of 100 cubic feet.

COMMERCIAL OR INDUSTRIAL CONSUMER. The owner or tenant of property used primarily for commercial or industrial uses, but does not include apartment houses or other multiple-family dwellings.

CONSUMER. Every person or business entity, individually or through agents, employees, officers, representatives, or permittees, makes a taxable purchase of electricity or natural gas services.

ELECTRIC SUPPLIER. Any person or business entity owning or operating facilities for the generation, transmission, or distribution of electricity for sales, except any person owning or operating solar, water, or hydroelectric facilities with a designated generation capacity of less than 25 megawatts.

GAS SUPPLIER. Any person or business entity licensed by the State Corporation Commission to engage in the business of selling natural gas.

GAS UTILITY. A public utility authorized to furnish natural gas service in the state.

KILOWATT HOURS (kWh). One thousand watts of electricity delivered by an electric supplier to an actual consumer, except that in the case of eligible customer-generators (sometimes called cogenerators) as defined in VA Code § 56-594, as amended, it means ***kWh*** supplied from the electric grid to such customer-generators, minus the ***kWh*** generated and fed back to the electric grid by such customer-generators.

PIPELINE DISTRIBUTION COMPANY. A corporation or business entity, other than a pipeline transmission company which transmits, by means of a pipeline, natural gas, manufactured gas, or crude petroleum and the products or byproducts thereof to a purchaser for purposes of furnishing heat or light.

PIPELINE TRANSMISSION COMPANY. A corporation or business entity authorized to transmit natural gas, manufactured gas, or crude petroleum and the products or byproducts thereof in the public service by means of pipeline or pipelines from one point to another when such gas or petroleum is not for sale to an ultimate consumer for purposes of furnishing heat or light.

RESIDENTIAL CONSUMER. The owner or tenant of property used primarily for residential purposes including, but not limited to, separately metered apartment houses and other multiple-family dwellings.

SERVICE PROVIDER. A person or business entity that delivers electricity to the consumer.

USED PRIMARILY. Relates to the larger portion of the use for which electric or natural gas utility service is furnished and for the purposes of this subchapter.
(1998 Code, § 58-52) (Ord. O-2001-01, passed 10-25-2000; Ord. O-2001-05, passed 2-13-2001)

§ 35.066 CONSUMER UTILITY TAX ON ELECTRICITY.

(A) *Per meter tax.* In accordance with VA Code § 58.1-3814, as amended, effective January 1, 2001, there is hereby imposed and levied a per meter tax on each purchase of electricity provided to consumers by electric suppliers as follows.

(1) *Residential consumers.* Such tax shall be at the rate of a \$1.05 minimum charge plus \$0.011881 per kWh delivered monthly to such consumers, not to exceed \$2.25 per month.

(2) *Group or master metered apartment (multiple-family dwelling) consumers.* Such tax shall be at the rate of a \$1.05 per meter minimum charge plus \$0.011881 per kWh delivered monthly to such consumers, not to exceed the lesser of 15% of the net bill or 15% of an amount calculated at \$15 times the dwelling units served per month. Group or master metered apartment houses or other multiple-family dwellings shall be taxed at the residential electric consumer rate for each dwelling unit.

(3) *Commercial and industrial consumers.* Such tax, for the period of January 1, 2001 to December 31, 2003, shall be at the rate of a \$1.72 minimum charge plus \$0.010517 per kWh delivered monthly to such consumers, not to exceed \$9 per month.

(4) *Conversion.* The conversion of tax pursuant to this subchapter to monthly kWh delivered shall not be effective before the first meter reading after December 31, 2000, prior to which time the tax previously imposed by this jurisdiction shall be in effect.

(B) *Exemptions.* The following consumers of electricity are exempt from the tax imposed by this section:

(1) Any public safety agency as defined in VA Code § 58.1-3813, as amended; and

(2) The United States of America, the state and the political subdivisions, boards, commissions, and authorities thereof.

(C) *Billing, collection, and remittance of tax.* The service provider shall bill the electricity consumer tax to all users who are subject to the tax and to whom it delivers electricity and shall remit the same to this jurisdiction on a monthly basis in accordance with the applicable provisions of VA Code Title 58.1, as amended. If any consumer receives and pays for electricity but refuses to pay the tax imposed by this section, the service provider shall notify this jurisdiction of the name and address of such consumer. If any consumer fails to pay a bill issued by a service provider, including the tax imposed by this section, the service provider must follow its normal collection procedures and, upon collection of the bill or any part thereof, must apportion the net amount collected between the charge for electric service and the tax and remit the tax portion to this jurisdiction. Any tax paid by the consumer to the service provider shall be deemed to be held in trust by such provider until remitted to this jurisdiction.

(D) *Computation of bi-monthly bill.* Bills shall be considered as monthly bills for the purposes of this subchapter if submitted 12 times per year at approximately 30-day intervals. The tax on a bimonthly bill (approximately 60-day intervals) shall be determined as follows:

(1) kWh consumed shall be divided by two;

(2) A monthly tax shall be calculated using the rates set forth above;

(3) The tax determined by division (D)(2) above shall be multiplied by two; and

(4) The tax in division (D)(3) above shall not exceed twice the monthly maximums set forth in division (A) above.

(1998 Code, § 58-53) (Ord. O-2001-01, passed 10-25-2000; Ord. O-2001-05, passed 2-13-2001)

§ 35.067 CONSUMER UTILITY TAX FOR NATURAL GAS.

(A) *Per meter tax.* In accordance with VA Code § 58.1-3814, as amended, there is hereby imposed and levied a per meter tax on each purchase of natural gas provided to consumers by pipeline distribution companies and gas utilities as follows.

(1) *Residential consumers.* Such tax shall be at the rate of a \$1.35 minimum charge plus \$0.0141600 per CCF delivered monthly to such consumers, not to exceed \$2.25 per month.

(2) *Group or master metered apartment (multiple-family dwelling) consumers.* Such

tax shall be at the rate of a \$6.86 minimum charge plus \$0.0351952 per CCF delivered monthly to such consumers, not to exceed the lesser of 15% of the net bill or 15% of an amount calculated at \$15 times the dwelling units served per month.

(3) *Commercial and industrial consumers.* Such tax, for the period of January 1, 2001 to December 31, 2003, shall be at the rate of a \$2.51 minimum charge plus \$0.0627327 per CCF delivered monthly to such consumers, not to exceed \$9 per month.

(4) *Conversion.* The conversion of tax pursuant to this subchapter to monthly CCF delivered shall not be effective before the first meter reading after December 31, 2000, prior to which time the tax previously imposed by this jurisdiction shall be in effect.

(B) *Exemptions.* The following consumers of natural gas are to be exempt from the tax imposed by this section:

- (1) Any public safety agencies as defined in VA Code § 58.1-3813, as amended; and
- (2) The United States of America, the state and the political subdivisions, boards, commissions, and authorities thereof.

(C) *Billing, collection, and remittance of tax.*

(1) The service provider shall bill the natural gas consumer tax to all users who are subject to the tax and to whom it delivers natural gas and shall remit the same to this jurisdiction on a monthly basis in accordance with the applicable provisions of VA Code Title 58.1, as amended.

(2) If any consumer receives and pays for natural gas but refuses to pay the tax imposed by this section, the service provider shall notify this jurisdiction of the name and address of such consumer.

(3) If any consumer fails to pay a bill issued by a service provider, including the tax imposed by this section, the service provider must follow its normal collection procedures and upon collection of the bill or any part thereof must apportion the net amount collected between the charge for natural gas service and the tax and remit the tax portion to this jurisdiction.

(4) Any tax paid by the consumer to the service provider shall be deemed to be held in trust by such provider until remitted to this jurisdiction.

(D) *Computation of bimonthly bill.* Bills shall be considered as monthly bills for the purposes of this subchapter if submitted 12 times per year at approximately 30-day intervals. The tax on a bimonthly bill (approximately 60-day intervals) shall be determined as follows:

- (1) CCF consumed shall be divided by two;
- (2) A monthly tax shall be calculated using the rates set forth above;

(3) The tax determined by division (D)(2) above shall be multiplied by two; and

(4) The tax in division (D)(3) above shall not exceed twice the monthly maximums set forth in division (A) above.

(1998 Code, § 58-54) (Ord. O-2001-01, passed 10-25-2000; Ord. O-2001-05, passed 2-13-2001)

§ 35.068 CONFLICTS.

Any ordinance or provision of this code, as amended, relating to the imposition of the consumer utility tax for electrical or natural gas service, and in conflict herewith stands repealed to the extent of the inconsistency, as of the effective date of this subchapter.

(1998 Code, § 58-57) (Ord. O-2001-01, passed 10-25-2000; Ord. O-2001-05, passed 2-13-2001)

TAX ON TRANSIENT ROOM RENTALS

§ 35.080 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

HOTEL. Any public or private hotel, inn, hostelry, tourist home or house, motel, rooming house, or other lodging place within the town offering lodging, as defined in this section, for compensation to any transient, as hereinafter defined in this section.

LODGING. Any room or space furnished any transient.

PERSON. Any individual, corporation, company, association, firm, copartnership, or any group of individuals acting as a unit.

TRANSIENT. Any person who, for a period of not more than 90 consecutive days, either at his or her own expense or at the expense of another, obtains lodging or the use of any space at any hotel, for which lodging or use of space a charge is made.

TREASURER. The Town Treasurer of the town and his or her duly designated deputies, assistants, inspectors, clerks, or other employees.

(1998 Code, § 58-60) (Ord. O-1999-02, passed 6-8-1999)

§ 35.081 LEVY OF TAX ON TRANSIENT ROOM RENTALS; COLLECTION GENERALLY.

There is hereby imposed and levied upon every transient obtaining or occupying lodging within the town, in addition to all other taxes and fees of every kind now imposed by law, a tax equivalent to 2% of the amount charged for such lodging. The tax shall be collected from transients in the manner and at the time provided in this subchapter.

(1998 Code, § 58-61) (Ord. O-1999-02, passed 6-8-1999)

§ 35.082 COLLECTION FROM TRANSIENTS; WHEN PAYABLE.

(A) Every person receiving any payment for lodging or the use of space with respect to which a tax is levied under this subchapter shall collect the amount of such tax so imposed from the transient on whom such tax is levied, or from the person paying for such lodging, at the time payment for such lodging is made.

(B) The taxes required to be collected under this subchapter shall be deemed held in trust by the person required to collect such taxes until the same shall have been remitted to the town as provided by this subchapter.

(1998 Code, § 58-62) (Ord. O-1999-02, passed 6-8-1999)

§ 35.083 REPORT OF COLLECTION AND REMITTANCE OF TAX.

(A) The person collecting any tax as provided in this subchapter shall make out a report thereof, upon such forms and setting forth such information as the Commissioner may prescribe and require, showing the amount of lodging, charges collected, and the tax required to be collected and shall sign and deliver such reports with the remittance of such tax to the Treasurer.

(B) Such reports and remittances shall be made on or before the twentieth day of each month covering the amount of tax due and collected during the preceding month.

(1998 Code, § 58-63) (Ord. O-1999-02, passed 6-8-1999)

§ 35.084 DISCOUNT.

For the purpose of compensating persons required to collect such taxes for the collection of the tax imposed by this subchapter, every person required to collect such taxes shall be allowed 3% of the total amount of the tax due and accounted for in the form of a deduction on his or her monthly return; provided, however, the amount due is not delinquent at the time of payment.

(1998 Code, § 58-64) (Ord. O-1999-02, passed 6-8-1999)

§ 35.085 FAILURE TO COLLECT AND REPORT TAX.

If any person whose duty is to do so shall fail or refuse to collect the tax imposed under this subchapter and to make, within the time provided herein, any report and remittance required, the

Treasurer shall proceed in such manner as he or she may deem best to obtain facts and information on which to base an estimate of the tax due. As soon as the Treasurer has secured whatever facts and information as he or she is able to obtain upon which to base the assessment of any tax due and payable by any person who has failed or refused to collect such tax and to make such report and remittance, he or she shall proceed to determine and assesses against such person the tax and penalty and interest as provided for in this subchapter and shall notify such person by registered mail, sent to his or her last place of known address, the amount of such tax and penalty and interest. The total amount thereof shall be payable within ten days of mailing of such notice. The Treasurer shall have the power to examine such records for the purpose of administering and enforcing the provisions of this subchapter as provided by law.

(1998 Code, § 58-66) (Ord. O-1999-02, passed 6-8-1999)

§ 35.086 PRESERVATION OF RECORDS.

It shall be the duty of every person liable for the collection and remittance of the taxes imposed by this subchapter to keep and preserve for a period of two years such suitable records as may be necessary to determine the amount of such tax as he or she may have been responsible for collecting and paying to the town. The Treasurer shall have the power to examine such records, at reasonable times and without unreasonable interference with the business of such person, for the purpose of administering and enforcing the provisions of this subchapter, and to make transcripts of all or any parts thereof.

(1998 Code, § 58-67) (Ord. O-1999-02, passed 6-8-1999) Penalty, see § 35.999

§ 35.087 CESSATION OF BUSINESS; TAX DUE IMMEDIATELY.

Whenever any person required to collect and pay to the town a tax imposed by this subchapter shall cease to operate, go out of business, or otherwise dispose of his or her business, any tax then payable to the town shall become immediately due and payable, and such person shall immediately make a report and pay the tax due to the Treasurer.

(1998 Code, § 58-68) (Ord. O-1999-02, passed 6-8-1999) Penalty, see § 35.999

§ 35.088 EXCEPTIONS FOR GOVERNMENTAL EMPLOYEES ON OFFICIAL BUSINESS.

No tax shall be payable hereunder with respect to any payment for lodging of the use of space paid by or for any federal, state, or town official or employee when on official business.

(1998 Code, § 58-69) (Ord. O-1999-02, passed 6-8-1999)

§ 35.089 ENFORCEMENT.

(A) It shall be the duty of the Treasurer to ascertain the name of every hotel offering lodging to a transient in the town, liable for the collection of the tax imposed by this subchapter, which fails,

refuses, or neglects to collect such tax or to make the reports and remittances required by this subchapter. The Treasurer may have issued a summons to such person responsible for the hotel offering lodging to a transient, and the summons may be served upon such person by any town police officer in the manner provided by law. One return of the original summons shall be made to the general district court for the town.

(B) In the event the purchaser of any transient room rental refuses to pay the tax imposed by this subchapter, the hotel operator may call upon the Police Department for assistance, and the investigating officer may, when probable cause exists, issue the purchaser a summons returnable to the general district court as provided by law.

(1998 Code, § 58-70) (Ord. O-1999-02, passed 6-8-1999) Penalty, see § 35.999

§ 35.999 PENALTY.

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

(B) Pursuant to § 35.001, to all real estate taxes that may be delinquent, there shall be added a penalty of 8% after February 15. To all real estate taxes that may be delinquent after March 15, interest of 10% per annum shall be added to the unpaid balance, including the penalty.

(1998 Code, § 58-1)

(C) Any purchaser failing, refusing, or neglecting to pay the tax imposed or levied in §§ 35.020 through 35.025 and any seller violating the provisions of §§ 35.020 through 35.025, and any officer, agent, or employee of any seller violating the provisions of §§ 35.020 through 35.025 shall, upon conviction, be subject to a fine of not more than \$100.

(1998 Code, § 58-37)

(D) If any person whose duty it is to do so shall fail or refuse to make the report or remit the tax required by §§ 35.040 through 35.051 within the time and in the amount required, there shall be added to the tax by the Treasurer a penalty in the amount of 10% of the tax, or a minimum of \$10, whichever is greater; provided, however, that the penalty shall in no case exceed the amount of the tax due. The Treasurer shall also assess interest on the tax and penalty at the rate of 10% per annum from the day after the tax is due until paid.

(1998 Code, § 58-43)

(E) (1) Any person willfully failing or refusing to file a return as required under §§ 35.040 through 35.051 shall, upon conviction thereof, be guilty of a class 1 misdemeanor except that any person failing to file such a return shall be guilty of a class 3 misdemeanor if the amount of tax lawfully assessed in connection with the return is \$1,000 or less. Any person violating or failing to comply with any other provision of §§ 35.040 through 35.051 shall be guilty of a class 1 misdemeanor.

(2) Except as provided in division (E)(1) above, any corporate or partnership officer, as defined in VA Code § 58.1-3906, or any other person required to collect, account for, or pay over the meals tax imposed under §§ 35.040 through 35.051, who willfully fails to collect or truthfully account for or pay over such tax, or who willfully evades or attempts to evade such tax or payment thereof, shall, in addition to any other penalties imposed by law, be guilty of a class 1 misdemeanor.

(3) Each violation of or failure to comply with §§ 35.040 through 35.051 shall constitute a separate offense. Conviction of any such violation shall not relieve any person from the payment, collection, or remittance of the tax provided in §§ 35.040 through 35.051.

(1998 Code, § 58-51)

(F) Any consumer of electricity or natural gas failing, refusing, or neglecting to pay the tax imposed and levied under §§ 35.065 through 35.068, and any officer, agent, or employee of any electric supplier, gas distribution company, or gas utility violating the provisions of §§ 35.065 through 35.068 shall, upon conviction thereof, be punished by a fine of not less than \$10 nor more than \$300 or by imprisonment in jail for not more than 90 days, or by both such fine and imprisonment. Such failure, refusal, neglect, or violation shall constitute a separate offense. Such conviction shall not relieve any person from the payment, collection, and remittance of the tax as provided in §§ 35.065 through 35.068.

(1998 Code, § 58-55)

(G) (1) If any person whose duty is to do so shall fail or refuse to report and remit to the Treasurer the tax required to be collected and paid under §§ 35.080 through 35.089, within the time and in the amount as provided for in §§ 35.080 through 35.089, there shall be added to such tax by the Treasurer a penalty in the amount of 10% of the tax due or the sum of \$10, whichever is greater, provided, however, that the penalty shall in no case exceed the amount of the tax due. The Treasurer shall also assess interest on the tax and penalty at the rate of 10% per year from the day after the tax is due until paid.

(1998 Code, § 58-65)

(2) Any person violating or failing to comply with any of the provisions of §§ 35.080 through 35.089 shall, upon conviction thereof, be guilty of a class 3 misdemeanor if the amount of the tax lawfully assessed is \$1,000 or less, or a class 1 misdemeanor if the amount of the tax lawfully assessed is more than \$1,000 and punishable as provided in § 10.99 of this code. Conviction shall not relieve any person from the payment, collection, or remittance of the tax as provided in §§ 35.080 through 35.089. Each violation or failure shall be a separate offense.

(1998 Code, § 58-71)

(Ord. passed 5-13-1975; Ord. O-1999-02, passed 6-8-1999; Ord. O-1999-03, passed 6-8-1999; Ord. O-2000-02, passed 6-13-2000; Ord. O-2001-01, passed 10-25-2000; Ord. O-2001-05, passed 2-13-2001)

TITLE V: PUBLIC WORKS

[Reserved]

TITLE VII: TRAFFIC CODE

Chapter

70. GENERAL PROVISIONS

71. MOTOR VEHICLE DECALS

72. TRAFFIC REGULATIONS

73. PARKING REGULATIONS

74. REMOVAL OF UNATTENDED OR IMMOBILE VEHICLE

75. KEEPING OF INOPERABLE VEHICLES

76. SNOW EMERGENCY ROUTES

77. PARKING SCHEDULES

Statutory reference:

Abandoned vehicles, see VA Code §§ 46.2-1200 et seq.

General powers of local governments as to motor vehicles, see VA Code §§ 46.2-1300 et seq.

Identification of disabled parking spaces by above grade signage, see VA Code § 36-99.11

Local vehicle license, see VA Code §§ 46.2-752 et seq.

Motor vehicles, see VA Code §§ 46.2-100 et seq.

Parking regulations in cities, towns, and certain counties, see VA Code § 46.2-1220

Removal of vehicles involved in accidents, see VA Code § 46.2-1212

Removal or immobilization of motor vehicles against which there are outstanding parking violations,

see VA Code § 46.2-1216

CHAPTER 70: GENERAL PROVISIONS

Section

- 70.01 Compliance with chapter
- 70.02 General powers of Council relative to parking spaces
- 70.03 Adoption of state law
- 70.04 Operation of miscellaneous vehicles

- 70.99 Penalty

§ 70.01 COMPLIANCE WITH CHAPTER.

It shall be unlawful for any person to refuse, fail, or neglect to comply with any of the provisions of this chapter or any rule or regulation promulgated pursuant to this chapter.
(1998 Code, § 62-1) (Ord. O-2002-04, passed 2-12-2002) Penalty, see § 70.99

§ 70.02 GENERAL POWERS OF COUNCIL RELATIVE TO PARKING SPACES.

The Council shall retain authority to regulate and designate street parking including, but not limited to, motor vehicle parking space geometric qualities or properties, and to exercise the authority provided to localities in VA Code Title 46.2, as amended, on behalf of the town.
(1998 Code, § 62-1) (Ord. O-2002-04, passed 2-12-2002)

§ 70.03 ADOPTION OF STATE LAW.

(A) (1) Pursuant to the authority of §11 of the Town Charter (1998), as amended, and pursuant to VA Code §§ 1-220, 18.2-268.12, and Title 46.2 Chapter 13, specifically §§ 46.2-1300 and 46.2-1313, as amended, all of the provisions and requirements of the laws of the state, effective as of July 1, 2004, including future amendments to those state statutes as may from time to time be adopted by the state's General Assembly, effective upon the same date as the effective date of such state statutes and not before, contained in VA Code Title 46.2, and VA Code Title 18.2, Chapter 7, Article 2, as amended, as well as those provisions and requirements of VA Code Title 16.1, Chapter 11, Article 9 (§§ 16.1-278 et seq.), pertaining to the disposition of juveniles charged with violations of misdemeanors and traffic infractions contained in the previously referenced portions of VA Code Titles 18.2 and 46.2, and the ordinances of the town, are adopted and incorporated by reference and made applicable within the town: except those provisions and requirements the violation of which constitutes a felony; except those provisions and portions which specifically authorize the adoption of a local ordinance but do not

provide for direct incorporation of specific provisions and requirements, requiring instead, the local governing body to provide provisions and requirements; and, except those provisions and requirements which, by their very nature, can have no application to or within the town. The provisions and requirements of VA Code §§ 46.2-1247 through 46.2-1253 are specifically incorporated by reference as provided for separately in each of those sections.

(2) Such provisions and requirements are hereby adopted, mutatis mutandis, and made part of this section as fully as those set forth at length herein; and it shall be unlawful for any person within the town to violate, fail, neglect, or refuse to comply with any provision of VA Code Title 46.2, VA Code Title 18.2, Chapter 7, Article 2, which is adopted by this section, provided that in no event shall the penalty imposed for the violation of any provision or requirement adopted exceed the penalty imposed for a similar offense under VA Code Title 16.1, Chapter 11, Article 9 (§§ 16.1-278 et seq.), VA Code Title 18.2, Chapter 7, Article 2 (§§ 18.2-266 et seq.), or of VA Code Title 46.2.

(B) (1) When such provisions and requirements of VA Code Title 46.2; VA Code Title 18.2, Chapter 7, Article 2; and VA Code Title 16.1, Chapter 11, Article 9, incorporate and adopted herein, make reference to or in turn incorporate other provisions of the VA Code, rules or regulations promulgated by an arm or agency of the state or the United States, the United States Code, the United States Code of Federal Regulations, the State Administrative Code, federal or state motor carrier safety regulations, regulations promulgated by the Superintendent of State Police pertaining to commercial motor vehicle safety pursuant to the United States Motor Carrier Act of 1984, regulations promulgated by the State Division of Motor Vehicles, or to other provisions, standards, specification, regulations, or uniform codes, they shall apply, mutatis mutandis, as if set forth herein.

(2) All definitions of words and phrases contained in such provisions and requirements hereby adopted shall apply, mutatis mutandis, to such words and phrases when used in this chapter unless clearly indicated to the contrary. References to “highways of the state” or “Commonwealth” contained in such provisions and requirements hereby adopted shall be deemed to refer to the streets, highways, and other public ways within the town.

(C) The penalties imposed for the violation of any provision or requirement adopted by this section shall be and are, mutatis mutandis, as provided by general law for the same or similar offenses under general state law, particularly, VA Code Title 46.2 or under VA Code Title 18.2, Chapter 7, Article 2 (§§ 18.2-266 et seq.) or as provided for juveniles pursuant to VA Code Title 16.1, Chapter 11, Article 9 (§16.1-278 et seq.); effective as of July 1, 2004; including future amendments to those state statutes as may from time to time be adopted by the general assembly, effective upon the same date as the effective date of such state statutes and not before.

(D) (1) Each of the foregoing provisions of this section has been adopted in an endeavor to preserve and extend the public welfare and safety, it is declared to be the legislative intent that, if any portion, division, sentence, clause, or provision of this section is held invalid or unconstitutional, or the application thereof to any person or circumstances, the remainder of this section shall not be affected or impaired by such judgment, decision, or order of any court of competent jurisdiction and shall be interpreted, if necessary, so as to give a meaning consistent with the purpose and intent of this section. For this purpose, the provisions of this section are severable from the particular portion or provision so

declared to be unconstitutional or invalid and the remaining portions thereof shall remain in full force and effect where not inseparably connected in meaning and effect with the portion or provision of this section so declared to be unconstitutional or invalid. This division (D) reiterates § 10.05 of this code.

(2) If any portion of this section is found to be in conflict with any other provision of this code, the provisions of this section shall prevail. Adoption of this section, however, shall not affect nor prevent any pending or future prosecution of any violation of said code occurring prior to the effective date of this section; nor any violation of said code that is merely alternative to this section. (1998 Code, § 62-2) (Ord. passed 5-13-1997; Ord. O-2004-14, passed 6-8-2004) Penalty, see § 70.99

§ 70.04 OPERATION OF MISCELLANEOUS VEHICLES.

(A) It shall be the duty of the Police Department to enforce this section.

(B) No person shall play on a highway designated for vehicular traffic within the town. No person shall use roller skates, skateboards, toys, or other devices on wheels or runners, except bicycles, mopeds, motorcycles, and other vehicles licensed by the state on highways where play is prohibited.

(C) No person riding on any bicycle, moped, roller skates, skateboards, toys, or other devices on wheels or runners shall attach the device or himself or herself to any vehicle on a roadway. This division (C) is not intended to prohibit the lawful attachment or towing of trailers and the like. (1998 Code, § 62-3) Penalty, see § 70.99

§ 70.99 PENALTY.

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

(B) (1) Whenever a penalty is provided in the VA Code for the violation of any section of the VA Code adopted by reference in § 70.03, the penalty for a violation of § 70.03 shall be the same as the penalty provided by state statute for a like offense.

(2) Every person convicted of a violation of any of the provisions of this chapter or rule or regulation promulgated pursuant to this chapter, for which no other penalty is provided and which is not defined as a misdemeanor, shall be punished by a fine of not more than \$200; however, in no event shall any penalty imposed for a violation of any of the provisions of this chapter or rule or regulation promulgated pursuant to this chapter exceed the penalty prescribed by general law of the state for a like offense. (1998 Code, § 62-1)

(C) If any person rides any bicycle or skateboard on any sidewalk in the town, such person shall be guilty of a traffic infraction and, upon conviction, shall be fined not less than \$5 nor more than

\$200.

(1998 Code, § 62-3)

(Ord. O-2002-04, passed 2-12-2002)

CHAPTER 71: MOTOR VEHICLE DECALS

Section

- 71.01 Definitions
- 71.02 Licenses
- 71.03 Military personnel
- 71.04 Proration of license fee and deadline for application for license
- 71.05 Fees; transfer; duplicate
- 71.06 Licensing requirements for parked vehicles

- 71.99 Penalty

Statutory reference:

Local vehicle license, see VA Code §§ 46.2-752 et seq.

§ 71.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

LICENSE YEAR. A period of time that shall commence on November 16 and shall expire on the following November 15 in each year.

MOTOR VEHICLE. Any land vehicle that is self-propelled or designed for self-propulsion, except mopeds.
(1998 Code, § 62-36) (Ord. passed 5-13-1997)

§ 71.02 LICENSES.

(A) The situs for the imposition of local vehicle licensing fees is in all cases, except as hereinafter provided, the county, city, or town in which the motor vehicle, trailer, or semitrailer is normally garaged, stored, or parked. If it cannot be determined where the personal property is normally garaged, stored, or parked, the situs shall be the domicile of its owner. If the owner of the motor vehicle is a full-time student attending an institution of higher education, the situs shall be the domicile of such student, provided the student has presented sufficient evidence that he or she has paid a personal property tax on the motor vehicle in his or her domicile. The owner of any motor vehicle described in this division (A) shall obtain from the town a license, in the form of a motor vehicle decal, for such motor vehicle.

(B) Application for such license shall be made to the Treasurer of the town or his or her duly appointed agent. Such application shall contain a brief description of the motor vehicle to be licensed, including make and serial number, together with such other pertinent information as the Treasurer or his or her authorized agent may require. The applicant shall show a valid vehicle registration card showing an address within the limits of the town or proof of a business licensed by the town. Upon payment of the license fee, the Treasurer or his or her authorized agent shall issue a decal for each vehicle for which proper application has been made. The decal shall bear a suitable number and shall be attached to the vehicle in such a manner as to be visible at all times. Such decal shall be affixed to the windshield at a location designated by the Superintendent of the Department of State Police.
(1998 Code, § 62-37)

§ 71.03 MILITARY PERSONNEL.

Military personnel, who are exempt from the provisions of this chapter under the provisions of the Soldier's and Sailor's Civil Relief Act, being 50 U.S.C. §§ 3901 et seq., as amended, shall be required to pay a handling charge of \$1.
(1998 Code, § 62-38)

§ 71.04 PRORATION OF LICENSE FEE AND DEADLINE FOR APPLICATION FOR LICENSE.

Half of the annual license fee shall be paid if application for such license is made on or after May 15 of the license year. Application for license under this chapter shall be made within 30 days after such motor vehicle is principally garaged, stored, or parked in the town.
(1998 Code, § 62-39) (Ord. O-2005-05, passed 6-14-2005)

§ 71.05 FEES; TRANSFER; DUPLICATE.

(A) The license fee shall be established annually by the Town Council for the ensuing license year during its budget adoption process, the amount not to exceed the license fee of the state on the vehicle.

(B) Transfer of license by an owner to a replacement vehicle shall be permitted upon payment of a fee of \$5.

(C) If any motor vehicle decal issued under the provisions of this chapter is lost or mutilated or becomes illegible, the owner shall make immediate application for and obtain a duplicate or substitute decal, upon furnishing information of such fact satisfactory to the Treasurer and upon payment of \$5. A person, having once applied for and received a duplicate or substitute motor vehicle decal, shall not be entitled to apply again for and receive a duplicate decal during the license year for which the original motor vehicle decal was issued.

(1998 Code, § 62-40) (Ord. O-2005-05, passed 6-14-2005) Penalty, see § 71.99

§ 71.06 LICENSING REQUIREMENTS FOR PARKED VEHICLES.

It shall be unlawful for any motor vehicle to be parked on any public thoroughfare, street, or alley within the town limits unless such vehicle has a valid state license plate, state emissions, or other inspection sticker if required by law and, if otherwise required by the provisions of this chapter, a valid town decal. If such violation continues for more than two consecutive days, such motor vehicle may be towed away by the town at the owner's expense.

(1998 Code, § 62-42) Penalty, see § 71.99

§ 71.99 PENALTY.

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 70.99 of this code of ordinances.

(B) Pursuant to § 71.05, it shall be unlawful for any owner of a motor vehicle to fail to obtain and display upon the vehicle the decal of the town. Failure to do so shall constitute a misdemeanor, the penalty for which shall not exceed that of a class 4 misdemeanor. A violation may not be discharged by payment of a fine except upon presentation of satisfactory evidence that the required license has been obtained.

(1998 Code, § 62-40)

CHAPTER 72: TRAFFIC REGULATIONS

Section

- 72.01 Operator to give full time and attention to driving
- 72.02 Vehicle to be kept under proper control
- 72.03 No blocking of intersection

§ 72.01 OPERATOR TO GIVE FULL TIME AND ATTENTION TO DRIVING.

No person shall operate a motor vehicle upon the highways of the town without giving his or her full time and attention to the operation of the vehicle.

(1998 Code, § 62-76) Penalty, see § 70.99

§ 72.02 VEHICLE TO BE KEPT UNDER PROPER CONTROL.

No person shall operate a motor vehicle upon the highways of the town, failing to keep the vehicle under proper control at all times.

(1998 Code, § 62-77) Penalty, see § 70.99

§ 72.03 NO BLOCKING OF INTERSECTION.

No operator of a vehicle shall enter an intersection or marked crosswalk unless there is sufficient space beyond such intersection or crosswalk in the direction in which such vehicle is proceeding to accommodate the vehicle without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic control signal indication to proceed.

(1998 Code, § 62-78) (Ord. O-2017-01, passed 1-3-2017) Penalty, see § 70.99

CHAPTER 73: PARKING REGULATIONS

Section

- 73.01 Enforcement of parking regulations
- 73.02 Parking prohibited in specific places
- 73.03 Parking commercial vehicles, recreational vehicles, and trailers
- 73.04 Parking on private property
- 73.05 Disabled parking
- 73.06 Parking for certain purposes prohibited
- 73.07 Presumption as to owner of illegally parked vehicle
- 73.08 Stopping on streets or highways generally
- 73.09 Arrest for violations of chapter; release on summons and promise to appear; admitting to bail
- 73.10 When arresting officer shall take person before judicial officer in lieu of issuing summons

- 73.99 Penalty

§ 73.01 ENFORCEMENT OF PARKING REGULATIONS.

(A) It shall be the duty of the Police Department to enforce the parking regulations of the town.

(B) The police officer shall attach to the vehicle in violation a notice that such vehicle has been parked in a manner that fails to comply with the provisions of this chapter, and that the appropriate sum, according to the fine schedule, may be paid to the Town Treasurer or his or her duly appointed agent at 314 Mill Street, Occoquan, Virginia, within ten days from the time of noncompliance appearing on such notice, exclusive of Saturdays, Sundays, and national holidays, and further notifying such owner that if the appropriate fine is paid within such time, no action shall be taken to prosecute the owner for the excessive or improper parking specified on such notice; otherwise, the owner will be in violation of this chapter, and a summons will be issued.

(C) If any person should fail to pay the appropriate fine, the police officer who issued the citation shall notify the violator on the records of the State Department of Motor Vehicles that the fine provided by law for such violation may be paid within five days of receipt of such notice. The notice to the violator shall be contained in an envelope bearing the words "Law Enforcement Notice" stamped on its

face in type at least one-half inch in height.

(D) If a person should fail to respond to the notification, the police officer who issued the citation shall obtain a summons through the magistrate's office.

(E) If any person should contest a parking citation, a request shall be made in writing to the Town Clerk or his or her duly appointed agent for an appointment for a slot on the issuing officer's court date. If the person cited is under age 18, the case will be heard in juvenile and domestic relations district court; if the person cited is 18 years or older, the case will be heard in general district court.

(F) The Town Treasurer or his or her duly appointed agent is authorized to collect the fines cited in this section and deposit them in the General Fund of the town treasury.
(1998 Code, § 62-111) (Ord. O-2014-05, passed 12-2-2014)

§ 73.02 PARKING PROHIBITED IN SPECIFIC PLACES.

(A) When parking in locations other than marked parking space, no person shall park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or in marked parking spaces:

- (1) On or blocking a sidewalk;
- (2) In front of a public or private driveway;
- (3) On a pedestrian crosswalk;
- (4) Alongside or opposite any street excavation or obstruction when such parking would obstruct traffic;
- (5) On the roadway side of any vehicle parked at the edge or curb of a street;
- (6) In a restricted zone where such zone is marked by official signs or markings unless the vehicle properly falls within the permitted class for the restricted zone;
- (7) In a marked fire lane;
- (8) Upon any bridge;
- (9) At any place where signs prohibit parking;
- (10) In any location or manner which operates to obstruct traffic;
- (11) On the wrong side of the street (left wheel to curb);

(12) Across marked lines of a parking space unless the parking space is too small to avoid such manner of parking;

(13) Over the top of the curb;

(14) In a restricted zone in excess of the permitted time limit, where such zone is marked by official signs or markings, unless the vehicle properly falls within the permitted class for the restricted zone; and/or

(15) Alongside a yellow curb.

(B) No person other than a police officer or a person acting at the direction of the Police Department shall move a vehicle onto any such prohibited area or away from a curb such distance as is unlawful, or start or cause to be started the motor of any motor vehicle, or shift, change, or move the levers, brake, starting device, gears, or other mechanism of a parked motor vehicle to a position other than that in which it was left by its owner or driver, or attempt to do so.

(1998 Code, § 62-112) Penalty, see § 73.99

Statutory reference:

Parking in certain locations, see VA Code § 46.2-1239

§ 73.03 PARKING COMMERCIAL VEHICLES, RECREATIONAL VEHICLES, AND TRAILERS.

No person shall park any vehicle, including recreational vehicles, exceeding 10,000 pounds gross vehicle weight or any trailer of any type, whether or not connected to a tow vehicle, on or alongside the roads, highways, and streets in the town for a continuous period of more than four hours. This section shall not be applicable to school buses or to business vehicles when parked at the established commercial business or motor vehicle carriers while picking up or delivering passengers or merchandise or to vehicles parked pursuant to the performance of work or service at such location.

(1998 Code, § 62-113) Penalty, see § 73.99

§ 73.04 PARKING ON PRIVATE PROPERTY.

No person shall stand or park a vehicle on any private lot or lot area without the express or implied consent of the owner of such lot or area. Whenever signs or markings have been erected on any lot or lot area contiguous or adjacent to a street, thoroughfare, or alley indicating that no vehicles are permitted to stand or park thereon, it shall be unlawful for any person to drive a vehicle across any curb or lot line or over any driveway from a street or alley into such lot or area for the purpose of standing or parking such vehicle, or for any person to stop, stand, or park any vehicle in such lot or area.

(1998 Code, § 62-114) Penalty, see § 73.99

§ 73.05 DISABLED PARKING.

(A) It shall be unlawful for any nondisabled operator of a motor vehicle to park in a parking space reserved and marked for the disabled with an above-grade sign distinctly indicating that the space is reserved for disabled parking at privately owned shopping centers, business offices, or other commercial place of business, or to park in a disabled parking zone unless a disabled person is a passenger in the motor vehicle. If any vehicle so parked is not properly marked with disabled license plates or decals issued pursuant to VA Code §§ 46.2-731 or 46.2-739, or pursuant to any similar law of the state in which it is registered, it shall be deemed to be prima facie evidence of a violation of this section. A summons for this offense may be issued by a member of the town's Police Department without the necessity of a warrant's being obtained by the owner of such shopping center or business office, or other commercial place of business.

(B) It shall be unlawful for any person to block spaces reserved and marked off for the disabled by placing, or causing to be placed, snow, dirt, construction material, or any other items that effectively deny access to the disabled parking space.
(1998 Code, § 62-115) Penalty, see § 73.99

§ 73.06 PARKING FOR CERTAIN PURPOSES PROHIBITED.

(A) It shall be unlawful for any person to park or place any automobile, truck, trailer, or other vehicle upon or in any street or alley for the purpose of selling or offering the vehicle for sale or rent. No sign or lettering shall be attached or placed upon any automobile, truck, trailer, or other vehicle parked in or upon any public street or alley of the town indicating that such vehicle is offered for sale or for rent. It shall also be unlawful to park any vehicle from which any merchandise is being sold upon any street in the town.

(B) It shall be unlawful to stop a vehicle at any time upon a street or highway for the purpose of advertising any article of any kind, or to display upon such vehicle advertisements of any article or advertisement for the sale of the vehicle itself.

(C) It shall be unlawful for any person to park a vehicle upon any street or highway for the principal purpose of greasing or repairing the vehicle, except minor repairs necessitated by emergency.
(1998 Code, § 62-116) Penalty, see § 73.99

§ 73.07 PRESUMPTION AS TO OWNER OF ILLEGALLY PARKED VEHICLE.

In any prosecution charging a violation of any section of this chapter or any ordinance of the town governing the standing or parking of a vehicle, proof that the particular vehicle involved in such stated offense was parked in violation of such section or ordinance, together with proof that the defendant named in the summons or warrant was, at the time of such standing or parking, the registered owner of such vehicle, shall constitute, in evidence, a prima facie presumption that such registered owner of such vehicle was the person who parked or placed such vehicle at the point where, and for the time during which, such violation occurred.

(1998 Code, § 62-117)

§ 73.08 STOPPING ON STREETS OR HIGHWAYS GENERALLY.

(A) No vehicle shall be stopped in such a manner as to impede or render dangerous the use of a street or highway by others, except in the case of an emergency as the result of an accident or mechanical breakdown, in which case a report shall be made to the nearest police officer as soon as practicable; and the vehicle shall be removed from the roadway to the shoulder as soon as possible and removed from the shoulder without unnecessary delay; and, if such vehicle is not promptly removed, such removal may also be ordered by a police officer at the expense of the owner if the disabled vehicle creates a traffic hazard or impedes the flow of traffic.

(B) (1) Except upon streets or portions of streets where angle parking is permitted, and except when actually loading or unloading merchandise, no vehicle shall be stopped except close to and parallel with the right-hand curb.

(2) In no instance shall such vehicle be parked with the curbside wheels farther than 12 inches from the curb.

(C) (1) No vehicle shall be stopped at or in the vicinity of a fire, accident, or other area of emergency in such a manner as to create a traffic hazard or interfere with the necessary procedures of police, firefighters, rescue workers, or others whose duty it is to deal with such emergencies.

(2) Any vehicle found unattended in the vicinity of such fire, accident, or area of emergency may be removed by order of a police officer at the risk and expense of the owner if such vehicle creates a traffic hazard or impedes the flow of traffic, or interferes with the necessary procedures of police, firefighters, rescue workers, or others whose assigned duty it is to deal with such emergencies.

(D) The provisions of this section shall not apply to any vehicle owned or controlled by the State Department of Transportation or the town, while actually engaged in the construction, reconstruction, or maintenance of streets or highways.

(1998 Code, § 62-118) Penalty, see § 73.99

§ 73.09 ARREST FOR VIOLATIONS OF CHAPTER; RELEASE ON SUMMONS AND PROMISE TO APPEAR; ADMITTING TO BAIL.

(A) Whenever any person is arrested for a violation of any provision of this subchapter, the arresting officer shall, except as otherwise provided in § 73.10, take the name and address of such person and the license number of his or her motor vehicle and issue a summons or otherwise notify him or her in writing to appear at a time and place to be specified in such summons or notice. Such time shall be at least five days after such arrest unless the person arrested shall demand an earlier hearing. Such person shall, if he or she so desires, have a right to an immediate hearing or a hearing within 24 hours at a convenient hour, and before a court having jurisdiction within the town. Such officer shall thereupon and upon the giving by such person of his or her written promise to appear at such time and

place forthwith release him or her from custody.

(B) Any person refusing to give such written promise to appear shall be taken immediately by the arresting or other police officer before the nearest or most accessible judicial officer or other person qualified to admit to bail having jurisdiction under this chapter.

(1998 Code, § 62-119) Penalty, see § 73.99

§ 73.10 WHEN ARRESTING OFFICER SHALL TAKE PERSON BEFORE JUDICIAL OFFICER IN LIEU OF ISSUING SUMMONS.

If any person is believed by the arresting officer to have committed a felony or be likely to disregard a summons issued under § 73.09, the arresting officer, unless a summons was issued, shall take such person forthwith before the nearest or most accessible judicial officer or other person qualified to admit to bail in lieu of issuing the summons required by § 73.09, who shall determine whether or not probable cause exists that such person is likely to disregard a summons, and may issue either a summons or warrant as deemed proper.

(1998 Code, § 62-120)

§ 73.99 PENALTY.

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 70.99 of this code of ordinances.

(B) Fines for violation of § 73.01 are as follows:

<i>Violation</i>	<i>Fine</i>
Parked in disabled zone	\$100 to \$500
All other violations cited in § 73.01	\$50

(1998 Code, § 62-111)

(C) Any person who willfully violates his or her written promise to appear, given in accordance with 73.09, shall be guilty of a class 1 misdemeanor and treated in accordance with the provisions of VA Code § 46.2-938.

(1998 Code, § 62-119)

(Ord. O-2014-05, passed 12-2-2014)

CHAPTER 74: REMOVAL OF UNATTENDED OR IMMOBILE VEHICLE

Section

- 74.01 Provision for removal
- 74.02 Removal by police officer
- 74.03 Written request
- 74.04 Presumption of abandonment
- 74.05 Removal, disposal of vehicle involved in accident

§ 74.01 PROVISION FOR REMOVAL.

The police may remove for safekeeping any motor vehicle, trailer, semitrailer, or parts of such vehicle if it is:

- (A) Left unattended on a public highway or other public property and constitutes a traffic hazard;
- (B) Illegally parked;

(C) Left unattended for more than ten days either on public property or on private property without the permission of the property owner, lessee, or occupant; and/or

(D) Immobilized on a public roadway by weather conditions or other emergency situation.
(1998 Code, § 62-151)

§ 74.02 REMOVAL BY POLICE OFFICER.

Removal of unattended or immobile vehicles shall be carried out by or under the direction of a police officer.

(1998 Code, § 62-152)

§ 74.03 WRITTEN REQUEST.

Motor vehicles, trailers, or semitrailers or parts of such vehicles shall not be removed from private property without written request of the owner, lessee, or occupant of the premises.

(1998 Code, § 62-153)

§ 74.04 PRESUMPTION OF ABANDONMENT.

It shall be presumed that such vehicle is abandoned if it lacks either a current license plate, a current town license decal, or a valid state emissions or other inspection sticker if required by law and if it has been in a specific location for four days without being moved.

(1998 Code, § 62-154)

§ 74.05 REMOVAL, DISPOSAL OF VEHICLE INVOLVED IN ACCIDENT.

(A) Whenever a motor vehicle, trailer, or semitrailer involved in an accident is found upon any highway and is so located as to impede the orderly flow of traffic, the police officer may:

(1) At no cost to the owner or operator, remove the vehicle, trailer, or semitrailer to some point in the vicinity where it will not impede the flow of traffic; or

(2) Have the vehicle removed to a storage area for safekeeping and shall report the removal to the State Department of Motor Vehicles and to the owner of the vehicle, as promptly as possible.

(B) If the vehicle is removed to a storage area under division (A)(2) above, the owner shall pay to the parties entitled thereto all costs incidental to its removal and storage.

(1998 Code, § 62-155)

CHAPTER 75: KEEPING OF INOPERABLE VEHICLES

Section

- 75.01 Definitions
- 75.02 Exceptions to provisions of chapter
- 75.03 Regulated
- 75.04 Removal
- 75.05 Disposal
- 75.06 Reasonable notice

Statutory reference:

Keeping of inoperable motor vehicles, see VA Code §§ 15.2-904, 15.2-905

§ 75.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

INOPERABLE MOTOR VEHICLE. Any motor vehicle, trailer, or semitrailer that is not in operating condition, or does not display valid license plates, a state safety inspection sticker, or a town motor vehicle decal.

SHIELDED OR SCREENED FROM VIEW. Hidden from sight from adjoining or nearby properties or streets by plantings or fences.
(1998 Code, § 62-186)

§ 75.02 EXCEPTIONS TO PROVISIONS OF CHAPTER.

The provisions of this chapter shall not apply to a licensed business regularly engaged as an automobile dealer, salvage dealer, or scrap processor.
(1998 Code, § 62-187)

§ 75.03 REGULATED.

It shall be unlawful for a property owner to keep, except in a fully enclosed building or structure or otherwise shielded or screened from view, on any property zoned for residential, commercial, or agricultural purposes, any motor vehicle, trailer, or semitrailer as such is defined in VA Code § 46.2-100, which is inoperable.

(1998 Code, § 62-188) Penalty, see § 70.99

§ 75.04 REMOVAL.

The owners of property zoned for residential, commercial, or agricultural purposes shall, at such times as the town may prescribe, remove from their property any inoperable motor vehicle that is not kept within a fully enclosed building or structure or otherwise fully shielded or screened from view. The town may remove the inoperable motor vehicle whenever the owner of the premises, after reasonable notice, has failed to do so.

(1998 Code, § 62-189)

§ 75.05 DISPOSAL.

If the town removes an inoperable motor vehicle, after having given reasonable notice, the town may dispose of the vehicle after giving additional notice to the owner of the premises. The cost of the removal and disposal may be charged to either the owner of the inoperable vehicle or the owner of the premises, and the cost may be collected by the town as taxes and levies are collected. Every cost authorized by this section with which the owner of the premises has been assessed shall constitute a lien against the property from which the inoperable vehicle was removed, and the lien shall continue until actual payment of the cost has been made to the town.

(1998 Code, § 62-190)

§ 75.06 REASONABLE NOTICE.

Whenever reasonable notice of removal to a property owner is required, the reasonable notice shall be satisfied by the methods set forth below.

(A) Reasonable notice of the date fixed by the town for removal of inoperable vehicles shall be given by mail or personal delivery to each property owner by written notice or by newspaper publication.

(B) Upon failure of such property owner to remove such inoperable vehicles, by the date fixed, the town shall notify the property owner, by certified and by regular mail, that he or she has 15 days from the date of the notice to remove the inoperable vehicles; and upon his or her failure to so remove, the town shall have the vehicles removed and shall charge the cost to the owner. The requirement of notification by certified mail shall be satisfied by mailing of such certified letter to the property owner's current address, listed in the real estate tax records of the county.

(1998 Code, § 62-191)

CHAPTER 76: SNOW EMERGENCY ROUTES

Section

- 76.01 Posting of signs
- 76.02 Parking; obstructing traffic by failure to have snow tires or chains
- 76.03 Removal of stalled, abandoned, and the like vehicles

- 76.99 Penalty

Cross-reference:

Parking schedules, see Ch. 77 Sch. I

§ 76.01 POSTING OF SIGNS.

All snow emergency routes designated in Ch. 77, Sch. I shall be posted with appropriate signs indicating their designation as snow emergency routes. Such signs shall be placed not more than 2,500 feet apart in either direction.

(1998 Code, § 62-193) (Ord. O-2015-06, passed 10-6-2015)

§ 76.02 PARKING; OBSTRUCTING TRAFFIC BY FAILURE TO HAVE SNOW TIRES OR CHAINS.

(A) In the event of snow, sleet, hail, freezing rain, ice, water, flood, high wind, or storm, or the threat thereof, it shall be unlawful for any person to park any vehicle on any snow emergency route designated in Chapter 77, Schedule I or to obstruct or impede traffic on any such snow emergency route by reason of failure to have any vehicle operated thereon equipped with adequate snow tires or chains.

(B) The drivers of the following vehicles shall be exempt from the provisions of this section:

(1) Commercial vehicles making emergency deliveries of fuel and motor oils, coal, gasoline, goods, milk, and medicines;

(2) Emergency vehicles of public service corporations;

- (3) Ambulances and vehicles carrying sick or injured persons;
- (4) Vehicles engaged in snow removal operations or sanding streets;
- (5) Tow trucks;
- (6) Vehicles of physicians responding to sick calls;
- (7) Vehicles carrying United States mail for delivery;
- (8) Police vehicles;
- (9) Fire vehicles;
- (10) Government emergency vehicles; and

(11) Hearses and motor vehicles in funeral processions.

(1998 Code, § 62-194) (Ord. O-2015-06, passed 10-6-2015) Penalty, see § 76.99

§ 76.03 REMOVAL OF STALLED, ABANDONED, AND THE LIKE VEHICLES.

In the event of snow, sleet, hail, freezing rain, ice, water, flood, high wind, or storm, or the threat thereof, the Police Department may remove, or cause to be removed, any vehicle that is stalled, stuck, parked, or abandoned on or along any snow emergency route designated in Chapter 77, Schedule I. Such vehicle may be removed, stored, and disposed of in accordance with VA Code § 46.2-1209. (1998 Code, § 62-195) (Ord. O-2015-06, passed 10-6-2015)

§ 76.99 PENALTY.

Each violation of any provision of this chapter shall be punishable by a fine of \$50 in addition to any removal, storage, or disposal charges, charged by the tow operator. (1998 Code, § 62-196) (Ord. O-2015-06, passed 10-6-2015)

CHAPTER 77: PARKING SCHEDULES

Schedule

I. Designated snow emergency routes

SCHEDULE I. DESIGNATED SNOW EMERGENCY ROUTES.

Designated snow emergency routes are as follows:

(A) Commerce Street, from Gordon Boulevard (Route 123) to Ellicott Street;

(B) Ellicott Street, from Mill Street to Union Street;

(C) Mill Street, from town line (Poplar Lane) to River Mill Park (cul-de-sac);

(D) Union Street, from Mill Street to town line (Tanyard Hill Road); and

(E) Washington Street, from town line (Occoquan Road) to Mill Street.

(Ord. O-2015-06, passed 10-6-2015) (1998 Code, § 62-192) Penalty, see § 76.99

TITLE IX: GENERAL REGULATIONS

Chapter

90. ANIMALS

91. FIRE PREVENTION

92. HEALTH AND SANITATION

**93. STREETS, SIDEWALKS, AND OTHER
PUBLIC PLACES**

CHAPTER 90: ANIMALS

Section

- 90.01 Pets and farm animals
- 90.02 Pet excrement
- 90.03 Leashes required

- 90.99 Penalty

Charter reference:

Regulation of animals, see Charter § 17

Statutory references:

Comprehensive animal laws, see VA Code §§ 3.2-6500 et seq.

Cruelty to animals, see VA Code §§ 3.2-6570 et seq.

Diseased animals, dead animals, and the like, see VA Code §§ 18.2-323, 18.2-510

Dogs and cats deemed personal property, rights relating thereto, see VA Code § 3.2-6585

Estrays, see VA Code §§ 55-202 et seq.

Game, inland fisheries, and boating, see VA Code Title 29.1

Hunting near public schools and public parks, see VA Code § 29.1-527

Livestock and poultry, see VA Code §§ 3.2-6000 et seq.

Penalties for offenses involving animals, see VA Code §§ 3.2-6587, 18.2-403.1 et seq.

§ 90.01 PETS AND FARM ANIMALS.

No pet or farm animal shall be allowed to run at large.

(1998 Code, § 6-1) Penalty, see § 90.99

§ 90.02 PET EXCREMENT.

It shall be unlawful for the owner of any dog or any person restraining a dog by means of a leash, cord, or chain to fail to remove immediately the dog's excrement from a public right-of-way or any property other than the dog owner's property.

(1998 Code, § 6-2) Penalty, see § 90.99

§ 90.03 LEASHES REQUIRED.

A dog may be allowed on the streets or squares of the town only if accompanied by its owner or authorized custodian and securely controlled by a leash.
(1998 Code, § 6-3) Penalty, see § 90.99

§ 90.99 PENALTY.

Any person who violates any provision of this chapter shall be guilty of a class 4 misdemeanor.
(1998 Code, § 6-4)

CHAPTER 91: FIRE PREVENTION

Section

- 91.01 Adopted; enforcement; availability for reference
- 91.02 Amendment to the Statewide Fire Prevention Code; generally
- 91.03 Violations of the Statewide Fire Prevention Code
- 91.04 Notification of fire
- 91.05 Responsibility for filing incident report
- 91.06 Obstruction of fire apparatus roads
- 91.07 Interior finish, decorative materials, and furnishings
- 91.08 Fire protection systems; standards
- 91.09 Fire protection systems; systems out of service
- 91.10 Fire alarms; faulty and nuisance alarms
- 91.11 Fire Department connections; signs
- 91.12 Means of egress from buildings and/or occupancies; maintenance and inspection
- 91.13 Hazardous materials; unauthorized discharges

- 91.99 Penalty

§ 91.01 ADOPTED; ENFORCEMENT; AVAILABILITY FOR REFERENCE.

(A) There is hereby adopted by the Town Council, for the purpose of prescribing regulations to safeguard life and property from the hazards of fire or explosion arising from the improper maintenance of life safety and fire prevention and protection materials, devices, systems, and structures, and the unsafe storage, handling, and use of substances, materials, and devices, wherever located, that certain code known as the Statewide Fire Prevention Code (“Fire Prevention Code”), as amended, save and except such portions as are deleted, modified, or amended by this chapter, and the same is hereby adopted and incorporated as fully as if set out at length herein.

(B) The Fire Marshal shall have responsibility for enforcement of the Fire Prevention Code. The term “Fire Official”, as used in the Fire Prevention Code, shall mean the Fire Marshal or his or her designee.

(C) At least one copy of the Fire Prevention Code adopted in division (A) above shall be on file in the office of the Fire Marshal, and it shall be available for inspection between the hours of 8:00 a.m.

and 4:30 p.m., Monday through Friday inclusive, except for legal holidays.
(1998 Code, § 22-6)

§ 91.02 AMENDMENT TO THE STATEWIDE FIRE PREVENTION CODE; GENERALLY.

Pursuant to the authority found in VA Code Title 27, Chapter 9, the Statewide Fire Prevention Code (“Fire Prevention Code”), the town hereby adopts the following changes to the Fire Prevention Code.
(1998 Code, § 22-7)

§ 91.03 VIOLATIONS OF THE STATEWIDE FIRE PREVENTION CODE.

If any notice of violation issued pursuant to § 111 of the Fire Prevention Code is not complied with within the time specified in the notice citing the alleged violation, the Fire Marshal shall request the County Attorney to institute the appropriate legal proceedings to restrain, correct, or abate such alleged violation. Where two or more follow-up inspections are required because a responsible party, person, firm, or corporation has failed to comply with a previously issued order or notice of violation, a fee shall be charged as permitted in § 107.15 of the Fire Prevention Code. Fees shall be in accordance with the fee schedule set out in § 107.15 of the Fire Prevention Code.
(1998 Code, § 22-8)

§ 91.04 NOTIFICATION OF FIRE.

In any building subject to inspection under any provision of the Fire Prevention Code, when a fire or evidence of there having been a fire is discovered, even though it has apparently been extinguished, it shall be immediately reported to the County Public Communications Center. This shall be the duty of the owner, manager, or person in control of such building at the time of discovery. This requirement shall not be construed to forbid the owner, manager, or person in control of said building from using all diligence necessary to extinguish such fire prior to the arrival of the Fire Department.
(1998 Code, § 22-9)

§ 91.05 RESPONSIBILITY FOR FILING INCIDENT REPORT.

It shall be the responsibility of the Fire Department officer-in-charge, or his or her designee, to file with the Chief Fire Marshal, in such form as he or she shall prescribe, a report of every fire, explosion, or incident to which apparatus or equipment responds. Such reports shall be filed at such time and location prescribed by the Chief Fire Marshal.
(1998 Code, § 22-10)

§ 91.06 OBSTRUCTION OF FIRE APPARATUS ROADS.

Fire apparatus access roads and approved designated fire lanes shall not be obstructed in any manner including the parking of vehicles, staging, or storage of devices, equipment, or materials or any unauthorized use in accordance with §§ 503.4.1 through 503.4.2 of the International Fire Code (2009). The minimum widths and clearances established in § 503.2.1 shall be maintained at all times. (1998 Code, § 22-11)

§ 91.07 INTERIOR FINISH, DECORATIVE MATERIALS, AND FURNISHINGS.

This section shall be applicable to all assembly, educational, and institutional occupancies. Combustible materials such as paper, cotton batting, straw, cut or dry vines, leaves, trees, artificial flowers or shrubbery, or similar combustible materials, and foam plastic materials, shall not be used for decorative purposes in non-sprinklered show windows, building lobbies, exits or exit accesses, interior stairways, or other parts of buildings, or any area of public use in such a quantity as to constitute a fire hazard. (1998 Code, § 22-12)

§ 91.08 FIRE PROTECTION SYSTEMS; STANDARDS.

All fire protection systems that were installed in compliance with any law, ordinance, or order shall be maintained in an operative condition at all times. An owner or occupant shall not reduce the effectiveness of the protection so required to include to silence, reset, remove, tamper with, damage, destroy, or use without just cause any fire detection or alarm system, fire protection system, except for the purpose of extinguishing fire, training, recharging, repairing, or when approved by the Fire Official. Fire protection systems shall be inspected, tested, and maintained in accordance with the referenced standards listing in Table 901.6.1 of the International Fire Code (2009 Edition). (1998 Code, § 22-13)

§ 91.09 FIRE PROTECTION SYSTEMS; SYSTEMS OUT OF SERVICE.

Where a required fire protection system is out of service, the Public Safety Communications Center and the Fire Marshal shall be notified immediately and, where required by the Fire Marshal, the building shall be evacuated and/or an approved and documented fire watch shall be provided for all occupants and premises left unprotected by the inoperative system until the fire protection system has been returned to service and the fire watch has been terminated by the Fire Marshal. Where utilized, fire watches shall be provided with at least one approved means for notification of the Fire Department and their only duty shall be to perform constant patrols of the premises and keep watch for fire. (1998 Code, § 22-14)

§ 91.10 FIRE ALARMS; FAULTY AND NUISANCE ALARMS.

(A) Notwithstanding the provisions found in §§ 2.5-1 et seq., of Chapter 2.5 of the County Code, whenever faulty or nuisance alarms in an occupancy exceed three in any one-month period, the Fire Official may require the owner or occupant to conduct a witnessed test of the fire protection system causing the faulty or nuisance alarm.

(B) For the purpose of this section, a faulty or nuisance alarm is deemed to occur whenever the Fire Officer in charge responding to a fire alarm call shall determine, after investigation, that faulty equipment initiated the alarm. An alarm caused by mechanical failure, malfunction, improper installation, or lack of proper maintenance, or an alarm activated by a cause that cannot be determined may be deemed a faulty alarm.

(C) As soon as practical following the faulty or nuisance alarm, the responding officer-in-charge shall cause the Fire Marshal's office to be notified in writing of the facts and circumstances supporting his or her determination that faulty equipment initiated the alarm.

(D) Whenever an owner or occupant is required by this section to conduct a test of a fire alarm or suppression system, the Fire Official shall notify the owner or occupant in writing and prescribe a certified test consistent with standard procedures to be witnessed by the Fire Official or his or her designee.

(E) (1) Any faulty equipment or systems identified during the test which will reduce the effectiveness of the protection shall be recorded and a notice of violation prepared and served in accordance with the provisions of § 111.0 of Statewide Fire Prevention Code (2009). The notice of violation will require the repair, abatement, or correction of any noted defects, the restoration of the system to normal operative condition, and compliance with any law, ordinance, or order affecting such alarm system.

(2) The notice of violation shall be enforced pursuant to the provisions of § 110 of the International Fire Code (2009).
(1998 Code, § 22-15)

§ 91.11 FIRE DEPARTMENT CONNECTIONS; SIGNS.

(A) A metal sign with raised letters at least one-inch in size shall be mounted on all Fire Department connections serving automatic sprinklers, standpipes, or fire pump connections. Such signs shall read: "AUTOMATIC SPRINKLERS" or "STANDPIPES" or "TEST CONNECTION" or a combination thereof as applicable.

(B) Where multiple Fire Department connections are provided, a metal sign with raised letters at least one-inch in size shall be provided at all Fire Department connections to indicate the numerical street address, range of numerical street addresses, or fire protection zones served by a fire protection system connected to Fire Department connection. This sign is to be placed in a location as to be readily visible, free of obstruction, and approved by the Fire Marshal.
(1998 Code, § 22-16)

**§ 91.12 MEANS OF EGRESS FROM BUILDINGS AND/OR OCCUPANCIES;
MAINTENANCE AND INSPECTION.**

The owner, operator, manager, or other person responsible for the operation of an assembly, educational, or mercantile occupancy, or other occupancy or building open to the general public, shall inspect and check egress facilities before such occupancy or building is occupied to determine compliance with this section. If such inspection reveals that any element of the means of egress cannot be accessed, is obstructed, locked, fastened, or otherwise unsuited for immediate utilization, admittance to the occupancy or building shall not be permitted until necessary corrective action has been completed and the means of egress restored to a safe and compliant condition.

(1998 Code, § 22-17)

§ 91.13 HAZARDOUS MATERIALS; UNAUTHORIZED DISCHARGES.

(A) The storage, use, and handling of all hazardous materials shall be in accordance with Chapter 9.2, Article V of the Prince William County Code of Ordinances.

(B) When hazardous materials or hazardous waste are released in any quantity, the Code Official shall be notified and the procedures required in accordance with Chapter 9.2, Article V of the Prince William County Code of Ordinances shall be followed.

(1998 Code, § 22-18)

§ 91.99 PENALTY.

(A) Unless otherwise specified in this chapter, any person, firm, or corporation who shall violate any of the sections of this chapter, or any provisions of the Fire Prevention Code adopted in accordance with this chapter, shall separately, for each and every such violation and noncompliance respectively, be guilty of a violation of this chapter, and shall, upon conviction, be punishable as a class 1 misdemeanor.

(B) A violation of this chapter shall be construed to be an infringement, breach, or failure to comply with any provision of this chapter or any order made thereunder, or any act of building in violation of any detailed statement, specifications, or plans submitted and approved thereunder, or any certificate or permit issued thereunder, and from which no appeal has been taken, or any failure to comply with such an order within the time fixed therein.

(C) Each day that a violation continues after a service of notice as provided for in this code shall be deemed a separate offense.

(1998 Code, § 22-27)

CHAPTER 92: HEALTH AND SANITATION

Section

General Provisions

- 92.01 Dangerous conditions
- 92.02 Noise

Refuse; Vegetation

- 92.15 Definitions
- 92.16 Refuse storage; collection and disposal
- 92.17 Refuse storage; standards and regulations
- 92.18 Property to be free of refuse
- 92.19 Removal
- 92.20 Grass, weeds, and other foreign growth

- 92.99 Penalty

Charter reference:

Cleaning of premises, see § 17

Statutory references:

Certain local regulations pertaining to food and beverage containers prohibited, see VA Code § 10.1-1425

Health, see VA Code Title 32.1

Inspection warrant for inspecting or testing for toxic substances, see VA Code §§ 19.2-393 et seq.

Regulation of well covers, see VA Code § 18.2-318

Sanitation in transportation terminals, festivals, fairs, service stations, and the like, see VA Code § 32.1-202

GENERAL PROVISIONS

§ 92.01 DANGEROUS CONDITIONS.

(A) In addition to any other remedies provided by this code or the VA Code, the town may protect public health, safety, and welfare by addressing dangers to health and safety as provided in this division (A).

(1) The owners of property in the town shall, at such time or times as the Council may prescribe, remove therefrom any and all trash, garbage, refuse, litter, and other substances which might endanger the health or safety of other residents of the town. The town may, whenever the Council deems it necessary, after reasonable notice, have such trash, garbage, refuse, litter, and other like substances which might endanger the health of other residents of the town, removed by its own agents or employees, in which event the cost or expenses thereof shall be chargeable to and paid by the owners of such property and may be collected by the town as taxes are collected. Any tree, bush, or other plant which endangers persons or poses a risk of fire or other property damage because of its location and/or condition shall constitute a substance which might endanger the health or safety of residents of the town for purposes of this division (A).

(2) Every charge authorized by this division (A) or VA Code § 15.2-900 with which the owner of any such property has been assessed and that remains unpaid shall constitute a lien against such property ranking on a parity with liens for unpaid local taxes and enforceable in the same manner as provided in VA Code Title 58.1, Chapter 39, Articles 3 (§§ 58.1-3940 et seq.) and 4 (§§ 58.1-3965 et seq.). The Town Council may by resolution waive such liens in order to facilitate the sale of the property. Such liens may be waived only as to a purchaser who is unrelated by blood or marriage to the owner and who has no business association with the owner. All such liens shall remain a personal obligation of the owner of the property at the time the liens were imposed.

(B) In addition to any other remedies provided by this code or the VA Code, the town may protect public health, safety, and welfare by addressing dangerous structures as provided in this division (B).

(1) The owners of property in the town shall remove, repair, or secure any building, wall or any other structure that might endanger the public health or safety of other residents of the town at such time or times as the Town Council may prescribe by resolution or ordinance.

(2) The town through its agents or employees may remove, repair, or secure any building, wall, or any other structure that might endanger the public health or safety of other residents of the town, if the owner and lien holder of such property have failed to remove, repair, or secure the building, wall, or other structure, after the notice provided in this division (B) has been sent and the time to act provided in that notice has elapsed.

(a) For purposes of this division (B), repair may include maintenance work to the exterior of a building to prevent deterioration of the building or adjacent buildings.

(b) For purposes of this division (B), reasonable notice includes a written notice: mailed by certified or registered mail, return receipt requested, sent to the last known address of the property owner; and published once a week for two successive weeks in a newspaper having general circulation in the locality.

(c) No action shall be taken to remove, repair, or secure any building, wall, or other structure for at least 30 days following the later of the return of the receipt or newspaper publication, except that the town may take action to prevent unauthorized access to the building within seven days of such notice if the structure is deemed to pose a significant threat to public safety and such fact is stated in the notice.

(3) If the town, through its own agents or employees, removes, repairs, or secures any building, wall, or any other structure after complying with the notice provisions of this division (B), the cost or expenses thereof shall be chargeable to and paid by the owners of such property and may be collected by the town as taxes are collected.

(4) Every charge authorized by this division (B) or VA Code § 15.2-900 with which the owner of any such property has been assessed and that remains unpaid shall constitute a lien against such property ranking on a parity with liens for unpaid local taxes and enforceable in the same manner as provided in VA Code Title 58.1, Chapter 39, Articles 3 (§§ 58.1-3940 et seq.) and 4 (§§ 58.1-3965 et seq.). The Town Council may, by resolution, waive such liens in order to facilitate the sale of the property. Such liens may be waived only as to a purchaser who is unrelated by blood or marriage to the owner and who has no business association with the owner. All such liens shall remain a personal obligation of the owner of the property at the time the liens were imposed.

(C) In addition to any other remedies provided by this code or the VA Code, the town may protect public health, safety, and welfare by addressing dangerous wharves, piers, pilings, bulkheads, vessels, or abandoned, obstructing, or hazardous property as provided in this division (C).

(1) The owners of property in the town shall, at such time or times as the Town Council may prescribe, remove, repair, or secure any vessel which has been abandoned or any wharf, pier, piling, bulkhead, or any other structure or vessel which might endanger the public health or safety of other persons, or which might constitute an obstruction or hazard to the lawful use of the waters within or adjoining such locality. If such property is deemed to be abandoned, the Town Council may designate and empower an official to ascertain the lawful owner of such property and to have the owner repair, remove, or secure such property.

(2) The town, through its own agents or employees, may remove, repair, or secure any vessel which has been abandoned or any wharf, pier, piling, bulkhead, or other structure or vessel which might endanger the public health or safety of other persons or which might constitute a hazard or obstruction to the lawful use of the waters within the town, if the owner of such property, after reasonable notice and reasonable time to do so, has failed to remove, repair, or secure such wharf, pier, piling, bulkhead, or other structure or vessel.

(3) If the town, through its own agents or employees, removes, repairs, or secures any wharf, pier, piling, bulkhead, or other structure or vessel after complying with the notice provisions of this division (C), the cost or expenses thereof shall be chargeable to and paid by the owners of such property and to the extent applicable may be collected by the locality as taxes are collected.

(4) If the identity or whereabouts of the lawful owner is unknown or not able to be ascertained after a reasonable search and after lawful notice has been made to the last known address of any known owner, the town, through its own agents or employees, may repair such wharf, pier, piling, bulkhead, or other structure or vessel or remove such property after giving notice by publication once each week for two weeks in a newspaper of general circulation in the area where such property is located.

(5) Every charge authorized by this division (C) with which the owner of any such property has been assessed and which remains unpaid, to the extent applicable, shall constitute a lien against the owner's real property, and such lien shall be recorded in the judgment lien docket book in the County Circuit Court. Such lien may also be reduced to a personal judgment against the owner.

(D) Nothing in this section shall affect the town's ability to abate or remove dangerous conditions pursuant to a declared national, state, or local emergency.

(1998 Code, § 30-1) (Ord. O-2014-01, passed 6-17-2014) Penalty, see § 92.99

§ 92.02 NOISE.

(A) It is declared as a matter of legislative determination and public policy that the making, creation, or maintenance of excessive, unreasonable, or unusually loud noises, unusual and unnatural in their time and place and which disturb the usual peace, quietude, tranquility, and normal enjoyable use of any area are detrimental to the public health, safety, convenience, welfare, and prosperity of the residents of the town and constitute a public nuisance.

(B) The following acts are specifically violations of this section:

(1) Sounding a horn or other signaling device on any motor vehicle except as an emergency or danger warning signal;

(2) Operating a motor vehicle, other than an authorized emergency vehicle or a vehicle moving under special permit, which creates a noise disturbance;

(3) Operating, loading, or unloading any vehicle including, but not limited to, trucks, or the opening and destruction of bales, boxes, crates, and containers in the outdoors within 100 yards of a lawfully occupied dwelling between the hours of 10:00 p.m. and 7:00 a.m. on weekdays and between the hours of 10:00 p.m. and 9:00 a.m. on Saturdays, Sundays, and legal holidays;

(4) Operating and causing to be operated between the hours of 10:00 p.m. and 7:00 a.m. on weekdays and between the hours of 10:00 p.m. and 9:00 a.m. on Saturdays, Sundays, and legal holidays any equipment used in construction, repair, alteration, or demolition work on buildings, structures, or appurtenances thereto in the outdoors within 100 yards of a lawfully occupied dwelling. This provision shall not apply to work performed by private or public utility companies for the repair of facilities or restoration of services. In cases where operation of such equipment between 10:00 p.m. and 7:00 a.m. on weekdays or between 10:00 p.m. and 9:00 a.m. on Saturdays, Sundays, or legal

holidays would reduce the disruption to services provided to town residents, the Council may issue a permit for such operation and impose reasonable conditions on the permit;

(5) Using, operating, or causing to be operated mechanical loudspeakers or other sound amplification devices on trucks or other moving vehicles or in commercial establishments for the purpose of commercial advertising or attracting the attention of the public;

(6) Operating or permitting to be operated any powered model aircraft in the outdoors during the nighttime; and/or

(7) The playing of radios, phonographs, televisions, tape or disc players, musical instruments or drums, sound amplifiers or similar devices that produce, reproduce, or amplify sound in such a manner as to create a noise disturbance.

(C) In applying, enforcing, and interpreting this section, a reasonable person standard shall apply, such that a noise, to be considered an offense under this section, must be of such volume (dB), duration, and/or character on public or private property as to disturb a reasonable person. (1998 Code, § 18-1) (Ord. O-2006-01, passed 7-20-2005) Penalty, see § 92.99

REFUSE; VEGETATION

§ 92.15 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

GARBAGE. Putrescible animal and vegetable wastes resulting from the handling, preparation, cooking, and consumption of food.

PRIVATE COLLECTORS. Persons engaged in the collection and transportation of refuse from residential, commercial, industrial, institutional, or other establishments for compensation.

REFUSE. All putrescible and non-putrescible solid wastes of the town, including trash, garbage, ashes, rubbish, street cleanings, and solid wastes generated from manufacturing, industrial, commercial, and agricultural activities and any other business or profession.

STORAGE AREA. An enclosed area on private property of commercial, industrial, institutional, or other establishment used for the storage of refuse.

TOWN COLLECTORS. Persons contracted by the town engaged in the collection and transporting of refuse.
(1998 Code, § 30-31)

§ 92.16 REFUSE STORAGE; COLLECTION AND DISPOSAL.

(A) *Purpose.* The purpose of this subchapter is to provide regulations for the sanitary and effective storage, collection, and disposal of refuse in the town.

(B) *Authority to administer.* The Zoning Administrator is delegated authority to administer this subchapter and to issue supplementary rules and regulations that are in support of and not in conflict with the provisions of this subchapter. Such supplemental rules and regulations shall have the same force and effect as if fully set forth in this subchapter.
(1998 Code, § 30-32)

§ 92.17 REFUSE STORAGE; STANDARDS AND REGULATIONS.

(A) *Residential refuse.*

(1) *Storage.* Except as otherwise permitted by the Town Manager, residential refuse shall be stored in watertight metal or non-breakable plastic containers equipped with handles and tightfitting covers. The size and characteristics of containers shall be subject to reasonable regulation by the Town Manager, consistent with the town's current contract for trash pick-up. Containers and storage areas for residential refuse shall be emptied regularly and cleaned sufficiently often to keep them free of obnoxious odors and vermin.

(2) *Exceptions.* The following are exceptions to the provisions of this section:

(a) Tree trimmings with a maximum diameter of one and one-half inches, bushes and brush must be tied securely in bundles not more than four feet in length.

(b) Refuse collected during the spring cleanup that is too large or bulky for containers may be placed next to the containers.

(c) Ashes shall only be disposed of when cold, and shall only be placed in metal containers.

(3) *Placement.* All residential refuse shall be placed at the curb line not earlier than 4:00 p.m. of the day preceding pickup and not later than 6:00 a.m. on the day of pickup. Containers must be tightly covered. Plastic bags must be securely tied. Refuse shall not be placed on the sidewalk or on any portion of a street right-of-way where it will interfere with pedestrian traffic. Containers shall be removed from the curb line as soon as possible after trash pickup and shall be stored in the rear of the building or in a screened or enclosed trash receptacle storage area.

(B) *Non-residential refuse.*

(1) Each non-residential establishment shall be equipped with adequate refuse containers or storage areas. All containers, except those for storage of bulky refuse, shall be vermin-proof and waterproof, of noncorrosive material and equipped with tight lids, which shall be kept closed at all times except when filling or emptying the container.

(2) Containers and storage areas for non-residential refuse shall be emptied regularly and cleaned sufficiently often to keep them free of obnoxious odors and vermin.

(3) All storage areas for non-residential refuse shall be enclosed by adequate walls or opaque fencing and shall be well drained and fully accessible to collection equipment and to public health inspection. These areas shall protect refuse from dispersal by wind or otherwise, and must be kept free of litter and refuse overflow.

(C) *Prohibited activities.*

(1) It shall be unlawful to place refuse in any street, alley, or public or private place except in accordance with this section.

(2) It shall be unlawful to accumulate refuse on either residential or non-residential properties, except in approved containers or storage areas.

(3) It shall be unlawful to place any refuse in a manner where it may be scattered by the elements.

(4) It shall be unlawful to permit private containers to remain on public streets at times other than those described in division (A)(3) of this section.

(1998 Code, § 30-33) (Ord. O-2018-03, passed 8-7-2018) Penalty, see § 92.99

§ 92.18 PROPERTY TO BE FREE OF REFUSE.

(A) The Town Council finds that the proliferation of refuse and litter including, but not limited to, food- and beverage-related trash and litter, unused or abandoned machinery or appliances, within the town, constitutes a threat to the health, welfare, and safety of the community, degrades the appearance of the community, and reduces the value of surrounding properties.

(B) Owners of property within the town shall keep such property free of refuse, litter, unused or abandoned machinery or appliances, and other substances that might endanger the health, safety, and welfare of residents of the town.

(1998 Code, § 30-34) Penalty, see § 92.99

Statutory reference:

Removal of trash, see VA Code § 15.2-901

§ 92.19 REMOVAL.

(A) When substances of the nature set forth in § 92.18 are found upon property within the town, the Zoning Administrator shall immediately notify the owner of such property to remove such substance. Such notification shall be by registered or certified letter sent to the owner at his or her last known address. If after diligent inquiry no address can be found for such owner, the letter shall be posted in a conspicuous place on the property.

(B) If the substances have not been removed from the property by the owner within ten days from the date the letter has been mailed, or the notice posted, the Zoning Administrator shall cause the removal by town forces or the town's agent of such substances from such property forthwith.

(C) Where substances have been removed from property by the Zoning Administrator pursuant to the provisions of this section, the cost of such removal shall be chargeable to and paid by the owner of the property and may be collected by the town as taxes and levies are collected. Every charge authorized by this section with which the owner and lienholder of any such property shall have been assessed and which remains unpaid shall constitute a lien against such property ranking on a priority with liens for unpaid local taxes and enforceable in the same manner as provided in VA Code §§ 58.1-3940 et seq. and 58.1-3965 et seq.
(1998 Code, § 30-35)

§ 92.20 GRASS, WEEDS, AND OTHER FOREIGN GROWTH.

(A) Where grass, weeds, or other foreign growth in excess of 12 inches in height is found upon property, the Zoning Administrator shall immediately notify the owner of such property to cut such grass, weeds, or other foreign substances down to a height not to exceed three inches. Notification shall be made by the same procedure as set forth in § 92.19.

(B) If the grass, weeds, or other foreign growth have not been cut down within ten days from the date of the letter or posting, the Zoning Administrator shall cause the cutting down by the town, or the town's agent, of such grass, weeds, or other foreign growth forthwith.

(C) Where grass, weeds, or other foreign growth have been cut down on property by the Zoning Administrator pursuant to the provisions of this section, the cost of such cutting shall be chargeable to and paid by the owner of the property and may be collected by the town as taxes and levies are collected.
(1998 Code, § 30-36)

§ 92.99 PENALTY.

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

(B) (1) Violations of § 92.01(A) shall be subject to a civil penalty of \$50 for the first violation, or

violations arising from the same set of operative facts. The civil penalty for subsequent violations not arising from the same set of operative facts within 12 months of the first violation shall be \$200. Each business day during which the same violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same set of operative facts result in civil penalties that exceed a total of \$3,000 in a 12-month period.

(2) The imposition of civil penalties under § 92.01(A) shall be in lieu of criminal penalties and shall preclude prosecution of such violation as a misdemeanor. However, such violations shall be a class 3 misdemeanor in the event three civil penalties have previously been imposed on the same defendant for the same or similar violation, not arising from the same set of operative facts, within a 24-month period. Classifying such subsequent violations as criminal offenses shall preclude the imposition of civil penalties for the same violation.

(3) The town may impose and collect civil penalties, not to exceed a total of \$1,000, for violations of § 92.01(B).
(1998 Code, § 30-1)

(C) Pursuant to § 92.02, any person who permits, allows, or suffers any excessive, unreasonable, loud, or unusual noises to emanate from his or her property or place of business or from public property so as to disturb the usual peace, quietude, tranquility, and normal enjoyable use of any residence or residences in the town shall be guilty of maintaining a public nuisance and guilty of a class 2 misdemeanor.
(1998 Code, § 18-1)

(D) Any person who violates any provision of §§ 92.15 through 92.20 by doing a prohibited act, or failing to perform a required act, or failing to perform permitted acts in the prescribed manner, shall be deemed guilty of a class 3 misdemeanor.
(1998 Code, § 30-37)

CHAPTER 93: STREETS, SIDEWALKS, AND OTHER PUBLIC PLACES

Section

- 93.01 Obstruction of street, sidewalk, or alley
- 93.02 Approval of permits
- 93.03 Placing dirt, ashes, similar materials upon streets prohibited; exceptions
- 93.04 Riding of horses or ponies on sidewalks and sidewalk areas
- 93.05 Removal of snow and ice from sidewalks
- 93.06 Removal of sidewalks
- 93.07 Trees, shrubs, vines, hedges
- 93.08 Public tree care

- 93.99 Penalty

§ 93.01 OBSTRUCTION OF STREET, SIDEWALK, OR ALLEY.

(A) No person shall place any obstruction on any street or sidewalk; provided that any person desiring to use any part of a street or sidewalk for building material may obtain a permit from the Town Hall, after approval by the Mayor, which permit shall state the mode and character of the obstruction and length of time it shall continue; and further provided that no such permit shall be granted when such obstruction can be reasonably avoided.

(B) Any person building near the street line shall be required to erect such overhead scaffolding as may be necessary to protect the public from anything that may fall from the wall or scaffolding of such building.

(C) It shall be the duty of the Mayor, when approving such permit, to require the party obtaining the permit give such assurance as may be necessary to protect the town from liability from any damage that may result from such obstruction.
(1998 Code, § 50-1)

§ 93.02 APPROVAL OF PERMITS.

The Mayor shall approve or disapprove and establish the conditions for a permit under this chapter pursuant to uniform town standards.

(1998 Code, § 50-2)

§ 93.03 PLACING DIRT, ASHES, SIMILAR MATERIALS UPON STREETS PROHIBITED; EXCEPTIONS.

It shall be unlawful for any person to throw or place dirt, ashes, stone, wood, or any other material upon any street within the town; provided, that the penalty for violation of this section shall not be imposed upon persons placing building materials upon a street, in connection with construction work, after having obtained a permit to place such materials upon the street for a limited period of time and having placed such materials in the space designated and manner directed and having not permitted the materials to remain there longer than the limited period stipulated in the permit.

(1998 Code, § 50-3) Penalty, see § 93.99

§ 93.04 RIDING OF HORSES OR PONIES ON SIDEWALKS AND SIDEWALK AREAS.

It shall be unlawful for any person to ride or lead any horse or pony on any sidewalk or in any area between any sidewalk and any curb or curb line in the town.

(1998 Code, § 50-4) Penalty, see § 93.99

§ 93.05 REMOVAL OF SNOW AND ICE FROM SIDEWALKS.

It shall be the duty of the occupant of any property which has a sidewalk of brick, wood, or concrete abutting on such property to have all snow removed from such sidewalk within 12 hours after it has ceased falling; provided that, if snow falls during the night, it shall be removed by 5:00 p.m. on the following day. The same requirements shall exist with respect to ice or sleet on sidewalks, except that ice and sleet, if it cannot be removed without injury to the sidewalk, shall be covered within the time required in this section, with sawdust, ashes, or other material which will render the sidewalk safe for travel. When there is no occupant of such property, it shall be the duty of the owner thereof to have such snow, ice, and sleet removed or covered as provided in this section. If after such reasonable notice as the town may prescribe the owner or occupant of the property affected by the provisions of this section shall fail to abate or obviate the condition, the town may do so and charge and collect the cost thereof from the owner or occupant of the property affected in any manner provided by law for the collection of state or local taxes

(1998 Code, § 50-5) (Ord. O-2003-02, passed 2-18-2003)

§ 93.06 REMOVAL OF SIDEWALKS.

No person shall remove any portion of the walkways or sidewalks in the town or in any way interfere with walkways or sidewalks without a permit authorized by the Mayor.

(1998 Code, § 50-6)

§ 93.07 TREES, SHRUBS, VINES, HEDGES.

(A) It shall be unlawful for the owners of property within the town to allow tree branches, shrubs, vines, or hedges to overhang sidewalks or other public rights-of-way in such a manner as to obstruct the free movement of or endanger pedestrians using such sidewalks.

(B) Where tree branches, shrubs, vines, or hedges on such property are found to so obstruct sidewalks or rights-of-way, a town official shall immediately notify the owner of such property to cut such tree branches, shrubs, vines, or hedges so as to render any affected sidewalks or rights-of-way free of obstruction.

(C) Such notice shall be in writing and sent by certified mail to the occupant of such property or the owner of the property at the last known address as reflected on the real property tax records of the town. If, after diligent inquiry, no address can be found for such owner, the notice shall be posted in a conspicuous place on the property.

(D) If such tree branches, shrubs, vines, or hedges have not been cut within ten days from the date of mailing or posting of the notice, a town official shall cause the cutting down by the town's agent of such tree branches, shrubs, vines, or hedges.

(E) Where tree branches, shrubs, vines, or hedges have been cut down on property by a town official, the cost of such cutting shall be billed to the owner of the property. If such bill is not paid, prior to issuance of the next real estate tax bill, it shall be added to the town real estate tax bill on such property and shall be a lien on such property to the same extent and effect as the real estate tax. (1998 Code, § 50-7) (Ord. O-2004-01, passed 8-12-2003) Penalty, see § 93.99

§ 93.08 PUBLIC TREE CARE.

(A) The Town Manager or designee shall be responsible for the care, preservation, pruning, planting, removal, or disposition of trees in parks, along streets, and in other public areas. The Town Manager or designee, in coordination with a certified arborist, shall consider, investigate, issue findings, report, and make recommendations on any matter or question related to the care, preservation, pruning, planting, removal, or disposition of public trees.

(B) The town shall have the right to plant, prune, maintain, and remove trees, plants, and shrubs located on town-owned property as may be necessary to ensure public safety or preserve or enhance the beauty and function of such public spaces.

(C) The Town Manager may remove or cause or order to be removed any tree located on town property or part thereof which is in an unsafe condition or which, by reason of its nature, is injurious to sewers, electric power lines, gas lines, water lines, or other public improvements, or is affected by any injurious fungus, insect, or other pest.

(Ord. O-2017-05, passed 12-5-2017)

§ 93.99 PENALTY.

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

(B) Any person who violates any provision of §§ 93.01 through 93.07 shall be guilty of a class 1 misdemeanor.

(1998 Code, § 50-8)

TITLE XI: BUSINESS REGULATIONS

Chapter

110.GENERAL PROVISIONS

111.LICENSES

112.MASSAGE ESTABLISHMENTS

Charter reference:

Issuance of licenses, see § 12

Privilege taxes, regulation of businesses, see § 17

Statutory reference:

*Enforcement, collection, refunds, remedies, and review of local taxes, see
VA Code §§ 58.1-3900 et seq.*

Going-out-of-business sales, see VA Code §§ 18.2-223, 18.2-224

Local license taxes, see VA Code §§ 58.1-3700 et seq.

Professions and occupations, see VA Code Title 54.1

Records of firearms dealers, see VA Code §§ 54.1-4200 et seq.

Regulation of precious metals dealers, see VA Code § 54.1-4111

Sale of ice cream and similar products, state preemption, see VA Code § 3.2-5202

CHAPTER 110: GENERAL PROVISIONS

Section

110.01 Franchises with utility companies

110.02 Keeping of permanent register by lodging facilities

110.99 Penalty

§ 110.01 FRANCHISES WITH UTILITY COMPANIES.

The town may impose franchises on utility companies on a contract basis. The contract agreements are available in the Town Clerk's office.
(1998 Code, § 14-1)

§ 110.02 KEEPING OF PERMANENT REGISTER BY LODGING FACILITIES.

Each person who shall keep, maintain, and operate in the town any lodging facility shall keep a permanent register on which shall be entered the name and address of every person furnished lodging and the license number and state of registration of the motor vehicle, if any, being used at such time by the person furnished such lodging. The term **LODGING FACILITY** means any place offering to the public for compensation transitory lodging, or sleeping accommodations, overnight or otherwise, including, but not limited to, facilities known by varying nomenclatures or designations as hotels, motels, travel lodges, tourist homes, hostels, or bed and breakfast establishments. The register provided for in this section shall be open to inspection by law enforcement officers of the town and of this state.
(1998 Code, § 14-2) Penalty, see § 110.99

Statutory reference:

Guest registers, see VA Code § 35.1-9

§ 110.99 PENALTY.

(A) Pursuant to § 110.02, if any person who keeps, maintains, and operates in the town any lodging facility shall fail or refuse to keep such register, such person shall be guilty of a class 3 misdemeanor and, upon conviction, shall be punished accordingly. The person furnished lodging shall also be guilty of a class 3 misdemeanor and, upon conviction, shall be punished accordingly if such

person shall knowingly enter or allow to be entered on such register the license number and state of registration of any motor vehicle not being used by the person for whom registered.

(B) Pursuant to § 110.02, if any person applying for or furnished any lodging at or in any lodging facility shall use any false or fictitious name, or shall enter or cause to be entered any false or fictitious name on any register provided for in this section, such person shall be guilty of a class 3 misdemeanor and, upon conviction thereof, shall be punished accordingly.

(1998 Code, § 14-2)

CHAPTER 111: LICENSES

Section

General Provisions

- 111.01 Definitions
- 111.02 Overriding conflicting ordinances
- 111.03 Purpose of chapter
- 111.04 License requirement
- 111.05 Situs of gross receipts
- 111.06 Limitations and extensions
- 111.07 Appeals and rulings
- 111.08 Record keeping and audits
- 111.09 Exclusions and deductions from gross receipts
- 111.10 License fee and tax
- 111.11 Procedure for obtaining license generally
- 111.12 Assessment of additional tax
- 111.13 Proration of license taxes
- 111.14 Beginner's license
- 111.15 License to be personal privilege; suspension
- 111.16 Transferability
- 111.17 Multiple places of business
- 111.18 Corporations and partnerships
- 111.19 Treasurer as enforcement official; production of books and papers
- 111.20 Display of license
- 111.21 Compliance with zoning and other regulations

Special License Tax Provisions

- 111.35 Carnivals, circuses, performances, certain restrictions
- 111.36 Fortunetellers, clairvoyants, and practitioners of palmistry or phrenology
- 111.37 Peddlers; itinerant vendors
- 111.38 Itinerant vendor events
- 111.39 Peddlers at wholesale
- 111.40 Direct sellers
- 111.41 Limitations on license taxes imposed on peddlers, itinerant vendors, and peddlers at wholesale

- 111.42 Use of streets
- 111.43 Water or sewer, heat, light, power, and gas companies

Classified Business and Occupational Provisions

- 111.55 Retail merchants; exceptions
- 111.56 Relationship to licensing requirements of the state
- 111.57 Restaurants

- 111.99 Penalty

GENERAL PROVISIONS

§ 111.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACTED RESPONSIBLY. The taxpayer: exercised the level of reasonable care that a prudent person would exercise under the circumstances in determining the filing obligations for the business; and undertook significant steps to avoid or mitigate the failure, such as requesting appropriate extensions (where applicable), attempting to prevent a foreseeable impediment, acting to remove an impediment once it occurred, and promptly rectifying a failure once the impediment was removed or the failure discovered.

AFFILIATED GROUP.

(1) One or more chains of corporations subject to inclusion connected through stock ownership with a common parent corporation, which is a corporation subject to inclusion if:

(a) Stock possessing at least 80% of the voting power of all classes of stock and at least 80% of each class of the nonvoting stock of each of the corporations subject to inclusion, except the common parent corporation, is owned directly by one or more of the other corporations subject to inclusion; and

(b) The common parent corporation directly owns stock possessing at least 80% of the voting power of all classes of stock and at least 80% of each class of the nonvoting stock of at least one of the other subject to inclusion corporations. As used in this section, the term “stock” does not include nonvoting stock which is limited and preferred as to dividends; the term ***CORPORATION SUBJECT TO INCLUSION*** means any corporation within the ***AFFILIATED GROUP*** irrespective of the state or country of its incorporation; and the term “receipts” includes gross receipts and gross income.

(2) Two or more corporations if five or fewer persons who are individuals, estates, or trusts own stock possessing:

(a) At least 80% of the total combined voting power of all classes of stock entitled to vote or at least 80% of the total value of shares of all classes of the stock of each corporation; and

(b) More than 50% of the total combined voting power of all classes of stock entitled to vote or more than 50% of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.

(3) When one or more of the corporations subject to inclusion, including the common parent corporation, is a nonstock corporation, the term “stock” shall refer to the nonstock corporation membership or membership voting rights, as is appropriate to the context.

ASSESSMENT. A determination as to the proper rate of tax, the measure to which the tax rate is applied, and ultimately the amount of tax, including additional or omitted tax, that is due. An **ASSESSMENT** shall include a written assessment made pursuant to notice by the assessing official or a self-assessment made by a taxpayer upon the filing of a return or otherwise not pursuant to notice. **ASSESSMENTS** shall be deemed made by an assessing official when a written notice of **ASSESSMENT** is delivered to the taxpayer by the assessing official or an employee of the assessing official, or mailed to the taxpayer at his or her last known address. **SELF-ASSESSMENTS** shall be deemed made when a return is filed, or if no return is required, when the tax is paid. A return filed or tax paid before the last day prescribed by ordinance for filing or payment shall be deemed to be filed or paid on the last day specified for the filing of a return or the payment of tax, as the case may be.

ASSESSOR or **ASSESSING OFFICIAL.** The Town Treasurer.

BASE YEAR. The calendar year preceding the license year, except for contractors subject to the provisions of VA Code § 58.1-3715, or unless this chapter provides for a different period for measuring the gross receipts of a business, such as for beginning businesses or to allow an option to use the same fiscal year as for federal income tax purposes.

BROKER. An agent of a buyer or a seller who buys or sells stocks, bonds, commodities, or services, usually on a commission basis.

BUSINESS. A course of dealing that requires the time, attention, and labor of the person so engaged for the purpose of earning a livelihood or profit. It implies a continuous and regular course of dealing, rather than an irregular or isolated transaction. A person may be engaged in more than one **BUSINESS**. The following acts shall create a rebuttable presumption that a person is engaged in a **BUSINESS**:

(1) Advertising or otherwise holding oneself out to the public as being engaged in a particular **BUSINESS**; or

(2) Filing tax returns, schedules, and documents that are required only of persons engaged in a trade or **BUSINESS**.

CARNIVAL. An aggregation of shows, amusements, concessions, eating places, and riding devices or any of them, operated together on one lot or street or on contiguous lots or streets, moving from place to place, whether or not they are owned and actually operated by separate persons.

COMMODITY. Staples such as wool, cotton, and the like, which are traded on a commodity exchange and on which there is trading in futures.

CONTRACTOR. As prescribed in VA Code § 58.1-3714(B), whether such work is done or offered to be done by day labor, general contract, or subcontract.

DEALER. Any person engaged in the business of buying and selling securities for his or her own account, but does not include a bank, or any person insofar as he or she buys or sells securities for his or her own account, either individually or in some fiduciary capacity, but not as part of a regular business.

DEFINITE PLACE OF BUSINESS. An office or a location at which occurs a regular and continuous course of dealing for 30 consecutive days or more. A **DEFINITE PLACE OF BUSINESS** for a person engaged in business may include a location leased or otherwise obtained from another person on a temporary or seasonal basis and real property leased to another. A person's residence shall be deemed to be a **DEFINITE PLACE OF BUSINESS** if there is no **DEFINITE PLACE OF BUSINESS** maintained elsewhere and the person is not subject to licensure as a peddler or itinerant merchant.

DIRECT SELLER. Any person who:

(1) Engages in the trade or business of selling or soliciting the sale of consumer products primarily in private residences and maintains no public location for the conduct of such business;

(2) Receives remuneration for such activities, with substantially all of such remuneration being directly related to sales or other sales-oriented services rather than to the number of hours worked; and

(3) Performs such activities pursuant to a written contract between such person and the person for whom the activities are performed and such contract provides that such person will not be treated as an employee with respect to such activities for federal tax purposes.

EVENTS BEYOND THE TAXPAYER'S CONTROL. Includes, but is not limited to: the unavailability of records due to fire or other casualty; the unavoidable absence (e.g., due to death or serious illness) of the person with the sole responsibility for tax compliance; or the taxpayer's reasonable reliance in good faith upon erroneous written information from the Assessing Official, who

was aware of the relevant facts relating to the taxpayer's business when he or she provided the erroneous information.

FINANCIAL SERVICES. The buying, selling, handling, managing, investing, and providing of advice regarding money, credit, securities, and other investments and shall include the service for compensation by a credit agency, an investment company, a broker or dealer in securities and commodities or a security or commodity exchange, unless such service is otherwise provided for in this chapter. Those engaged in rendering ***FINANCIAL SERVICES*** include, but without limitation, the following: buying installment receivables; chattel mortgage financing; consumer financing; credit card services; credit unions; factors; financing accounts receivable; industrial loan companies; installment financing; inventory financing; loan or mortgage brokers; loan or mortgage companies; safety deposit box companies; security and commodity brokers and services; stockbroker; and working capital financing.

GROSS RECEIPTS. The whole, entire, total receipts attributable to the licensed privilege, without deduction, except as may be limited by the provisions of VA Code §§ 58.1-3700 et seq.

ITINERANT VENDOR. Any person who engages in, does, or transacts any temporary or transient business in the town and who, for the purpose of carrying on such business, occupies any location for a period of less than one year.

ITINERANT VENDOR EVENT. Any date when any combination of five or more itinerant vendors engage in, do, or transact any temporary or transient business under common sponsorship.

LICENSE YEAR. The calendar year for which a license is issued for the privilege of engaging in business.

PEDDLER. Any person who shall carry from place to place any goods, wares, or merchandise, which he or she offers to sell or barter or actually sells or barterers.

PEDDLER AT WHOLESALE. Any person who sells or offers to sell goods, wares, or merchandise to licensed dealers, other than at a definite place of business, operated by the seller, and at the time of such sale or exposure for sale delivers or offers to deliver the goods, wares, or merchandise to the buyer. For purposes of this definition, any delivery made on the day of sale shall be construed as a ***DELIVERY AT THE TIME OF SALE.***

PERSONAL SERVICES. Rendering for compensation any repair, personal, business, or other services not specifically classified as "financial, real estate or professional service" under this chapter, or rendered in any other business or occupation not specifically classified in this chapter unless exempted from local license tax by VA Code Title 58.1.

PROFESSIONAL SERVICES. Services performed by architects, attorneys at law, certified public accountants, dentists, engineers, land surveyors, surgeons, veterinarians, and practitioners of the healing arts (the arts and sciences dealing with the prevention, diagnosis, treatment, and cure or alleviation of human physical or mental ailments, conditions, diseases, pain, or infirmities) and such occupations, and no others, as the State Department of Taxation may list in the BPOL guidelines promulgated pursuant to VA Code § 58.1-3701. The Department shall identify and list each occupation or vocation in which a professed knowledge of some department of science or learning, gained by a prolonged course of specialized instruction and study, is used in its practical application to the affairs of others, either advising, guiding, or teaching them, and in serving their interests or welfare in the practice of an art or science founded on it. The word “profession” implies attainments in professional knowledge as distinguished from mere skill, and the application of knowledge to uses for others rather than for personal profit.

PURCHASES. All goods, wares, and merchandise received for sale at each definite place of business of a wholesale merchant. The term shall also include the cost of manufacture of all goods, wares, and merchandise manufactured by any wholesale merchant and sold or offered for sale. A wholesale merchant may elect to report the gross receipts from the sale of manufactured goods, wares, and merchandise if it cannot determine the cost of manufacture or chooses not to disclose the cost of manufacture.

REAL ESTATE SERVICES. Providing a service with respect to the purchase, sale, lease, rental, or appraisal of real property unless the service is otherwise specifically provided for in this chapter and such services include, but are not limited to, the following: appraisers of real estate; escrow agents, real estate; fiduciaries, real estate; lessors of real property; real estate agents, brokers and managers; real estate selling agents; and rental agents for real estate.

RETAILER or RETAIL MERCHANT. Any person who sells goods, wares, and merchandise for use or consumption by the purchaser or for any purpose other than resale by the purchaser, but does not include sales at wholesale to institutional, commercial, and industrial users.

SECURITY. Has the same meaning as in the Securities Act (VA Code §§ 13.1-501 et seq.) or in similar laws of the United States regulating the sale of securities.

SERVICES. Things purchased by a customer that do not have physical characteristics, or are not goods, wares, or merchandise.

SPONSOR. Any person that organizes an itinerant vendor event or solicits and receives applications from itinerant vendors for participation in such an event.

WHOLESALE or WHOLESALE MERCHANT. Any person who sells wares and merchandise for resale by the purchaser, including sales when the goods, wares, and merchandise will be incorporated into goods and services for sale, and also includes sales to institutional, commercial, government, and industrial users that, because of the quantity, price, or other terms indicate that they are consistent with sales at wholesale.

(1998 Code, § 14-36)

§ 111.02 OVERRIDING CONFLICTING ORDINANCES.

Except as may be otherwise provided by the laws of the state, and notwithstanding any other ordinances or resolutions enacted by the Town Council, whether or not codified in this code, to the extent of any conflict, the provisions of this chapter shall be applicable to the levy, assessment, and collection of licenses required and taxes imposed on businesses, trades, professions, and callings and upon the persons engaged in such businesses, trades, professions, and callings within the town.

(1998 Code, § 14-37)

§ 111.03 PURPOSE OF CHAPTER.

It is the purpose and policy of the Town Council in this chapter to equalize as far as practicable the burden of license taxation among those liable to taxation, by adopting for general application, but subject to any restrictions or exceptions imposed by state or federal law, or to any restrictions or exceptions as may be imposed specifically in this chapter, a system of license taxes measured by classified gross receipts of the business, profession, trade, or occupation in respect to which the tax is levied. The license tax shall be for the support of town government and for the payment of the debt of the town.

(1998 Code, § 14-38)

§ 111.04 LICENSE REQUIREMENT.

(A) Every person in the town engaging in any business, trade, profession, occupation, or calling, unless otherwise exempted by law, shall apply for a license for each such business, trade, profession, occupation, or calling if such person maintains a definite place of business in the town; such person does not maintain a definite place of business anywhere but the person resides in the town, which residence for the purposes of this chapter shall be deemed a definite place of business; or there is no definite place of business in the town but such person operates amusement machines, is engaged as a peddler or itinerant merchant, carnival, or circus as specified in VA Code §§ 58.1-3717, 58.1-3718, or 58.1-3728, respectively, or is a contractor subject to VA Code § 58.1-3715, or is a public service corporation subject to VA Code § 58.1-3731. A separate license shall be required for each definite place of business and for each business. A person engaged in two or more businesses or professions carried on at the same place of business may elect to obtain one license for all such businesses and professions if all of the following criteria are satisfied:

(1) Each business or profession is subject to licensure at the location and has satisfied any requirements imposed by state law or other provisions of the ordinances of the town;

(2) All of the businesses or professions are subject to the same tax rate, or, if subject to different tax rates, the licensee agrees to be taxed on all businesses and professions at the highest rate; and

(3) The taxpayer agrees to supply such information as the Assessor may require concerning the nature of the several businesses and their gross receipts.

(B) Each person subject to a license tax shall apply for a license prior to beginning business if he or she was not subject to licensing in the town on or before January 1 of the license year, or no later than March 1 of the current license year if he or she had been issued a license for the preceding license year. The application shall be on forms prescribed by the Town Treasurer.

(C) The tax shall be paid with the application in the case of any license not based on gross receipts. If the tax is measured by gross receipts of the business, the tax shall be paid on or before May 31.

(D) The Town Treasurer may grant an extension of time, not to exceed 90 days, in which to file an application for a license, for reasonable cause. The extension shall be conditioned upon the timely payment of a reasonable estimate of the appropriate tax, subject to adjustment to the correct tax at the end of the extension, together with interest from the due date until the date paid and, if the estimate submitted with the extension is found to be unreasonable under the circumstances, with a penalty of 10% of the portion paid after the due date.

(E) A penalty of 10% of the tax may be imposed upon the failure to file an application or the failure to pay the tax by the appropriate due date. Only the late filing penalty shall be imposed by the Assessing Official if both the application and payment are late; however, both penalties may be assessed if the Town Treasurer determines that the taxpayer has a history of noncompliance. In the case of an assessment of additional tax made by the Town Treasurer, if the application and, if applicable, the return were made in good faith and the understatement of the tax was not due to any fraud, reckless, or intentional disregard of the law by the taxpayer, there shall be no late payment penalty assessed with the additional tax. If any assessment of tax by the Town Treasurer is not paid within 30 days, the Town Treasurer may impose a 10% late payment penalty. The penalties shall not be imposed, or if imposed, shall be abated by the Town Treasurer, if the failure to file or pay was not the fault of the taxpayer. In order to demonstrate lack of fault, the taxpayer must show that he or she acted responsibly and that the failure was due to events beyond his or her control. The terms "acted responsibly" and "events beyond the taxpayer's control" are defined in VA Code § 58.1-3703.1.

(F) Interest shall be charged on the late payment of the tax from the due date until the date paid without regard to fault or other reason for the late payment. Whenever an assessment of additional or omitted tax by the Assessing Official is found to be erroneous, all interest and any penalties charged and collected on the amount of the assessment found to be erroneous shall be refunded together with interest on the refund from the date of payment or the due date, whichever is later. Interest shall be paid on the refund of any BPOL tax from the date of payment or due date, whichever is later, whether attributable to an amended return or other reason. Interest on any refund shall be paid at the same rate charged under VA Code § 58.1-3916. No interest shall accrue on an adjustment of estimated tax liability to actual liability at the conclusion of a base year. No interest shall be paid on a refund or charged on a late payment, provided the refund or the late payment is made not more than 30 days from the date of the payment that created the refund or the due date of the tax, whichever is later.

(1998 Code, § 14-40) (Ord. O-2007-3, passed 9-11-2007) Penalty, see § 111.99

§ 111.05 SITUS OF GROSS RECEIPTS.

(A) *General rule.* Whenever the tax imposed by this chapter is measured by gross receipts, the gross receipts included in the taxable measure shall be only those gross receipts attributed to the exercise of a licensable privilege at a definite place of business within the town. In the case of activities conducted outside of a definite place of business, such as during a visit to a customer location, the gross receipts shall be attributed to the definite place of business from which such activities are initiated, directed, or controlled. The situs of gross receipts for different classifications of business shall be attributed to one or more definite places of business or offices as follows.

(1) The gross receipts of a contractor shall be attributed to the definite place of business at which his or her services are performed, or if his or her services are not performed at any definite place of business, then the definite place of business from which his or her services are directed or controlled, unless the contractor is subject to the provisions of VA Code § 58.1-3715.

(2) The gross receipts of a retailer or wholesaler shall be attributed to the definite place of business at which sales solicitation activities occur, or if sales solicitation activities do not occur at any definite place of business, then the definite place of business from which sales solicitation activities are directed or controlled; however, a wholesaler or distribution house subject to a license tax measured by purchases shall determine the situs of its purchases by the definite place of business at which or from which deliveries of the purchased goods, wares, and merchandise are made to customers. Any wholesaler who is subject to license tax in two or more localities and who is subject to multiple taxation because the localities use different measures may apply to the State Department of Taxation for a determination as to the proper measure of purchases and gross receipts subject to license tax in each locality.

(3) The gross receipts of a business renting tangible personal property shall be attributed to the definite place of business from which the tangible personal property is rented or, if the property is not rented from any definite place of business, then the definite place of business at which the rental of such property is managed.

(4) The gross receipts from the performance of services shall be attributed to the definite place of business at which the services are performed or, if not performed at any definite place of business, then the definite place of business from which the services are directed or controlled.

(B) *Apportionment.* If the licensee has more than one definite place of business and it is impractical or impossible to determine to which definite place of business gross receipts should be attributed under the general rule and the affected jurisdictions are unable to reach an apportionment agreement, except as to circumstances set forth in VA Code § 58.1-3709, the gross receipts of the business shall be apportioned between the definite places of businesses on the basis of payroll. Gross receipts shall not be apportioned to a definite place of business unless some activities under the applicable general rule occurred at or were controlled from such definite place of business. Gross receipts attributable to a definite place of business in another jurisdiction shall not be attributed to the

town solely because the other jurisdiction does not impose a tax on the gross receipts attributable to the definite place of business in such other jurisdiction.

(C) *Agreements.* The Assessor may enter into agreements with any other political subdivision of the state concerning the manner in which gross receipts shall be apportioned among definite places of business. However, the sum of the gross receipts apportioned by the agreement shall not exceed the total gross receipts attributable to all of the definite places of business affected by the agreement. Upon being notified by a taxpayer that its method of attributing gross receipts is fundamentally inconsistent with the method of one or more political subdivisions in which the taxpayer is licensed to engage in business and that the difference has resulted or is likely to result in taxes on more than 100% of its gross receipts from all locations in the affected jurisdictions, the Assessor shall make a good-faith effort to reach an apportionment agreement with the other political subdivisions involved. If an agreement cannot be reached, either the Assessor or taxpayer may seek an advisory opinion from the State Department of Taxation pursuant to VA Code § 58.1-3701; notice of the request shall be given to the other party. Notwithstanding the provisions of VA Code § 58.1-3993, when a taxpayer has demonstrated to a court that two or more political subdivisions of the state have assessed taxes on gross receipts that may create a double assessment within the meaning of VA Code § 58.1-3986, the court shall enter such orders pending resolution of the litigation as may be necessary to ensure that the taxpayer is not required to pay multiple assessments even though it is not then known which assessment is correct and which is erroneous.
(1998 Code, § 14-41)

§ 111.06 LIMITATIONS AND EXTENSIONS.

(A) Where, before the expiration of the time prescribed for the assessment of any license tax imposed pursuant to this chapter, both the Assessing Official and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(B) Notwithstanding VA Code § 58.1-3903, the Assessing Official shall assess the local license tax omitted because of fraud or failure to apply for a license for the current license year and the six preceding license years.

(C) The period for collecting any local license tax shall not expire prior to the period specified in VA Code § 58.1-3940, two years after the date of assessment if the period for assessment has been extended pursuant to this section, two years after the final determination of an appeal for which collection has been stayed pursuant to § 111.07(B) and (D), or two years after the final decision in a court application pursuant to VA Code § 58.1-3984, or similar law for which collection has been stayed, whichever is later.
(1998 Code, § 14-42)

§ 111.07 APPEALS AND RULINGS.

(A) Any person assessed with a licensing tax under this chapter as the result of an audit may apply within 90 days from the date of the assessment to the Assessing Official for a correction of the assessment. The application must be filed in good faith and sufficiently identify the taxpayer, audit period, remedy sought, each alleged error in the assessment, the grounds upon which the taxpayer relies, and any other facts relevant to the taxpayer's contention. The Assessor may hold a conference with the taxpayer if requested by the taxpayer, or require submission of additional information and documents, a further audit, or other evidence deemed necessary for a proper and equitable determination of the application. The assessment shall be deemed prima facie correct. The Assessor shall undertake a full review of the taxpayer's claims and issue a determination to the taxpayer setting forth its position. Every assessment pursuant to an audit shall be accompanied by a written explanation of the taxpayer's right to seek correction and the specific procedure to be followed in the jurisdiction (e.g., the name and address to which an application should be directed).

(B) Provided a complete application is made within 90 days of an assessment, collection activity shall be suspended until a final determination is issued by the Assessor, unless the Assessor determines that collection would be jeopardized by delay or that the taxpayer has not responded to a request for relevant information after a reasonable time. Interest shall accrue in accordance with the provisions of § 111.04(F), but no further penalty shall be imposed while collection action is suspended. The term "jeopardized by delay" includes a finding that the application is frivolous, or that a taxpayer desires to depart quickly from the town, to remove his or her property from the town, to conceal himself or his or her property in the town, or to do any other act tending to prejudice, or to render wholly or partially ineffectual, proceedings to collect the tax for the period in question.

(C) Any person assessed with a license tax under this chapter as a result of an audit may apply within 90 days of the determination by the Assessing Official on an application pursuant to division (A) above to the State Tax Commissioner for a correction of such assessment. The Tax Commissioner shall issue a determination to the taxpayer within 90 days of receipt of the taxpayer's application unless the taxpayer and the Assessing Official are notified that a longer period will be required. The application shall be treated as an application pursuant to VA Code § 58.1-1821, and the Tax Commissioner may issue an order correcting such assessment pursuant to VA Code § 58.1-1822. Following such an order, either the taxpayer or the Assessing Official may apply to the appropriate Circuit Court pursuant to VA Code § 58.1-3984. However, the burden shall be on the party making the application to show that the ruling of the Tax Commissioner is erroneous. Neither the Tax Commissioner nor the State Department of Taxation shall be made a party to an application to correct an assessment merely because the Tax Commissioner has ruled on it.

(D) On receipt of a notice of intent to file an appeal to the Tax Commissioner under division (C) above, the Assessing Official shall further suspend collection activity until a final determination is issued by the Tax Commissioner unless the Assessor determines that collection would be jeopardized by delay or that the taxpayer has not responded to a request for relevant information after a reasonable time. Interest shall accrue in accordance with the provisions of § 111.04(F), but no further penalty shall be imposed while collection action is suspended. The term "jeopardized by delay" shall have the same meaning as set forth in division (B) above.

(E) Any taxpayer may request a written ruling regarding the application of the tax to a specific situation from the Assessor. Any person requesting such a ruling must provide all the relevant facts for the situation and may present a rationale for the basis of an interpretation of the law most favorable to the taxpayer. Any misrepresentation or change in the applicable law or the factual situation as presented in the ruling request shall invalidate any such ruling issued. A written ruling may be revoked or amended prospectively if there is a change in the law, a court decision, or the guidelines issued by the State Department of Taxation upon which the ruling was based or the Assessor notifies the taxpayer of a change in the policy or interpretation upon which the ruling was based. However, any person who acts on a written ruling that later becomes invalid shall be deemed to have acted in good faith during the period in which such ruling was in effect.

(1998 Code, § 14-43)

§ 111.08 RECORD KEEPING AND AUDITS.

Every person who is assessable with a license tax shall keep sufficient records to enable the Assessor to verify the correctness of the tax paid for the license years assessable and to enable the Assessor to ascertain the correct amount of tax that was assessable for each of those years. All such records, books of accounts, and other information shall be open to inspection and examination by the Assessor in order to allow the Assessor to establish whether a particular receipt is directly attributable to the taxable privilege exercised within the town. The Assessor shall provide the taxpayer with the option to conduct the audit in the taxpayer's local business office, if the records are maintained there. If the records are maintained outside the town, copies of the appropriate books and records shall be sent to the Assessor's office upon demand.

(1998 Code, § 14-44)

§ 111.09 EXCLUSIONS AND DEDUCTIONS FROM GROSS RECEIPTS.

(A) *General rule.* Gross receipts for license tax purposes shall not include any amount not derived from the exercise of the licensed privilege to engage in a business or profession in the ordinary course of business or profession.

(B) *Exclusions.* The following items shall be excluded from gross receipts:

(1) Amounts received and paid to the United States, the state or any county, city, or town for the state retail sales or use tax, or for any local sales tax or any local excise tax on cigarettes, or for any federal or state excise taxes on motor fuels;

(2) Any amount representing the liquidation of a debt or conversion of another asset to the extent that the amount is attributable to a transaction previously taxed (e.g., the factoring of accounts receivable created by sales that have been included in taxable receipts even though the creation of such debt and factoring are a regular part of its business);

(3) Any amount representing returns and allowances granted by the business to its customer;

(4) Receipts that are the proceeds of a loan transaction in which the licensee is the obligor;

(5) Receipts representing the return of principal of a loan transaction in which the licensee is the creditor, or the return of principal or basis upon the sale of a capital asset;

(6) Rebates and discounts taken or received on account of purchases by the licensee. A rebate or other incentive offered to induce the recipient to purchase certain goods or services from a person other than the offeror, and which the recipient assigns to the licensee in consideration of the sale of goods and services, shall not be considered a rebate or discount to the licensee but shall be included in the licensee's gross receipts, together with any handling or other fees related to the incentive;

(7) Withdrawals from inventory for purposes other than sale or distribution and for which no consideration is received and the occasional sale or exchange of assets other than inventory, whether or not a gain or loss is recognized for federal income tax purposes; and

(8) Investment income not directly related to the privilege exercised by a licensable business not classified as rendering financial services. This exclusion shall apply to interest on bank accounts of the business, and to interest, dividends, and other income derived from the investment of its own funds in securities and other types of investments unrelated to the licensed privilege. This exclusion shall not apply to interest, late fees, and similar income attributable to an installment sale or other transaction that occurred in the regular course of business.

(C) *Deductions.* The following shall be deducted from gross receipts or gross purchases that would otherwise be taxable:

(1) Any amount paid for computer hardware and software that are sold to a United States federal or state government entity provided that such property was purchased within two years of the sale to such entity by the original purchaser who shall have been contractually obligated at the time of purchase to resell such property to a state or federal government entity. This deduction shall not occur until the time of resale and shall apply to only the original cost of the property and not to its resale price, and the deduction shall not apply to any of the tangible personal property that was the subject of the original resale contract if it is not resold to a state or federal government entity in accordance with the original contract obligation; and

(2) Any receipts attributable to business conducted in another state or foreign country in which the taxpayer is liable for an income or other tax based upon income.
(1998 Code, § 14-45)

§ 111.10 LICENSE FEE AND TAX.

(A) Every person or business subject to licensure under this chapter shall be assessed and required to pay annually the license fee set forth in this section. Except as may be specifically

otherwise provided by ordinance or other law, the minimum annual license tax imposed in this section shall be \$30.

(B) The annual license tax imposed shall be at the rate set forth in this section for those classes or enterprises listed in this section and shall be on all the gross receipts of such persons includable as provided in this chapter:

(1) For contractors and persons constructing for their own account for sale, \$0.16 per \$100 of gross receipts (VA Code §§ 58.1-3706, 58.1-3714, and 58.1-3715);

(2) For retailers, \$0.20 per \$100 of gross receipts (VA Code § 58.1-3706);

(3) For financial, real estate, and professional services, \$0.33 per \$100 of gross receipts (VA Code § 58.1-3706);

(4) For repair, personal, and business services and all other businesses and occupations not specifically listed or exempted in this chapter or otherwise by law, \$0.20 per \$100 of gross receipts (VA Code § 58.1-3706);

(5) For wholesalers, \$0.05 per \$100 of purchases (VA Code § 58.1-3716);

(6) Hotels, motels, lodging, and the like, \$0.26 per \$100 of gross receipts (VA Code § 58.1-3703(C)(7));

(7) For photographers, with no regularly established place of business in the state, \$10 per year (VA Code § 58.1-3727); and

(8) For savings and loan associations and state-chartered credit unions, \$50 per year (VA Code § 58.1-3730).
(1998 Code, § 14-46)

§ 111.11 PROCEDURE FOR OBTAINING LICENSE GENERALLY.

(A) Every person liable for the payment of a license tax under the provisions of this chapter shall make application at the office of the Town Treasurer and shall provide proof of the amount of gross receipts of such business, except as in the case of a beginner.

(B) The Town Clerk shall furnish license application forms, which shall provide spaces for the:

(1) Correct name and trade name of the applicant;

(2) Correct residence of the applicant;

(3) Nature of the business, profession, trade, or occupation for which request of such license is being made;

(4) Place where such business, profession, trade, or occupation is to be pursued; and

(5) Federal income tax identification number of the applicant.

(C) For all licenses, the Town Treasurer shall require a sworn statement from the applicant of the amount of gross receipts of such business, profession, trade, or occupation for the previous year, except as in the case of a beginner.

(D) The application shall in all cases be signed personally by the person who authenticates the federal income tax returns for the business, profession, trade, or occupation.

(E) The Town Treasurer shall assess such applicant, or other person of whom a license is required, with the license tax as required by this chapter. Upon the payment of the required license tax to the Town Treasurer, the Town Treasurer shall note the receipt of such payment on the license application form and furnish a receipted copy to the applicant.

(1998 Code, § 14-47)

§ 111.12 ASSESSMENT OF ADDITIONAL TAX.

(A) Whenever the Town Treasurer shall ascertain that any person shall be assessed with any additional license tax pursuant to the provisions of this chapter, the Treasurer shall assess such person in writing with such additional license tax as may be due.

(B) If such additional assessment shall be paid within 30 days from the date of such additional assessment, no penalty shall accrue. If such additional assessment shall not be paid within 30 days from the date of such additional assessment, interest at the rate of 10% per annum shall accrue from the date of the additional assessment until the time of payment.

(1998 Code, § 14-48)

§ 111.13 PRORATION OF LICENSE TAXES.

If a person ceases to engage in a business, trade, profession, or calling within the town during a year for which a license tax based on gross receipts has already been paid, the taxpayer shall be entitled, upon application, to a refund for that portion of the license tax already paid, prorated on a monthly basis so as to ensure that the licensed privilege is taxed only for that fraction of the year during which it is exercised within the town. The town may elect to remit any refunds in the ensuing fiscal year and may offset against such refund any amount of past-due taxes owed by the same taxpayer. In no event shall the town be required to refund any part of a flat fee or minimum flat tax.

(1998 Code, § 14-49)

§ 111.14 BEGINNER'S LICENSE.

(A) Every person who, during any calendar year, begins a business, profession, trade, or occupation subject to a license tax under the provisions of this chapter shall estimate the amount of the gross receipts expected between the date of beginning business and the end of the then-current license year. Such estimate shall be included in the license application form, and the license tax for the then-current year shall be computed based on such estimate.

(B) Each such beginning business shall submit to the Town Treasurer, not later than July 30 following the business's first license year, a report of actual gross receipts for the preceding year.

(C) Whenever a license tax for a beginning business is so computed, any estimate found to be erroneous upon a report of actual gross receipts as required by division (B) above shall be subject to correction. The Treasurer shall assess such person with any additional license tax found to be due at the end of the license year and shall at the same time correct the estimate for the then-current license year. Such additional license tax shall be subject to a penalty of 10% and interest of 10% per annum from the date of the original estimate if the estimate proves to be unreasonable. Estimates will be deemed unreasonable if they are less than 80% of the actual taxes ultimately due. In case of an overestimate, the taxpayer shall be entitled to a credit upon his or her license tax payable the following year. (1998 Code, § 14-50) (Ord. passed 1-13-1998)

§ 111.15 LICENSE TO BE PERSONAL PRIVILEGE; SUSPENSION.

Every license issued under this chapter shall be deemed to confer a personal privilege to transact, carry on, or conduct the business, trade, or occupation that may be subject to the license, and shall not be exercised except by the person licensed. If it is determined that such individual to whom the license has been issued shall have transferred the license, except as otherwise prescribed in § 111.16, or if the Town Treasurer has cause to believe that such person is otherwise abusing the privilege for which the license was issued, the official may suspend such license. Such suspension shall remain in effect until the causes are removed. The official shall report this action to the Town Council at its next regular business meeting after the effective date of the suspension. (1998 Code, § 14-51)

§ 111.16 TRANSFERABILITY.

A license issued under this chapter shall not be transferred from one person to another. A new owner is required to obtain a beginner's license in accordance with § 111.14. If a business changes name without change of ownership, the change shall be so stated in writing to the Town Treasurer. (1998 Code, § 14-52)

§ 111.17 MULTIPLE PLACES OF BUSINESS.

No single license shall be issued under this chapter to cover more than one place of business.
(1998 Code, § 14-53)

§ 111.18 CORPORATIONS AND PARTNERSHIPS.

When the business, profession, trade, or occupation taxed is conducted by a corporation or partnership, the license tax shall be imposed upon the gross receipts or gross expenditures of the corporation or the partnership, and paid by it, and when so paid, and also when paid by an individual employing persons who otherwise would be liable to a license, it shall be deemed to discharge the license tax liability of the officers and partners of such corporation and partnership and of such persons employed by an employer who otherwise would be liable to such tax, insofar as the licensed business, profession, trade, or occupation is concerned.
(1998 Code, § 14-54)

§ 111.19 TREASURER AS ENFORCEMENT OFFICIAL; PRODUCTION OF BOOKS AND PAPERS.

The Town Treasurer is given the responsibility of enforcing the provisions of this chapter. The Treasurer may, for the purpose of collecting all taxes due, summon the taxpayer or any other person to appear at the Treasurer's office to answer under oath questions touching the tax liability of any and all taxpayers involved in the business.
(1998 Code, § 14-55) Penalty, see § 111.99

§ 111.20 DISPLAY OF LICENSE.

The license form issued to show payment of the license taxes imposed by any section of this chapter shall be displayed in a conspicuous place at the regular place of business of the licensee, which license shall be produced by the licensee upon request of any authorized enforcement officer of the town for inspection. All licensees who maintain no regular place of business shall carry on or about their persons the license form issued to show payment of the license tax, which shall be produced by the licensee on request of any authorized enforcement officer for his or her inspection.
(1998 Code, § 14-56) Penalty, see § 111.99

§ 111.21 COMPLIANCE WITH ZONING AND OTHER REGULATIONS.

(A) The Town Treasurer shall not issue a license for conducting any business, profession, trade, or occupation at a location where the conduct of such business, profession, trade, or occupation is prohibited by Chapter 157 of this code.

(B) All such licenses shall be subject to verification to ascertain compliance with the zoning, federal, state, and local regulations and all other applications. Failure to comply shall be just cause for immediate revocation by the Town Treasurer.
(1998 Code, § 14-57)

SPECIAL LICENSE TAX PROVISIONS

§ 111.35 CARNIVALS, CIRCUSES, PERFORMANCES, CERTAIN RESTRICTIONS.

(A) There shall be a license tax of \$1,000 for each performance given by carnivals and circuses operated within the limits of the town. Such tax shall be paid before any performance is held. Until such tax has been paid, the town shall have a lien upon the property of such carnival or circus to the extent of the unpaid tax.

(B) A resident mechanic or artist may exhibit any production of his or her own art or invention without compensation; and no registration, bond, or license shall be required of any industrial arts exhibit or of any agricultural fair or the shows exhibited within the grounds of such fair during the period of such fair, whether an admission is charged or not. In addition, no registration, bond, or license shall be required of resident persons performing in a show or exhibition for charity, or other benevolent purposes, or of exhibitions of volunteer fire companies, whether an admission is charged or not. Whenever such show, exhibition or performance is given, whether licensed or exempted by the terms of this division (B), those persons performing or acting in a show, exhibition, or performance and operating under either license or exemption shall be exempt from such tax.

(C) The provisions of division (B) above shall not be construed to allow, without payment of the tax imposed by this section, a performance for charitable or benevolent purposes by a company, association, or persons or a corporation in the business of giving such exhibitions, no matter what terms of contract may be entered into, or under what auspices such exhibition is given by such company, association, persons, or corporation. It is the intent and meaning of this section that every company, association, person, or corporation in the business of giving exhibitions for compensation, whether a part of the proceeds are for charitable or benevolent purposes or not, shall pay the tax imposed by the authority of this section. However, no tax shall be imposed on a bona fide local association or corporation organized for the principal purpose of holding legitimate agricultural exhibitions or industrial arts exhibits when they rent or lease fair or exhibition grounds or buildings for the purpose of giving such exhibitions or performances and exhibit agriculture or industrial arts products as a part of such exhibition.

(1998 Code, § 14-91) Penalty, see § 111.99

§ 111.36 FORTUNETELLERS, CLAIRVOYANTS, AND PRACTITIONERS OF PALMISTRY OR PHRENOLOGY.

Any person who, for compensation, shall pretend to tell fortunes, assume to act as a clairvoyant, or to practice palmistry or phrenology shall be deemed a fortuneteller and shall pay to the town an annual license tax of \$1,000.

(1998 Code, § 14-92) Penalty, see § 111.99

§ 111.37 PEDDLERS; ITINERANT VENDORS.

A peddler or an itinerant vendor shall pay for the privilege of conducting such business an annual license fee of \$500. This section shall not apply to a peddler at wholesale or to those who sell or offer for sale, in person or by his or her employees, ice, wood, charcoal, meats, milk, butter, eggs, poultry, game, vegetables, fruits, or other family supplies of a perishable nature, or farm products grown or produced by them, and not purchased by them for sale. This section shall not apply to participants of an itinerant vendor event provided that the sponsor of each itinerant vendor event complies with § 111.38.

(1998 Code, § 14-93) Penalty, see § 111.99

§ 111.38 ITINERANT VENDOR EVENTS.

(A) *Exemptions.* No person shall be exempt from the provisions of this section by reason of associating temporarily with any local dealer, trader, or merchant, or by reason of conducting such temporary or transient business in connection with or as part of the business in the name of any local dealer, trader, or merchant.

(B) *Permit for sponsors.* It shall be unlawful for any itinerant vendor to engage in any itinerant vendor event without the sponsor's first obtaining and possessing a valid permit issued pursuant to this section. Sponsors of itinerant vendor events shall apply for a permit to conduct an itinerant vendor event, which permit will be valid for the duration of the event but shall not be valid for more than five days. The application for such a permit shall contain the following information:

- (1) Name and business address of the sponsor;
- (2) The number of vendors in the event;
- (3) The location of the itinerant vendor event;
- (4) An estimate of the number of people it is anticipated the event will draw;

(5) A plan for the handling of traffic and parking. If the event coincides with Occoquan Days (first weekend in June) or the Fall Craft Show (last weekend in September), traffic flow shall comply with established patterns; and the sponsor shall instruct vendors to follow that pattern; and

(6) A description of how the safety and welfare needs of attendees shall be met (bathroom facilities, first aid, and the like).

(C) *Public property, recognition; fees.*

(1) The town recognizes two shows to be held on public property: the Occoquan Town Spring Craft Show (first weekend in June) and the Occoquan Town Fall Craft Show (last weekend in September).

(2) The Occoquan Town Craft Show Committee shall establish and collect all fees. All profits from both shows shall be submitted to the town for use in the budget. An income and expense statement shall be provided by the Town Treasurer for the audit.

(D) *Private property; filing date; fees.*

(1) An application for an itinerant vendor event on private property shall be filed with the Town Clerk 45 days prior to the event.

(2) The fee for an itinerant vendor event on private property shall be \$2,500.

(3) No permit issued under this section shall be transferable.

(1998 Code, § 14-94) (Ord. O-2007-02, passed 6-12-2007) Penalty, see § 111.99

§ 111.39 PEDDLERS AT WHOLESALE.

Any person who is deemed a peddler at wholesale shall pay for the privilege an annual license tax equal to the rate imposed by the town on a wholesale merchant selling similar goods, wares, or merchandise in the town at one definite place of business.

(1998 Code, § 14-96) Penalty, see § 111.99

§ 111.40 DIRECT SELLERS.

No license tax shall be levied on a direct seller unless the total sales of such seller exceed \$4,000 per year. The rate of tax levied on a direct seller whose total sales exceed \$4,000 per year shall be the same as that charged for retail merchants or wholesale merchants, whichever is applicable. The situs for the tax shall be where such person maintains his or her place of abode.

(1998 Code, § 14-97)

§ 111.41 LIMITATIONS ON LICENSE TAXES IMPOSED ON PEDDLERS, ITINERANT VENDORS, AND PEDDLERS AT WHOLESALE.

Any license tax imposed on peddlers or itinerant vendors or on peddlers at wholesale shall not apply to a:

(A) Licensed wholesale dealer who sells and, at the time of such sale, delivers merchandise to retail merchants;

(B) Distributor or vendor of motor fuels and petroleum products;

(C) Distributor or vendor of seafood, who catches seafood and sells only the seafood caught by him or her;

(D) Farmer or producer of agricultural products who sells only the farm or agricultural products produced or grown by him or her;

(E) Farmers' cooperative association; and/or

(F) Manufacturer who is subject to state tax on intangible personal property who peddles at wholesale only the goods, wares, or merchandise manufactured by him or her at a plant whose intangible personal property is taxed by this state.

(1998 Code, § 14-98)

§ 111.42 USE OF STREETS.

No licensed peddler, licensed itinerant merchant, or other licensed business shall conduct business from a location in the public streets or rights-of-way except by express permission of the Town Council.

(1998 Code, § 14-99) Penalty, see § 111.99

§ 111.43 WATER OR SEWER, HEAT, LIGHT, POWER, AND GAS COMPANIES.

(A) Every person or business entity furnishing water or sewer, heat, light, power, or gas for domestic, commercial, and industrial consumption in the town shall be assessed by the Treasurer and pay for the privilege 0.5% of the gross receipts, as hereinabove defined, accruing from sales to the ultimate consumer within the town during the next preceding year, calendar or fiscal, excluding such service furnished to federal, state, and local public authorities and offices thereof and excluding such service furnished to other electric utilities for resale.

(B) After December 31, 2000, the license tax authorized by this section shall not be imposed on pipeline distribution companies as defined in VA Code § 58.1-2600, or on gas suppliers, gas utilities, or electric suppliers, as defined in VA Code § 58.1-400.2, except as provided in VA Code § 58.1-2901D.

(1998 Code, § 14-100) (Ord. O-2001-02, passed 12-5-2000)

CLASSIFIED BUSINESS AND OCCUPATIONAL PROVISIONS

§ 111.55 RETAIL MERCHANTS; EXCEPTIONS.

The license tax imposed on retail merchants shall not apply to unpaid agents or members of a nonprofit organization conducting a sale for the purpose of raising money to be used solely for charitable, community service, nonprofit recreational, or religious purposes, consistent with the organization's charter or organizational purposes.

(1998 Code, § 14-121)

§ 111.56 RELATIONSHIP TO LICENSING REQUIREMENTS OF THE STATE.

In all cases in which the state imposes a license tax in connection with a business, profession, or employment, the applicant for a town license under this chapter shall present satisfactory evidence of having secured the requisite state license before a town license shall be issued.

(1998 Code, § 14-122)

§ 111.57 RESTAURANTS.

No license required under this chapter shall be issued to a restaurant or eating place unless there shall have been first presented to the Town Treasurer a certificate of approval of such restaurant or eating place issued by the Health Department.

(1998 Code, § 14-123)

§ 111.99 PENALTY.

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

(B) It shall be unlawful for any person to willfully fail or refuse to file application for a business license at the times required in this chapter or to make a false statement with intent to defraud in such application. If the amount of the tax lawfully assessed in connection with the application is \$2,500 or less, the person shall be subject to a fine of not more than \$500. If the amount of the tax lawfully assessed in connection with the return is more than \$2,500, the person may be confined in jail for not more than 12 months and fined not more than \$1,000, either or both.

(1998 Code, § 14-39)

(C) Pursuant to § 111.19, any person who refuses to answer under oath questions touching any person's tax liability shall be deemed guilty of a class 4 misdemeanor.

(1998 Code, § 14-55)

(D) Every person who exhibits or gives a performance or exhibition of any of the shows, carnivals or circuses described in § 111.35, without the license required, shall be fined not less than \$50 nor more than \$500 for each offense.

(1998 Code, § 14-91)

(E) Pursuant to § 111.36, any person who engages in business as a fortuneteller without the license required shall be guilty of a class 3 misdemeanor.

(1998 Code, § 14-92)

(F) Any person violating any provision of sections §§ 111.37 or 111.38 shall be guilty of a class 2 misdemeanor.

(1998 Code, § 14-95)

CHAPTER 112: MASSAGE ESTABLISHMENTS

Section

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- 112.03 Right of entry to enforce chapter
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- 112.06 Entrance sign
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GENERAL PROVISIONS

§ 112.01 DECLARATION OF FINDINGS AND POLICY.

It is declared that the Town Council has found it necessary and proper to exercise its police power for the protection of the health, safety, and general welfare of its citizens by providing for the licensing and regulation of massage therapists, massage establishments, and out-call massage services. (1998 Code, § 14-156) (Ord. passed 6-23-1997)

§ 112.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

DIRECTOR. The Director of the County Health District, or his or her designee.

MASSAGE ESTABLISHMENT. Any establishment having a fixed place of business where massages are administered. The term ***MASSAGE ESTABLISHMENT*** shall include, but shall not be limited to, massage parlors, health clubs, sauna baths, and steam baths, and similar type businesses, whether such business is a public or private facility. This definition shall not be construed to include:

- (1) A hospital, nursing home, medical clinic, or the office of a physician, surgeon, chiropractor, osteopath, or physical therapist duly licensed by the state;
- (2) Barbershops or beauty salons in which massages are administered only to the feet, scalp, the face, the neck, or the shoulders; or
- (3) A volunteer fire department, a volunteer rescue squad, or a nonprofit organization operating a community center, swimming pool, tennis court, or other educational, cultural, recreational, or athletic facilities and facilities for the welfare of residents in the area.

MASSAGE THERAPIST. Any individual who administers a massage to another individual at a massage establishment or as part of an out-call massage service for pay and who meets the qualifications of and is currently certified as a ***MASSAGE THERAPIST*** by the Board of Nursing of

the state. This definition shall not be construed to include a physician, surgeon, chiropractor, osteopath, physical therapist, or nurse duly licensed by the state.

MASSAGE THERAPY. The treatment of soft tissues for therapeutic purposes by the application of massage and bodywork techniques based on manipulation or application of pressure to the muscular structure or soft tissues of the human body. The terms ***MASSAGE THERAPY*** and ***THERAPEUTIC MASSAGE*** do not include the diagnosis or treatment of illness or disease or any service or procedure for which a license to practice medicine, nursing, chiropractic therapy, physical therapy, occupational therapy, acupuncture, or podiatry is required by law.

OUT-CALL MASSAGE SERVICE. Any business which provides, engages in, or carries on massages at a location designated by the customer, client, massage therapist, or other person, which location is other than at a massage establishment.

SEXUAL OR GENITAL PARTS. The pubic area, penis, scrotum, vulva, perineum, anus, or female breasts.

(1998 Code, § 14-157) (Ord. passed 6-23-1997)

§ 112.03 RIGHT OF ENTRY TO ENFORCE CHAPTER.

The Director of Health, the Director of the Fire and Rescue Service, the Town Sergeant, the Zoning Administrator, and the Building/Code Official, or their duly authorized agents, are authorized to enter, examine, and survey, during business hours, any premises in the town for which a massage establishment permit has been issued pursuant to this chapter, for the purpose of enforcing the provisions. This section shall not restrict or limit the right of entry vested in any law enforcement agency.

(1998 Code, § 14-159) (Ord. passed 6-23-1997) Penalty, see § 112.99

§ 112.04 REVOCATION OR SUSPENSION OF PERMITS ISSUED UNDER CHAPTER.

(A) (1) Any massage establishment permit or massage therapist's permit granted under this chapter shall be revoked by the Director, after notice and hearing, if the permittee (if the permittee is a partnership or association, any partner or member thereof, or if the permittee is a corporation, any officer, director, or shareholder owning 10% or more of its capital stock):

(a) Has been convicted, pleaded nolo contendere, or suffered a forfeiture on a charge of violating any provision of VA Code §§ 18.2-346 through 18.2-349, 18.2-355 through 18.2-361, 18.2-368, or 18.2-370, which laws relate to sexual offenses, or any provision of a similar ordinance of the town or law or ordinance of another jurisdiction;

(b) Has been convicted, pleaded nolo contendere, or suffered a forfeiture on a charge of violating any provision of this chapter relating to massage establishments, or on a charge of violating a similar law in any other jurisdiction;

(c) Has made a false statement on the application for the permit; or

(d) Has failed to make the report required by § 112.08.

(2) Notice of the hearing before the Director for revocation of the permit shall be given in writing, setting forth the grounds of the complaint and the time and place of hearing. Such notice shall be mailed, by certified mail, to the permittee's last known address, at least ten days prior to the date set for the hearing.

(B) If the Director finds that a massage establishment for which a massage establishment permit has been issued under this chapter does not conform to the standards set forth in this chapter, or that the permittee has refused the Director or other authorized person the right to enter the premises to enforce the provisions of this chapter, the Director may enter an order for the immediate suspension of the massage establishment permit until such time as he or she finds that the reason for such suspension no longer exists. The order shall set forth the reasons for the suspension. A copy of the order shall be sent to the permittee at his or her place of business by certified mail. The permittee shall be afforded an opportunity to be heard by the Director within 12 days after the suspension. Notice of the hearing shall be mailed, by certified mail to the permittee's business address, at least ten days prior to the date set for the hearing. No person shall operate a massage establishment when subject to an order of suspension. (1998 Code, § 14-160) (Ord. passed 6-23-1997) Penalty, see § 112.99

§ 112.05 COMPLIANCE WITH CHAPTER 157 OF THIS CODE AND BUILDING CODE.

(A) Massage establishments shall be located in a proper zoning district, as specified in Chapter 157 of this code.

(B) Each such establishment and its facilities shall be in conformity with all applicable requirements of the State Uniform Statewide Building Code. (1998 Code, § 14-161) (Ord. passed 6-23-1997) Penalty, see § 112.99

§ 112.06 ENTRANCE SIGN.

A recognizable and legible sign shall be posted at the main entrance of each massage establishment identifying the premises as a massage establishment. Any sign shall comply with the requirements of town ordinances. (1998 Code, § 14-162) (Ord. passed 6-23-1997) Penalty, see § 112.99

§ 112.07 DISPLAY OF COPY OF CHAPTER.

A copy of this chapter shall be displayed in a conspicuous place in every massage establishment, so that it may be readily seen and read by persons entering the premises and employees of the establishment. (1998 Code, § 14-163) (Ord. passed 6-23-1997) Penalty, see § 112.99

§ 112.08 INFORMATION TO BE REPORTED TO DIRECTOR.

(A) Each person to whom a massage establishment permit is issued under §§ 112.25 through 112.32 shall report to the Director any change in any of the information required by § 112.26, such report to be made within 14 days of learning of the change.

(B) Each holder of a massage therapist's permit issued under §§ 112.45 through 112.54 shall report to the Director any change in any of the information required in § 112.46, such report to be made within 14 days of learning of the change.

(1998 Code, § 14-164) (Ord. passed 6-23-1997) Penalty, see § 112.99

§ 112.09 REQUIREMENTS FOR MASSAGE ESTABLISHMENTS.

(A) Minimum lighting shall be provided in accordance with the State Uniform Statewide Building Code.

(B) Minimum ventilation shall be provided in accordance with the State Uniform Statewide Building Code.

(C) Adequate equipment for disinfecting and sterilizing any instruments used for massage shall be provided.

(D) Hot and cold running water shall be provided.

(E) Adequate separate dressing, bathing, and toilet facilities shall be provided for patrons. The facilities for one gender shall be segregated from those for the other.

(F) Walls, ceilings, floors, steam rooms, and all other physical facilities for the establishment shall be kept in good repair and maintained in a sanitary condition.

(G) Clean towels and linens shall be provided for patrons receiving massage services. No common use of towels or linens shall be permitted.

(1998 Code, § 14-165) (Ord. passed 6-23-1997) Penalty, see § 112.99

§ 112.10 CLEANLINESS OF THERAPISTS.

Every massage therapist shall cleanse his or her hands thoroughly with soap and hot running water immediately before serving each patron.

(1998 Code, § 14-166) (Ord. passed 6-23-1997) Penalty, see § 112.99

§ 112.11 SERVING PERSONS WITH SKIN INFLAMMATION OR ERUPTIONS.

No massage establishment shall serve any patron when the skin of the patron is inflamed or erupted unless the patron submits a certificate, from a duly licensed physician, to the Director of Health stating that such inflammation or eruption is not communicable.

(1998 Code, § 14-167) (Ord. passed 6-23-1997) Penalty, see § 112.99

§ 112.12 MASSAGING, EXPOSING SEXUAL OR GENITAL PARTS.

(A) It shall be unlawful for any person in a massage establishment to place his or her hands upon, to touch with any part of his or her body, to fondle in any manner, or to massage a sexual or genital part of any other person.

(B) It shall be unlawful for any person in a massage establishment to expose his or her sexual or genital parts, or any portion, to any other person. It shall also be unlawful for any person in a massage establishment to expose the sexual or genital parts, or any portion, of any other person.

(C) It shall be unlawful for any person, while in the presence of any other person in a massage establishment, to fail to conceal, with a fully opaque covering, the sexual or genital parts of his or her body.

(D) It shall be unlawful for any person owning, operating, or managing a massage establishment to knowingly cause, allow, or permit, in or about such massage establishment, any agent, employee, or any other person under his or her control or supervision to perform any act prohibited by this section.

(1998 Code, § 14-168) (Ord. passed 6-23-1997) Penalty, see § 112.99

ESTABLISHMENT PERMIT

§ 112.25 REQUIRED.

It shall be unlawful for any person to own, operate, or conduct a massage establishment without a valid, non-suspended permit issued pursuant to this chapter for such establishment.

(1998 Code, § 14-191) (Ord. passed 6-23-1997) Penalty, see § 112.99

§ 112.26 APPLICATION.

(A) Each application for a massage establishment permit required by this chapter shall be upon a form provided by the Director and shall be submitted to the Director. Each such application shall contain the following information:

- (1) A description of the facilities and services to be available on the premises of the proposed establishment;
- (2) The location and mailing address of the establishment;
- (3) The name and residential address of the applicant. If the applicant is an association or a partnership, the names and residence addresses of each of the associates or partners. If the applicant is a corporation, the names and residence addresses of each of the officers and directors of such corporation, and of each stockholder owning more than 10% of the stock of the corporation. If one or more of the stockholders owning more than 10% of the applicant corporation is itself a corporation, the names and residence addresses of each of the officers and directors of such corporation and of each stockholder owning more than 10% of the stock of the corporation;
- (4) If the applicant is an individual, all other addresses of the applicant for the three-year period immediately prior to the application. If the applicant is an association or a partnership, the names and addresses of each associate partner for the three-year period immediately prior to the application. If the applicant is a corporation, all of the addresses for a three-year period of each of the officers and directors of such corporation and of each stockholder owning more than 10% of the stock of the corporation;
- (5) If the applicant is an individual, the birth date of the applicant. If the applicant is a partnership, the birth date of each partner. If the applicant is a corporation, the birth date of each of the officers and directors of such corporation and of each stockholder owning more than 10% of the stock of the corporation;
- (6) If the applicant is an individual, a complete set of the applicant's fingerprints. If the applicant is an association or partnership, a complete set of each associate's or partner's fingerprints. If the applicant is a corporation, a complete set of fingerprints of each of the officers and directors of the corporation and each stockholder owning more than 10% of the stock of the corporation. The fingerprints shall be taken by the Town Sergeant or his or her agent;
- (7) If the applicant is an individual, the business, occupation, or employment of the applicant for the three-year period immediately preceding the date of the application. If the applicant is an association or partnership, the business, occupation, or employment of each associate or partner for the three-year period immediately prior to the date of the application. If the applicant is a corporation, the business occupation or employment of each officer or director and each of the stockholders owning more than 10% of the stock of the applicant corporation;
- (8) The history of the applicant in the operation of massage establishments or a similar business or occupation including, but not limited to, whether or not such person, in previously operating in this town or another town, city, or state under a permit or license, has had such permit or license revoked or suspended and the reason for revocation or suspension, and the business activity or occupation subsequent to such action of suspension or revocation;

(9) The criminal record, if any, other than misdemeanor traffic violations or traffic infractions, of the applicant. If the applicant is an association or partnership, the criminal record of each associate or partner. If the applicant is a corporation, the criminal record of each officer or director of the corporation and each of the stockholders owning more than 10% of the stock of the applicant corporation; and

(10) The name of the operator or manager of the massage establishment. If the operator or manager of the massage establishment is not an applicant, the operator or manager must provide the information required in this section relative to the applicant.

(B) Each application for a massage establishment permit shall be accompanied by an investigation fee of \$65, no part of which shall be refundable. Such fee shall be in addition to any permit fee required by this chapter and any business license tax imposed by the town.
(1998 Code, § 14-192) (Ord. passed 6-23-1997)

§ 112.27 INSPECTION OF APPLICANT'S PREMISES.

Upon receipt of an application for a permit under this chapter, the Director shall refer the application to the Building/Code Official, the Director of the Fire and Rescue Service, the Town Sergeant and the Zoning Administrator, each of whom, within a period of 21 days from the date of the application, shall review records and make an inspection of the premises proposed to be used as a massage establishment and shall make a written report to the Director concerning compliance with the law.

(1998 Code, § 14-193) (Ord. passed 6-23-1997)

§ 112.28 FEE.

The annual fee for a massage establishment permit shall be \$25, which fee shall be paid prior to the issuance or renewal of the permit. Such fee shall be in addition to any business license tax imposed by the town.

(1998 Code, § 14-194) (Ord. passed 6-23-1997)

§ 112.29 ISSUANCE OR DENIAL.

(A) A massage establishment permit shall be issued by the Director when all provisions of this chapter have been complied with if he or she determines, from the inspections and reports provided for in § 112.27 and from the information contained in the permit application, that the establishment meets the requirements of this chapter and that the applicant is qualified under the requirements of this chapter to engage in such business in the town.

(B) Such permit shall be denied if the Director finds any condition to exist that would be grounds for the revocation of a permit under § 112.04.

(1998 Code, § 14-195) (Ord. passed 6-23-1997)

§ 112.30 TERM.

A permit issued under this chapter shall be valid for one year from the date of issuance unless sooner suspended or revoked pursuant to § 112.04.

(1998 Code, § 14-196) (Ord. passed 6-23-1997)

§ 112.31 DISPLAY.

Every person to whom a massage establishment permit is issued shall display such permit in a conspicuous place in the massage establishment so that it may be readily seen by persons entering the premises.

(1998 Code, § 14-197) (Ord. passed 6-23-1997) Penalty, see § 112.99

§ 112.32 TRANSFER.

No permit issued under this chapter shall be transferable from one person to another. A change of location of a massage establishment may be approved by the Director and the establishment's permit transferred to the new location, provided all applicable provisions of this chapter are complied with.

(1998 Code, § 14-198) (Ord. passed 6-23-1997)

MESSAGE THERAPIST PERMIT

§ 112.45 REQUIRED.

It shall be unlawful for any person to administer a massage in a massage establishment or as part of an out-call massage service unless he or she has a valid unsuspended massage therapist's permit issued pursuant to this subchapter and is certified as a massage therapist by the Board of Nursing of the state or has been specifically exempted from the definition of "massage therapy" in § 112.02. It shall be unlawful for the owner, operator, or manager of any massage establishment to permit any person who does not have the permit and certification required by this section to administer any massage in such establishment.

(1998 Code, § 14-221) (Ord. passed 6-23-1997) Penalty, see § 112.99

§ 112.46 APPLICATION.

(A) Each application for a massage therapist permit shall be upon a form provided by the Director and shall be submitted to the Director.

(B) Each such application shall contain the following information:

(1) The applicant's full name, residential address, and telephone number;

(2) The name and address of the massage establishment where the applicant is to be employed and the name of the owner of the establishment;

(3) The names and addresses of any and all previous massage establishments where the applicant has been employed as a massage therapist;

(4) The criminal record, if any, other than a misdemeanor traffic violation or traffic infraction, of the applicant;

(5) Whether any permit to perform as a massage therapist has previously been denied or the application revoked and, if so, the circumstances of such denial or revocation;

(6) A complete set of the applicant's fingerprints, which shall be taken by the Town Sergeant or his or her agent; and

(7) Written proof that the applicant is 18 years of age or older.

(1998 Code, § 14-222) (Ord. passed 6-23-1997)

§ 112.47 APPLICANT'S QUALIFICATIONS GENERALLY.

Each applicant for a massage therapist's permit must be at least 18 years of age and must be certified as a massage therapist by the Board of Nursing of the state.

(1998 Code, § 14-223) (Ord. passed 6-23-1997)

§ 112.48 APPLICANT'S HEALTH CERTIFICATE.

Each applicant for a permit under this subchapter must obtain from the Director a health certificate within the 12 months preceding the application for a massage therapist's permit. Such certificate shall be issued upon such conditions as the Director may deem reasonable and proper to accomplish the purposes of this subchapter and to protect the health of patrons and other persons in massage establishments.

(1998 Code, § 14-224) (Ord. passed 6-23-1997)

§ 112.49 INVESTIGATION OF APPLICANT'S CRIMINAL RECORD.

Upon receipt of an application for a permit under this subchapter, the Director shall request that the Town Sergeant make or cause to be made a thorough investigation of the criminal record of the applicant.

(1998 Code, § 14-225) (Ord. passed 6-23-1997)

§ 112.50 FEE.

The annual fee for a massage therapist's permit shall be \$15, which fee shall be paid prior to the issuance or renewal of the permit. Such fee shall be in addition to any business or occupation license tax imposed by the town and any other fees that may be required to engage in the business.

(1998 Code, § 14-226) (Ord. passed 6-23-1997)

§ 112.51 ISSUANCE OR DENIAL.

(A) A massage therapist's permit shall be issued by the Director if the applicant has paid the fee and meets the qualifications prescribed by this subchapter; however, the Director shall deny any application for a massage therapist's permit, after notice and hearing, if the Director finds that any condition exists that would constitute grounds for revocation of such a permit under § 112.04.

(B) The Director shall act upon the application for a massage therapist's permit within 60 days from the date of the application. Notice of the hearing before the Director for denial of the application shall be given in writing, setting forth the grounds for the denial and the time and place of the hearing. Such notice shall be mailed, by certified mail, to the applicant's last known address, at least ten days prior to the date set for such hearing.

(1998 Code, § 14-227) (Ord. passed 6-23-1997)

§ 112.52 NONTRANSFERABLE.

No massage therapist's permit shall be transferable from one person to another.

(1998 Code, § 14-228) (Ord. passed 6-23-1997)

§ 112.53 DISPLAY.

Every person to whom a massage therapist's permit has been granted shall, while in a massage establishment, display such permit in a conspicuous place in the massage establishment.

(1998 Code, § 14-229) (Ord. passed 6-23-1997) Penalty, see § 112.99

§ 112.54 TERM.

A massage therapist's permit shall be valid for one year from the date of issuance unless sooner suspended or revoked. Within one month before the expiration date, the holder of a massage therapist's

permit may make application for a new permit as provided in this section; however, applicants whose fingerprints are currently on file with the Director shall not be required to provide fingerprints when applying for a new permit.

(1998 Code, § 14-230) (Ord. passed 6-23-1997)

§ 112.99 PENALTY.

Any person violating any provision of this chapter shall be guilty of a class 1 misdemeanor.
(1998 Code, § 14-158) (Ord. passed 6-23-1997)

TITLE XIII: GENERAL OFFENSES

Chapter

130. GENERAL PROVISIONS

131. OFFENSES AGAINST PROPERTY

132. OFFENSES INVOLVING FRAUD

133. OFFENSES INVOLVING HEALTH AND SAFETY

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135. OFFENSES AGAINST PEACE AND ORDER

**136. OFFENSES AGAINST THE ADMINISTRATION
OF JUSTICE**

**137. OFFENSES INVOLVING FIRE PREVENTION
AND PROTECTION**

Charter reference:

Police regulations, see § 17

Statutory reference:

Crimes and offenses generally, see VA Code Title 18.2

CHAPTER 130: GENERAL PROVISIONS

Section

130.01 Assault and battery

130.99 Penalty

§ 130.01 ASSAULT AND BATTERY.

It is unlawful to commit a simple assault or assault and battery.
(1998 Code, § 38-1) Penalty, see § 130.99

Statutory reference:

Assault and battery, see VA Code § 18.2-57

§ 130.99 PENALTY.

(A) Any person who shall commit a simple assault or assault and battery shall be guilty of a class 1 misdemeanor; and if the person intentionally selects the person against whom a simple assault is committed because of his or her race, religious conviction, color, or national origin, the penalty upon conviction shall include a mandatory, minimum term of confinement of at least six months, 30 days of which shall not be suspended, in whole or in part.

(B) As used in this section, the term ***MANDATORY, MINIMUM*** means that the sentence it describes shall be served with no suspension of sentence in whole or in part, and that no probation shall be given by the court.
(1998 Code, § 38-1)

CHAPTER 131: OFFENSES AGAINST PROPERTY

Section

- 131.01 Simple larceny defined
- 131.02 Shoplifting
- 131.03 Larceny
- 131.04 Tampering with coin-operated devices with intent to steal
- 131.05 Tampering with utility metering devices; diverting utility service
- 131.06 Injuring property
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- 131.09 Entering or setting in motion vehicle, aircraft, boat, locomotive, or rolling stock of railroad; exceptions
- 131.10 Bona fide repossession under lien
- 131.11 Waterworks and sewage collection and disposal facilities; injuring, defacing
- 131.12 Trespass after having been forbidden to do so
- 131.13 Instigating trespass by others; preventing service to persons not forbidden to trespass
- 131.14 Peeping or spying into structure occupied as dwelling
- 131.15 Entering premises of another for purpose of damaging property or interfering with its use
- 131.16 Trespass at night upon any cemetery
- 131.17 Pulling down fences or leaving gates open

- 131.99 Penalty

§ 131.01 SIMPLE LARCENY DEFINED.

Any person who:

(A) Commits larceny from the person of another of money or other thing of value of less than \$5;
or

(B) Commits simple larceny not from the person of another of goods and chattels of the value of less than \$500, except as provided in VA Code § 18.2-95(iii); shall be deemed guilty of simple larceny. (1998 Code, § 38-31) Penalty, see § 131.99

Statutory reference:

Petit larceny, see VA Code § 18.2-96

§ 131.02 SHOPLIFTING.

(A) Whoever, without authority, with the intention of converting goods or merchandise to his or

her own or another's use without having paid the full purchase price, or of defrauding the owner of the value of the goods or merchandise:

(1) Willfully conceals or takes possession of the goods or merchandise of any store or other mercantile establishment;

(2) Alters the price tag or other price marking on such goods or merchandise, or transfers the goods from one container to another; or

(3) Counsels, assists, aids, or abets another in the performance of any of the above acts; shall, if the value of the goods or merchandise is less than \$200, be deemed guilty of larceny. The willful concealment of goods or merchandise of any store or other mercantile establishment, while still on the premises, shall be prima facie evidence of an intent to convert and defraud the owner out of the value of the goods or merchandise.

(B) (1) A merchant, agent, or employee of the merchant who causes the arrest or detention of any person pursuant to the provisions of VA Code §§ 18.2-95 or 18.2-96, or this section shall not be held civilly liable for unlawful detention, if such detention does not exceed one hour, slander, malicious prosecution, false imprisonment, false arrest, or assault and battery of the person so arrested or detained, whether such arrest or detention takes place on the premises of the merchant, or after close pursuit from such premises by such merchant, his or her agent, or employee, provided that, in causing the arrest or detention of such person, the merchant, agent, or employee of the merchant had at the time of such arrest or detention probable cause to believe that the person had shoplifted or committed willful concealment of goods or merchandise.

(2) As used in this division (B), **AGENTS OF THE MERCHANT** shall include attendants at any parking lot owned or leased by the merchant, or generally used by customers of the merchant through any contract or agreement between the owner of the parking lot and the merchant.

(1998 Code, § 38-32) Penalty, see § 131.99

Statutory reference:

Similar provisions, see VA Code §§ 18.2-103 through 18.2-106

§ 131.03 LARCENY.

When a person is convicted of an offense of larceny or any offense deemed to be or punished as larceny under any provision of this code, and it is alleged in the warrant or information on which he or she is convicted, and admitted, or found by the jury or judge before whom he or she is tried, that he or she has been before convicted in the state or in another jurisdiction for any offense of larceny or any offense deemed or punishable as larceny, or of any substantially similar offense in any other jurisdiction, regardless of whether the prior convictions were misdemeanors, felonies, or a combination of the two, he or she shall be punished as set forth in § 131.99.

(1998 Code, § 38-33) Penalty, see § 131.99

Statutory reference:

Similar provisions, see VA Code, § 18.2-104

§ 131.04 TAMPERING WITH COIN-OPERATED DEVICES WITH INTENT TO STEAL.

Any person who enters, forces, or attempts to force an entrance into, tampers with, or inserts any part of an instrument into any parking meter, vending machine, pay telephone, money changing

machine, or any other device designed to receive money, with intent to steal from such device, shall, for the first conviction, be punished as set forth in § 131.99.

(1998 Code, § 38-34) Penalty, see § 131.99

Statutory reference:

Similar provisions, see VA Code § 18.2-152

§ 131.05 TAMPERING WITH UTILITY METERING DEVICES; DIVERTING UTILITY SERVICE.

(A) Any person who shall tamper with any metering device incident to any oil, telegraph, telephone, electric, telecasting, gas, sewer, wastewater or water facility, or otherwise intentionally prevent such a metering device from properly registering the degree, amount, or quantity of such service supplied, or who shall divert such service, excepting, however, telephonic or electronic extension service not owned or controlled by any such company, without authorization from the owner of such facility who or which furnishes such service to the public, shall be punished as set forth in § 131.99.

(B) The presence of any metering device found to have been altered, tampered with, or bypassed in a manner that would cause such metering device to inaccurately measure and register the degree, amount, or quantity of such service supplied or that would cause such service to be diverted from the recording apparatus of the meter shall be prima facie evidence of intent to violate and of the violation of this section by the person to whose benefit it is that such service be unmetered, unregistered, or diverted.

(1998 Code, § 38-35) Penalty, see § 131.99

Statutory reference:

Similar provisions, see VA Code § 18.2-163

§ 131.06 INJURING PROPERTY.

If any person unlawfully destroys, defaces, damages, or removes without the intent to steal any property, real or personal, not his or her own, or breaks down, destroys, defaces, damages, or removes without the intent to steal, any monument erected for the purpose of marking the site of any engagement fought during the war between the states, or for the purpose of designating the boundaries of any city, town, tract of land, or any tree marked for that purpose, he or she shall be punished pursuant to § 131.99 if the value of or damage to the property or monument is less than \$1,000. The amount of loss caused by the destruction, defacing, damage, or removal of such property or monument may be established by proof of the fair market cost of repair or fair market replacement value.

(1998 Code, § 38-36) Penalty, see § 131.99

Statutory reference:

Similar provisions, see VA Code § 18.2-137

§ 131.07 DAMAGING PUBLIC BUILDINGS AND PUBLIC PROPERTY.

Any person who willfully and maliciously breaks any window or door, damages, or defaces or destroys any property in or on the property of the Town Hall or in or on other public buildings or public grounds shall be punished pursuant to § 131.99 if the damage is less than \$1,000.

(1998 Code, § 38-37) Penalty, see § 131.99

Statutory reference:

Similar provisions, see VA Code see § 18.2-138

§ 131.08 BREAKING, INJURING, DEFACING, DESTROYING, OR PREVENTING THE OPERATION OF VEHICLE, AIRCRAFT, OR BOAT.

Any person who shall individually or in association with one or more others willfully break, injure, tamper with, or remove any part of any vehicle, aircraft, boat, or vessel for the purpose of injuring, defacing, or destroying the vehicle, aircraft, boat, or vessel, or temporarily or permanently preventing its useful operation, or for any purpose against the will or without the consent of the owner of such vehicle, aircraft, boat, or vessel, or who shall in any other manner willfully or maliciously interfere with or prevent the running or operation of such vehicle, aircraft, boat, or vessel, shall be punished pursuant to § 131.99.

(1998 Code, § 38-38) Penalty, see § 131.99

Statutory reference:

Similar provisions, see VA Code § 18.2-146

§ 131.09 ENTERING OR SETTING IN MOTION VEHICLE, AIRCRAFT, BOAT, LOCOMOTIVE, OR ROLLING STOCK OF RAILROAD; EXCEPTIONS.

Any person who shall, without the consent of the owner or person in charge of a vehicle, aircraft, boat, vessel, locomotive, or other rolling stock of a railroad, climb into or upon such vehicle, aircraft, boat, vessel, locomotive, or other rolling stock of a railroad, with intent to commit any crime, malicious mischief, or injury thereto, or who, while a vehicle, aircraft, boat, vessel, locomotive, or other rolling stock of a railroad is at rest and unattended, shall attempt to manipulate any of the levers and starting crank or other device, brakes, or mechanism or to set into motion such vehicle, aircraft, boat, vessel, locomotive, or other rolling stock of a railroad, with the intent to commit any crime, malicious mischief, or injury thereto, shall be punished pursuant to § 131.99; except that the foregoing provision shall not apply when any such act is done in an emergency or in furtherance of public safety or by or under the direction of an officer in the regulation of traffic or performance of any other official duty.

(1998 Code, § 38-39) Penalty, see § 131.99

Statutory reference:

Similar provisions, see VA Code § 18.2-147

§ 131.10 BONA FIDE REPOSSESSION UNDER LIEN.

The provisions of §§ 131.08 and 131.09 and VA Code § 18.2-102, shall not apply to a bona fide repossession of a vehicle, aircraft, boat, or vessel by the holder of a lien on such vehicle, aircraft, boat, or vessel, or by the agents or employees of such lienholder.

(1998 Code, § 38-40)

Statutory reference:

Similar provisions, see VA Code § 18.2-148

§ 131.11 WATERWORKS AND SEWAGE COLLECTION AND DISPOSAL FACILITIES; INJURING, DEFACING.

No person shall injure or deface any sewage disposal facility, pump station, or any building or other fixture connected with or pertaining to any waterworks, or sewage facility, without lawful

authority, climb over or get through the enclosure around such facility and waterworks, or place any building material or other thing on the stopcock or other fixture of a street water main or other service pipe so as to obstruct access thereto, or remove or injure any pipe, fireplug, hydrant, or stopcock, or use water from the waterworks for any other purpose for which he or she has not obtained permission. (1998 Code, § 38-41) Penalty, see § 131.99

Statutory reference:

Similar provisions, see VA Code § 18.2-119

§ 131.12 TRESPASS AFTER HAVING BEEN FORBIDDEN TO DO SO.

(A) If any person without authority of law goes upon or remains upon the lands, buildings, or premises of another, or any portion or area of the premises, after having been forbidden to do so, either orally or in writing, by the owner, lessee, custodian, or other person lawfully in charge of the premises, or after having been forbidden to do so by a sign posted by such persons or by the holder of any easement or other right-of-way authorized by the instrument creating such interest to post such signs on such lands, structures, premises, or portion or area at a place where it or they may be reasonably seen, or if any person, whether he or she is the owner, tenant, or otherwise entitled to the use of such land, building, or premises, goes upon, or remains upon such land, building, or premises after having been prohibited from doing so by a court of competent jurisdiction by an order issued pursuant to VA Code §§ 16.1-253, 16.1-253.1, 16.1-278.2 through 16.1-278.6, 16.1-278.8, 16.1-278.14, 16.1-278.15, or 16.1-279.1, or an ex parte order issued pursuant to VA Code § 20-103, and after having been served with such order, he or she shall be punished pursuant to § 131.99.

(B) This section shall not be construed to affect in any way the provisions of VA Code §§ 18.2-132 through 18.2-136.

(1998 Code, § 38-42) Penalty, see § 131.99

Statutory reference:

Similar provisions, see VA Code § 18.2-119

§ 131.13 INSTIGATING TRESPASS BY OTHERS; PREVENTING SERVICE TO PERSONS NOT FORBIDDEN TO TRESPASS.

If any person shall solicit, urge, encourage, exhort, instigate, or procure another to go upon or remain upon the lands, buildings, or premises of another, or any part, portion of area of such lands, buildings, or premises, knowing such other person to have been forbidden, either orally or in writing, to do so by the owner, lessee, custodian, or other person lawfully in charge of such lands, buildings, or premises, or knowing such other person to have been forbidden to do so by a sign posted on such lands, buildings, premises, or part, portion, or area of such lands, buildings, or premises, at a place where it may reasonably be seen, or if any person shall, on such lands, buildings, premises, or part, portion, or area of such lands, buildings, or premises, prevent or seek to prevent the owner, lessee, custodian, person in charge, or any employees from rendering service to any person not so forbidden, such person shall be punished pursuant to § 131.99.

(1998 Code, § 38-43) Penalty, see § 131.99

Statutory reference:

Similar provisions, see VA Code § 18.2-120

§ 131.14 PEEPING OR SPYING INTO STRUCTURE OCCUPIED AS DWELLING.

If any person enters upon the property of another and secretly or furtively peeps, spies, or attempts to peep or spy into or through a window, door, or other aperture of any building, structure, or other enclosure of any nature occupied or intended for occupancy as a dwelling, whether or not such building, structure, or enclosure is permanently situated or transportable and whether or not such occupancy is permanent or temporary, such person shall be punished pursuant to § 131.99. (1998 Code, § 38-44) Penalty, see § 131.99

Statutory reference:

Similar provisions, see VA Code § 18.2-130

§ 131.15 ENTERING PREMISES OF ANOTHER FOR PURPOSE OF DAMAGING PROPERTY OR INTERFERING WITH ITS USE.

It shall be unlawful for any person to enter the land, dwelling, outhouse, or any other building of another for the purpose of damaging such property or any of its contents or in any manner to interfere with the rights of its owner, user or the occupant to use such property free from interference. (1998 Code, § 38-45) Penalty, see § 131.99

Statutory reference:

Similar provisions, see VA Code § 18.2-121

§ 131.16 TRESPASS AT NIGHT UPON ANY CEMETERY.

If any person, without the consent of the owner, proprietor, or custodian, goes or enters in the nighttime, upon the premises, property, driveways, or walks of any cemetery, either public or private, for any purpose other than to visit the burial lot or grave of some member of his or her family, he or she shall be punished pursuant to § 131.99. (1998 Code, § 38-46) Penalty, see § 131.99

Statutory reference:

Similar provisions, see VA Code § 18.2-125

§ 131.17 PULLING DOWN FENCES OR LEAVING GATES OPEN.

If any person shall, without permission of the owner, pull down the fence of another and leave the fence down or, without permission, open and leave open the gate of another, or any gate across a public road established by order of court, such person shall be punished pursuant to § 131.99. (1998 Code, § 38-47) Penalty, see § 131.99

Statutory reference:

Similar provisions, see VA Code § 18.2-143

§ 131.99 PENALTY.

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

(B) Petit larceny, as defined in § 131.01, shall be punishable as a class 1 misdemeanor. (1998 Code, § 38-31)

(C) Any person convicted for the first time of an offense under § 131.02, when the value of the goods or merchandise involved in the offense is less than \$200, shall be punished as for a class 1 misdemeanor.

(1998 Code, § 38-32)

(D) Any person violating the provisions of § 131.03 shall be confined in jail not less than 30 days nor more than 12 months.

(1998 Code, § 38-33)

(E) Any person violating the provisions of § 131.04 shall, for the first conviction, be guilty of a class 1 misdemeanor.

(1998 Code, § 38-34)

(F) Any person violating the provisions of § 131.05(A) shall be guilty of a class 1 misdemeanor.

(1998 Code, § 38-35)

(G) Any person violating the provisions of § 131.06 shall be guilty of a class 1 misdemeanor.

(1998 Code, § 38-36)

(H) Any person violating the provisions of § 131.07 shall be guilty of a class 1 misdemeanor.

(1998 Code, § 38-37)

(I) Any person violating the provisions of § 131.08 shall be guilty of a class 1 misdemeanor.

(1998 Code, § 38-38)

(J) Any person violating the provisions of § 131.09 shall be guilty of a class 1 misdemeanor.

(1998 Code, § 38-39)

(K) Any person violating the provisions of § 131.12 shall be guilty of a class 1 misdemeanor.

(1998 Code, § 38-42)

(L) Any person violating the provisions of § 131.13 shall be guilty of a class 1 misdemeanor.

(1998 Code, § 38-43)

(M) Any person violating the provisions of § 131.14 shall be guilty of a class 1 misdemeanor.

(1998 Code, § 38-44)

(N) Any person violating the provisions of § 131.15 shall be guilty of a class 1 misdemeanor.

(1998 Code, § 38-45)

(O) Any person violating the provisions of § 131.16 shall be guilty of a class 4 misdemeanor.

(1998 Code, § 38-46)

(P) Any person violating the provisions of § 131.17 shall be guilty of a class 4 misdemeanor.

(1998 Code, § 38-47)

CHAPTER 132: OFFENSES INVOLVING FRAUD

Section

- 132.01 Calling or summoning ambulance or firefighting apparatus without just cause; maliciously activating fire alarms in public buildings; venue
- 132.02 Unlawful operation of coin box telephone, parking meter, vending machine
- 132.03 Untrue, deceptive, or misleading advertising
- 132.04 Defrauding restaurants

- 132.99 Penalty

§ 132.01 CALLING OR SUMMONING AMBULANCE OR FIREFIGHTING APPARATUS WITHOUT JUST CAUSE; MALICIOUSLY ACTIVATING FIRE ALARMS IN PUBLIC BUILDINGS; VENUE.

(A) Any person who without just cause calls or summons, by telephone or otherwise, any ambulance, or firefighting apparatus, or any person who maliciously activates a manual or automatic fire alarm in any building used for public assembly or for other public use including, but not limited to, schools, theaters, stores, office buildings, shopping centers and malls, coliseums and arenas, regardless of whether fire apparatus responds or not, shall be punished pursuant to § 132.99.

(B) A violation of this section may be prosecuted if the call or summons was made from the town or if the call or summons was received in the town.
(1998 Code, § 38-81) Penalty, see § 132.99

Statutory reference:

Similar provisions, see VA Code § 18.2-212

§ 132.02 UNLAWFUL OPERATION OF COIN BOX TELEPHONE, PARKING METER, VENDING MACHINE.

Any person who shall operate, cause to be operated, or attempt to operate or cause to be operated any coin box telephone, parking meter, vending machine, or other machine that operates on the coin-in-the-slot principle, whether of like kind or not, designed only to receive lawful coin of the United States of America, in connection with the use or enjoyment of telephone or telegraph service, parking privileges or any other service, or the sale of merchandise or other property, by means of a slug, or any false, counterfeit, mutilated, sweated, or foreign coin, or by any means, method, trick, or device whatsoever, not authorized by the owner, lessee, or licensee of such coin box telephone, parking meter, vending machine, or other machine, or who shall obtain or receive telephone or telegraph service, parking privileges, merchandise, or any other service or property from any such coin box telephone,

parking meter, vending machine, or other machines, designed only to receive lawful coin of the United States of America, without depositing in or surrendering to such coin box telephone, parking meter, vending machine, or other machine lawful coin of the United States of America to the amount required by the owner, lessee, or licensee of such coin box telephone, parking meter, vending machine, or other machine, shall be punished pursuant to § 132.99.

(1998 Code, § 38-82) Penalty, see § 132.99

Statutory reference:

Similar provisions, see VA Code § 18.2-179

§ 132.03 UNTRUE, DECEPTIVE, OR MISLEADING ADVERTISING.

(A) Any person who, with intent to sell or in anywise dispose of merchandise, securities, service, or anything offered by such person, directly or indirectly, to the public for sale or distribution, or with intent to increase their consumption, or to induce the public in any manner to enter into any related obligation or to acquire title or any interest, makes, publishes, disseminates, circulates, or places before the public, or causes, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, blueprint, map, tag, bill, label, circular, pamphlet, or letter or in any other way, an advertisement of any sort regarding merchandise, securities, service, land, lot, or anything so offered to the public, which advertisement contains any promise, assertion, representation, or statement of fact that is untrue, deceptive, or misleading, or uses any other method, device, or practice which is fraudulent, deceptive, or misleading to induce the public to enter into any obligation, shall be punished pursuant to § 132.99.

(B) The terms ***UNTRUE***, ***DECEPTIVE***, and ***MISLEADING***, as used in this section, shall be construed as including:

(1) The advertising in any manner by any person of any goods, wares, or merchandise as bankrupt stock, receiver's stock, or trustee's stock, or any sale as an insurance, fire-damaged, water-damaged, or going-out-of business sale, or any other sale generally known as a distress sale, if such stock contains any goods, wares, or merchandise put in stock subsequent to the date of the purchase by such advertiser of such stock, and if such advertisement of any such stock fails to set forth the fact that such stock contains other goods, wares, or merchandise put in stock, subsequent to the date of the purchase by such advertiser of such stock, in type as large as the type used in any other part of such advertisement, including the caption, it shall be a violation of this section; and

(2) The use of any writing or document which appears to be but is not in fact a negotiable check, negotiable draft, or other negotiable instrument, notwithstanding the fact that its nonnegotiability is indicated on the writing or document.

(1998 Code, § 38-83) Penalty, see § 132.99

Statutory reference:

Similar provisions, see VA Code § 18.2-216

§ 132.04 DEFRAUDING RESTAURANTS.

(A) It shall be unlawful for any person to obtain food from a restaurant or other eating house and, without having an express agreement for credit, to procure food or entertainment without paying for such food or entertainment and with intent to cheat or defraud the owner or keeper of such restaurant or eating house out of the pay for such food or entertainment.

(B) This section shall apply only if the value of service, credit, or benefit procured or obtained is less than \$200.

(1998 Code, § 38-84) Penalty, see § 132.99

Statutory reference:

Similar provisions, see VA Code § 18.2-188

§ 132.99 PENALTY.

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

(B) Any person violating the provisions of § 132.01 shall be deemed guilty of a class 1 misdemeanor.
(1998 Code, § 38-81)

(C) Any person violating the provisions of § 132.02 shall be deemed guilty of a class 3 misdemeanor.
(1998 Code, § 38-82)

(D) Any person violating the provisions of § 132.03 shall be deemed guilty of a class 1 misdemeanor.
(1998 Code, § 38-83)

(E) Any person who violates any provision of § 132.04 shall be guilty of a class 1 misdemeanor.
(1998 Code, § 38-84)

CHAPTER 133: OFFENSES INVOLVING HEALTH AND SAFETY

Section

- 133.01 Failing to secure medical attention for injured child
- 133.02 Expectorating in public places
- 133.03 Inhaling drugs or other noxious chemical substances or causing others to do so
- 133.04 Burning
- 133.05 Abandoned or discarded refrigerators or other airtight containers
- 133.06 Duty of persons causing well or pit to be dug to fill it before abandonment
- 133.07 Unsanitary conditions prohibited
- 133.08 Throwing or depositing certain substances upon highway; removal of such substances
- 133.09 Willfully discharging firearms in public places

- 133.99 Penalty

§ 133.01 FAILING TO SECURE MEDICAL ATTENTION FOR INJURED CHILD.

Any parent or other person having custody of a minor child, which child shows evidence of need for medical attention as the result of physical injury inflicted by an act of any member of the household, whether the injury was intentional or unintentional, who knowingly fails or refuses to secure prompt and adequate medical attention, or who conspires to prevent the securing of such attention, for such minor child shall be punished pursuant to § 133.99; provided, that any parent or other person having custody of a minor child that is being furnished Christian Science treatment by a duly accredited Christian Science practitioner shall not for that reason alone be considered in violation of this section.

(1998 Code, § 38-116) Penalty, see § 133.99

Statutory reference:

Similar provisions, see VA Code § 18.2-314

§ 133.02 EXPECTORATING IN PUBLIC PLACES.

No person shall spit, expectorate, or deposit any sputum, saliva, mucus, or any form of saliva or sputum upon the floor, stairways, or upon any part of any public building or place where the public assembles, or upon the floor of any part of any public conveyance, or upon any sidewalk abutting on any public street, alley, or lane of the town.

(1998 Code, § 38-117) Penalty, see § 133.99

Statutory reference:

Similar provisions, see VA Code § 18.2-322

§ 133.03 INHALING DRUGS OR OTHER NOXIOUS CHEMICAL SUBSTANCES OR CAUSING OTHERS TO DO SO.

(A) It shall be unlawful, except under the direction of a practitioner as defined in VA Code § 54.1-3401, for any person deliberately to smell or inhale any drugs or any other noxious chemical substances including, but not limited to, fingernail polish or model airplane glue, containing any ketones, aldehydes, organic acetates, ether, chlorinated hydrocarbons or vapors, with the intent to become intoxicated, inebriated, excited, stupefied, or to dull the brain or nervous system.

(B) It shall be unlawful for any person, other than one duly licensed, deliberately to cause, invite, or induce any person to smell or inhale any drugs or any other noxious substances or chemicals containing any ketone, aldehydes, organic acetates, ether, chlorinated hydrocarbons, or vapors with the intent to intoxicate, inebriate, excite, stupefy, or to dull the brain or nervous system of such person. (1998 Code, § 38-118) Penalty, see § 133.99

Statutory reference:

Similar provisions, see VA Code § 18.2-264

§ 133.04 BURNING.

(A) It shall be unlawful and punished pursuant to § 133.99 for any person to burn, cause to be burned, or allow to be burned on any property in this town any rubber, rubber product, automobiles, trucks, or their parts, or any other product, material, or substance, the burning of which causes noxious or offensive odors, noxious or offensive fumes, or noxious or offensive smoke.

(B) No person shall kindle or ignite, or cause to be kindled or ignited, or maintain any open fire in any public or private place outside any building except under the following circumstances:

(1) Open fires may be set in performance of an official duty or by any public health or safety officer if the fire is necessary for one or more of the following reasons or purposes:

(a) For the prevention of a fire hazard that can be abated by no other means;

(b) For the instruction of public firefighters or industrial employees under the supervision of the Fire Marshal of the town; or

(c) For the protection of public health.

(2) Fires may be used for cooking of food, provided there is no smoke violation, and provided no other nuisance is created.

(3) Salamanders or other devices may be used for heating by construction and other workers, provided there is no smoke violation, and provided no other nuisance is created.

(1998 Code, § 38-119) Penalty, see § 133.99

Statutory reference:

Regulating or prohibiting the making of fires, see VA Code § 15.2-1118

§ 133.05 ABANDONED OR DISCARDED REFRIGERATORS OR OTHER AIRTIGHT CONTAINERS.

(A) It shall be unlawful for any person to discard, abandon, leave, or allow to remain in any place any icebox, refrigerator, or other container, device, or equipment of any kind with an interior storage area of more than two cubic feet of clear space that is airtight without first removing the doors or hinges from such icebox, refrigerator, container, device, or equipment.

(B) This section shall not apply to any icebox, refrigerator, container, device, or equipment that is being used for the purpose for which it was originally designed, or is being used for display purposes by any retail or wholesale merchant, or is crated, strapped, or locked to such an extent that it is impossible for a child to obtain access to any airtight compartment.

(1998 Code, § 38-120) Penalty, see § 133.99

Statutory reference:

Similar provisions, see VA Code § 18.2-319

§ 133.06 DUTY OF PERSONS CAUSING WELL OR PIT TO BE DUG TO FILL IT BEFORE ABANDONMENT.

(A) Any person who has caused to be dug on his or her own land or the land of another any well or pit shall fill such well or pit with earth so that the well or pit shall not be dangerous to human beings, animals, or fowls before such well or such pit is abandoned; and any person owning land whereon any such well or pit is located shall in the same manner fill with earth any such well or pit that has been abandoned, provided such person has knowledge of the existence of such well or pit.

(B) In the case of mining operations in lieu of filling the shaft or pit the owner or operator on ceasing operations in such shaft or pit shall securely fence the shaft or pit and keep the shaft or pit at all times thereafter securely fenced.

(1998 Code, § 38-121) Penalty, see § 133.99

Statutory reference:

Similar provisions, see VA Code § 18.2-316

§ 133.07 UNSANITARY CONDITIONS PROHIBITED.

It shall be unlawful for any person to permit any noxious, unsanitary, or offensive matter, stagnant water, or other substance that is or might be injurious to the public health to be or remain on such person's property or in such person's possession or control.

(1998 Code, § 38-122) Penalty, see § 133.99

§ 133.08 THROWING OR DEPOSITING CERTAIN SUBSTANCES UPON HIGHWAY; REMOVAL OF SUCH SUBSTANCES.

(A) No person shall throw or deposit or cause to be deposited upon any highway any glass bottle, glass, nail, tack, wire, can, or any other substance likely to injure any person or animal, or damage any vehicle upon such highway; nor shall any person throw or deposit or cause to be deposited upon any highway any soil, sand, mud, gravel, or other substances so as to create a hazard to the traveling public. Any person who drops, or permits to be dropped or thrown, upon any highway any destructive, hazardous, or injurious material shall immediately remove the material or cause it to be removed. Any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle. Any persons violating the provisions

of this section shall be punished pursuant to § 133.99.

(B) This section shall not apply to the use, by a law enforcement officer while in the discharge of official duties, of any device designed to deflate tires.
(1998 Code, § 38-123) Penalty, see § 133.99

Statutory reference:

Similar provisions, see VA Code § 18.2-324

§ 133.09 WILLFULLY DISCHARGING FIREARMS IN PUBLIC PLACES.

If any person willfully discharges or causes to be discharged any firearm in any street in the town, or in any place of public business or place of public gathering, such person shall be punished pursuant to § 133.99. This section shall not apply to any law enforcement officer in the performance of his or her official duties nor to any other person whose willful act is otherwise justifiable or excusable at law in the protection of life or property or is otherwise specifically authorized by law.
(1998 Code, § 38-124) Penalty, see § 133.99

Statutory reference:

Similar provisions, see VA Code § 18.2-280

§ 133.99 PENALTY.

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

(B) Any person violating the provisions of § 133.01 shall be deemed guilty of a class 1 misdemeanor.
(1998 Code, § 38-116)

(C) A violation of § 133.02 shall constitute a class 4 misdemeanor.
(1998 Code, § 38-117)

(D) (1) Any person violating the provisions of § 133.03(A) shall be guilty of a class 1 misdemeanor.

(2) Any person violating the provisions of § 133.03(B) shall be guilty of a class 2 misdemeanor.
(1998 Code, § 38-118)

(E) (1) Any person violating the provisions of § 133.04(A) shall be deemed guilty of a class 2 misdemeanor.

(2) Any violation of the provisions of § 133.04(B) shall constitute a class 3 misdemeanor.
(1998 Code, § 38-119)

(F) Any violation of the provisions of § 133.05 shall constitute a class 3 misdemeanor.
(1998 Code, § 38-120)

(G) Any person violating any provision of § 133.06 shall be deemed guilty of a class 3 misdemeanor.
(1998 Code, § 38-121)

(H) A violation of § 133.07 shall be a class 1 misdemeanor.
(1998 Code, § 38-122)

(I) Any person violating any provision of § 133.08 shall be deemed guilty of a class 1 misdemeanor.
(1998 Code, § 38-123)

(J) Any person violating any provision of § 133.09 shall be deemed guilty of a class 1 misdemeanor.
(1998 Code, § 38-124)

CHAPTER 134: OFFENSES INVOLVING MORALS AND DECENCY

Section

- 134.01 Causing or encouraging acts rendering children delinquent, abused
- 134.02 Profane swearing and intoxication in public
- 134.03 Use of profane, threatening or indecent language over public airways
- 134.04 Bawdy places
- 134.05 Obscene defined; obscene items enumerated; production, publication, sale, possession of obscene items
- 134.06 Indecent exposure

- 134.99 Penalty

§ 134.01 CAUSING OR ENCOURAGING ACTS RENDERING CHILDREN DELINQUENT, ABUSED.

(A) Any person 18 years of age or older, including the parent of any child, who:

- (1) Willfully contributes to, encourages, or causes any act, omission, or condition that renders a child delinquent, in need of services, in need of supervision, or abused or neglected; or
- (2) Engages in consensual sexual intercourse with a child 15 or older not his or her spouse, child, or grandchild.

(B) For the purpose of this section, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ABUSED OR NEGLECTED CHILD. Any child:

(a) Whose parents or other person responsible for his or her care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement, or impairment of bodily or mental functions;

(b) Whose parents or other person responsible for his or her care neglects or refuses to provide care necessary for his or her health; however, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall, for that reason alone, be considered to be an ***ABUSED OR NEGLECTED CHILD***;

(c) Whose parents or other person responsible for his or her care abandons such child;

(d) Whose parents or other person responsible for his or her care commits or allows to be committed any sexual act upon a child in violation of the law; or

(e) Who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent, guardian, legal custodian, or other person standing in loco parentis.

ADULT. A person 18 years of age or older.

CHILD IN NEED OF SERVICES. A child whose behavior, conduct, or condition presents or results in a serious threat to the well-being and physical safety of the child; however, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be a **CHILD IN NEED OF SERVICES**, nor shall any child who habitually remains away from or habitually deserts or abandons his or her family as a result of what the court or the local child protective services unit determines to be incidents of physical, emotional, or sexual abuse in the home be considered a **CHILD IN NEED OF SERVICES** for that reason alone. However, to find that a child falls within these provisions, the conduct complained of must present a clear and substantial danger to the child's life or health; or the child or his or her family is in need of treatment, rehabilitation, or services not presently being received, and the intervention of the court is essential to provide the treatment, rehabilitation, or services needed by the child or his or her family.

CHILD IN NEED OF SUPERVISION.

(a) A child who, while subject to compulsory school attendance, is habitually and without justification absent from school, and the child has been offered an adequate opportunity to receive the benefit of any and all educational services and programs that are required to be provided by law and that meet the child's particular educational needs, and the school system from which the child is absent or other appropriate agency has made a reasonable effort to effect the child's regular attendance without success; or

(b) A child who, without reasonable cause and without the consent of his or her parent, lawful custodian, or placement authority, remains away from or habitually deserts or abandons his or her family or lawful custodian, or escapes or remains away without proper authority from a residential care facility in which he or she has been placed by the court, and such conduct presents a clear and substantial danger to the child's life or health; the child or his or her family is in need of treatment, rehabilitation, or services not presently being received; and the intervention of the court is essential to provide the treatment, rehabilitation, or services needed by the child or his or her family.

CHILD, JUVENILE, or MINOR. A person less than 18 years of age.
(1998 Code, § 38-156) Penalty, see § 134.99

Statutory reference:

Similar provisions, see VA Code § 18.2-371

§ 134.02 PROFANE SWEARING AND INTOXICATION IN PUBLIC.

If any person profanely curses or swears or is intoxicated in public, whether such intoxication

results from alcohol, narcotic drug, or other intoxicant or drug of whatever nature, such person shall be punished pursuant to § 134.99.

(1998 Code, § 38-157) Penalty, see § 134.99

Statutory reference:

Similar provisions, see VA Code § 18.2-388

§ 134.03 USE OF PROFANE, THREATENING, OR INDECENT LANGUAGE OVER PUBLIC AIRWAYS.

If any person shall use obscene, vulgar, profane, lewd, lascivious, or indecent language, or make any suggestion or proposal of an obscene nature, or threaten any illegal or immoral act with the intent to coerce, intimidate, or harass any person, over any telephone or citizens band radio in the town, such person shall be punished pursuant to § 134.99.

(1998 Code, § 38-158) Penalty, see § 134.99

Statutory reference:

Similar provisions, see § 18.2-427

§ 134.04 BAWDY PLACES.

(A) It shall be unlawful and punishable pursuant to § 134.99 for any person to keep any bawdy place, or to reside in or at or visit, for immoral purposes, any bawdy place.

(B) For the purposes of this section, **BAWDY PLACE** shall mean any place, within or without any building or structure, within this town that is used or is to be used for lewdness, assignation, or prostitution. The term shall include but shall not be limited to every house of prostitution, house of ill fame, house of assignation, and brothel.

(C) In a prosecution for a violation of this section, the general reputation of the place may be proved.

(1998 Code, § 38-159) Penalty, see § 134.99

Statutory reference:

Similar provisions, see VA Code § 18.2-347

§ 134.05 OBSCENE DEFINED; OBSCENE ITEMS ENUMERATED; PRODUCTION, PUBLICATION, SALE, POSSESSION OF OBSCENE ITEMS.

(A) Obscene means that which, considered as a whole, has as its dominant theme or purpose an appeal to the prurient interest in sex; that is, a shameful or morbid interest in nudity, sexual conduct, sexual excitement, excretory functions or products or sadomasochistic abuse, and which goes substantially beyond customary limits of candor in description or representation of such matters and which, taken as a whole, does not have serious literary, artistic, political, or scientific value.

(B) Obscene items shall include:

(1) Any obscene book;

(2) Any obscene leaflet, pamphlet, magazine, booklet, picture, painting, bumper sticker, drawing, photograph, film, negative, slide, motion picture, videotape recording; or

(3) Any obscene figure, object, article, instrument, novelty device, or recording or transcription used or intended to be used in disseminating any obscene song, ballad, words, or sounds.

(C) It shall be unlawful for any person knowingly to:

(1) Prepare any obscene item for the purposes of sale or distribution;

(2) Print, copy, manufacture, produce, or reproduce any obscene item for purposes of sale or distribution;

(3) Publish, sell, rent, lend, transport in intrastate commerce, or distribute or exhibit any obscene item, or offer to do any of these things; or

(4) Have in his or her possession with intent to sell, rent, lend, transport, or distribute any obscene item. Possession in public or in a public place of any obscene item shall be deemed prima facie evidence of a violation of this division (C). For the purposes of this division (C), **DISTRIBUTE** means delivery in person, by mail, messenger, or by any other means by which obscene items may pass from one person to another.

(D) It shall be unlawful for any person knowingly to expose, place, display, post up, exhibit, paint, print, or mark, or cause to be exposed, placed, displayed, posted, exhibited, painted, printed, or marked, in or on any building, structure, billboard, wall, or fence, or on any street, or in or upon any public place, any placard, poster, banner, bill, writing, or picture that is obscene, or that advertises or promotes any obscene item proscribed in division (B) above or any obscene exhibition or performance, or knowingly to permit any of these items to be displayed on property belonging to or controlled by him or her.

(E) It shall be unlawful for any person knowingly to hire, employ, use, or permit any minor to do or assist in doing any act or thing constituting an offense under this section.

(1998 Code, § 38-160) Penalty, see § 134.99

Statutory reference:

Similar provisions, see VA Code §§ 18.2-372, 18.2-373, 18.2-374, 18.2-377, 18.2-379, and 18.2-380

§ 134.06 INDECENT EXPOSURE.

Every person who intentionally makes an obscene display or exposure of his or her person, or his or her private parts in any public place, or in any place where others are present, or procures another to so expose himself or herself, shall be punished pursuant to § 134.99. No person shall be deemed to be in violation of this section for breastfeeding a child in any public place or any place where others are present.

(1998 Code, § 38-161) Penalty, see § 134.99

Statutory reference:

Similar provisions, see VA Code § 18.2-387

§ 134.99 PENALTY.

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

(B) Any person violating the provisions of § 134.01(A) shall be deemed guilty of a class 1 misdemeanor.
(1998 Code, § 38-156)

(C) Any person violating the provisions of § 134.02 shall be deemed guilty of a class 4 misdemeanor.
(1998 Code, § 38-157)

(D) Any person violating the provisions of § 134.03 shall be deemed guilty of a class 1 misdemeanor.
(1998 Code, § 38-158)

(E) Any person violating the provisions of § 134.04 shall be deemed guilty of a class 1 misdemeanor.
(1998 Code, § 38-159)

(F) Any person convicted for the first time of an offense under § 131.05 shall be deemed guilty of a class 1 misdemeanor.
(1998 Code, § 38-160)

(G) Any person violating the provisions of § 131.06 shall be deemed guilty of a class 1 misdemeanor.
(1998 Code, § 38-161)

CHAPTER 135: OFFENSES AGAINST PEACE AND ORDER

Section

General Provisions

- 135.01 Disorderly conduct in public places
- 135.02 Abusive language
- 135.03 Obstructing free passage of others
- 135.04 Resisting or obstructing execution of legal process

Riots and Unlawful Assemblies

- 135.20 What constitutes
- 135.21 Participation in
- 135.22 Remaining at scene after warning to disperse
- 135.23 Dispersal

- 135.99 Penalty

GENERAL PROVISIONS

§ 135.01 DISORDERLY CONDUCT IN PUBLIC PLACES.

(A) A person is guilty of disorderly conduct if, with the intent to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof, he or she:

(1) In any street, highway, public building, or while in or on a public conveyance or public place engages in conduct having a direct tendency to cause acts of violence by the person or persons at whom, individually, such conduct is directed;

(2) Willfully or being intoxicated, whether willfully or not, and whether such intoxication results from self-administered alcohol or other drug of whatever nature, disrupts any meeting of the Town Council or a division or agency of the town, or of any school, literary society, or place of religious worship, if the disruption prevents or interferes with the orderly conduct of the meeting or has a direct tendency to cause acts of violence by the person or persons at whom, individually, the disruption is directed; or

(3) Willfully or while intoxicated, whether willfully or not, and whether such intoxication results from self-administered alcohol or other drug of whatever nature, disrupts the operation of any school or any activity conducted or sponsored by any school, if the disruption prevents or interferes

with the orderly conduct of the operation or activity or has a direct tendency to cause acts of violence by the person or persons at whom, individually, the disruption is directed.

(B) However, the conduct prohibited under divisions (A)(1), (A)(2), or (A)(3) above shall not be deemed to include the utterance or display of any words or to include conduct otherwise made punishable under this chapter.

(C) The person in charge of any such building, place, conveyance, meeting, operation, or activity may eject any person who violates any provision of this section, with the aid, if necessary, of any persons who may be called upon for such purpose.

(1998 Code, § 38-191) Penalty, see § 135.99

Statutory reference:

Similar provisions, see VA Code § 18.2-415

§ 135.02 ABUSIVE LANGUAGE.

If any person shall, in the presence or hearing of another, curse or abuse such other person, or use any violent, abusive language to such person concerning himself or any of his or her relations, or otherwise use such language, under circumstances reasonably calculated to provoke a breach of the peace, such person shall be punished pursuant to § 135.99.

(1998 Code, § 38-192) Penalty, see § 135.99

Statutory reference:

Similar provisions, see VA Code § 18.2-416

§ 135.03 OBSTRUCTING FREE PASSAGE OF OTHERS.

Any person who in any public place or on any private property open to the public unreasonably or unnecessarily obstructs the free passage of other persons to and from or within such place or property and who shall fail or refuse to cease such obstruction or move on when requested to do so by the owner or lessee or agent or employee of such owner or lessee or by a duly authorized law enforcement officer shall be punished pursuant to § 135.99 Nothing in this section shall be construed to prohibit lawful picketing.

(1998 Code, § 38-193) Penalty, see § 135.99

Statutory reference:

Similar provisions, see VA Code § 18.2-404

§ 135.04 RESISTING OR OBSTRUCTING EXECUTION OF LEGAL PROCESS.

Every person acting jointly or in combination with any other person to resist or obstruct the execution of any legal process shall be punished pursuant to § 135.99.

(1998 Code, § 38-195) Penalty, see § 135.99

Statutory reference:

Similar provisions, see VA Code § 18.2-409

RIOTS AND UNLAWFUL ASSEMBLIES

§ 135.20 WHAT CONSTITUTES.

(A) Any unlawful use, by three or more persons acting together, of force or violence that seriously jeopardizes the public safety, peace, or order is a **RIOT**.

(B) Whenever three or more persons assembled share the common intent to advance some lawful or unlawful purpose by the commission of an act of unlawful force or violence likely to jeopardize seriously public safety, peace, or order, and the assembly actually tends to inspire persons of ordinary courage with well-grounded fear of serious and immediate breaches of public safety, peace or order, then such assembly is an **UNLAWFUL ASSEMBLY**.

(1998 Code, § 38-216) Penalty, see § 135.99

Statutory reference:

Similar provisions, see VA Code §§ 18.2-405 and 18.2-406

§ 135.21 PARTICIPATION IN.

Every person who participates in any riot or unlawful assembly shall be punished pursuant to § 135.99.

(1998 Code, § 38-217) Penalty, see § 135.99

Statutory reference:

Similar provisions, see VA Code §§ 18.2-405 and 18.2-406

§ 135.22 REMAINING AT SCENE AFTER WARNING TO DISPERSE.

Every person, except the owner or lessee of the premises, such person's family and non-rioting guests, and public officers and persons assisting them, who remains at the place of any riot or unlawful assembly, after having been lawfully warned to disperse, shall be punished pursuant to § 135.99.

(1998 Code, § 38-218) Penalty, see § 135.99

Statutory reference:

Similar provisions, see VA Code § 18.2-407

§ 135.23 DISPERSAL.

(A) (1) When any number of persons, whether armed or not, are unlawfully or riotously assembled, the police officials shall go among the persons assembled, or as near to them as safety will permit, and command them, in the name of the state, to immediately disperse.

(2) If upon such command the persons unlawfully assembled do not disperse immediately, the police officials may use such force as is reasonably necessary to disperse them and to arrest those who fail or refuse to disperse.

(3) To accomplish this end, the police officials may request and use the assistance and services of private citizens.

(B) Every endeavor shall be used by the police officials, which can be made consistently with the preservation of life, to induce or force persons unlawfully assembled to disperse before an attack is made upon those unlawfully assembled by which their lives may be endangered.

(C) No liability, criminal or civil, shall be imposed upon any person authorized to disperse or assist in dispersing a riot or unlawful assembly for any action of such person that was taken after those rioting or unlawfully assembled had been commanded to disperse, and which action was reasonably necessary, under all the circumstances, to disperse such riot or unlawful assembly or to arrest those who failed or refused to disperse.

(1998 Code, § 38-219)

Statutory reference:

Similar provisions, see VA Code §§ 18.2-411 and 18.2-412

§ 135.99 PENALTY.

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed shall be subject to § 10.99 of this code of ordinances.

(B) Any person violating any provision of § 135.01 shall be deemed guilty of a class 1 misdemeanor.

(1998 Code, § 38-191)

(C) Any person violating any provision of § 135.02 shall be deemed guilty of a class 3 misdemeanor.

(1998 Code, § 38-192)

(D) Any person violating any provisions of § 135.03 shall be deemed guilty of a class 1 misdemeanor.

(1998 Code, § 38-193)

(E) Any person violating any provisions of § 135.04 shall be deemed guilty of a class 1 misdemeanor.

(1998 Code, § 38-195)

(F) Any person violating any provisions of § 135.21 shall be deemed guilty of a class 1 misdemeanor.

(1998 Code, § 38-217)

(G) Any person violating any provisions of § 135.22 shall be deemed guilty of a class 3 misdemeanor.

(1998 Code, § 38-218)

CHAPTER 136: OFFENSES AGAINST THE ADMINISTRATION OF JUSTICE

Section

136.01 Obstructing justice

136.02 Falsely summoning or giving false reports to law enforcement officials

136.99 Penalty

§ 136.01 OBSTRUCTING JUSTICE.

(A) If any person without just cause knowingly obstructs a judge, magistrate, justice, juror, attorney for the state, witness, or any law enforcement officer in the performance of his or her duties as such or fails or refuses without just cause to cease such obstruction when requested to do so by such judge, magistrate, justice, juror, attorney for the state, witness, or law enforcement officer, he or she shall be punished pursuant to § 136.99.

(B) If any person, by threats or force, knowingly attempts to intimidate or impede a judge, magistrate, justice, juror, attorney for the state, witness, or any law enforcement officer, lawfully engaged in his or her duties as such, or to obstruct or impede the administration of justice in any court, he or she shall be punished pursuant to § 136.99.
(1998 Code, § 38-251) Penalty, see § 136.99

Statutory reference:

Similar provisions, see VA Code § 18.2-460

§ 136.02 FALSELY SUMMONING OR GIVING FALSE REPORTS TO LAW ENFORCEMENT OFFICIALS.

It shall be unlawful for any person to knowingly give a false report as to the commission of any crime to any law enforcement official with intent to mislead, or without just cause and with intent to interfere with the operations of any law enforcement official, to call or summon any law enforcement official by telephone or other means, including engagement or activation of an automatic emergency alarm.

(1998 Code, § 38-252) Penalty, see § 136.99

§ 136.99 PENALTY.

(A) Any person violating any provision of this chapter for which no specific penalty is prescribed

shall be subject to § 10.99 of this code of ordinances.

(B) (1) Any person violating any provisions of § 136.01(A) shall be deemed guilty of a class 2 misdemeanor.

(2) Any person violating any provisions of § 136.01(B) shall be deemed to be guilty of a class 1 misdemeanor.
(1998 Code, § 38-251)

(C) Violation of the provisions of § 136.02 shall be punishable as a class 1 misdemeanor.
(1998 Code, § 38-252)

CHAPTER 137: OFFENSES INVOLVING FIRE PREVENTION AND PROTECTION

Section

- 137.01 Impersonation
- 137.02 Damage or injury to Fire Department equipment or personnel
- 137.03 Unlawful boarding or tampering with fire and rescue vehicles
- 137.04 Unlawful use of fire or rescue apparatus, equipment, and the like within town
- 137.05 Allowing fire to spread to land of another
- 137.06 Carelessly damaging property by fire
- 137.07 Refusal to obey orders of a fire or rescue officer
- 137.08 Prohibited parking within a designated fire lane; unauthorized use

- 137.99 Penalty

§ 137.01 IMPERSONATION.

It shall be unlawful and punished pursuant to § 137.99 for any unauthorized person to use a badge, uniform or any other credentials, so as to gain access to any building, marine vessel, vehicle, or premises, or to otherwise falsely identify himself or herself as the Fire Marshal or his or her designated representative.

(1998 Code, § 22-19) (Ord. O-2013-04, passed 4-2-2013) Penalty, see § 137.99

§ 137.02 DAMAGE OR INJURY TO FIRE DEPARTMENT EQUIPMENT OR PERSONNEL.

It shall be unlawful and punished pursuant to § 137.99 for any person to damage or deface, or attempt or conspire to damage or deface any fire or rescue vehicle belonging to the County Department of Fire and Rescue or a volunteer company at any time, or to injure, or attempt to injure or conspire to injure fire and rescue personnel while such personnel are in the performance of their duties.

(1998 Code, § 22-20) (Ord. O-2013-04, passed 4-2-2013) Penalty, see § 137.99

§ 137.03 UNLAWFUL BOARDING OR TAMPERING WITH FIRE AND RESCUE VEHICLES.

It shall be unlawful and a punished pursuant to § 137.99 for any person, without proper authorization from the fire or rescue officer in charge of said vehicle, to cling to, attach himself or herself to, climb upon or into, board, or swing upon any fire or rescue vehicle, whether such vehicle is in motion or at rest, or to sound any warning device thereon, or to manipulate, tamper with, or destroy or attempt to manipulate, tamper with, or destroy any lever, valve, switch, starting device, brake, pump,

or any equipment, protective clothing, or tool, on or a part of such vehicle.
(1998 Code, § 22-21) (Ord. O-2013-04, passed 4-2-2013) Penalty, see § 137.99

§ 137.04 UNLAWFUL USE OF FIRE OR RESCUE APPARATUS, EQUIPMENT, AND THE LIKE WITHIN TOWN.

(A) It shall be unlawful and punished pursuant to § 137.99 for any person to operate or cause to be operated upon a public highway or street in the town any vehicle or equipment used, intended to be used, or designated to be used for the purpose of fighting fires or responding to emergency incidents, unless the use of such vehicle or equipment is authorized by the county.

(B) This section shall not apply to the operation of firefighting vehicles or rescue equipment owned by any fire or rescue company outside of the county when such vehicle or equipment is traveling in or through the town for parade or other non-firefighting purposes or in response to a call from the county's public safety communications center.
(1998 Code, § 22-22) (Ord. O-2013-04, passed 4-2-2013) Penalty, see § 137.99

§ 137.05 ALLOWING FIRE TO SPREAD TO LAND OF ANOTHER.

Any person who intentionally sets or procures another to set fire to any woods, brush, leaves, grass, straw, or any other inflammable substance capable of spreading fire, and who intentionally allows the fire to escape to lands not his or her own, whereby the property of another is damaged or jeopardized, shall be punished pursuant to § 137.99 and shall be liable for the full amount of all expenses incurred in fighting the fire.
(1998 Code, § 22-23) (Ord. O-2013-04, passed 4-2-2013) Penalty, see § 137.99

§ 137.06 CARELESSLY DAMAGING PROPERTY BY FIRE.

If any person shall carelessly, negligently, or intentionally set any woods or marshes on fire, or set fire to any stubble, brush, straw, or any other substance capable of spreading fire on lands, whereby the property of another is damaged or jeopardized, he or she shall be punished pursuant to § 137.99 and shall be liable for the full amount of all expenses incurred in fighting the fire.
(1998 Code, § 22-24) (Ord. O-2013-04, passed 4-2-2013) Penalty, see § 137.99

§ 137.07 REFUSAL TO OBEY ORDERS OF A FIRE OR RESCUE OFFICER.

(A) Any person or persons refusing to obey the orders of the officer in charge at an incident scene shall be punished pursuant to § 137.99.

(B) Any officer in charge at an incident scene shall have the power to make arrests for violation of the provisions of this section.

(C) Any person neglecting to obey any order of an officer in charge of an incident scene shall upon conviction of such offense, be punished pursuant to § 137.99.
(1998 Code, § 22-25) (Ord. O-2013-04, passed 4-2-2013) Penalty, see § 137.99

§ 137.08 PROHIBITED PARKING WITHIN A DESIGNATED FIRE LANE;

UNAUTHORIZED USE.

(A) Notwithstanding the provisions found in §§ 13-324 and 13-325 of the County Code, it shall be unlawful for any person to park a vehicle within a designated fire lane. In any prosecution under this section, proof that the vehicle described in the complaint, summons, or warrant was parked in violation of this code, together with proof that the defendant was at the time of such prohibited parking the registered owner of the vehicle, shall constitute a prima facie evidentiary presumption that such registered owner of the vehicle was the person who parked the vehicle at the place and at the time such violation occurred. In addition, the vehicle parked in violation of this section may be impounded by the County Police Department and held until the penalty provided and the towing and storage charges incurred are paid. This section shall be enforced by the County Fire Marshal's office and the County Police Department.

(B) It shall be unlawful for any person, firm, or corporation to otherwise obstruct, stage, or store devices, equipment, or materials, or use any designated fire lane without authorization from the fire official.
(1998 Code, § 22-26) (Ord. O-2013-04, passed 4-2-2013) Penalty, see § 137.99

§ 137.99 PENALTY.

(A) Any person violating any provisions of § 137.01 shall be deemed guilty of a class 1 misdemeanor.
(1998 Code, § 22-19)

(B) Any person violating any provisions of § 137.02 shall be deemed guilty of a class 1 misdemeanor.
(1998 Code, § 22-20)

(C) Any person violating any provisions of § 137.03 shall be deemed guilty of a class 1 misdemeanor.
(1998 Code, § 22-21)

(D) Any person violating any provisions of § 137.04 shall be deemed guilty of a class 2 misdemeanor.
(1998 Code, § 22-22)

(E) Any person violating any provisions of § 137.05 shall be deemed guilty of a class 1 misdemeanor.
(1998 Code, § 22-23)

(F) Any person violating any provisions of § 137.06 shall be deemed guilty of a class 4 misdemeanor.
(1998 Code, § 22-24)

(G) (1) Any person violating any provisions of § 137.07(A) shall be deemed guilty of a class 4 misdemeanor.

(2) Any person violating any provisions of § 137.07(B) shall be fined not to exceed \$100.
(1998 Code, § 22-25)

(G) (1) Unless otherwise specified in this chapter, any person, firm, or corporation who shall violate any of the sections of this chapter, or any provisions of the Fire Prevention Code adopted in accordance with this chapter, shall separately for each and every such violation and noncompliance respectively, be guilty of a violation of this chapter, and shall, upon conviction, be punishable as a class 1 misdemeanor.

(2) A violation of this chapter shall be construed to be an infringement, breach, or failure to comply with any provision of this chapter or any order made thereunder, or any act of building in violation of any detailed statement, specifications, or plans submitted and approved thereunder, or any certificate or permit issued thereunder, and from which no appeal has been taken, or any failure to comply with such an order within the time fixed therein.

(3) Each day that a violation continues after a service of notice as provided for in this code shall be deemed a separate offense.
(1998 Code, § 22-27)
(Ord. O-2013-04, passed 4-2-2013)

TITLE XV: LAND USAGE

Chapter

150.BUILDINGS AND BUILDING REGULATIONS

151.FLOODS

152.EROSION AND SEDIMENT CONTROL

153.STATE STORMWATER MANAGEMENT PROGRAM

154.NOVA ARTS AND CULTURAL DISTRICT

155.SITE PLAN

156.SUBDIVISIONS

157.ZONING

Charter reference:

Abatement of nuisances, see § 17

Statutory reference:

Erosion and sediment control, see VA Code §§ 62.1-44.15:54 et seq.

Local air pollution ordinances, see VA Code § 10.1-1321

Stormwater management, see VA Code § 62.1-44.15:24 et seq.

CHAPTER 150: BUILDINGS AND BUILDING REGULATIONS

Section

- 150.01 Department of Building Inspection; Building/Code Official
- 150.02 Deputy
- 150.03 Inspections
- 150.04 Adoption of State Uniform Statewide Building Code
- 150.05 Definitions
- 150.06 When permit is required
- 150.07 Applicant for permit defined
- 150.08 Application for permit
- 150.09 Rules and regulations established by Building/Code Official
- 150.10 Fees
- 150.11 Appeals
- 150.12 Report to Council

- 150.99 Penalty

Charter reference:

Building regulations, see §§ 17 and 21

Statutory reference:

Access to and use of buildings by handicapped, see VA Code § 2.1-517

Contractors, see VA Code §§ 54.1-1100 et seq.

Effect of Building Code on other building regulations, see VA Code § 36-98

Enforcement of Building Code, appeals from decisions of local building department, inspection of buildings, see VA Code § 36-105

Limitation of prosecutions of Building Code violations, see VA Code § 19.2-8

Local licensing of certain contractors, see VA Code § 54.1-1117

Uniform Statewide Building Code, see VA Code §§ 36-97 et seq.

State Industrialized Building Safety Law, see VA Code §§ 36-70 et seq.

Voluntary apprenticeship, see VA Code §§ 40.1-117 et seq.

§ 150.01 DEPARTMENT OF BUILDING INSPECTION; BUILDING/CODE OFFICIAL.

The Department of Building Inspection is hereby created, and the executive official in charge of the department shall be known as the Building/Code Official.

(1998 Code, § 10-1) (Ord. O-2004-13, passed 4-13-2004)

§ 150.02 DEPUTY.

The Town Council may appoint a deputy who shall perform such duties as assigned and exercise all the powers of the Building/Code Official during the temporary absence or disability of the Building/Code Official.

(1998 Code, § 10-2) (Ord. O-2004-13, passed 4-13-2004)

§ 150.03 INSPECTIONS.

The Building/Code Official shall make all of the required inspections, or the Building/Code Official shall accept reports of inspection by approved agencies or individuals in accordance with § 113.2.1 of the State Uniform Statewide Building Code, being 13 VAC 5-63. All reports of such inspections shall be in writing and be certified by a responsible officer of such approved agency or by the responsible individual. The Building/Code Official is authorized to engage such expert opinion as deemed necessary to report upon unusual technical issues that arise, subject to the approval of the Mayor.

(1998 Code, § 10-3)

§ 150.04 ADOPTION OF STATE UNIFORM STATEWIDE BUILDING CODE.

(A) Pursuant to authority granted in VA Code § 36-105, as amended, it is hereby expressly provided that the Building Official for the town shall enforce the State Uniform Statewide Building Code (VUSBC), being 13 VAC 5-63, including the State Maintenance Code dealing with property maintenance, as it may be amended from time to time by the State Board of Housing and Community Development (VBHCD). To the extent provided by law, the Building Official for the town may inspect existing buildings and structures, permanent or temporary, whether occupied or not, and their associated equipment after completion of construction to ensure that the buildings and structures are maintained in accordance with those provisions of the VUSBC regulations.

(B) Nothing in this section shall be held to preclude compliance with any zoning, health, safety, sanitation, or other provisions of this code heretofore or hereafter adopted.

(1998 Code, § 10-4) (Ord. O-2008-04, passed 11-12-2008)

§ 150.05 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Also, whenever the following words or terms are used in the Building Code adopted in this chapter, they shall have the meanings ascribed to them in this section.

BUILDING/CODE OFFICIAL. The Building/Code Official for the Town of Occoquan, Virginia.

GAS FITTER. A person who holds himself or herself out to the public to do gas fitting work and accepts compensation for his or her services in doing such work.

LEGAL COUNSEL. The Town Attorney for the Town of Occoquan, Virginia.

MUNICIPALITY. The Town of Occoquan, Virginia.

PLUMBER. A person who holds himself or herself out to the public to do plumbing work and accepts compensation for his or her services in doing such work.
(1998 Code, § 10-5)

§ 150.06 WHEN PERMIT IS REQUIRED.

(A) Except as provided in § 107.1 of the State Uniform Statewide Building Code, being 13 VAC 5-63, written application shall be made to the Building/Code Official when a construction permit is required.

(B) A permit shall be issued by the Building/Code Official before any of the following actions subject to the State Uniform Statewide Building Code, being 13 VAC 5-63 may be commenced:

(1) Constructing, enlarging, altering, repairing, or demolishing a building or structure;

(2) Changing the use of a building either within the same use group or to a different use group when the new use requires greater degrees of structural strength, fire protection, exit facilities, ventilation, or sanitary provisions;

(3) Installing or altering any equipment which is regulated by the Building Code; and

(4) Removing or disturbing any asbestos-containing materials during demolition, alteration, renovation of, or additions to buildings or structures.

(1998 Code, § 10-6) Penalty, see § 150.99

§ 150.07 APPLICANT FOR PERMIT DEFINED.

As used in this chapter, the term **APPLICANT** shall include any person who shall be the owner of record of any real property upon which is contemplated or undertaken any erection, alteration, demolition, or repair of or any addition to any building or other structure of any nature or kind, and shall further include any person who undertakes to perform or performs on behalf of the owner of record such erection, alteration, demolition, repair, or addition.

(1998 Code, § 10-7)

§ 150.08 APPLICATION FOR PERMIT.

No permit shall be issued by the Building/Code Official for the erection, alteration, demolition, or repair of or for the addition to any structure until the following conditions shall have first been satisfied.

(A) The applicant shall have executed, under oath, and on a form provided by the Building/Code Official or by the Town Clerk an application for a building permit, which application shall fully disclose the estimated cost of such erection, alteration, demolition, repair, or addition, and shall state explicitly the location, purpose, dimensions, distance from street lines, character and composition of walls, coverings, and other information relative to such erection, alteration, demolition, repair, or addition as the Building/Code Official shall require including, but not limited to: scale drawings; lists or bills of materials; textual information; and the like.

(B) The applicant shall have supplied to the Building/Code Official, or to the Town Clerk, three copies of a correct site drainage or grading plan, which shall bear the name and authority of the firm or individual who shall have prepared the plan; this site drainage or grading plan requirement may be waived at the discretion of the Building/Code Official except that no such waiver may be granted when an application has been made for erection of or substantial addition to any commercial structure.

(C) The applicant shall have provided to the Building/Code Official written authorization from the County Health Department for the installation of a well and septic system, or in lieu of such authorization, a permit from the County Service Authority allowing connection by applicant to water and sewer systems.

(D) The applicant shall have provided a certificate signed by the Chairperson of the Planning Commission that the applicant has complied with the land use or zoning provisions of this code.

(E) The applicant shall provide to the Building/Code Official evidence which, in the discretion of the Building/Code Official, establishes that in any construction or development by the applicant, satisfactory water runoff control measures shall be taken by the applicant to ensure that the amount of water running off the site will not exceed the level of water running from the site prior to the construction or development. The applicant shall have paid to the Town Clerk all fees required by § 150.10.

(1998 Code, § 10-8) Penalty, see § 150.99

§ 150.09 RULES AND REGULATIONS ESTABLISHED BY BUILDING/CODE OFFICIAL.

Whenever necessary to the just and efficient administration of the provisions of this chapter, and unless inconsistent with the provisions of this chapter, the Building/Code Official may promulgate rules and regulations relating to the subject matter of this chapter; and such rules and regulations shall be available from the Town Clerk as official public records of the town.

(1998 Code, § 10-9)

§ 150.10 FEES.

Fees required under this chapter shall be as provided in a fee schedule adopted pursuant to § 112.0 of the State Uniform Statewide Building Code, being 13 VAC 5-63.

(1998 Code, § 10-10)

§ 150.11 APPEALS.

Pursuant to an agreement between the town and county, appeals from decisions of the Building/Code Official may be made to the County Board of Building Code Appeals upon the payment by the appellant of a fee of \$300 for each application.
(1998 Code, § 10-11) (Ord. O-2002-08, passed 4-9-2002)

§ 150.12 REPORT TO COUNCIL.

At each regular meeting of the Town Council, the Building/Code Official shall report to the Council the number of applications for permits that have been received by him or her since the last regular meeting of the Council, the number of permits that have been issued, and the number of applications that have been denied.
(1998 Code, § 10-12)

§ 150.99 PENALTY.

Any person violating a provision of this chapter shall be guilty of a misdemeanor and shall, upon conviction, be fined not more than \$2,500. Each day during which erection, alteration, repair, or demolition shall occur in violation of the provisions of this chapter shall constitute a separate offense.
(1998 Code, § 10-13)

Statutory reference:

Authority for above section, see VA Code § 36-106

CHAPTER 151: FLOODS

Section

Floodplain Management

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- 151.03 Compliance and liability
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Statutory reference:

Flood Damage Reduction Act, see VA Code §§ 10.1-600 et seq.

FLOODPLAIN MANAGEMENT

§ 151.01 AUTHORITY AND PURPOSE.

(A) This chapter is adopted pursuant to VA Code §§ 10.1-600 et seq.

(B) The purpose of this chapter is to prevent the loss of life and property, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and unnecessary expenditure of public funds for flood protection and relief, and the impairment of the tax base by:

(1) Regulating uses, activities, and development that, alone or in combination with other existing or future uses, activities, and development, will cause unacceptable increases in flood heights, velocities, and frequencies;

(2) Restricting or prohibiting certain uses, activities, and development from locating within areas subject to flooding;

(3) Requiring all those uses, activities, and developments that do occur in flood-prone areas to be protected and/or flood proofed against flooding and flood damage; and

(4) Protecting individuals from buying land and structures which are unsuited for intended purposes because of flood hazards.

(1998 Code, § 26-31) (Ord. O-2016-01, passed 2-2-2016)

§ 151.02 APPLICABILITY.

This chapter shall apply to all privately and publicly owned lands within the jurisdiction of the town and identified as special flood hazard areas by the Federal Emergency Management Agency.

(1998 Code, § 26-32) (Ord. O-2016-01, passed 2-2-2016)

§ 151.03 COMPLIANCE AND LIABILITY.

(A) No land shall be developed and no structure shall be located, relocated, constructed, reconstructed, enlarged, or structurally altered except in full compliance with the terms and provisions of this chapter and any other applicable ordinances and regulations that apply to uses within the jurisdiction of this chapter.

(B) The degree of flood protection sought by the provisions of this chapter is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study. Larger floods may occur on rare occasions. Flood heights may be increased by human-made or natural causes, such as ice jams and bridge openings restricted by debris. This chapter does not imply that areas outside the floodplain districts, or that land uses permitted within such districts, will be free from flooding or flood damages.

(C) This chapter shall not create liability on the part of the town or any officer or employee of the town for any flood damages that result from reliance on this chapter or any administrative decision lawfully made under this chapter.

(1998 Code, § 26-33) (Ord. O-2016-01, passed 2-2-2016) Penalty, see § 151.99

§ 151.04 ABROGATION AND GREATER RESTRICTIONS.

This chapter supersedes any ordinance currently in effect in flood-prone areas. However, any underlying ordinance shall remain in full force and effect to the extent that its provisions are more restrictive than this chapter.

(1998 Code, § 26-34) (Ord. O-2016-01, passed 2-2-2016)

§ 151.05 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BASE FLOOD. A flood that has a 1% chance of being equaled or exceeded in any given year. Also referred to as the **100-YEAR FLOOD**.

BASE FLOOD ELEVATION (BFE). The water surface elevation of the base flood in relation to the datum specified on the flood insurance study and flood insurance rate map.

BASEMENT. Any area of a building having its floor subgrade (below ground level) on all sides.

DEVELOPMENT. Any human-made change to improved or unimproved real estate including, but not limited to, buildings or other structures, the placement of manufactured homes, streets, and other paving, utilities, filling, grading, excavation, mining, dredging, or drilling operation, or storage of equipment or materials, and the subdivision of land.

ELEVATION CERTIFICATE. A FEMA approved form which documents the elevation of a structure.

FLOOD. A general and temporary inundation of normally dry land areas.

FLOOD INSURANCE RATE MAP (FIRM). An official map of a community, on which the

Federal Emergency Management Agency has delineated both the special hazard areas and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY (FIS). A report by the Federal Emergency Management Agency that examines, evaluates, and determines flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudflow and/or flood-related erosion hazards.

FLOOD PROOFING. Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents, as provided in the State Uniform Statewide Building Code, being 13 VAC 5-63.

FLOODPLAIN.

(1) A relatively flat or low land area adjoining a river, stream, or watercourse that is subject to partial or complete inundation; and/or

(2) An area subject to the unusual and rapid accumulation or runoff of surface waters from any source.

FLOODPLAIN ADMINISTRATOR (FA). The Town Manager, or in the Town Manager's absence another person appointed by Town Council to perform the Town Manager's duties, or any deputy or assistant appointed by the Town Manager to administer this chapter.

FLOOD-PRONE AREA. Any land area susceptible to being inundated by water from any source.

FLOODWAY. The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot at any point within the town.

HISTORIC STRUCTURE. Any structure that is:

(1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(3) Individually listed on a state inventory of historic places in states with historic preservation programs that have been approved by the Secretary of the Interior; or

(4) Individually listed in § 157.177 of this code.

LOWEST FLOOR. The lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area is not considered a building's **LOWEST FLOOR** provided such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter.

MANUFACTURED HOME. A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term **MANUFACTURED HOME** also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

MANUFACTURED HOME PARK OR SUBDIVISION. A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

NEW CONSTRUCTION. For floodplain management purposes, structures for which the start of construction commenced on or after November 1, 1994, and includes any subsequent improvements to such structures.

RECREATIONAL VEHICLE. A vehicle that is: built on a single chassis; no more than 400 square feet when measured at the largest horizontal projection; designed to be self-propelled or permanently towable by a light-duty truck; and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

SPECIAL FLOOD HAZARD AREA (SFHA). The land in the floodplain subject to a 1% or greater chance of being flooded in any given year as determined in § 151.06.

START OF CONSTRUCTION. The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement, or other improvement was within 180 days of the permit date. The actual **START** means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual **START OF THE CONSTRUCTION** means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

STRUCTURE. A walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

SUBSTANTIAL DAMAGE. Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT. Any reconstruction, rehabilitation, addition, or other improvement of a structure the cost of which equals or exceeds 50% of the market value of the structure before the start of construction of the improvement. This term includes structures that have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

(1) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications that have been identified by the local code enforcement official and are the minimum necessary to assure safe living conditions; or

(2) Any alteration of a historic structure, provided the alteration will not preclude the structure's continued designation as a historic structure as determined by the town's Architectural Review Board as defined in § 157.175 of this code.

VIOLATION. The failure of a structure or other development to be fully compliant with the town's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this chapter is presumed to be in ***VIOLATION*** until such time as that documentation is provided to the Floodplain Administrator. (1998 Code, § 26-35) (Ord. passed 5-13-1997; Ord. O-2016-01, passed 2-2-2016)

§ 151.06 DESCRIPTION OF DISTRICTS.

(A) The various floodplain districts shall include the special flood hazard area (SFHA). The basis for the delineation of these districts shall be the flood insurance study (FIS) and Panel 51153C0217 D of flood insurance rate map (FIRM) prepared by the Federal Emergency Management Agency for Prince William County, Virginia and Incorporated Areas, dated August 3, 2015 and January 5, 1995, respectively as amended or revised.

(B) The floodway district is delineated, for purposes of this chapter, using the criterion that certain areas within the floodplain must be capable of carrying the waters of the base flood without increasing the water surface elevation of that flood more than one foot at any one point. The areas included in this district are specifically defined in the flood insurance study and shown on the accompanying FIRM.

(C) The flood fringe district shall be that area of the 1% annual chance floodplain not included in the floodway district. The basis for the outermost boundary of this district shall be the base flood elevations contained in the flood profiles of the flood insurance study and as shown on the accompanying flood insurance rate map.

(D) The approximated floodplain district shall be that floodplain area for which no detailed flood profiles or elevations are provided, but where the SFHA floodplain boundary has been approximated. Such areas are shown as zone A on the maps accompanying the flood insurance study. For these areas, the BFE and floodway information from federal, state, and other acceptable sources shall be used, when available. Where the specific BFE cannot be determined for this area using other sources of data, such as the U.S. Army Corps of Engineers Floodplain Information Reports, U.S. Geological Survey Flood-Prone Floodplain Information Reports, and U.S. Geological Survey Flood-Prone Quadrangles, the applicant for the proposed use, development, and/or activity shall determine this elevation in accordance with hydrologic and hydraulic engineering techniques. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computations, and similar data or reports shall be submitted in sufficient detail to allow a thorough review by the town.
(1998 Code, § 26-36) (Ord. O-2016-01, passed 2-2-2016)

§ 151.07 OFFICIAL FLOODPLAIN MAP.

The boundaries of the floodplain districts are established as shown on the FIRM, which is declared to be a part of this chapter and which shall be kept on file at the town offices.
(1998 Code, § 26-37) (Ord. O-2016-01, passed 2-2-2016)

§ 151.08 DISTRICT BOUNDARY CHANGES.

The delineation of any of the floodplain districts may be revised by the Town Council where natural or human-made changes have occurred and/or where more detailed studies have been conducted or undertaken by the U.S. Army Corps of Engineers or other qualified agency, or an individual documents the need for possibility for such change. However, prior to any such change, approval must be obtained from the Federal Emergency Management Agency. A final letter of map revision (LOMR) from FEMA is a record of this approval.
(1998 Code, § 26-38) (Ord. O-2016-01, passed 2-2-2016)

§ 151.09 INTERPRETATION OF DISTRICT BOUNDARIES.

Initial interpretations of the boundaries of the floodplain districts shall be made by the Floodplain Administrator. Should a dispute arise concerning the boundaries of any of the districts, the Town Council shall make the necessary determination. The person questioning or contesting the location of the district boundary shall be given a reasonable opportunity to present his or her case to the Council and to submit his or her own technical evidence if he or she so desires.
(1998 Code, § 26-39) (Ord. O-2016-01, passed 2-2-2016)

§ 151.10 DISTRICT PROVISIONS.

(A) All uses, activities, and development occurring within any floodplain district, including the placement of manufactured homes, shall be undertaken only upon the issuance of a special exception in accordance with § 151.14. Such development shall be undertaken only in strict compliance with the provisions of this chapter and with all other applicable codes and ordinances, such as the State Uniform Statewide Building Code, being 13 VAC 5-63. Prior to the issuance of any such permit, the Floodplain Administrator shall require all applications to include compliance with all applicable state and federal laws. Under no circumstances shall any use, activity, and/or development adversely affect the capacity of the channels or floodways or any watercourse, drainage ditch, or any other drainage facility or system.

(B) Prior to any proposed alteration or relocation of any channels or of any watercourse, stream, and the like, within this jurisdiction, a permit from the U.S. Army Corps of Engineers or the State Marine Resources Commission or the certification from the State Water Control Board may be necessary (a joint permit application is available from any one of these organizations). Further notification of the proposal shall be given to all affected adjacent jurisdictions, the Division of Soil and Water Conservation (Department of Conservation and Recreation), and the Federal Emergency Management Agency.

(C) All applications for the development in the floodplain district and all special exceptions issued for the floodplain shall incorporate the following information:

- (1) For structures that have been elevated, the elevation of the lowest floor (including basement);
- (2) For structures that have been flood proofed (nonresidential only), the elevations to which the structure has been flood proofed;
- (3) The elevation of the 100-year flood; and
- (4) Topographic information showing the existing and proposed ground elevations. (1998 Code, § 26-40) (Ord. O-2016-01, passed 2-2-2016) Penalty, see § 151.99

§ 151.11 FLOODWAY DISTRICT.

(A) In the floodway district, no development, including fill or substantial improvements, shall be permitted except where the effect of such development on flood heights is fully offset by accompanying improvements that shall have demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed development will not result in any increase in the base flood elevation.

(B) If the above is satisfied, all new construction and substantial improvements shall comply with the State Uniform Statewide Building Code, being 13 VAC 5-63 and all applicable provisions of

the general standards subchapter of this chapter (§§ 151.30 through 151.40), and the elevation and construction standards section (§ 151.31) and subdivision standards section (§ 151.32) in this chapter.

(C) The placement of manufactured homes is prohibited, except when replacing an existing manufactured home in an existing manufactured home park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring, elevation, and encroachment standards are met.

(1998 Code, § 26-41) (Ord. O-2016-01, passed 2-2-2016) Penalty, see § 151.99

§ 151.12 FLOOD FRINGE AND APPROXIMATED FLOODPLAIN DISTRICTS.

(A) In Zone AE, as designated and defined on the FIRM, until a regulatory floodway is designated, no new construction, substantial improvements, or other development (including fill) shall be permitted, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the town.

(B) In the flood fringe and approximated floodplain districts, the development and/or use of land shall be permitted in accordance with the regulations of this chapter provided that all such uses, activities, and/or development shall be undertaken in strict compliance with the flood proofing and related provisions contained in the State Uniform Statewide Building Code, being 13 VAC 5-63, the general standards subchapter in this chapter (§§ 151.30 through 151.40) and the elevation and construction standards section (§ 151.31) and subdivision standards section (§ 151.32) in this chapter, and all other applicable codes and ordinances.

(C) Within the approximated floodplain areas, the applicant shall also delineate a floodway area based on the requirement that all existing and future development not increase the 100-year flood elevation more than one foot at any one point. The engineering principle—equal reduction of conveyance shall be used to make the determination of increased flood heights.

(D) Within the floodway area delineated by the applicant, the provisions of § 151.11 shall also apply.

(1998 Code, § 26-42) (Ord. O-2016-01, passed 2-2-2016) Penalty, see § 151.99

§ 151.13 DESIGN CRITERIA FOR UTILITIES AND FACILITIES.

(A) *Sanitary sewerage facilities.* All new or replaced sanitary sewerage facilities and private package sewage treatment plants (including all pumping stations and collector systems) shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into the floodwaters. In addition, they shall be located and constructed to minimize or eliminate flood damage and impairment.

(B) *Water facilities.* All new or replacement water facilities shall be designed to minimize or eliminate infiltration of floodwaters into the system and be located and constructed to minimize or eliminate flood damages.

(C) *Drainage facilities.* All storm drainage facilities shall be designed to convey the flow of surface waters without damage to persons or property. Systems shall ensure drainage away from buildings and on-site waste disposal sites. The Town Council may require a primarily underground system to accommodate frequent floods and a secondary surface system to accommodate larger, less frequent floods. Drainage plans shall be consistent with local and regional drainage plans. The facilities shall be designed to prevent the discharge of excess runoff onto adjacent properties.

(D) *Utilities.* All utilities, such as gas lines, electrical, and telephone systems, being placed in flood-prone areas shall be located, elevated (where possible), and constructed to minimize the chance of impairment during a flooding occurrence.

(E) *Streets and sidewalks.* Streets and sidewalks shall be designed to minimize their potential for increasing and aggravating the levels of flood flow. Drainage openings shall be required to sufficiently discharge flood flows without unduly increasing flood heights.

(1998 Code, § 26-43) (Ord. O-2016-01, passed 2-2-2016) Penalty, see § 151.99

§ 151.14 VARIANCES; FACTORS TO BE CONSIDERED.

(A) (1) Whenever any person is aggrieved by a decision of the Floodplain Administrator with respect to the provisions of this chapter, it is the right of that person to appeal to Town Council. Such appeal must be filed, in writing, within 30 days after the determination by the permit officer.

(2) Upon receipt of such an appeal, the Town Council shall set a time and place for the purpose of hearing the appeal, which shall be not less than ten nor more than 30 days from the date of the receipt of the appeal. Notice of the time and place of the hearing of the appeal shall be given to all parties, at which time they may appear and be heard. The determination by the Town Council shall be final in all cases.

(3) In ruling upon an appeal, the Town Council shall consider the criteria listed in division (C) below.

(B) (1) The special exception provisions of this chapter fulfill the regulatory mandate of 44 C.F.R. § 60.6.

(2) In passing upon applications for a special exception, the Town Council shall satisfy all relevant factors and procedures specified in other sections of this chapter and consider the factors listed in division (C) below.

(C) In considering an appeal or a request for a special exception, the Town Council shall consider the following factors:

(1) The danger to life and property due to increased flood heights or velocities caused by encroachments. No special exception or appeal shall be granted for any proposed use,

development, or activity within the floodway district that will cause any increase in flood levels during the base flood;

(2) The danger that materials may be swept on to other lands or downstream to the injury of others;

(3) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions;

(4) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners;

(5) The importance of the services provided by the proposed facility to the town;

(6) The requirements of the facility for a waterfront location;

(7) The availability of alternative locations not subject to flooding for the proposed use;

(8) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;

(9) The relationship of the proposed use to the Comprehensive Plan and floodplain management program for the area;

(10) The safety of access by ordinary and emergency vehicles to the property in time of flood;

(11) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters expected at the site;

(12) The historic nature of a structure. Special exceptions for repair or rehabilitation of historic structures may be granted upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the special exception is the minimum necessary to preserve the historic character and design of the structure; and

(13) Such other factors relevant to the purposes of this chapter.

(D) The Town Council may refer any application and accompanying documentation pertaining to any request for a special exception or appeal to any engineer or other qualified person or agency for technical assistance in evaluating the proposed project in relation to flood height and velocities, and the adequacy of the plans for the flood protection, and other related matters.

(E) Special exceptions shall be issued and appeals granted only upon: a showing of good and sufficient cause; after the Town Council has determined that failure to grant the special exception or appeal would result in exceptional hardship to the applicant; and after the Town Council has determined that the granting of such will not result in unacceptable or prohibited increases in flood

heights, additional threats to public safety or extraordinary public expense, and will not create a nuisance, cause fraud or victimization of the public, or conflict with local laws or ordinances.

(F) While the granting of special exceptions generally is limited to a lot size less than one-half acre, deviations from that limitation may occur. However, as the lot size increases beyond one-half acre, the technical justification required for issuing a special exception increases. Special exceptions may be issued by the Town Council for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, in conformance with the provisions of this section.

(G) Special exceptions may be issued for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use provided that the criteria of this section are met, and the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

(H) Special exceptions shall be issued only after the Town Council has determined that the special exception will be the minimum required to provide relief from any hardship to the applicant.

(I) The Town Council shall notify the applicant for a special exception, in writing, that the issuance of a special exception to construct a structure below the 100-year flood elevation increases the risks to life and property and will result in increased premium rates for flood insurance.

(J) A record of the notification required by division (G) above, as well as all special exception actions, including justification for their issuance, shall be maintained; and any special exceptions shall be noted in the annual or biennial report submitted to the Federal Emergency Management Agency. (1998 Code, § 26-44) (Ord. O-2016-01, passed 2-2-2016)

§ 151.15 EXISTING STRUCTURES IN FLOODPLAIN DISTRICTS.

A structure or use of a structure or premises which lawfully existed before November 1994, but which is not in conformity with this chapter, may be continued subject to the following conditions.

(A) Existing structures and/or uses located in the floodway district shall not be expanded or enlarged unless the effect of the proposed expansion or enlargement on flood heights is fully offset by accompanying improvements.

(B) Any modifications, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use located in any floodplain district to an extent or amount of less than 50% of its market value shall conform to the State Uniform Statewide Building Code, being 13 VAC 5-63 and the appropriate provisions of this chapter.

(C) The modification, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use, regardless of its location in a floodplain district, to an extent or amount of 50% or more of its market value shall be undertaken only in full compliance with this chapter, and the entire structure shall conform to the provisions of this chapter and the State Uniform Statewide Building Code, being

13 VAC 5-63.

(D) Uses or their adjuncts that are or become nuisances shall not be permitted to continue.

(E) No building or structure shall be occupied/reoccupied after a natural disaster such as fire or flood without an inspection and approval for structural stability and livability by the Town Building Official.

(1998 Code, § 26-45) (Ord. passed 5-13-1997; Ord. O-2016-01, passed 2-2-2016)

GENERAL STANDARDS

§ 151.30 GENERAL STANDARDS.

The following provisions shall apply to all permits.

(A) New construction and substantial improvements shall be built according to this chapter and the State Uniform Statewide Building Code, being 13 VAC 5-63, and anchored to prevent flotation, collapse, or lateral movement of the structure.

(B) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable state anchoring requirements for resisting wind forces.

(C) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(D) New construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.

(E) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities, including duct work, shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(F) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.

(G) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters.

(H) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

(I) In addition to provisions in divisions (A) through (H) above, in all special flood hazard areas, the flood carrying capacity within an altered or relocated portion of any watercourse shall be maintained.

(1998 Code, § 26-46) Penalty, see § 151.99

§ 151.31 ELEVATION AND CONSTRUCTION STANDARDS.

In all identified flood hazard areas where base flood elevations have been provided in the FIS or generated by a certified professional in accordance with § 151.06(C), the following provisions shall apply.

(A) *Residential construction.* New construction or substantial improvement of any residential structure (including manufactured homes) in Zones AE and A (as defined on the FIRM) with detailed base flood elevations shall have the lowest floor, including basement, elevated to or above the base flood level plus 18 inches.

(B) *Nonresidential construction.*

(1) New construction or substantial improvement of any commercial, industrial, or nonresidential building (or manufactured home) shall have the lowest floor, including basement, elevated to or above the base flood level, plus 18 inches.

(2) Nonresidential buildings located in all AE zones (as defined on the FIRM) may be flood proofed in lieu of being elevated provided that all areas of the building components below the elevation corresponding to the BFE plus two feet are watertight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this division (B) are satisfied. Such certification, including the specific elevation (in relation to mean sea level) to which such structures are flood proofed, shall be maintained by the Floodplain Administrator.

(C) *Space below the lowest floor.* In zones A and AE (as defined on the FIRM), fully enclosed areas, of new construction or substantially improved structures, which are below the regulatory flood protection elevation shall:

(1) Not be designed or used for human habitation, but shall be used solely for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). Be constructed entirely of flood-resistant materials below the regulatory flood protection elevation; and

(2) Include measures to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet the following minimum design criteria:

(a) Provide a minimum of two openings on different sides of each enclosed area subject to flooding;

(b) The total net area of all openings must be at least one square inch for each square foot of enclosed area subject to flooding;

(c) If a building has more than one enclosed area, each area must have openings to allow floodwaters to automatically enter and exit;

(d) The bottom of all required openings shall be no higher than one foot above the adjacent grade;

(e) Openings may be equipped with screens, louvers, or other opening coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and

(f) Foundation enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires openings as outlined above.

(D) *Standards for manufactured homes and recreational vehicles.*

(1) In zones A and AE (as defined on the FIRM), all manufactured homes placed, or substantially improved, on individual lots or parcels, must meet all the requirements for new construction, including the elevation and anchoring requirements in the general standards section, and the elevation and construction standards section of this chapter.

(2) All recreational vehicles placed on sites must either:

(a) Be on the site for fewer than 180 consecutive days, be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions); or

(b) Meet all the standards for manufactured homes in this chapter.
(1998 Code, § 26-47) Penalty, see § 151.99

§ 151.32 SUBDIVISION STANDARDS.

Subdivision standards are set forth in § 156.067 of this code.
(1998 Code, § 26-48)

§ 151.33 RECORDS.

Records of actions associated with administering this chapter shall be kept on file and maintained by or under the direction of the Floodplain Administrator.
(1998 Code, § 26-51)

§ 151.34 ADMINISTRATION; DESIGNATION OF THE FLOODPLAIN ADMINISTRATOR.

(A) The Town Manager is hereby appointed to administer and implement these regulations and is referred to herein as the Floodplain Administrator.

(B) The Floodplain Administrator may:

(1) Cause work to be performed as necessary to comply with the terms of this chapter;

(2) Delegate duties and responsibilities set forth in these regulations to qualified technical personnel, plan examiners, inspectors, and other employees; and/or

(3) Enter into a written agreement or written contract with another community or private sector entity to administer specific provisions of these regulations. Administration of any part of these regulations by another entity shall not relieve the community of its responsibilities pursuant to the participation requirements of the National Flood Insurance Program as set forth in 44 C.F.R. § 59.22.

(1998 Code, § 26-52)

§ 151.35 DUTIES AND RESPONSIBILITIES OF THE FLOODPLAIN ADMINISTRATOR.

The duties and responsibilities of the Floodplain Administrator shall include, but are not limited to:

(A) Review applications for permits to determine whether proposed activities will be located in the special flood hazard area;

(B) Interpret floodplain boundaries and provide available base flood elevation and flood hazard information;

(C) Review applications to determine whether proposed activities will be reasonably safe from flooding and require new construction and substantial improvements to meet the requirements of these regulations;

(D) Review applications to determine whether all necessary permits have been obtained from the federal, state, or local agencies from which prior or concurrent approval is required; in particular, permits from state agencies for any construction, reconstruction, repair, or alteration of a dam, reservoir, or waterway obstruction (including bridges, culverts, structures), any alteration of a watercourse, or any change of the course, current, or cross-section of a stream or body of water, including any change to the BFE and SFHA of free-flowing nontidal waters of the state;

(E) Verify that applicants proposing an alteration of a watercourse have notified adjacent communities, the Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management), and other appropriate agencies (VADEQ, USACE) and have submitted copies of such notifications to FEMA;

(F) Approve applications and issue permits to develop in flood hazard areas if the provisions of these regulations have been met, or disapprove applications if the provisions of these regulations have not been met;

(G) Inspect or cause to be inspected, buildings, structures, and other development for which permits have been issued to determine compliance with these regulations or to determine if noncompliance has occurred or violations have been committed;

(H) Review elevation certificates and require incomplete or deficient certificates to be corrected. Obtain the elevation of the lowest floor, including the basement, of all new and substantially improved structures; and, if the structure has been flood proofed in accordance with the requirements of this chapter, the elevation to which the structure has been flood proofed;

(I) Submit to FEMA, or require applicants to submit to FEMA, data and information necessary to maintain FIRMs, including hydrologic and hydraulic engineering analyses prepared by or for the town, within six months after such data and information becomes available if the analyses indicate changes in base flood elevations;

(J) Maintain and permanently keep records that are necessary for the administration of these regulations, including:

(1) Flood insurance studies, flood insurance rate maps (including historic studies and maps and current effective studies and maps) and letters of map revision; and

(2) Documentation supporting issuance and denial of permits, elevation certificates, documentation of the elevation (in relation to the datum on the FIRM) to which structures have been flood proofed, inspection records, other required design certifications, special exceptions, and records of enforcement actions taken to correct violations of these regulations.

(K) Enforce the provisions of these regulations, investigate violations, issue notices of violations, request the Building Official to issue stop work orders, and require permit holders to take corrective action;

(L) Advise the Town Council regarding the intent of these regulations and, for each application for a special exception, prepare a staff report and recommendation;

(M) Administer the requirements related to proposed work on existing buildings:

(1) Make determinations as to whether buildings and structures that are located in flood hazard areas and that are damaged by any cause have been substantially damaged; and

(2) Make reasonable efforts to notify owners of substantially damaged structures of the need to obtain a permit to repair, rehabilitate, or reconstruct. Prohibit the noncompliant repair of substantially damaged buildings except for temporary emergency protective measures necessary to secure a property or stabilize a building or structure to prevent additional damage.

(N) Undertake, as determined appropriate by the Floodplain Administrator due to the circumstances, other actions which may include, but are not limited to: issuing press releases, public service announcements, and other public information materials related to permit requests and repair of damaged structures; coordinating with other federal, state, and local agencies to assist with substantial damage determinations; providing owners of damaged structures information related to the proper repair of damaged structures in special flood hazard areas; and assisting property owners with documentation necessary to file claims for increased cost of compliance coverage under NFIP flood insurance policies;

(O) Notify the Federal Emergency Management Agency when the corporate boundaries of the town have been modified and:

(1) Provide a map that clearly delineates the new corporate boundaries or the new area for which the authority to regulate pursuant to these regulations has either been assumed or relinquished through annexation; and

(2) If the FIRM for any annexed area includes special flood hazard areas that have flood zones that have regulatory requirements that are not set forth in these regulations, prepare amendments to these regulations to adopt the FIRM and appropriate requirements, and submit the amendments to the governing body for adoption; such adoption shall take place at the same time as or prior to the date of annexation and a copy of the amended regulations shall be provided to Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management) and FEMA.

(P) Upon the request of FEMA, complete and submit a report concerning participation in the NFIP which may request information regarding the number of buildings in the SFHA, number of permits issued for development in the SFHA, and number of special exceptions issued for development in the SFHA; and

(Q) It is the duty of the Floodplain Administrator to take into account flood, mudslide, and flood-related erosion hazards, to the extent that they are known, in all official actions relating to land management and use throughout the entire jurisdictional area of the town, whether or not those hazards have been specifically delineated geographically (e.g., via mapping or surveying).

(1998 Code, § 26-53)

§ 151.36 USE AND INTERPRETATION OF FIRMS.

(A) The Floodplain Administrator shall make interpretations, where needed, as to the exact location of special flood hazard areas, floodplain boundaries, and floodway boundaries.

(B) The following shall apply to the use and interpretation of FIRMs and data:

(1) Where field surveyed topography indicates that adjacent ground elevations:

(a) Are below the base flood elevation, even in areas not delineated as a special flood hazard area on a FIRM, the area shall be considered as special flood hazard area and subject to the requirements of these regulations;

(b) Are above the base flood elevation, the area shall be regulated as special flood hazard area unless the applicant obtains a letter of map change that removes the area from the SFHA.

(2) In FEMA-identified special flood hazard areas where base flood elevation and floodway data have not been identified and in areas where FEMA has not identified SFHAs, any other flood hazard data available from a federal, state, or other source shall be reviewed and reasonably used;

(3) Base flood elevations and designated floodway boundaries on FIRMs and in FISs shall take precedence over base flood elevations and floodway boundaries by any other sources if such sources show reduced floodway widths and/or lower base flood elevations;

(4) Other sources of data shall be reasonably used if such sources show increased base flood elevations and/or larger floodway areas than are shown on FIRMs and in FISs; and

(5) If a preliminary flood insurance rate map and/or a preliminary flood insurance study has been provided by FEMA:

(a) Upon the issuance of a letter of final determination by FEMA, the preliminary flood hazard data shall be used and shall replace the flood hazard data previously provided from FEMA for the purposes of administering these regulations;

(b) Prior to the issuance of a letter of final determination by FEMA, the use of preliminary flood hazard data shall be deemed the best available data pursuant to § 151.06(C) and used where no base flood elevations and/or floodway areas are provided on the effective FIRM; and

(c) Prior to issuance of a letter of final determination by FEMA, the use of preliminary flood hazard data is permitted where the preliminary base flood elevations or floodway areas exceed the base flood elevations and/or designated floodway widths in existing flood hazard data provided by FEMA. Such preliminary data may be subject to change and/or appeal to FEMA.

(1998 Code, § 26-54)

§ 151.37 JURISDICTIONAL BOUNDARY CHANGES.

(A) Before the town boundary with Prince William or Fairfax County changes, the Town Council shall pass a resolution acknowledging and accepting responsibility for enforcing floodplain ordinance standards. If the FIRM for any added area includes special flood hazard areas that have flood zones that have regulatory requirements that are not set forth in these regulations, the Floodplain Administrator shall prepare amendments to this chapter to adopt the FIRM and appropriate requirements, and submit the amendments to the governing body for adoption; such adoption shall take place at the same time as or prior to the date of boundary change and a copy of the amended regulations shall be provided to Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management) and FEMA.

(B) In accordance with 44 C.F.R. § 59.22(a)(9)(v), the town will notify the Federal Insurance Administration and optionally the State Coordinating Office in writing whenever the boundaries of the town have been modified or the town has otherwise assumed or no longer has authority to adopt and enforce floodplain management regulations for a particular area.

(C) In order that all flood insurance rate maps accurately represent the town's boundaries, a copy of a map of the town suitable for reproduction, clearly delineating the new corporate limits or new area for which the town has assumed or relinquished floodplain management regulatory authority shall be included with the notification.

(1998 Code, § 26-55)

§ 151.38 SUBMITTING MODEL BACKED TECHNICAL DATA.

The town's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, the town shall notify the Federal Emergency Management Agency of the changes by submitting technical or scientific data. The town may submit data via a LOMR. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates, and floodplain management requirements will be based upon current data.

(1998 Code, § 26-56)

§ 151.39 LETTERS OF MAP REVISION.

(A) When development in the floodplain will cause or causes a change in the base flood elevation, the applicant, including state agencies, must notify FEMA by applying for a conditional letter of map revision and then a letter of map revision.

(B) Example cases include: any development that causes a rise in the base flood elevations within the floodway; any development occurring in Zones A1-30 and AE (as defined on the FIRM) without a designated floodway, which will cause a rise of more than one foot in the base flood elevation; and/or alteration or relocation of a stream (including, but not limited to, installing culverts and bridges) 44 C.F.R. §§ 65.3 and 65.6(a)(12). (1998 Code, § 26-57)

§ 151.99 PENALTY.

(A) Any person who fails to comply with any of the requirements or provisions of this chapter or directions of the Floodplain Administrator or any authorized employee of the town shall be guilty of a class 1 misdemeanor and subject to the penalties thereof.

(B) The State Uniform Statewide Building Code, being 13 VAC 5-63 addresses Building Code violations and the associated penalties in §§ 104 and 115.

(C) In addition to the above penalties, all other actions are hereby reserved, including an action in equity for the proper enforcement of this chapter. The imposition of a fine or penalty for any violation of, or noncompliance with, this chapter shall not excuse the violation or noncompliance or permit it to continue; and all such persons shall be required to correct or remedy such violations within a reasonable time.

(D) Any structure constructed, reconstructed, enlarged, altered, or relocated in noncompliance with this chapter may be declared by the town to be a public nuisance and abatable as such. (1998 Code, § 26-50)

CHAPTER 152: EROSION AND SEDIMENT CONTROL

Section

- 152.01 Purpose
- 152.02 Authorization
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- 152.04 Local erosion and sediment control program
- 152.05 Regulated land disturbing activities
- 152.06 Action on erosion and sediment control plans
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§ 152.01 PURPOSE.

(A) The purpose of this chapter is to conserve the land, water, and other natural resources of the town and promote the public health and welfare of the people residing in the town by establishing requirements for the control of erosion and sediment, and by establishing procedures whereby these requirements shall be administered and enforced.

(B) This chapter complements §§ 157.150 through 157.163.
(1998 Code, § 18-31)

§ 152.02 AUTHORIZATION.

(A) This chapter is authorized by VA Code §§ 62.1-44.15:54 et seq., known as the “Erosion and Sediment Control Law”.

(B) This chapter provides for a comprehensive statewide program, with standards and guidelines

to control soil erosion and sedimentation, which is implemented on the local level.
(1998 Code, § 18-32)

§ 152.03 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADMINISTRATOR. The Town Engineer and/or Building/Code Official of the town, who has been appointed to serve as the agent of the Town Council in administering this chapter.

AGREEMENT IN LIEU OF A PLAN. A contract between the plan-approving authority and the owner that specifies conservation measures that must be implemented in the construction of a single-family residence; this contract may be executed by the plan-approving authority in lieu of a formal site plan.

APPLICANT. Any person submitting an erosion and sediment control plan for approval or requesting the issuance of a permit, when required, authorizing land disturbing activities to commence.

BOARD or **STATE SOIL AND WATER CONSERVATION BOARD.** The agency continued in VA Code § 10.1-502.

CLEARING. Any activity that removes the vegetative ground cover including, but not limited to, root mat removal and/or topsoil removal.

CONSERVATION PLAN, EROSION, AND SEDIMENT CONTROL PLAN or **PLAN.** A document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The **PLAN** shall contain all major conservation decisions to assure that the entire unit of land will be so treated to achieve the conservation objectives.

CONSERVATION STANDARDS or **STANDARDS.** The guidelines, techniques, and methods for the control of erosion and sediment.

DISTRICT or **SOIL AND WATER CONSERVATION DISTRICT.** The Prince William Soil and Water Conservation District.

EROSION AND SEDIMENT CONTROL PERMIT. A permit issued by the town for installation of erosion and sediment control devices or measures, including only the minimum degree of clearing and grading necessary to install such devices or measures.

EROSION IMPACT AREA. An area of land not associated with current land disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of 10,000 square feet or

less used for residential purposes or to shorelines where the erosion results from wave action or other coastal processes.

EXCAVATING. Any digging, scooping, or other method of removing earth materials.

FILLING. Any depositing or stockpiling of earth materials.

GRADING. Any excavating or filling of earth materials, or any combination of materials, including the land in its excavated or filled condition.

LAND DISTURBING ACTIVITY. Any land change that may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the state including, but not limited to, clearing, grading, excavating, transporting and filling of land; except that the term shall not include:

- (1) Minor **LAND DISTURBING ACTIVITIES** such as home gardens and individual home landscaping, repairs, and maintenance work;
- (2) Individual service connections;
- (3) Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard-surfaced road, street, or sidewalk provided the **LAND DISTURBING ACTIVITY** is confined to the area of the road, street, or sidewalk which is hard surfaced;
- (4) Septic tank lines or drainage fields unless included in an overall plan for **LAND DISTURBING ACTIVITY** relating to construction of the building to be served by the septic tank system;
- (5) Surface or deep mining;
- (6) Exploration or drilling for oil and gas, including the well site, roads, feeder lines, and off-site disposal areas;
- (7) Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or livestock feedlot operations, including engineering operations as follows: construction of terraces; terrace outlets; check dams; desilting basins; dikes; ponds; ditches; strip cropping; lister furrowing; contour cultivating; contour furrowing; land drainage; and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of VA Code §§ 10.1-1100 et seq., or is converted to bona fide agricultural or improved pasture use as described in VA Code § 10.1-1163(B);
- (8) Repair or rebuilding of the tracks, right-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company;

(9) Agricultural engineering operations including, but not limited to, the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act (VA Code §§ 10.1-604 et seq.), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation;

(10) Disturbed land areas less than 2,500 square feet in size;

(11) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;

(12) Shore erosion control projects on tidal waters when the projects are approved by local wetlands boards, the State Marine Resources Commission or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this chapter;

(13) Emergency work to protect life, limb, or property, and emergency repairs; however, if the **LAND DISTURBING ACTIVITY** would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the plan approving authority; and

(14) Activities specifically exempted by VA Code §§ 62.1-44.15:54 et seq.

LAND DISTURBING PERMIT. A permit issued by the town for clearing, filling, excavating, grading, or transporting, or any combination of such activities, on all lands, except privately owned occupied or operated, agricultural, horticultural, or forestry land.

LOCAL EROSION AND SEDIMENT CONTROL PROGRAM or **LOCAL CONTROL PROGRAM.** An outline of the various methods employed by a program authority to regulate land disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program and may include such items as local ordinances, policies and guidelines, technical materials, inspection, enforcement, and evaluation.

OWNER. The owner of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person in control of a property.

PERSON. Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of the state, any interstate body, or any other legal entity.

PLAN APPROVING AUTHORITY. The Town Council.

PROGRAM AUTHORITY. The Town of Occoquan.

STATE EROSION AND SEDIMENT CONTROL PROGRAM or **STATE PROGRAM.** The program administered by the Board pursuant to this chapter, including regulations designed to

minimize erosion and sedimentation.

STATE WATERS. All waters on the surface and under the ground wholly or partially within or bordering the state or within its jurisdiction.

SUBDIVISION. As defined in Chapter 156 of this code.

TRANSPORTING. Any moving of earth materials from one place to another, other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover, either by tracking or the buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such **TRANSPORTING** occurs.

(1998 Code, § 18-33) (Ord. O-2006-10, passed 11-14-2006; Ord. O-2012-03, passed 10-2-2012)

§ 152.04 LOCAL EROSION AND SEDIMENT CONTROL PROGRAM.

(A) This chapter, the *State Erosion and Sediment Control Handbook*, and all locally adopted guidelines, procedures, and standards shall comprise and be integral parts of the town erosion and sediment control program.

(B) The guidelines, procedures, and other elements of the local control program shall be developed consistent with the state program and guidelines.

(C) To carry out the local control program, conservation standards are established. Such standards shall include criteria, guidelines, techniques, and methods for the control of erosion and sedimentation. (See § 152.05(A).) The conservation standards shall be included in part III of the *State Erosion and Sediment Control Handbook*.

(D) The standards and specifications of the *State Erosion Control Handbook* shall be modified within the town as follows.

(1) Temporary gravel construction entrances (minimum standard #17) shall have a minimum length of 70 feet and minimum width of 12 feet. Wash racks with appropriate water sources shall also be provided for washing mud off the tires of construction vehicles before entering the public road. Wash water shall be directed to a settling area for sediment removal.

(2) Straw bale barriers (standard and specification #3.04) shall be used only for sheet flow application and not as perimeter controls or in any channel or drainageway.

(3) Brush barriers (standard and specification #3.06) shall not be acceptable for use in the town.

(4) Storm drain inlet protection (standard and specification #3.07) shall consist of VDOT #3, #357 or #5 stone wrapped in wire mesh and supported by concrete blocks, or standard block and gravel devices as illustrated in the *State Erosion and Sediment Control Handbook*. Inlet protection devices will not be considered sufficient protection for drainage areas of one acre or more.

(5) Temporary sediment traps (standard and specification #3.13) shall be cleaned of sediment after every storm or shall be sized to provide storage volume of 134 cubic yards per acre of drainage area and be cleared out when half the storage volume is displaced by trapped sediment. Stone outlets for sediment traps shall be constructed with VDOT #3, #357, or #5 course aggregate and faced on the upstream side with a one-foot-thick layer of VDOT class 1 stone.

(6) Temporary sediment basins (standard and specification #3.14) shall be provided for any disturbed area exceeding three acres.

(7) Temporary seeding (standard and specification #3.31) with mulching is required for all denuded areas where no land disturbing construction activities take place for a period exceeding 14 days.

(E) Stream restoration and relocation projects that incorporate natural channel design concepts are not human-made channels and shall be exempt from any flow rate capacity and velocity requirements for natural or human-made channels as defined in any regulations promulgated pursuant to VA Code §§ 62.1-44.15:54 et seq.. Any land disturbing activity that provides for stormwater management intended to address any flow rate capacity and velocity requirements for natural or human-made channels shall satisfy the flow rate capacity and velocity requirements for natural or human-made channels if the practices are designed to: detain the water quality volume and to release it over 48 hours; detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and reduce the allowable peak flow rate resulting from the 1.5-, 2-, and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or human-made channels as defined in any regulations promulgated pursuant to VA Code §§ 10.1-562 or 10.1-570. (1998 Code, § 18-34) (Ord. O-2009-02, passed 7-14-2009)

§ 152.05 REGULATED LAND DISTURBING ACTIVITIES.

(A) Except as provided in this section, no person shall engage in any land disturbing activity until an erosion and sediment control plan for such activity has been submitted to and approved by the town. For the purposes of this section, when land disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an erosion and sediment control plan shall be the responsibility of the owner. The plan shall indicate phases of construction, as appropriate, and a detailed narrative shall be submitted to indicate in detail the timing and method of implementing each phase. This phased plan shall be designed to ensure adequate erosion and sediment control protection from the beginning of a project until its completion. Where storm sewers or paved areas are to be constructed, there shall be a minimum of two phases indicated on all erosion and sediment control plans. Plans shall clearly state when any proposed stormwater management facility is to be constructed.

(B) Any person who owns, occupies, or operates private agricultural, horticultural, or forest lands shall not be deemed to be in violation of this chapter for land disturbing activities that result from the tilling, planting, or harvesting of agricultural, horticultural, or forest crops, or products of engineering operations.

(C) Where land disturbing activities involve lands under the jurisdiction of more than one local control program, an erosion and sediment control plan may, at the option of the applicant, be submitted to the Board for review and approval rather than to each jurisdiction concerned.

(D) (1) Electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies and railroad companies shall file general erosion and sediment control specifications annually with the Board for review and written comments. The specifications shall apply to:

(a) Construction, installation, or maintenance of electric, natural gas, and telephone utility lines, and pipelines; and

(b) Construction of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of the railroad company.

(2) Individual approval of separate projects within divisions (D)(1)(a) and (D)(1)(b) above is not necessary when Board approved specifications are followed, however, projects included in divisions (D)(1)(a) and (D)(1)(b) above must comply with Board approved specifications. Projects not included in divisions (D)(1)(a) and (D)(1)(b) above shall comply with the requirements of the town erosion and sediment control program.

(E) State agency projects are exempt from the provisions of this chapter except as provided for in VA Code § 62.1-44.15:56.

(F) Where the land disturbing activity results from the construction of a single-family residence, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the plan approving authority.

(1998 Code, § 18-35) (Ord. O-2006-10, passed 11-14-2006) Penalty, see § 152.99

§ 152.06 ACTION ON EROSION AND SEDIMENT CONTROL PLANS.

(A) The town, through the Town Engineer, shall, within 45 days, approve any erosion and sediment control plan submitted or specify, in writing, to the applicant, such modifications, terms, and conditions that will permit approval of the plan. The person responsible for carrying out the plan shall certify that he or she will properly perform the conservation measures included in the plan and will conform to the provisions of this chapter. In addition, as a prerequisite to engaging in the land disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate of competence, to the program authority, as

provided by VA Code § 10.1-561, of the State Erosion and Sediment Control Law, who will be in charge of and responsible for carrying out the land disturbing activity. Failure to provide the name of an individual holding a certificate of competence prior to engaging in land disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this chapter. If no action is taken by the plan approving authority within the time specified in this section, the plan shall be deemed approved and the person authorized to proceed with the proposed activity. However, any plan approving authority may waive the certificate of competence requirement for an agreement in lieu of a plan for construction of a single family residence. If a violation occurs during the land disturbing activity, then the person responsible for carrying out the agreement in lieu of a plan shall correct the violation and provide the name of an individual holding a certificate of competence, as provided by VA Code § 10.1-561.

(B) The town shall immediately transmit, for review, the plan to the district, which will return comments within 30 days.

(C) The approved plan may be changed by the town which has approved the plan, in the following cases:

(1) Where inspection has revealed the inadequacy of the plan to accomplish the erosion and sediment control objectives of the plan, appropriate modifications to correct the deficiencies of the plan may be directed by the town; and

(2) Where the person responsible for carrying out the approved plan finds that, because of changed circumstances or for other reasons, the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this chapter, are agreed to by the town and the person responsible for carrying out the plan.

(D) Any person engaging, in more than one jurisdiction, in the creation and operation of wetland mitigation or stream restoration banks, which have been approved and have been operated in accordance with applicable federal and state guidance, laws, or regulations for the establishment, use, and operation of wetlands mitigation or stream restoration banks, pursuant to a mitigation banking instrument signed by the Department of Environmental Quality, the Marine Resources Commission, or the U.S. Army Corps of Engineers, may, at the option of that person, file general erosion and sediment control specifications for wetland mitigation or stream restoration banks annually with the Board for review and approval consistent with guidelines established by the Board. Projects not included in this division (D) shall comply with this chapter. Approval of general erosion and sediment control specifications by the Board does not relieve the owner or operator from compliance with any other local ordinances and regulations including requirements to submit plans and obtain permits as may be required by such ordinances and regulations.

(1998 Code, § 18-36) (Ord. O-2006-10, passed 11-14-2006; Ord. O-2009-02, passed 7-14-2009)
Penalty, see § 152.99

§ 152.07 SUBMISSION OF PLAN BY OWNER.

For the purposes of §§ 152.05 and 152.06, when land disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an erosion and sediment control plan shall be the responsibility of the owner.

(1998 Code, § 18-37) Penalty, see § 152.99

Statutory reference:

Similar provisions, see VA Code § 62.1-44.15:55

§ 152.08 ISSUANCE OF LAND DISTURBING PERMIT; FEES.

(A) No person subject to the provisions of this chapter shall engage in any land disturbing activity until a sediment and erosion control permit for the property shall have been obtained from the town. The initial phase of the approved erosion and sediment control plan shall be installed and approved by the town prior to issuance of any further permits or commencement of any other land disturbing activities on the site.

(B) Where an erosion and sediment control plan is approved as part of a site plan, grading plan, or other plan, separate cost estimates shall be prepared for all sediment and erosion control measures; and cash escrow, letter of credit, or other approved surety shall be provided for such measures separate and apart from any other required bonds or surety.

(C) Persons conducting grading, excavating, or filling operations on private agricultural, horticultural, or forest lands shall not be required to obtain a permit for erosion and sediment control measures, but shall submit and receive approval of an erosion and sediment control plan prior to commencing any land disturbance.

(D) A plan review and inspection fee shall be paid to the town at the time of filing the erosion and sediment control plan, in accordance with the town's adopted fee schedule.

(1998 Code, § 18-38) Penalty, see § 152.99

§ 152.09 APPROVED PLAN REQUIRED FOR ISSUANCE OF PERMITS; CERTIFICATION; BONDING OF PERFORMANCE.

(A) The town shall not issue any grading, land disturbing, building, or other permits for activities that involve land disturbing activities unless the applicant submits, with his or her application, the approved erosion and sediment control plan or certification of such approved plan from the town and certification that such plan will be followed. Permits for permanent construction shall not be issued until the initial erosion and sediment control measures have been inspected and approved by the Town Engineer.

(B) The town, prior to the issuance of any grading, land disturbing, building, or other permit, may require from any applicant a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement as is acceptable to the town, to ensure that emergency measures could be taken by the town, at the applicant's expense, should he or she fail, within the time specified, to initiate appropriate conservation action, which may be required of him or her as a result of his or her land disturbing activity. This bond, cash escrow, letter of credit, or other acceptable legal arrangement will provide for a right of entry by representatives of the town for the purpose of inspection, reinstallation, maintenance, or any other conservation practice that may be necessary. Within 60 days of the achievement of adequate stabilization of the land disturbing activity in any project or section of such activity, the bond, cash escrow, letter of credit, or other legal arrangement, or the unexpended or unobligated portion of such arrangement, shall be refunded to the applicant or terminated based upon the percentage of stabilization accomplished in the project or section of the project. The town may collect stabilization costs in excess of the security held.

(C) The requirements of this section are in addition to all other provisions of the law that relate to the issuance of such permits. The Building/Code Official shall issue no building or other permit until the erosion and sediment control measures have been inspected and approved by the town. (1998 Code, § 18-39)

§ 152.10 MONITORING, REPORTS, AND INSPECTIONS.

(A) The town, through the Town Engineer or other agent, shall periodically inspect the land disturbing activity to ensure compliance with the approved plan, and to determine whether the measures required in that plan are effective in controlling erosion and sediment resulting from the land disturbing activity. For purposes of this section, the word *PERIODICALLY* means during or immediately following initial installation of erosion and sediment controls, at least once in every two-week period, within 48 hours following any runoff producing storm event, and at the completion of the project prior to the release of any performance bonds. The right of entry to conduct such inspections shall be expressly reserved in the permit. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection. If the town, through the Town Engineer, finds that the permit holder has failed to comply with the plan, the town shall immediately serve a notice to comply upon the permit holder by registered or certified mail, at the address to be specified by the permit holder in his or her permit application. Such notice shall set forth specifically the measures necessary to comply with such plan. If no action is taken within the time specified in the letter, the town shall prepare a letter of intent to use the escrow account to correct the deficiency. This letter will be cleared by the Town Attorney and sent by registered mail to the owner, builder, or developer, with a copy to the escrow agent. The town will undertake the work, and the applicable account shall then be reimbursed from the escrow account. The owner, builder, or developer shall then be obligated to replenish the escrow account within ten days of the expenditure. Failure to do so will constitute a violation of this chapter. In addition, if the owner, builder, or developer fails to act within the specified time, the permit may be revoked; furthermore, the permittee or person responsible for carrying out the plan shall be deemed to be in violation of this chapter; and, upon conviction, shall be subject to the penalties provided by this chapter. Upon issuance of the letter of intent, the town and the Building/Code Official shall withhold all future permits until such violation is corrected.

(B) With respect to approved plans for erosion and sediment control in connection with all regulated land disturbing activities that require no permit, the town may require of the person responsible for carrying out the plan such monitoring and reports, and may make such on-site inspections, after notice to that person, as are deemed necessary to determine whether the soil erosion and sediment control has been performed, and whether such measures are effective in controlling soil erosion and sediment resulting from the land disturbing activity. The owner, permittee, or person responsible for carrying out the plan shall be given notice of the inspection. If it is determined that there is a failure to comply with the approved plan, the town shall serve notice of such failure upon the person who is responsible for carrying out the plan, at the address specified by him or her in his or her certification, at the time of obtaining his or her approved plan. Such notice shall set forth the measures necessary for compliance and the time within which such measures shall be completed. Upon failure of such person to comply within the specified period, he or she will be deemed to be in violation of this chapter and, upon conviction, shall be subject to the penalties provided for by this chapter.

(C) After land clearing operations have begun, no area shall be denuded for more than 30 days unless authorized by the town. All trenches for storm sewer, electric power, telephone, water, and gas lines are to be back-filled, compacted, seeded, and mulched within seven days after installation.

(D) For projects involving more than two acres of land disturbance, permit holders will be required to file periodic reports to document monitoring and compliance with the approved plan. Such reports shall be in a form approved by the Town Engineer and shall be certified by a registered professional engineer.

(E) (1) Upon determination of a violation of this chapter, the Mayor or Town Engineer may, in conjunction with or subsequent to a notice to comply as specified in this chapter, issue an order requiring that all or part of the land disturbing activities permitted on the site be stopped until the specified corrective measures have been taken.

(2) If land disturbing activities have commenced without an approved plan, the Mayor or Town Engineer may, in conjunction with or subsequent to a notice to comply as specified in this chapter, issue an order requiring that all of the land disturbing activities be stopped until an approved plan or any required permits are obtained.

(3) Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the state, or where the land disturbing activities have commenced without an approved plan or any required permits, such an order may be issued without regard to whether the permittee has been issued a notice to comply as specified in this chapter. Otherwise, such an order may be issued only after the permittee has failed to comply with such a notice to comply. The order shall be served in the same manner as a notice to comply, and shall remain in effect for a period of seven days from the date of service pending application by the enforcing authority or permit holder for appropriate relief to the Circuit Court.

(4) If the alleged violator has not obtained an approved plan or any required permits within seven days from the date of service of the order, the Mayor or Town Engineer may issue an

order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until an approved plan and any required permits have been obtained. Such an order shall be served upon the owner by registered or certified mail to the address specified in the permit application or the land records of the town.

(5) The owner may appeal the issuance of an order to the Circuit Court.

(6) Any person violating or failing, neglecting, or refusing to obey an order issued by the Mayor or Town Engineer may be compelled in a proceeding instituted in the Circuit Court to obey same and to comply therewith by injunction, mandamus, or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted.

(7) Nothing in this section shall prevent the Mayor or Town Engineer from taking any other action authorized by this chapter.

(1998 Code, § 18-40) (Ord. O-2006-10, passed 11-14-2006) Penalty, see § 152.99

§ 152.11 ADMINISTRATIVE APPEAL; JUDICIAL REVIEW.

Final decisions of the Town Engineer under this chapter shall be subject to review by the Town Council, provided an appeal is filed within 30 days from the date of any written decision by the Town Engineer that adversely affects the rights, duties, or privileges of the person engaging in or proposing to engage in land disturbing activities.

(1998 Code, § 18-41)

§ 152.99 PENALTY.

(A) A violation of this chapter shall be deemed a class 1 misdemeanor. Violators shall be denied all future permits, until violations of this chapter are corrected. The decision of the Town Council shall be final unless, within 30 days of such decision, the appellant shall file an appeal in proper legal form with the Circuit Court of the county.

(B) Violations of any regulation or order of the Board, any provision of its program, any condition of a permit, or any provision of VA Code §§ 62.1-44.15:54 et seq., shall be subject to a civil penalty. The civil penalty for any one violation shall be \$100, except that the civil penalty for commencement of land disturbing activities without an approved plan as provided in VA Code § 62.1-44.15:55, shall be \$1,000. In no event shall a series of specified violations arising from the same operative set of facts result in civil penalties that exceed a total of \$3,000, except that a series of violations arising from the commencement of land disturbing activities without an approved plan for any site shall not result in civil penalties that exceed a total of \$10,000. This division (B) shall be in lieu of criminal sanctions and shall preclude the prosecution of such violation as a misdemeanor under VA Code § 62.1-44.15:63.

(C) Any person who violates any regulation or order of the Board, any condition of a permit, any provision of its program, or any provision of VA Code §§ 62.1-44.15:54 et seq., shall, upon a finding of an appropriate general district court, be assessed a civil penalty in accordance with division (B) above. The Erosion and Sediment Control Administrator, his or her deputy or a certified inspector for the town may issue a summons for collection of the civil penalty; and the action may be prosecuted by the town. In any trial for a scheduled violation, it shall be the burden of the town to show the liability of the violator by a preponderance of the evidence. An admission or finding of liability shall not be a criminal conviction for any purpose. Any civil penalties assessed by a court shall be paid into the treasury of the town; except that where the violator is the town itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

(D) The Town Attorney may apply to the Circuit Court of the county for injunctive relief to enjoin a violation or threatened violation of this chapter.

(E) Without limiting the remedies that may be obtained in this section, any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for each violation. A civil action for such violation or failure may be brought by the town. Any civil penalties assessed by a court shall be paid into the treasury of the town; except that where the violator is the town itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

(F) The Town Attorney shall take legal action to enforce the provisions of this chapter.

(G) Compliance with the provisions of this chapter shall be prima facie evidence, in any legal or equitable proceeding for damages caused by erosion or sedimentation, that all requirements of law have been met and that the complaining party must show negligence in order to recover damages.

(1998 Code, § 18-42)

CHAPTER 153: STATE STORMWATER MANAGEMENT PROGRAM

Section

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§ 153.01 PURPOSE AND AUTHORITY.

(A) Pursuant to the authority and mandates of the State Stormwater Management Act, VA Code §§ 62.1-44.15:24 et seq., and the State Stormwater Management Program (VSMP) permit regulations (9 VAC §§ 25-870 et seq.), this chapter is adopted as part of an initiative to integrate the town stormwater management requirements with Chapter 152 of this code, Chapter 151 of this code, and §§ 157.150 through 157.163 into a unified stormwater program. The unified stormwater program is intended to facilitate the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities into a more convenient and efficient manner for both the town and those responsible for compliance with these ordinances.

(B) The purpose of this chapter is to ensure the general health, safety, and welfare of the citizens of the town and protect the quality and quantity of state waters from the potential harm of unmanaged stormwater, including protection from a land disturbing activity causing unreasonable degradation of properties, water quality, stream channels, and other natural resources, and to establish procedures whereby stormwater requirements related to water quality and quantity shall be administered and enforced.

(C) All references to the VA Code, acts of the General Assembly, and State Administrative Code herein are expressly intended to include future amendments to the provisions of the Code, acts of the General Assembly, or state regulations, pursuant to the authorization of VA Code § 1-220. (1998 Code, § 18-51)

§ 153.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Also, in addition to the definitions set forth in 9 VAC § 25-870-10 of the state stormwater management regulations, as amended, which are expressly adopted and incorporated herein by reference, the following words and terms used in this chapter have the following meanings unless otherwise specified herein. Where definitions differ, those incorporated herein shall have precedence.

ADMINISTRATOR. The VSMP authority including the town staff person or department responsible for administering the VSMP on behalf of the locality. The Town Manager shall act as Administrator. Town Council may appoint one or more deputy or assistant administrators who shall have the full authority of the Administrator. The senior deputy or assistant administrator shall, without further action of the Town Council, serve as Acting Administrator in the event of any vacancy in the office of Administrator. The Administrator will be responsible for accepting complete registration statements, completing plan review, plan approval, inspection and maintenance compliance, and enforcement and may assign those tasks as the Administrator deems appropriate.

AGREEMENT IN LIEU OF A STORMWATER MANAGEMENT PLAN. A contract between the VSMP authority and the owner or permittee that specifies methods that shall be implemented to comply with the requirements of the VSMP for the construction of a single-family residence; such contract may be executed by the VSMP authority in lieu of a stormwater management plan.

APPLICANT. Any person submitting an application for a permit or requesting issuance of a permit under this chapter.

BEST MANAGEMENT PRACTICE or BMP. Schedules of activities, prohibitions of practices, including both structural and nonstructural practices, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land disturbing activities.

CHESAPEAKE BAY PRESERVATION ACT LAND DISTURBING ACTIVITY. A land disturbing activity including clearing, grading, or excavation that results in a land disturbance equal or greater than 2,500 square feet and less than one acre in all areas of jurisdictions designated as subject to the regulations adopted pursuant to the Chesapeake Bay Preservation Act, VA Code §§ 62.1-44.15:67 et seq.

COMMON PLAN OF DEVELOPMENT OR SALE. A contiguous area where separate and distinct construction activities may be taking place at different times on different schedules.

CONTROL MEASURE. Any best management practice or stormwater facility, or other method used to minimize the discharge of pollutants to state waters.

CLEAN WATER ACT or CWA. The Federal Clean Water Act (33 U.S.C §§ 1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Pub. Law No. 92-500, as amended by Pub. Law No. 95-217, Pub. Law No. 95-576, Pub. Law No. 96-483, and Pub. Law No. 97-117, or any subsequent revisions thereto.

DEPARTMENT. The Department of Environmental Quality.

DEVELOPMENT. Land disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures or the clearing of land for nonagricultural or non-silvicultural purposes.

GENERAL PERMIT. The state permit titled “GENERAL PERMIT FOR DISCHARGES OF STORMWATER FROM CONSTRUCTION ACTIVITIES” found in Part XIV (9 VAC §§ 25-870-1100 et seq.) of the regulations authorizing a category of discharges under the CWA and the act within a geographical area of the state.

LAND DISTURBANCE or LAND DISTURBING ACTIVITY. A human-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation except that the term shall not include those exemptions specified in § 153.03(C).

LAYOUT. A conceptual drawing sufficient to provide for the specified stormwater management facilities required at the time of approval.

MINOR MODIFICATION. An amendment to an existing general permit before its expiration not requiring extensive review and evaluation including, but not limited to, changes in EPA promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A **MINOR GENERAL PERMIT MODIFICATION OR AMENDMENT** does not substantially alter general permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

OPERATOR. The owner or operator of any facility or activity subject to regulation under this chapter.

PERMIT or VSMP AUTHORITY PERMIT. An approval to conduct a land disturbing activity issued by the Administrator for the initiation of a land disturbing activity, in accordance with this chapter, and which may only be issued after evidence of general permit coverage has been provided by the Department.

PERMITTEE. The person to whom the VSMP authority permit is issued.

PERSON. Any individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, governmental body, including federal, state, or local entity as applicable, any interstate body or any other legal entity.

REGULATIONS. The State Stormwater Management Program (VSMP) permit regulations, 4 VAC § 50-60, as amended.

SITE. The land or water area where any facility or land disturbing activity is physically located or conducted, including adjacent land used or preserved in connection with the facility or land disturbing activity. Areas channel-ward of mean low water in tidal Virginia shall not be considered part of a **SITE**.

STATE. The Commonwealth of Virginia.

STATE BOARD. The Virginia State Water Control Board.

STATE PERMIT. An approval to conduct a land disturbing activity issued by the State Board in the form of a state stormwater individual permit or coverage issued under a state general permit or an approval issued by the State Board for stormwater discharges from an MS4. Under these state permits, the state imposes and enforces requirements pursuant to the Federal Clean Water Act and regulations, the State Stormwater Management Act and the regulations.

STATE STORMWATER BMP CLEARINGHOUSE WEBSITE. A website that contains detailed design standards and specifications for control measures that may be used in the state to comply with the requirements of the State Stormwater Management Act and associated regulations.

STATE STORMWATER MANAGEMENT ACT or ACT. VA Code §§ 62.1-44.15:24 et seq.

STATE STORMWATER MANAGEMENT PROGRAM AUTHORITY or VSMP AUTHORITY. An authority approved by the State Board after September 13, 2011, to operate a State Stormwater Management Program.

STATE WATER CONTROL LAW. VA Code §§ 62.1-44.2 et seq.

STATE WATERS. All water, on the surface and under the ground, wholly or partially within or bordering the state or within its jurisdiction, including wetlands.

STORMWATER. Precipitation that is discharged across the land surface or through conveyances

to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

STORMWATER MANAGEMENT PLAN. A document(s) containing material describing methods for complying with the requirements of § 153.06.

STORMWATER POLLUTION PREVENTION PLAN or **SWPPP.** A document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site, and otherwise meets the requirements of this chapter. In addition the document shall identify and require the implementation of control measures, and shall include, but not be limited to, the inclusion of, or the incorporation by reference of, an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan.

SUBDIVISION. The same as defined in § 156.001 of this code.

TOTAL MAXIMUM DAILY LOAD or **TMDL.** The sum of the individual wasteload allocations for point sources, load allocations for nonpoint sources, natural background loading, and a margin of safety **TMDLS** can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The **TMDL** process provides for point versus nonpoint source trade-offs.

VIRGINIA STORMWATER MANAGEMENT PROGRAM or **VSMP.** A program approved by the State Board after September 13, 2011, that has been established by a locality to manage the quality and quantity of runoff resulting from land disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards, and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in this chapter, and evaluation consistent with the requirements of this chapter and associated regulations.
(1998 Code, § 18-52)

§ 153.03 STORMWATER PERMIT REQUIREMENT; EXEMPTIONS.

(A) Except as provided herein, no person may engage in any land disturbing activity until a VSMP authority permit has been issued by the Administrator in accordance with the provisions of this chapter.

(B) A Chesapeake Bay Preservation Act land disturbing activity shall be subject to an erosion and sediment control plan consistent with the requirements of the Chapter 152 of this code, a stormwater management plan as outlined under § 153.06, the technical criteria and administrative requirements for land disturbing activities outlined in § 153.09, and the requirements for control measures long-term maintenance outlined under § 153.10.

(C) Notwithstanding any other provisions of this chapter, the following activities are exempt, unless otherwise required by federal law:

(1) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of VA Code Title 45.1;

(2) Clearing of lands specifically for agricultural purposes and the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the State Board in regulations, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of VA Code Title 10.1, Chapter 11 (§§ 10.1-1170 et seq.) or is converted to bona fide agricultural or improved pasture use as described in VA Code Title 10.1, Chapter 11, Article 9, §§ 10.1-1170 et seq.;

(3) Single-family residences separately built and disturbing less than 2,500 square feet and not part of a larger common plan of development or sale, including additions or modifications to existing single-family detached residential structures;

(4) Land disturbing activities that disturb less than 2,500 square feet of land area, or activities that are part of a larger common plan of development or sale that is one acre or greater of disturbance;

(5) Discharges to a sanitary sewer or a combined sewer system;

(6) Activities under a state or federal reclamation program to return an abandoned property to an agricultural or open land use;

(7) Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this division (C)(7); and

(8) Conducting land disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the Administrator shall be advised of the disturbance within seven days of commencing the land disturbing activity and compliance with the administrative requirements of division (A) above is required within 30 days of commencing the land disturbing activity.

(D) When land disturbing activity results from the construction of a single-family residence, an agreement in lieu of a stormwater management plan may be substituted for a stormwater management plan if approved by the Program Administrator. Failure to comply with the terms of an agreement in lieu of a stormwater management plan shall constitute a violation of this chapter which may be enforced pursuant to § 153.14 herein.

(1998 Code, § 18-53) Penalty, see § 153.99

§ 153.04 STORMWATER MANAGEMENT PROGRAM ESTABLISHED; SUBMISSION AND APPROVAL OF PLANS; PROHIBITIONS.

(A) Pursuant to VA Code §§ 62.1-44.15:24 et seq., the town hereby establishes a State Stormwater Management Program for land disturbing activities and adopts the applicable regulations that specify standards and specifications for VSMPs promulgated by the State Board for the purposes set out in § 153.01. The Town Council hereby designates the Town Manager as the Administrator of the State Stormwater Management Program.

(B) No VSMP authority permit shall be issued by the Administrator, until the following items have been submitted to and approved by the Administrator as prescribed herein:

(1) A permit application that includes a general permit registration statement, if such statement is required;

(2) An erosion and sediment control plan approved in accordance with the Chapter 152 of this code; and

(3) An approved stormwater management plan that meets the requirements of § 153.06.

(C) No VSMP authority permit shall be issued until evidence of general permit coverage is obtained. A registration statement is not required for detached single-family home construction within or outside a common plan of development or sale, but such projects must adhere to the requirements of the general permit.

(D) No VSMP authority permit shall be issued until the fees required to be paid pursuant to the uncodified ordinance are received, and a reasonable performance bond required pursuant to § 153.15 has been submitted.

(E) No VSMP authority permit shall be issued unless and until the permit application and attendant materials and supporting documentation demonstrate that all land clearing, construction, disturbance, land development, and drainage will be done according to the approved permit.

(F) No grading, building, or other local permit shall be issued for a property unless a VSMP authority permit has been issued by the Administrator.

(G) A stormwater management plan that is approved for a residential, commercial, or industrial subdivision shall govern the development of the individual parcels, including those parcels developed under subsequent owners.

(1998 Code, § 18-54) Penalty, see § 153.99

§ 153.05 STORMWATER POLLUTION PREVENTION PLAN; CONTENTS OF PLANS.

(A) The stormwater pollution prevention plan (SWPPP) shall include the content specified by 9 VAC § 25-870-54 and must also comply with the requirements and general information set forth in 9

VAC § 25-880-70, § II (stormwater pollution prevention plan) of the general permit.

(B) The SWPPP shall be amended by the operator whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters which is not addressed by the existing SWPPP.

(C) The SWPPP must be maintained by the operator at a central location on-site. If an on-site location is unavailable, notice of the SWPPP's location must be posted near the main entrance at the construction site. Operators shall make the SWPPP available for public review in accordance with § II of the general permit, either electronically or in hard copy.
(1998 Code, § 18-55) Penalty, see § 153.99

§ 153.06 STORMWATER MANAGEMENT PLAN; CONTENTS OF PLAN.

(A) The stormwater management plan, required in § 153.04, shall apply the stormwater management technical criteria set forth in § 153.09 to the entire land disturbing activity, consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff, and include the following information:

- (1) Information on the type and location of stormwater discharges; information on the features to which stormwater is being discharged including surface waters or karst features, if present, and the predevelopment and post-development drainage areas;
- (2) Contact information including the name, address, and telephone number of the owner and the tax reference number and parcel number of the property or properties affected;
- (3) A narrative that includes a description of current site conditions and final site conditions;
- (4) A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;
- (5) Information on the proposed stormwater management facilities, including:
 - (a) The type of facilities;
 - (b) Location, including geographic coordinates;
 - (c) Acres treated; and
 - (d) The surface waters or karst features, if present, into which the facility will discharge.
- (6) Hydrologic and hydraulic computations, including runoff characteristics;

(7) Documentation and calculations verifying compliance with the water quality and quantity requirements of 9 VAC §§ 25-870-62 through 25-870-92 of the regulations; and

(8) A map or maps of the site that depicts the topography of the site and includes:

(a) All contributing drainage areas;

(b) Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;

(c) Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;

(d) Current land use including existing structures, roads, and locations of known utilities and easements;

(e) Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;

(f) The limits of clearing and grading, and the proposed drainage patterns on the site;

(g) Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and

(h) Proposed land use with tabulation of the percentage of surface area to be adapted to various uses including, but not limited to, planned locations of utilities, roads, and easements.

(B) A stormwater management plan for a land disturbing activity shall apply the stormwater management technical criteria set forth in this part to the entire land disturbing activity. Individual lots in new residential, commercial, or industrial developments shall not be considered separate land disturbing activities.

(C) If an operator intends to meet the water quality and/or quantity requirements set forth in § 153.09 through the use of off-site compliance options, where applicable, then a letter of availability from the off-site provider must be included. Approved off-site options must achieve the necessary nutrient reductions prior to the commencement of the applicant's land disturbing activity except as otherwise allowed by the VA Code.

(D) Elements of the stormwater management plans that include activities regulated under VA Code §§ 54.1-400 et seq. shall be appropriately sealed and signed by a professional registered in the state pursuant to VA Code §§ 54.1-400 et seq.

(E) A construction record drawing for permanent stormwater management facilities shall be submitted to the Administrator. The construction record drawing shall be appropriately sealed and signed by a professional registered in the state, certifying that the stormwater management facilities have been constructed in accordance with the approved plan. An Administrator may elect not to require construction record drawings for stormwater management facilities for which maintenance agreements are not required pursuant to § 153.10(B).
(1998 Code, § 18-56) Penalty, see § 153.99

§ 153.07 POLLUTION PREVENTION PLAN; CONTENTS OF PLANS.

(A) Pollution prevention plan, required by 9 VAC § 25-870-56, shall be developed, implemented, and updated as necessary and must detail the design, installation, implementation, and maintenance of effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:

(1) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;

(2) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and

(3) Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.

(B) The pollution prevention plan shall include effective best management practices to prohibit the following discharges:

(1) Wastewater from washout of concrete, unless managed by an appropriate control;

(2) Wastewater from washout and clean out of stucco, paint, form release oils, curing compounds, and other construction materials;

(3) Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and

(4) Soaps or solvents used in vehicle and equipment washing.

(C) Discharges from dewatering activities, including discharges from dewatering of trenches and excavations, are prohibited unless managed by appropriate controls.

(1998 Code, § 18-57) Penalty, see § 153.99

§ 153.08 REVIEW OF STORMWATER MANAGEMENT PLAN.

(A) The Administrator shall review stormwater management plans and shall approve or disapprove a stormwater management plan according to the following.

(1) The Administrator shall determine the completeness of a plan in accordance with § 153.06, and shall notify the applicant, in writing, of such determination, within 15 calendar days of receipt. If the plan is deemed to be incomplete, the above written notification shall contain the reasons the plan is deemed incomplete.

(2) The Administrator shall have an additional 60 calendar days from the date of the communication of completeness to review the plan, except that if a determination of completeness is not made within the time prescribed in division (A)(1) above, then plan shall be deemed complete and the Administrator shall have 60 calendar days from the date of submission to review the plan.

(3) The Administrator shall review any plan that has been previously disapproved, within 45 calendar days of the date of resubmission.

(4) During the review period, the plan shall be approved or disapproved and the decision communicated in writing to the person responsible for the land disturbing activity or his or her designated agent. If the plan is not approved, the reasons for not approving the plan shall be provided in writing. Approval or denial shall be based on the plan's compliance with the requirements of this chapter.

(5) If a plan meeting all requirements of this chapter is submitted and no action is taken within the time provided above in divisions (A)(2) above, the plan shall be deemed approved.

(B) Approved stormwater plans may be modified as follows.

(1) Modifications to an approved stormwater management plan shall be allowed only after review and written approval by the Administrator. The Administrator shall have 60 calendar days to respond in writing either approving or disapproving such request.

(2) The Administrator may require that an approved stormwater management plan be amended, within a time prescribed by the Administrator, to address any deficiencies noted during inspection.

(C) The Administrator shall require the submission of a construction record drawing for permanent stormwater management facilities. The Administrator may elect not to require construction record drawings for stormwater management facilities for which recorded maintenance agreements are not required pursuant to § 153.10(B).

(1998 Code, § 18-58) Penalty, see § 153.99

§ 153.09 TECHNICAL CRITERIA FOR REGULATED LAND DISTURBING ACTIVITIES.

(A) To protect the quality and quantity of state water from the potential harm of unmanaged stormwater runoff resulting from land disturbing activities, the town hereby adopts the technical criteria for regulated land disturbing activities set forth in Part II B of the regulations, as amended, expressly to include: 9 VAC § 25-870-62 (applicability); 9 VAC § 25-870-63 (water quality design criteria requirements); 9 VAC § 25-870-65 (water quality compliance); 9 VAC § 25-870-66 (water quantity); 9 VAC § 25-870-69 (off-site compliance options); 4 VAC § 50-60-72 (design storms and hydrologic methods); 9 VAC § 25-870-74 (stormwater harvesting); 9 VAC § 25-870-76 (linear development project); 9 VAC § 25-870-85 (stormwater management impoundment structures or facilities); and 9 VAC § 25-870-92 (comprehensive stormwater management plans), which shall apply to all land disturbing activities regulated pursuant to this chapter, except as expressly set forth in division (B) below.

(B) Any land disturbing activity shall be considered grandfathered and shall be subject to the Part II C technical criteria of the VSMP regulation provided:

(1) A proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, preliminary or final site plan, or any document determined by the locality to be equivalent thereto: was approved by the locality prior to July 1, 2012; provided a layout as defined in 9 VAC § 25-870-10; will comply with the Part II C technical criteria of the VSMP regulation, expressly to include 9 VAC § 25-870-93 (definitions); 9 VAC § 25-870-94 (applicability); 9 VAC § 25-870-95 (general); 9 VAC § 25-870-96 (water quality); 9 VAC § 25-870-97 (stream channel erosion); 9 VAC § 25-870-98 (stream channel erosion); 9 VAC § 25-870-99 (regional (watershed-wide) stormwater management plans); and has not been subsequently modified or amended in a manner resulting in an increase in the amount of phosphorus leaving each point of discharge, and such that there is no increase in the volume or rate of runoff;

(2) A state permit has not been issued prior to July 1, 2014; and

(3) Land disturbance did not commence prior to July 1, 2014.

(C) Local, state, and federal projects shall be considered grandfathered by the VSMP authority and shall be subject to the Part II C technical criteria of the VSMP regulation provided:

(1) There has been an obligation of local, state, or federal funding, in whole or in part, prior to July 1, 2012, or the department has approved a stormwater management plan prior to July 1, 2012;

(2) A state permit has not been issued prior to July 1, 2014; and

(3) Land disturbance did not commence prior to July 1, 2014.

(D) Land disturbing activities grandfathered under divisions (A) and (B) above shall remain subject to the Part II C technical criteria of the VSMP regulation for one additional state permit cycle. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the State Board.

(E) In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, such project shall be subject to the technical criteria of Part II C.

(F) The Administrator may grant exceptions to the technical requirements of Part II B or Part II C of the regulations, provided that: the exception is the minimum necessary to afford relief; reasonable and appropriate conditions are imposed so that the intent of the act, the regulations, and this chapter are preserved; granting the exception will not confer any special privileges that are denied in other similar circumstances; and exception requests are not based upon conditions or circumstances that are self-imposed or self-created. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this chapter.

(1) Exceptions to the requirement that the land disturbing activity obtain required VSMP authority permit shall not be given by the Administrator, nor shall the Administrator approve the use of a BMP not found on the State Stormwater BMP Clearinghouse Website, or any other control measure duly approved by the Director.

(2) Exceptions to requirements for phosphorus reductions shall not be allowed unless off-site options otherwise permitted pursuant to 9 VAC § 25-870-69 have been considered and found not available.

(G) Nothing in this section shall preclude an operator from constructing to a more stringent standard at his or her discretion.

(1998 Code, § 18-59) Penalty, see § 153.99

§ 153.10 LONG-TERM MAINTENANCE OF PERMANENT STORMWATER FACILITIES.

(A) The Administrator shall require the provision of long-term responsibility for and maintenance of stormwater management facilities and other techniques specified to manage the quality and quantity of runoff. Such requirements shall be set forth in an instrument recorded in the local land records prior to general permit termination or earlier as required by the Administrator and shall at a minimum:

(1) Be submitted to the Administrator for review and approval prior to the approval of the stormwater management plan;

(2) Be stated to run with the land;

(3) Provide for all necessary access to the property for purposes of maintenance and regulatory inspections;

(4) Provide for inspections and maintenance and the submission of inspection and maintenance reports to the Administrator; and

(5) Be enforceable by all appropriate governmental parties.

(B) At the discretion of the Administrator, such recorded instruments need not be required for stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot on which they are located, provided it is demonstrated to the satisfaction of the Administrator that future maintenance of such facilities will be addressed through an enforceable mechanism at the discretion of the Administrator. If the Administrator exercises the discretion granted by this division (B), he or she will document that decision and the nature of the enforceable mechanism in the applicable record, which will thereafter be retained for as long as the enforceable mechanism remains in effect, and for one year thereafter.

(C) If a recorded instrument is not required pursuant to division (B) above, the Administrator shall develop a strategy for addressing maintenance of stormwater management facilities designed to treat stormwater runoff primarily from an individual residential lot. Such a strategy may include periodic inspections, homeowner outreach and education, or other method targeted at promoting the long-term maintenance of such facilities. Such facilities may not be subject to the requirement for an inspection to be conducted by the Administrator.
(1998 Code, § 18-60) Penalty, see § 153.99

§ 153.11 MONITORING AND INSPECTION.

(A) The Administrator shall inspect the land disturbing activity during construction for:

- (1) Compliance with the approved erosion and sediment control plan;
- (2) Compliance with the approved stormwater management plan;
- (3) Development, updating, and implementation of a pollution prevention plan; and

(4) Development and implementation of any additional control measures necessary to address a TMDL.

(B) The Administrator may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this chapter.

(C) In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement or instrument, the Administrator may also enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions which are required by the permit conditions associated with a land disturbing activity when a permittee, after proper notice, has failed to take acceptable action within the time specified.

(D) Pursuant to VA Code § 62.1-44.15:40, the Administrator may require every VSMP authority permit applicant or permittee, or any such person subject to VSMP authority permit requirements under

this chapter, to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of his or her discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this chapter.

(E) Post-construction inspections of stormwater management facilities required by the provisions of this chapter shall be conducted by the Administrator pursuant to the locality's adopted and State Board approved inspection program, and shall occur, at minimum, at least once every five years except as may otherwise be provided for in § 153.10.

(F) The Administrator shall keep records in accordance with the following.

(1) Project records, including approved stormwater management plans, shall be kept for three years after state permit termination or project completion.

(2) Stormwater management facility inspection records shall be documented and retained for at least five years from the date of inspection.

(3) Construction record drawings shall be maintained in perpetuity or until a stormwater management facility is removed.

(4) All registration statements submitted in accordance with 9 VAC § 25-870-59 shall be documented and retained for at least three years from the date of project completion or state permit termination.

(1998 Code, § 18-61) Penalty, see § 153.99

§ 153.12 HEARINGS.

(A) Any permit applicant or permittee, or person subject to this chapter's requirements, aggrieved by any action of the town taken without a formal hearing, or by inaction of the town, may demand in writing a formal hearing by the Town Council. A petition requesting a hearing based on town action must be filed with the Administrator within 30 days after notice of such action is given by the Administrator. A petition based on town inaction must be filed within 30 days after the town's deadline for action, if there is one, or if there is no deadline then within 30 days of the date the petitioner had actual or constructive notice that the town should have acted.

(B) The hearings held under this section shall be conducted by the Town Council at a regular or special meeting of the Town Council, or by at least one member of the Town Council designated by the Town Council to conduct such hearings on behalf of the Town Council at any other time and place authorized by the Town Council. The town shall give at least 15 days' notice of the date, time, and location of the hearing to the party filing the appeal and to the property owner or record. In reviewing the Administrator's actions, the Town Council or its designee(s) shall consider evidence and opinions presented by the aggrieved applicant and the Administrator. After considering the

evidence and opinions, the Town Council or its designee(s) may affirm, reverse, or modify the action. Such decision shall be final, subject only to appeal under § 153.13.

(C) A verbatim record of the proceedings of such hearings shall be taken and filed with the Town Council. Depositions may be taken and read as in actions at law.

(D) The Town Council or its designated member(s), as the case may be, shall have power to issue subpoenas and subpoenas duces tecum, and at the request of any party shall issue such subpoenas. The failure of a witness without legal excuse to appear or to testify or to produce documents shall be acted upon by the Town Council, or its designated member(s), whose action may include the procurement of an order of enforcement from the Circuit Court. Witnesses who are subpoenaed shall receive the same fees and reimbursement for mileage as in civil actions.

(1998 Code, § 18-62)

§ 153.13 APPEALS.

(A) Final decisions of the town under this chapter shall be subject to appeal to the County Circuit Court, provided that an appeal is filed within 30 days from the date of any written decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in land disturbing activities.

(B) The burden shall be upon the party complaining of town action to designate and demonstrate an error subject to review by the court. Allegations of error may be based upon: accordance with constitutional right, power, privilege, or immunity; compliance with statutory authority, jurisdiction limitations, or right as provided in the Act, the stated objectives for which regulations may be made, and the factual showing respecting violations or entitlement in connection with case decisions; observance of required procedure where any failure therein is not mere harmless error; and the substantiality of the evidentiary support for findings of fact. The determination of the substantiality of the evidence shall be made upon the whole evidentiary record provided by the town and the court shall determine whether there was substantial evidence in the town's record to support its decision.

(C) The court shall take due account of the presumption of official regularity, the experience and specialized competence of the town, and the purposes of the Act.

(D) The court may dismiss the appeal, order the town to take any nondiscretionary action that the town has withheld, or remand the matter to the town for further proceedings as the court may permit or direct in accordance with law. The court shall not itself undertake to supply town action committed by the Act to the town.

(1998 Code, § 18-63)

§ 153.14 ENFORCEMENT.

(A) If the Administrator determines that there is a failure to comply with the VSMP authority permit conditions or an agreement in lieu of a stormwater management plan or determines there is an

unauthorized discharge, notice shall be served upon the permittee or person responsible for carrying out the permit conditions by any of the following: verbal warnings and inspection reports; notices of corrective action; consent special orders; and notices to comply. Written notices shall be served by registered or certified mail to the address specified in the permit application or by delivery at the site of the development activities to the agent or employee supervising such activities.

(1) The notice shall specify the measures needed to comply with the permit conditions and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, a stop work order may be issued in accordance with division (B) below or the permit may be revoked by the Administrator.

(2) If a permittee fails to comply with a notice issued in accordance with this section within the time specified, the Administrator may issue an order requiring the owner, permittee, person responsible for carrying out an approved plan, or the person conducting the land disturbing activities without an approved plan or required permit to cease all land disturbing activities until the violation of the permit has ceased, or an approved plan and required permits are obtained, and specified corrective measures have been completed.

(3) Such orders shall be issued in accordance with local procedures, if adopted. In the absence of local procedures, such orders shall provide sufficient information for the recipient(s) to understand and comply with the order. Such orders shall become effective upon service on the person by certified mail, return receipt requested, sent to his or her address specified in the land records of the locality, or by personal delivery by an agent of the Administrator. However, if the Administrator finds that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the state or otherwise substantially impacting water quality, it may issue, without advance notice or hearing, an emergency order directing such person to cease immediately all land disturbing activities on the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order. If a person who has been issued an order is not complying with the terms thereof, the Administrator may institute a proceeding for an injunction, mandamus, or other appropriate remedy in accordance with division (C) below.

(B) In addition to any other remedy provided by this chapter, if the Administrator or his or her designee determines that there is a failure to comply with the provisions of this chapter, he or she may initiate such informal and/or formal administrative enforcement procedures in a manner that is consistent with the public interest.

(C) Any person violating or failing, neglecting, or refusing to obey any rule, regulation, ordinance, order, approved standard or specification, or any permit condition issued by the Administrator may be compelled in a proceeding instituted in County Circuit Court by the locality to obey same and to comply therewith by injunction, mandamus, or other appropriate remedy. (1998 Code, § 18-64) Penalty, see § 153.99

§ 153.15 PERFORMANCE BOND.

Prior to issuance of any permit, the Administrator may require a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the local government attorney, to ensure that measures could be taken by the town at the applicant's expense should he or she fail, after proper notice, within the time specified to initiate or maintain appropriate actions which may be required of him or her by the permit conditions as a result of his or her land disturbing activity. If the town takes such action upon such failure by the applicant, the locality may collect from the applicant for the difference should the amount of the reasonable cost of such action exceed the amount of the security held, if any. Within 60 days of the completion of the requirements of the permit conditions, such bond, cash escrow, letter of credit, or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated.

(1998 Code, § 18-65)

§ 153.16 FEES.

All incomplete payments will be deemed as nonpayments. The town shall provide notification to the state applicant of any incomplete payments.

(1998 Code, § 18-66) (Ord. O-2015-01, passed 1-6-2015)

§ 153.99 PENALTY.

(A) Any person who violates any provision of this chapter or who fails, neglects, or refuses to comply with any order of the Administrator, shall be subject to a civil penalty not to exceed \$32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense.

(1) Violations for which a penalty may be imposed under this division (A)(1) shall include but not be limited to the following:

- (a) No state permit registration;
- (b) No SWPPP;
- (c) Incomplete SWPPP;
- (d) SWPPP not available for review;
- (e) No approved erosion and sediment control plan;
- (f) Failure to install stormwater BMPs or erosion and sediment controls;

or maintained;

- (g) Stormwater BMPs or erosion and sediment controls improperly installed

- (h) Operational deficiencies;

- (i) Failure to conduct required inspections;

- (j) Incomplete, improper, or missed inspections; and

- (k) Discharges not in compliance with the requirements of 4 VAC § 50-60-1170 of the general permit.

(2) The Administrator may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court.

(3) In imposing a civil penalty pursuant to this division (A), the court may consider the degree of harm caused by the violation and also the economic benefit to the violator from noncompliance.

(4) Any civil penalties assessed by a court as a result of a summons issued by the locality shall be paid into the treasury of the town to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the locality and abating environmental pollution therein in such manner as the court may, by order, direct.

(B) Notwithstanding any other civil or equitable remedy provided by this section or by law, any person who willfully or negligently violates any provision of this chapter, any order of the Administrator, any condition of a permit, or any order of a court shall be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months or a fine of not less than \$2,500 nor more than \$32,500, or both.

(1998 Code, § 18-64)

CHAPTER 154: NOVA ARTS AND CULTURAL DISTRICT

Section

- 154.01 Creation of the NOVA Arts and Cultural District
- 154.02 Authority
- 154.03 Purpose of the District
- 154.04 General provisions and powers
- 154.05 Map of the NOVA Arts and Cultural District
- 154.06 Map of the town segment of the NOVA Arts and Cultural District

§ 154.01 CREATION OF THE NOVA ARTS AND CULTURAL DISTRICT.

(A) The Town Council hereby creates an arts and cultural district encompassing real property within the town and Fairfax County, which shall be known as the “NOVA Arts and Cultural District” (the “District”), which will be fully established by passage of a substantially similar ordinance by the Board of Supervisors of Fairfax County, Virginia.

(B) The district shall include the area shown on the attached map, which is incorporated in and made part of this chapter.
(1998 Code, § 8-1) (Ord. O-2017-02, passed 7-18-2017)

§ 154.02 AUTHORITY.

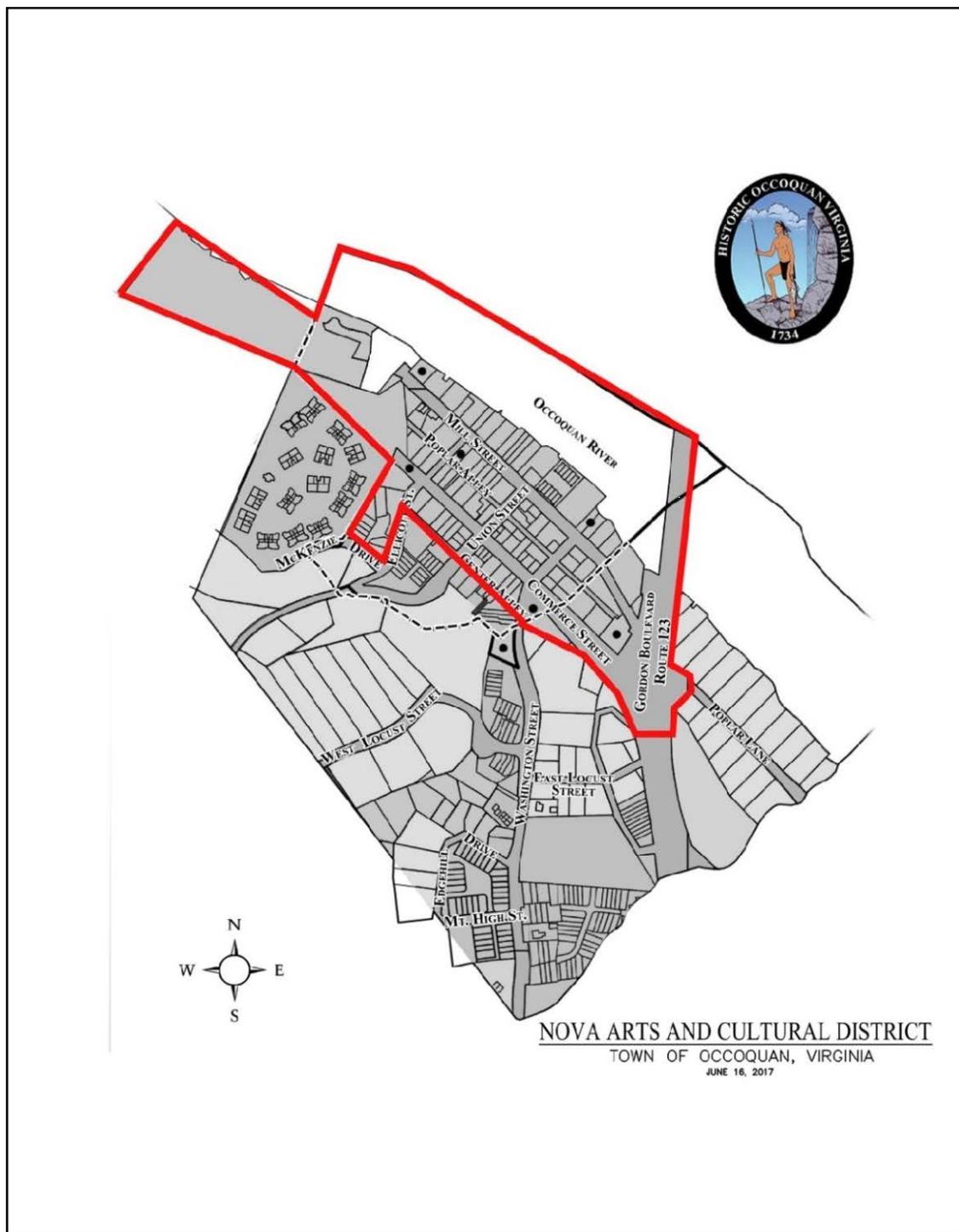
This chapter to establish the NOVA Arts and Cultural District is enacted pursuant to VA Code § 15.2-1129.1, as amended.
(1998 Code, § 8-2) (Ord. O-2017-02, passed 7-18-2017)

§ 154.03 PURPOSE OF THE DISTRICT.

The District is created for the purpose of increasing awareness and support for the arts and culture in the locality.
(1998 Code, § 8-3) (Ord. O-2017-02, passed 7-18-2017)

(1998 Code, § 8-5)

§ 154.0
6
MAP
OF
THE
TOWN
SEGMENT
OF
THE
NOVA
ARTS
AND
CULTURAL
DISTRICT.



(1998 Code, § 8-6)

CHAPTER 155: SITE PLAN

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Statutory reference:

Planning, subdivision of land and zoning, see VA Code §§ 15.2-2200 et seq.

GENERAL PROVISIONS

§ 155.001 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

APPROVING AUTHORITY. Those persons delegated the responsibility of approving any portion or part of the requirements of this chapter.

ARCHITECT. An individual who is recognized by the state, and who is registered with the State Board for Architects, Professional Engineers, Land Surveyors, and Landscape Architects as an ***ARCHITECT.***

BUILDING. Any structure built for the support, shelter, housing, or enclosure of persons, animals, or property of any kind.

CHESAPEAKE BAY PRESERVATION AREA or ***CBPA.*** See definition in § 157.152 of this code.

CONSTRUCTION STANDARDS. The design and construction standards of the Building/Code Official of the town, as approved by the Town Council.

DRIVEWAY. The space specifically designated and reserved on the site for the movement of vehicles from one site to another or from a site to a public street.

DWELLING UNIT. A group of one or more rooms designed for or intended for occupancy by a single family.

EASEMENT. A grant by a property owner of the use of his or her land by any person for a specific purpose.

ENGINEER. An individual who is recognized by the state, and who is registered with the State Board for Architects, Professional Engineers, Land Surveyors, and Landscape Architects as a professional **ENGINEER**.

FINAL SITE PLAN. A plan delineating the overall scheme of development of a tract of land including, but not limited to, grading, engineering design, construction details, and survey data for existing and proposed improvements.

OFF-SITE. Any area that does not fall within the boundary of the land to be developed.

OFF-STREET PARKING. Any space specifically allotted to the parking of motor vehicles, which space shall not be in dedicated right-of-way.

ON-SITE. The area within the boundary of the land to be developed.

OWNER. The person having legal title to the land involved, or holding a lease for a term not less than 30 years.

PRELIMINARY SITE PLAN. A plan showing the proposed general layout, the general location of the various types of land use, the proposed densities of population in residential areas, a major thoroughfare plan, a public utility plan, a storm drainage plan, and a plan showing the location of recreation spaces, parks, schools, and other public or community uses.

RESOURCE PROTECTION AREA or **RPA.** See definition in § 157.152 of this code.

SINGLE-FAMILY DWELLING. A detached building designed for or intended to be occupied by one family.

STRUCTURE. Anything built or constructed, an assembly of materials, or any piece or work artificially built up or composed of parts joined together in some definite manner.

SURVEYOR. An individual who is recognized by the state, and who is registered with the State Board for Architects, Professional Engineers, Land Surveyors, and Landscape Architects as a registered land ***SURVEYOR.***

TRAVEL LANE. The space specifically designated and reserved, on the site, for the movement of vehicular traffic.

TWO-FAMILY DWELLING. A building designed for or intended to be occupied by two families, living independently of each other, including both duplex (one dwelling unit above another) and semidetached (two dwelling units having a common vertical party wall).
(1998 Code, § 46-1) (Ord. O-2012-03, passed 10-2-2012)

§ 155.002 CONSTRUCTION OF REFERENCE TO SANITARY SEWER SYSTEMS.

Reference in this chapter to sanitary sewer systems, water mains, gas, power, and telephone lines is intended to apply to main distribution systems and not to individual services on private property.
(1998 Code, § 46-2)

§ 155.003 DEVELOPMENT OF LAND USE REQUIRING SITE PLAN.

A site plan is required and shall be submitted for approval of:

(A) Any use or development in the B-1 District;

(B) Any land use or development in the R-2 District, in any residential planned community division, or the R-1 District;

(C) Churches, schools, hospitals, and nursing homes;

(D) Any exterior addition or change in any existing residential use or development when changing the residential use to commercial, industrial, or institutional use; and

(E) Any land use or development for which a special use permit is required, except single trailers and signs.

(1998 Code, § 46-3) (Ord. O-2004-08, passed 2-10-2004) Penalty, see § 155.999

§ 155.004 CONSTRUCTION IN ACCORDANCE WITH SITE PLAN.

It shall be unlawful for any person to construct, erect, or alter any building or structure, or develop or improve any land, for which a site plan is required except in accordance with the approved site plan.
(1998 Code, § 46-4) Penalty, see § 155.999

§ 155.005 SITE PLAN PREREQUISITE TO ISSUANCE OF PERMIT.

No building permit shall be issued to construct, erect, or alter any building or structure, or develop or improve any land, that is subject to the provisions of this chapter until a site plan has been submitted and approved.

(1998 Code, § 46-5)

PREPARATION

§ 155.020 PERSONS AUTHORIZED TO PREPARE SITE PLANS.

Site plans involving engineering, architecture, or land surveying shall be prepared and certified, respectively, by an engineer, architect, or land surveyor duly registered by the state to practice as such.

(1998 Code, § 46-41)

§ 155.021 CONTENTS OF PRELIMINARY SITE PLAN.

Every preliminary site plan submitted in accordance with this chapter shall show the location of the following land uses that involve:

- (A) Residential uses;
- (B) Commercial uses;
- (C) Industrial uses;
- (D) Governmental uses;
- (E) Institutional uses;
- (F) School sites;
- (G) Parks;
- (H) Playgrounds;
- (I) Recreation areas;
- (J) Parking areas;
- (K) Other open spaces; and

(L) Resource protection areas (RPAs).
(1998 Code, § 46-42) (Ord. O-2012-03, passed 10-2-2012)

§ 155.022 CONTENTS OF FINAL SITE PLAN GENERALLY.

Every final site plan submitted in accordance with the requirements of this chapter shall show the following:

- (A) Name and address of the development;
- (B) Boundary of the entire tract by courses and distances;
- (C) Area and present zoning of tract;
- (D) Name and address of the owner of record of the tract and name and address of the applicant;
- (E) Owner and present use of all contiguous or abutting property;
- (F) Date, scale, north point, and number of sheets:

(1) Scale shall be one inch equals 50 feet, or larger; and

(2) When more than one sheet is required to cover the entire project, a common sheet, general in nature, shall be provided, which shall show all the individual sheets of an application in proper relations to one another.

(G) Courses and distances of centerlines of all streets or roads adjoining or abutting the tract;

(H) All building restriction lines, highway setback lines, easements, covenants, reservations, and rights-of-way;

(I) Existing topography, with a maximum of two-foot contour intervals within 100 feet of all buildings, and a maximum of ten-foot contour intervals on the remainder of the tract;

(J) Name, address, signature, and registration number of the professionals preparing the plan;

(K) A blank space, three inches wide and five inches high, for the use of the approving authority; and

(L) All CBPA information required by §§ 157.150 through 157.163, Chesapeake Bay Preservation Overlay District, as applicable.

(1998 Code, § 46-43) (Ord. O-2012-03, passed 10-2-2012)

§ 155.023 EXISTING IMPROVEMENTS TO BE SHOWN.

In addition to the information required in § 155.022, the final site plan shall show, when existing, the location, dimension, size, and heights of the following:

- (A) Sidewalks, streets, alleys, and easements;
- (B) Buildings and structures;
- (C) Driveways, entrances, exits, parking areas, and loading spaces;
- (D) Sanitary sewer systems;
- (E) Water mains and fire hydrants;
- (F) Gas, power, and telephone lines;
- (G) Recreation areas;
- (H) Storm drainage systems, to include natural and artificial watercourses; and

(I) Limits of floodplains, as established by the Federal Emergency Management Agency and the United States Department of Housing and Urban Development.
(1998 Code, § 46-44)

§ 155.024 PROPOSED IMPROVEMENTS TO BE SHOWN.

In addition to the information required by §§ 155.022 and 155.023, the final site plan shall show, when proposed, the location, dimensions, size, and height of the following:

- (A) Sidewalks, streets, alleys, and easements;
- (B) Buildings and structures, to include: distance between buildings; number of stories; area in square feet of each floor; number of dwelling units or guestrooms; and structures above the building height limit;
- (C) Driveways, entrances, exits, parking areas, and loading spaces, to include number of parking spaces and number of loading spaces;
- (D) Sanitary sewer systems;
- (E) Water mains and fire hydrants;
- (F) Gas, power, and telephone lines;

(G) Slopes, terraces, retaining walls, fencing, and screening;

(H) Recreation areas and open green spaces;

(I) Plans for collecting and depositing stormwater, in accordance with the requirements of the drainage section of the public watercourses, including a delineation of proposed development; and

(J) Finished grading, with a maximum of two-foot contour intervals, within 100 feet of all buildings, and a maximum of ten-foot contour intervals on the remainder of the property.

(1998 Code, § 46-45)

§ 155.025 NUMBER AND SIZE OF SHEETS; NUMBER OF COPIES.

(A) A site plan may be prepared in one or more sheets to show clearly the information required by this chapter and to facilitate review and approval of the plan. If prepared in more than one sheet, match lines shall clearly indicate where the several sheets join.

(B) The sheets to be used shall be 24 inches by 36 inches, or any multiple thereof.

(C) Clearly legible blue or black line copies (four administrative, plus Planning Commission members) of a site plan, prepared in accordance with the requirements of this chapter, are required to be submitted for approval, as provided in this chapter.

(1998 Code, § 46-46)

REVIEW; APPROVAL

§ 155.040 SUBMISSION OF SITE PLAN.

The required number of copies of the site plan, preliminary or final, shall be filed with the Planning Commission. The filing of the plan, signed by the applicant or his or her agent, shall constitute the application for approval. The plan shall be accompanied by a receipt from the Town Treasurer evidencing the payment of all site plan fees, as prescribed by the Town Council for the examination and approval of site plans.

(1998 Code, § 46-81)

§ 155.041 RESPONSIBILITY OF THE PLANNING COMMISSION GENERALLY.

The Planning Commission is responsible for checking the site plan for general completeness and compliance with the adopted plans or such administrative requirements as may be established prior to routing copies to reviewing agencies or officials. It shall see that all examination and review of the site

plan are completed by the approving authorities. The Planning Commission shall recommend approval or disapproval of the site plan to the Town Council, in accordance with reviewing authorities' recommendations. It shall then return to the applicant two copies of the site plan, together with modifications, noting any changes that will be required. Such return to the applicant shall be made not later than 45 days from the date of submission, except under abnormal circumstances.
(1998 Code, § 46-82)

§ 155.042 REVIEW OF SITE PLAN BY APPROVING AUTHORITIES.

All subdivision plans and site plans properly submitted as provided in this chapter shall be reviewed and recommended for approval or disapproval by:

(A) The Zoning Administrator or his or her agents relative to:

(1) Compliance with the requirements of this chapter, including setbacks, side yards and rear yards, heights of buildings, lot area and lot coverage, fencing, and screening; and

(2) Location and adequacy of automobile parking, as to number of spaces, square footage per space, including movement lanes, and total area.

(B) The Planning Commission or its agents, relative to:

(1) Location and design of vehicular entrances and exits, in relation to streets giving access to the site, and in relation to pedestrian traffic;

(2) Location and design of all parking areas;

(3) Concurrence of the State Department of Transportation for the location and design of the vehicular entrances and exits to and from state-maintained streets and highways;

(4) Adequate provision for traffic circulation and control within the site, and provision of access to adjoining property;

(5) Adequacy of drainage, water supply, fire protection, and sanitary sewage facilities; and

(6) Compliance with applicable established design criteria, construction standards, and specifications for all required public improvements.

(C) The county service authority or its agents, relative to sewage disposal; and

(D) Soil support report shall be provided by a certified soil scientist in appropriate case as determined by Town Council.

(1998 Code, § 46-83) (Ord. O-2002-06, passed 3-12-2002)

§ 155.043 PERIOD OF VALIDITY OF APPROVED SITE PLAN.

An approved preliminary site plan shall become null and void if the final site plan is not submitted to the Planning Commission within six months from the date of approval of the preliminary plan. An approved final site plan shall be valid for a period of five years from the date of approval thereof. A site plan shall be deemed final once it has been reviewed and approved by the Council if the only requirement remaining to be satisfied in order to obtain a building permit is the posting of any bonds and escrows. Construction or development may begin upon approval by Council of the final site plan upon payment of site plan fees and acquisition of construction permits. The Planning Commission may grant a single one-time, six-month extension, upon written request of the applicant, made at least 30 days before the expiration of the approved site plan.

(1998 Code, § 46-84) (Ord. O-2002-03, passed 2-12-2002)

§ 155.044 MINOR ADJUSTMENTS OF APPROVED SITE PLAN; EFFECT OF DEVIATIONS FROM APPROVED SITE PLAN.

After a site plan has been approved by the Town Council, minor adjustments of the site plan, which comply with the spirit of this section and other provisions of this subchapter, with the intent of the approving bodies in their approval of site plans, and with the general purpose of the master plan for development of the area, may be approved by the Planning Commission, with concurrence of the reviewing authorities concerned. Deviation from an approved site plan without the written approval of the Planning Commission shall void the plan, and the Planning Commission shall require the applicant to submit a new site plan for consideration.

(1998 Code, § 46-85)

§ 155.045 MAJOR REVISIONS OF APPROVED SITE PLAN; WAIVER OF REQUIREMENTS OF SUBCHAPTER.

Application for approval of any major revision of an approved site plan may be made in the same manner as for approval of an original site plan; and any requirement of this subchapter may be waived by the Town Council in specific cases where such requirement is found to be unreasonable and where such waiver will not be adverse to the purposes of this subchapter.

(1998 Code, § 46-86)

§ 155.046 EXTENSION OF SITE PLAN APPROVALS TO ADDRESS HOUSING CRISIS.

(A) Any valid final site plan outstanding as of January 1, 2009, shall remain valid until July 1, 2014, or such later date provided for by the terms of the town's approval, local ordinance, resolution, or regulation, or for a longer period as agreed to by the Town Council by express action and recorded roll call vote. Any other plan or permit associated with such site plan extended by this section shall likewise be extended for the same time period.

(B) The extension of validity provided in division (A) above shall not be effective unless any performance bonds and agreements or other financial guarantees of completion of public improvements in or associated with the proposed development are continued in force.
(1998 Code, § 46-87) (Ord. O-2009-06, passed - -)

REQUIRED IMPROVEMENTS

§ 155.060 GENERALLY.

In order to assure public safety, general welfare, and convenience, the agencies and officials charged with the responsibility for review and recommendation of approval of site plans shall require such of the following improvements as fall within their respective assignments:

(A) Designation of pedestrian walkways, so that persons may walk on them from store or building to building within the site and to adjacent sites;

(B) Construction of vehicular travel lanes or driveways not less than 22 feet in width, which will permit vehicular travel on-site and to and from adjacent parking areas and adjacent property;

(C) Connection, wherever possible, of all walkways, travel lanes, and driveways with similar facilities in adjacent developments;

(D) Screening, fences, walls, curb, and gutter, as required by the provisions of this code and other ordinances of the town, or by the regulations of the State Department of Transportation;

(E) Easements or rights-of-way for all facilities to be publicly maintained; however, each easement shall be clearly defined for the purpose intended;

(F) Extension or construction of service road and access to such service roads on-site bordering on a state primary highway; and

(G) Dedication or reservation of land for streets and service roads and the construction on such streets and roads.

(1998 Code, § 46-121)

§ 155.061 CONSTRUCTION REQUIREMENTS.

The construction standards for off-site improvements and on-site improvements, required by this chapter, shall conform to the design and construction standards of the town. The Planning Commission or its agents shall approve the plans and specifications for all required improvements, and shall inspect the installation of such improvements to assure conformity to the plan.

(1998 Code, § 46-122) Penalty, see § 155.999

§ 155.062 AGREEMENT AS TO CONSTRUCTION.

Prior to approval of the final site plan, the applicant shall execute an agreement to construct such required improvements as are located within public rights-of-way or easements or such as are connected to any public facility, and shall file a performance bond with surety acceptable to the town in the amount of the estimated costs of the required improvements, as determined by the Planning Commission.

(1998 Code, § 46-123) Penalty, see § 155.999

§ 155.063 INSPECTION AND SUPERVISION DURING INSTALLATION; CERTIFICATE OF APPROVAL.

(A) Inspections during the installation of the off-site improvements and required on-site improvements shall be made by the agency responsible for such improvements, as required to certify compliance with the approved site plan and applicable town standards. The owner or developer shall notify the Building/Code Official three days prior to the beginning of all street or storm sewer work shown to be constructed on the site plan. The owner or developer shall provide adequate supervision on-site during the installation of all required improvements and have a responsible superintendent or foreman, together with one set of approved plans, profiles, and specifications, available at the site at all times work is being performed.

(B) Upon satisfactory completion of the installation of the requirement improvements, the owner or developer shall receive a certificate of approval from the Planning Commission, upon the application for such certificate. The certificate of approval will not authorize the release of any bond that may have been furnished to guarantee the satisfactory installation of such improvements but shall serve as a letter of recommendation to the Town Council, suggesting release of such bonds.

(1998 Code, § 46-124) Penalty, see § 155.999

LANDSCAPE PLAN

§ 155.075 PURPOSE AND INTENT.

(A) The purpose of this subchapter is to establish minimum standards for the design, installation, and maintenance of landscaped areas that require the use of appropriate native vegetation and to promote the preservation of indigenous plant communities on-site. The town recognizes the significant benefits of establishing and protecting appropriate native vegetation and, therefore, the necessity to maximize the use of appropriate native vegetation in all public and private landscaped areas within the town.

(B) It is the intent of this chapter that these minimum landscape requirements be incorporated in order to promote the public health, safety, and welfare by:

- (1) Protecting and promoting appropriate native vegetation;
 - (2) Promoting microhabitats in urban areas for the conservation of wildlife by establishing new wildlife habitat and maintaining existing wildlife habitat;
 - (3) Creating larger, more connected plant habitats, helping ensure the future of native plant species by increasing their ability to respond to changes in climate;
 - (4) Conserving scarce water resources by promoting water-efficient landscaping through the use of appropriate native plants which, once established, typically require much less water than other species;
 - (5) Reducing the use of chemical fertilizers and pesticides to maintain landscaping;
 - (6) Reducing the negative impacts of landscape maintenance on local air quality;
 - (7) Reducing the negative impacts on the land from the use of inappropriate vegetation and poorly planned landscaping;
 - (8) Reducing the financial costs of landscape maintenance; and
 - (9) Encouraging creative landscaping designs that further the above stated goals.
- (1998 Code, § 46-130) (Ord. O-2009-04, passed 8-11-2009)

§ 155.076 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

APPROPRIATE NATIVE VEGETATION and ***APPROPRIATE NATIVE TREE***. Those species of plants and trees identified and listed in publicly available sources as native plants for conservation, restoration, and landscaping by the State Department of Conservation and Recreation, for the Coastal Plain and Piedmont areas of the state, and suited to the soil, topography, and hydrology risk of a particular site.

APPROPRIATE NON-NATIVE VEGETATION and ***APPROPRIATE NON-NATIVE TREE***. Those species of plants and trees not identified among native plants for conservation, restoration, and landscaping by the State Department of Conservation and Recreation, for the Coastal Plain and Piedmont areas of the state, but nevertheless suited to the soil, topography, and hydrology risk of a particular site, and not an invasion alien plant.

CALIPER. A measurement of the size of a tree equal to the diameter of the trunk six inches from the root ball.

COMMUNITY GARDEN. A public or community use area intended for the purposes of gardening.

COMMUNITY PLAY AREA. Public use areas, including school and athletic fields, composed of predominantly turfgrass intended for use for recreational purposes.

ENDANGERED PLANT. Any plant contained on the rare vascular plant list or rare nonvascular plant list maintained by the Division of Natural Heritage of the State Department of Conservation and Recreation or its successor.

INVASIVE ALIEN PLANT. A plant reproducing outside its native range and outside cultivation that disrupts naturally occurring native plant communities by altering structure, composition, natural processes, or habitat quality. **INVASIVE ALIEN PLANTS** are those plants recognized and listed in publicly available sources as invasive alien plant species of the state by the State Department of Conservation and Recreation. The Zoning Administrator shall maintain a list of such plants.

LANDSCAPED AREA. The entire parcel less the building footprint, driveway, nonirrigated portions of parking lots, hardscapes such as decks and patios, and other nonporous areas. Water features are included in the calculation of **LANDSCAPED AREAS**.

LANDSCAPING. Any combination of living plants and nonliving landscape material (such as rocks, pebbles, sand, mulch, walls, fences, or decorative paving materials).

NATIVE PLANT. Those species of plants identified and listed in publicly available sources as native plants for conservation, restoration, and landscaping by the State Department of Conservation and Recreation, for the Coastal Plain and Piedmont areas of the state. The Zoning Administrator shall maintain a list of such plants.

NATURAL AREA. An area on a site that contains natural vegetation and that will be undisturbed during development and will remain undisturbed when the property is fully developed.

NATURAL COMMUNITY. A distinct and recurring assemblage of populations of plants, animals, fungi, and microorganisms naturally associated with each other and their physical environment.

RARE PLANT. A plant species that has been designated with a legally protected status such as “threatened” or “endangered”, or that is contained on the rare vascular plant list or rare nonvascular plant list maintained by the Division of Natural Heritage of the State Department of Conservation and Recreation or its successor.

REMOVE. To transport a native plant from the premises on which it has been growing.

THREATENED PLANT. Any plant species that is contained on the vascular plant watch list maintained by the Division of Natural Heritage of the State Department of Conservation and Recreation or its successor.

TREE. A self-supporting woody plant having a single trunk or a multi-trunk of lower branches, growing to a mature height of at least 12 feet.

TURFGRASS. Continuous plant coverage consisting of a grass species that is mowed to maintain an established height.

(1998 Code, § 46-131) (Ord. O-2009-04, passed 8-11-2009)

§ 155.077 APPLICABILITY.

This subchapter applies to every site plan and site disturbance permit application submitted to the town. In addition, it applies whenever the cumulative change to a previously approved site plan amounts to 50% or more of the landscaped area provided in that site plan. It also applies to the removal of any tree four-caliper inches or larger on any property not otherwise exempted in this subchapter.

(1998 Code, § 46-132) (Ord. O-2009-04, passed 8-11-2009; Ord. O-2011-03, passed 6-14-2011)

§ 155.078 EXEMPTIONS.

(A) The following areas are exempt from this chapter:

- (1) Community gardens;
- (2) Community play areas;
- (3) Noninvasive food plants on residential properties;
- (4) Turfgrass in stormwater management areas;
- (5) Turfgrass in public rights-of-way; and

(6) Scientific and educational purposes, if approved in advance by the Zoning Administrator for a period not to exceed two years, with renewals of up to two years.

(B) The town shall, however, encourage the protection and promotion of native vegetation in these areas to the maximum extent practicable.

(1998 Code, § 46-133) (Ord. O-2009-04, passed 8-11-2009)

§ 155.079 MINIMUM NATIVE VEGETATION REQUIRED.

(A) *Public property.* Only native vegetation may be used in any newly developed, publicly owned landscaped areas within the town limits. Native vegetation shall be used to the greatest extent practicable in all existing landscaped areas. The town will strive to use appropriate native vegetation that is well suited to the soil, topography, and hydrology risk of the particular site.

(B) *Private property.* The minimum coverage of native vegetation in all newly landscaped private areas shall not be less than 50% of all permeable surfaces covered by the landscaping plan. Landowners of private property are encouraged to use appropriate native vegetation that is well suited to the soil, topography, and hydrology risk of the particular site. Additional minimum coverage standards may be set forth elsewhere in this chapter.

(1998 Code, § 46-134) (Ord. O-2009-04, passed 8-11-2009) Penalty, see § 155.999

§ 155.080 UNAVAILABILITY OF NATIVE VEGETATION.

If native vegetation is not available at the time of installation, the landowner may, with the advance written consent of the Zoning Administrator, substitute nonnative vegetation. The Zoning Administrator may, in the alternative, authorize a delay in completion of the landscaping plan to obtain native vegetation. If nonnative vegetation is used, the landowner is encouraged to select vegetation suited to the soil, topography, and hydrology risk of the site.

(1998 Code, § 46-135) (Ord O-2009-04, passed 8-11-2009) Penalty, see § 155.999

§ 155.081 PROTECTION OF RARE, THREATENED, AND ENDANGERED PLANTS.

Landowners submitting a landscape plan pursuant to § 155.082 are encouraged to provide protection and maintain in perpetuity all or a percentage of existing rare, threatened, and endangered plants at the site.

(1998 Code, § 46-136) (Ord O-2009-04, passed 8-11-2009)

§ 155.082 LANDSCAPE PLAN REQUIREMENT AND APPROVAL.

(A) *Generally.* Prior to or simultaneous with the submission of the final site plan, or the issuance of a site disturbance permit, a landowner or his or her representative shall submit a landscape plan to the appropriate local government staff. The landscape plan must be prepared by a licensed design professional, unless the site plan or site disturbance permit covers only one single-family dwelling. At a minimum, except as otherwise specifically provided, the landscape plan shall show the name and address of the development, the boundaries of each parcel covered by the plan, the areas of landscaping, the area and present zoning of each parcel, the name and address of the owner of record and of the applicant, the date, the scale (which shall be 50 feet to the inch or larger), the north point, the number of sheets (with a common sheet showing the entire development if more than one sheet is required), the location of all stormwater management and drainage easements and facilities, and the topography with a maximum two-foot contour intervals within all landscaped areas. The staff shall review and either approve or deny the landscape plan.

(B) *Single-family residence landscape plan requirements.*

(1) The developer or owner of a single-family residence subject to this subchapter shall submit a landscape plan that includes a drawing of the proposed landscaped area, a list of each species of native plant to be installed, and the quantities of each species of plant to be installed in each landscape category listed in § 155.083(A).

(2) However, a landscape plan submitted solely in relation to the removal of native trees under § 155.088 may instead provide a photograph of the existing tree and a sketch showing the location of any replacements.

(C) *Multifamily, business, or municipal landscape plan requirements.* An applicant for development or modification of a multifamily, business, or municipal site shall submit a landscape plan. The landscape plan shall include: the name, address, and phone number of the landscape designer; graphic symbols for all new and existing vegetation, labeled by name; a legend that indicates sizes, quantity, and spacing of all vegetation; and a graphic representation of the irrigation system, if any.

(1998 Code, § 46-137) (Ord O-2009-04, passed 8-11-2009) Penalty, see § 155.999

§ 155.083 LANDSCAPING REQUIREMENTS.

(A) *Single-family residential.* The minimum landscaping requirements for single-family residential properties shall be fulfilled by native trees, shrubs, and ground covers, as specified: buffer and perimeter planting; interior planting; foundation planting; tree planting requirements; and preservation of existing native vegetation.

(B) *Multifamily residential.* The minimum landscaping requirements for multifamily residential properties shall be fulfilled by native trees, shrubs, and ground covers, as specified: buffer and perimeter planting; interior planting; foundation planting; parking lot and street trees; tree planting requirements; and preservation of existing native vegetation.

(C) *Business.* The minimum landscaping requirements for business properties shall be fulfilled by native trees, shrubs, and ground covers, as specified: buffer and perimeter planting; interior planting; foundation planting; parking lot and street trees; tree planting requirements; and preservation of existing native vegetation.

(D) *Municipal.* The minimum landscaping requirements for municipal properties shall be fulfilled by native trees, shrubs, and ground covers, as specified: buffer and perimeter planting; interior planting; foundation planting; parking lot and street trees; tree planting requirements; and preservation of existing native vegetation.

(E) *Native use encouraged.* In divisions (A) through (D) above, the landowner is encouraged to use native trees, shrubs, and ground covers suited for the soil, topography, and hydrology risk of the particular site, and to preserve existing native vegetation, in particular existing rare, threatened, and endangered plants.

(1998 Code, § 46-138) (Ord O-2009-04, passed 8-11-2009) Penalty, see § 155.999

§ 155.084 TURFGRASS.

Nonnative turfgrass shall be considered within the percentage of nonnative vegetation permitted. The landowner shall use a low-water use turfgrass appropriate for the area.

(1998 Code, § 46-139) (Ord O-2009-04, passed 8-11-2009) Penalty, see § 155.999

§ 155.085 LANDSCAPE PLAN REVIEW CRITERIA.

When reviewing a landscape plan, the town shall approve a landscape plan if it satisfies the landscaping requirements of §§ 155.082 and 155.083 at the site.

(1998 Code, § 46-140) (Ord O-2009-04, passed 8-11-2009)

§ 155.086 LANDSCAPE MAINTENANCE.

A landowner is responsible for ensuring that all landscape material that is part of an approved landscape plan regulated by this chapter is maintained in a healthy condition. Within the first year after the date that the landscape plan has been completely installed, if any native plant that is part of the requirements of this chapter dies or is substantially damaged, the landowner shall replace the plant with the same landscape material or other native vegetation as approved by appropriate local government staff.

(1998 Code, § 46-141) (Ord O-2009-04, passed 8-11-2009) Penalty, see § 155.999

§ 155.087 LAND CLEARING.

No construction shall begin nor land cleared until a landscape plan for the site has been approved, if required by the provisions of this chapter.

(1998 Code, § 46-142) (Ord O-2009-04, passed 8-11-2009) Penalty, see § 155.999

§ 155.088 TREE PROTECTION.

It shall be unlawful for any person to remove, destroy, or permanently damage any existing native tree that is four-caliper inches or larger without an approved landscape plan or permit, except in an emergency threatening human life or to comply with a valid order of a government authority. The Town Manager may issue a permit permitting the removal, destruction, or damage of an existing native tree covered by this subchapter, provided an applicant submits an application or letter identifying the tree at issue, detailing the reason for the action, identifying appropriate native vegetation and/or an appropriate native tree that will replaced the tree removed, destroyed, or damaged, and the date by which the replacement vegetation and/or tree will be planted. If these conditions are not met, the Town Manager may not issue a permit, and the applicant will need to file a landscape plan in accordance with this subchapter. All existing native trees designated as remaining in their original placement as a part of the landscape plan shall be protected during construction and land clearing from permanent damage to any part of the tree by silt fencing at their drip lines.

(1998 Code, § 46-143) (Ord O-2009-04, passed 8-11-2009; Ord. O-2011-03, passed 6-14-2011)
Penalty, see § 155.999

§ 155.089 FEES.

The Town Council may charge an applicant reasonable fees for any permits and applications required by this chapter. Such fees may from time to time be amended by the Town Council by uncodified ordinance.

(1998 Code, § 46-144) (Ord O-2009-04, passed 8-11-2009)

§ 155.999 PENALTY.

Any person violating the provisions of this chapter shall be guilty of a class 4 misdemeanor. Violators of the provisions of this chapter may also be restrained, prohibited, or enjoined by injunction, mandamus, or any other appropriate judicial proceedings.

(1998 Code, § 46-6)

CHAPTER 156: SUBDIVISIONS

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Subdivided Land Sales Act of 1978, see VA Code §§ 55-336 et seq.

GENERAL PROVISIONS

§ 156.001 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Unless otherwise specified, all distances shall be measured horizontally and at right angles to the line in relation to which the distance is specified.

AGENT. The representative of the Planning Commission who has been appointed to serve the Commission in the processing, reviewing, and approving of preliminary subdivision plats.

ALLEY. A permanent service right-of-way providing a secondary means of access to abutting properties, which shall be construed to include, but not be limited to, rights-of-way known as Poplar Alley, Center Lane, and Cooper's Alley.

AUTHORIZED REPRESENTATIVE. The individual appointed by the Town Council for the day-to-day enforcement and inspection of this chapter.

BASE FLOOD. A flood that has a 1% chance of being equaled or exceeded in any given year. Also referred to as the **100-YEAR FLOOD**.

BASE FLOOD ELEVATION (BFE). The water surface elevation of the base flood in relation to

the datum specified on the flood insurance study and flood insurance rate map.

BUILDING. Any enclosed or open structure other than a tent or mobile home having a roof supported by columns or walls designed to support, shelter, house, or enclose persons, animals, or property of any kind. The word **BUILDING** includes the word **STRUCTURE**.

BUILDING/CODE OFFICIAL. The person appointed by the Town Council who issues the building permits for the structural design, construction, alteration, reconstruction, repair, restoration, demolition, or razing of all or part of any building. It includes a Deputy Building/Code Official.

BUILDING PERMIT. An approval statement signed by the Zoning Administrator and the Building/Code Official authorizing the construction, alteration, reconstruction, repair, restoration, demolition, or razing of all or a part of any building.

BUILDING SETBACK. The minimum distance by which any structure must be separated from the property line of a lot.

CHESAPEAKE BAY PRESERVATION AREA (CBPA). See § 157.152 of this code.

CLERK. The Clerk of the Circuit Court of Prince William County.

COMMISSION. The Planning Commission of the town.

CUL-DE-SAC. A street with one outlet and an appropriate turnaround for safe and convenient reverse traffic movement.

EASEMENT. A grant or reservation by a property owner to another person for the use of a specified portion, or all, of said property for a specific purpose, without including title to the property.

ENGINEER. An individual who is qualified to engage in the practice of engineering or land surveying as attested by the issuance to such person of a currently valid license as a professional engineer by the State Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects.

FLOODPLAIN. An area flooded by a flood of specific frequency or magnitude and delineated as a regulated area by federal, state, or local government order through the use of maps, flood elevations, flood profiles, or other techniques.

FRONTAGE. The distance measured from side lot line to side lot line, parallel to the street line.

HEALTH OFFICIAL. The Health Director or Sanitarian serving the town.

HIGHWAY ENGINEER. The resident engineer employed by the Virginia Department of Transportation (VDOT) and serving the town.

JURISDICTION. The area or territory subject to the legislative control of the Town Council.

LAND USE and USE OF LAND. Also includes **BUILDING USE** and **USE OF BUILDING**.

LOT. A parcel of land created by a metes and bounds description or plat of subdivision meeting minimum zoning requirements for area, coverage, setbacks, and other spaces as required at time of recordation. The word **LOT** includes the words **PLOT** and **PARCEL**.

LOT, CORNER. A lot abutting upon two or more streets, at their intersection; the shortest side, fronting upon a street, shall be considered the front of the lot, and the longest side, fronting upon a street, shall be considered the side of the lot.

LOT, DEPTH OF. The mean horizontal distance between the front and rear lot lines.

LOT, DOUBLE-FRONTAGE. An interior lot having frontage on two streets.

LOT, INTERIOR. A lot other than a corner lot.

LOT OF RECORD. A lot which has been legally recorded in the Clerk of the Court's office.

LOT, WIDTH OF. The mean horizontal distance between the side lot lines, measured at the building setback.

OWNER. Any person, group of persons, firm or firms, corporation or corporations, or any other legal entity having legal title to the land sought to be subdivided under this chapter.

PEDESTRIAN WAY or CROSSWALK. A right-of-way across, along, or within a block, for use by pedestrian traffic, whether designated as a **PEDESTRIAN WAY, CROSSWALK**, or otherwise designated, which may include utilities.

PLANNED UNIT DEVELOPMENT. Parcels set aside for specialized purposes where tracts suitable in location, area, and character for the uses and structures proposed are to be planned and developed on a unified basis.

PLAT, FINAL. The map or plan of a subdivision of land that meets all the requirements of this chapter, including any accompanying material that may be required.

PLAT, PRELIMINARY. The plan or map of a property drawn to scale, submitted with all tentative plans showing the relationship of the proposed subdivision to existing railroads, lakes, rivers, off-site drainage areas, creeks, public and semipublic facilities.

RESOURCE PROTECTION AREA (RPA). See § 157.152 of this code.

RE-SUBDIVISION. An authorized change in property lines of a recorded subdivision.

RIGHT-OF-WAY. A strip of land dedicated or reserved for a street, crosswalk, railroad, road, water main, sanitary or storm sewer main, public utility, or other special uses. For land platting purposes, the term **RIGHT-OF-WAY** shall mean that every **RIGHT-OF-WAY**, established after November 1, 1981, and shown on a final plat is to be separate and distinct from the lots or parcels adjoining such **RIGHT-OF-WAY** and is not included within the dimensions or areas of such lots or parcels. A **RIGHT-OF-WAY** intended for a street, crosswalk, water main, sanitary sewer storm drain, or any other use, involving maintenance by a public agency, shall be dedicated to public use.

SECRETARY. The Secretary of the Planning Commission of the town.

STREET. A strip of land, including the entire right-of-way intended to be dedicated for use as a means of vehicular and pedestrian circulation by the public at large. The term **STREET** includes avenues, boulevards, highways, roads, bridges, and the approaches thereto and all other public thoroughfares, but not alleys.

STREET, ARTERIAL. Any existing or future street, identified in any adopted plan, carrying traffic, or anticipated traffic, of more than 3,000 vehicles per day.

STREET, MAJOR. Any existing or future street, identified in an adopted plan, carrying traffic, or anticipated traffic, of 500 to 3,000 vehicles per day.

STREET, MINOR. Any existing or future street that is primarily used as a means of public access to abutting properties, with anticipated traffic of less than 500 vehicles per day.

STREET, SERVICE. A public street, generally parallel and contiguous to major streets, primarily designed to promote safety by properly spacing points of access to major streets.

STREET WIDTH. The total right-of-way width of the strip of land dedicated or reserved for public travel, including roadway, curb, gutter, sidewalk, and planting strip.

SUBDIVIDER. A person owning any tract, lot, or parcel of land to be subdivided, or a group of two or more persons owning any tract, lot, or parcel of land to be subdivided, or a person given power of attorney to act on the owner's behalf in the subdivision of land.

SUBDIVISION. The division of a parcel of land into two or more lots or parcels each for the purpose of transfer of ownership or building development; or, if a new street is involved in such division, any division of a parcel of land. The word **SUBDIVISION**, or any derivative thereof, shall have reference to the term **SUBDIVIDER**.

SURVEYOR. A land surveyor certified by the Commonwealth of Virginia.

TOWN ENGINEER. The licensed engineer designated by the Town Council to furnish engineering assistance for the administration of this chapter.
(1998 Code, § 54-1) (Ord. passed 9-5-2017)

§ 156.002 PURPOSE.

(A) The purpose of this chapter is to establish certain subdivision standards and procedures for the town as provided for by VA Code §§ 15.2-2240 through 15.2-2279. These regulations are part of a long-range plan to guide and facilitate the orderly, beneficial growth of the community, and to promote the public health, safety, convenience, comfort, prosperity, and general welfare. More specifically, the purposes of these standards and procedures are to provide a guide for the change that occurs when land is developed for residential, business, or industrial purposes; assurance that the purchasers of lots are buying a commodity that is suitable for development and use; and to make possible the provision of public services in a safe, adequate, and efficient manner.

(B) Subdivided land eventually becomes a public responsibility because roads and streets must be maintained, and numerous public services customary to urban areas must be provided. This chapter assists the community in meeting these responsibilities.
(1998 Code, § 54-2) (Ord. passed 9-5-2017)

§ 156.003 EXCEPTION.

(A) Where the subdivider can show that a provision of these standards would cause unnecessary hardship if strictly adhered to, and where, because of topographical or other conditions peculiar to the site, and where, in the opinion of the agent, an exception may be made without destroying the intent of such provisions, the agent, with approval of the Council, may authorize an exception.

(B) (1) Any exception to be authorized shall be stated, in writing, by the agent, with the reasoning upon which the exception is justified.

(2) No exception to this chapter may be granted if it is opposed, in writing, by the highway engineer or health official.
(1998 Code, § 54-3) (Ord. passed 9-5-2017)

§ 156.004 AMENDMENTS.

(A) This chapter may be amended, in whole or in part, by the Council, provided that any such amendment shall either originate with or be submitted to the Planning Commission for its recommendation; and further provided that no such amendment be adopted without a public hearing held by the Town Council.

(B) Notice of the time and place of the hearing shall have been given in accordance with the provisions of VA Code § 15.2-2204.
(1998 Code, § 54-4) (Ord. passed 9-5-2017)

AGENT

§ 156.015 APPOINTED.

The agent appointed by the Town Council is delegated the responsibility and authority to oversee administration of this chapter and shall have the responsibility of approving or denying the preliminary plat.

(1998 Code, § 54-56) (Ord. passed 9-5-2017)

§ 156.016 DUTIES.

The agent and authorized representatives shall perform their duties regarding subdivisions and subdividing in accordance with this chapter and the Land Subdivision and Development Act, VA Code §§ 15.2-2240 et seq.

(1998 Code, § 54-57) (Ord. passed 9-5-2017)

§ 156.017 CONSULTATION.

In the performance of their duties, the agent and authorized representatives may call for opinions or decisions, either oral or written, from other departments in considering details of any submitted plat. This authority of the agent shall have particular reference to the resident highway engineer, health official, sanitary district, Fire Marshal, and Planning Commission.

(1998 Code, § 54-58) (Ord. passed 9-5-2017)

§ 156.018 ADDITIONAL AUTHORITY.

In addition to the regulations contained in this chapter for the platting of subdivisions, the agent or authorized representatives may, from time to time, establish any reasonable additional administrative procedures deemed necessary for the administration of this chapter.

(1998 Code, § 54-59) (Ord. passed 9-5-2017)

COMPLIANCE WITH CHAPTER

§ 156.030 PLATTING REQUIRED.

Any owner or developer of any tract of land situated within the town who subdivides a parcel of land shall prepare a plat of such subdivision, in accordance with the provisions of this chapter, and

shall record the plat in the office of the Clerk of the Court. No such subdivision plat shall be recorded unless it has been submitted to the agent, approved, and certified by the Planning Commission in accordance with the regulations set forth in this chapter.

(1998 Code, § 54-91) (Ord. passed 9-5-2017) Penalty, see § 156.999

§ 156.031 RECORDATION REQUIRED.

No lot shall be sold in any proposed subdivision, nor shall any building permit be granted, until a final plat for the subdivision is approved and recorded.

(1998 Code, § 54-92) (Ord. passed 9-5-2017) Penalty, see § 156.999

§ 156.032 APPEALS.

If a final plat of a subdivision is denied by Planning Commission, the subdivider may appeal the decision of the Planning Commission to the Circuit Court of the county. If a preliminary plat has been denied by the agent, the subdivider may appeal the decision of the agent to the Planning Commission.

(1998 Code, § 54-93) (Ord. passed 9-5-2017)

PREPARATION AND RECORDATION OF SUBDIVISION PLATS

§ 156.045 DRAW AND CERTIFY.

(A) Every subdivision plat intended for recordation shall be prepared by a surveyor or engineer, who shall endorse upon each plat a certificate, signed by him or her, setting forth the source of the title of the land subdivided and the place of record of the last instrument in the chain of title.

(B) When the plat is of land acquired from more than one source of title, the outlines of the several tracts shall be indicated upon such plats, within an inset block, or by means of a dotted line upon the plat.

(1998 Code, § 54-126) (Ord. passed 9-5-2017) Penalty, see § 156.999

§ 156.046 OWNER'S STATEMENT.

(A) Every subdivision plat intended for recording or deed of dedication to which the plat is attached shall contain, in addition to the surveyor's or engineer's certificate, the following statement: "The platting or dedication of the following described land (insert a correct description of the land being subdivided) is with the free consent and in accordance with the desire of the undersigned owners, proprietors and trustees."

(B) The above statement shall be signed by the owners, proprietors, and trustees, if any, and shall be duly notarized and, when executed and approved, shall be filed and recorded in the office of the Clerk of the Court.

(1998 Code, § 54-127) (Ord. passed 9-5-2017) Penalty, see § 156.999

§ 156.047 NO PERSON EXEMPT.

No person shall subdivide any tract of land that is located within the town except in conformance with the provisions of this chapter.

(1998 Code, § 54-128) (Ord. passed 9-5-2017) Penalty, see § 156.999

§ 156.048 PRIVATE CONTRACTS.

This chapter bears no relation to any private easement, covenant, agreement, or restriction, nor is the responsibility of enforcing such private easement, covenant, agreement, or restriction implied in this chapter to any public official. When this chapter calls for more restrictive standards than required by a private contract, the provisions of this chapter shall prevail.

(1998 Code, § 54-129) (Ord. passed 9-5-2017)

§ 156.049 CHANGES.

No change, erasure, or revision shall be made on any subdivision plat intended for recording, nor on accompanying data sheets, after the written approval of the Planning Commission on the plat or sheets, unless written authorization for such change has been granted by the Planning Commission.

(1998 Code, § 54-130) (Ord. passed 9-5-2017) Penalty, see § 156.999

§ 156.050 FEES.

There shall be a charge for the examination of every plat reviewed. At the time of filing the plat, the subdivider shall deposit with the town checks payable to the town in amounts specified by the adopted schedule of fees.

(1998 Code, § 54-131) (Ord. passed 9-5-2017)

§ 156.051 TRANSFER OF AREAS FOR PUBLIC USE.

The recording of a plat shall serve to transfer, in fee simple, to the town all portions of the area platted that are set apart for streets, alleys, easements, or other public use, and to create a public right-of-passage over them. No such areas dedicated to public use shall be encumbered by easements retained by the subdivider or granted to utility companies or other corporate or natural persons. Nothing contained herein, however, shall prevent the subdivider from constructing and maintaining improvements required by this chapter.
(1998 Code, § 54-132) (Ord. passed 9-5-2017)

GENERAL REGULATIONS

§ 156.065 MUTUAL RESPONSIBILITY.

There is a mutual responsibility between the subdivider and the town to divide the land so as to improve the general use pattern of the land being subdivided.
(1998 Code, § 54-166) (Ord. passed 9-5-2017)

§ 156.066 SUITABLE LAND.

The Planning Commission may not approve the subdivision of land if it has been determined that, from adequate investigations conducted by all public agencies concerned and in the best interest of the public, the site is not suitable for the platting and development purposes being proposed. The Planning Commission may require the subdivider to furnish topographic maps, floodplain profile elevation information, or other relevant information.
(1998 Code, § 54-167) (Ord. passed 9-5-2017)

§ 156.067 FLOODING.

(A) All subdivision proposals shall be consistent with the need to minimize flood damage.

(B) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, sanitary sewer, and water systems located and constructed to minimize flood damage.

(C) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.

(D) In areas where a base flood elevation has not been previously established, base flood elevation data shall be obtained from other sources or developed using detailed methodologies, hydraulic and hydrologic analysis, comparable to those contained in a flood insurance study for subdivision proposals and other proposed development proposals (including manufactured home parks and subdivisions) that exceed 50 lots or five acres, whichever is the lesser.

(E) Land in the 100-year floodplain, other land subject to flooding, and land deemed to be topographically unsuitable shall not be platted for residential occupancy, or for such other uses in such a way as to endanger health, life, or property, or aggravate erosion or flood hazard. Such land within the subdivision shall be set aside on the plat for such uses as shall neither be endangered by periodic or occasional inundation, nor produce conditions contrary to public welfare.
(1998 Code, § 54-168) (Ord. passed 9-5-2017) Penalty, see § 156.999

§ 156.068 IMPROVEMENTS.

(A) *Cost of required improvements.* All required improvements shall be installed by the subdivider at his or her cost. Specifications that have been established either by the State Department of Transportation (VDOT) for streets or town regulations, ordinances, and codes shall be followed. The subdivider's bond shall not be released until all construction has been completed and approved by the Town Engineer or appropriate official. All improvements shall be in accordance with the requirements of this section.

(B) *Construction of public streets.* All public streets in the proposed subdivision shall be designed and constructed in accordance with the standards set by VDOT for acceptance into the state secondary road system, and at no cost to the town.

(1) *Alignment and layout.*

(a) The arrangement of streets in new subdivisions shall make provision for the continuation of existing streets in adjoining areas and proposed streets, as shown on the approved site plan. The street arrangement must cause no unnecessary hardship to owners of adjoining property when seeking convenient access to their property.

(b) Where, in the opinion of the agent, it is desirable to provide for street access to adjoining properties, the right-of-way of the proposed streets shall be extended to the boundary line of such properties.

(c) Half streets along the boundary of land proposed for subdivision shall not be permitted, unless approved by Town Council.

(d) Wherever possible, streets shall intersect at right angles. In all hillside areas, streets running with contours shall be required to meet the intersecting streets at angles of not less than 60 degrees unless approved by the agent upon recommendation of the highway engineer.

(2) *Alleys in new subdivisions.* Use of alleys in new subdivisions is not permitted.

(3) *Private streets.*

(a) Private streets shall not be allowed in any new subdivisions; except that townhouse,

multifamily, and apartment projects may have access to a publicly maintained road via a private street, provided that it meets the appropriate design standards as approved by the Planning Commission of the town regulations. In no case shall there be reserve strips.

(b) Private streets shall be platted such that all lot owners are assured perpetual right of access to a publicly maintained street. The final plat shall note each private street as “privately owned and privately maintained by the lot owner(s)”. The final plat shall also provide an adequate easement for ingress, egress, maintenance of utilities, and public agencies, including police and fire departments.

(c) Private streets shall be constructed of minimum pavement design of six-inch 21A subgrade and two-inch SM-2A asphalt surface, or other such road section approved by the Town Engineer. Dead-end streets or culs-de-sac shall be terminated with a turnaround approved by the Town Engineer.

(4) *Names.*

(a) Proposed streets that are obviously in alignment with other existing and named streets shall bear the names of the duplicate existing street names, regardless of the use of the suffixes “street”, “avenue”, “boulevard”, “road”, “driveway”, “place”, “lane”, or “court”.

(b) Street names shall be indicated on the preliminary and final plats and shall be approved by the Council.

(c) Names of existing streets shall not be changed, except by approval of the Town Council.

(d) Street names shall be approved by County GIS for full use in the 9-1-1 system.

(5) *Identification signs.* Street identification signs shall be readable from either side, of a design approved by the Town Council, and installed at all intersections by the subdivider.

(C) *Monuments.*

(1) *Installation.* All monuments shall be installed by the subdivider and shall meet the minimum specifications described in this division (C). Upon completion of subdivision streets, sewers, and other improvements, the subdivider shall make certain that all required monuments are clearly visible for inspection and use. Such monuments shall be inspected and approved before an occupancy permit is issued by the Building Official.

(2) *Location.* All lot corners shall be marked with iron pipe not less than three-fourths inch in diameter and 18 inches long, and driven so as to be flush with the finished grade.

(D) *Water facilities.* Public water service shall be extended by the subdivider to all lots within a subdivision, in accordance with the approved site plan.

(E) *Sewerage facilities.* Public sewerage facilities shall be extended by the subdivider to all lots within a subdivision, and septic tanks will not be permitted. The subdivider shall provide each lot with a satisfactory and sanitary means of sewage collection and disposal in accordance with the approved site plan.

(F) *Storm drainage facilities.* The subdivider shall provide all necessary information needed to determine what drainage improvements are necessary to develop such property. The subdivider shall install the approved storm drainage facilities in accordance with the approved site plan.

(G) *Fire protection.* Fire hydrants shall be required in a subdivision at locations approved by the agent, provided adequate public water is available. The location and design of the fire hydrants shall meet the American Insurance Association's specifications and be in accordance with the approved site plan.

(H) *Easements.* The Planning Commission may require the subdivider to provide easements through adjoining property. The width of easement provided for drainage, water, sewer, power lines, and other utilities in the subdivision shall be determined by the Planning Commission.

(I) *Plans and specifications.* Six blue or black line prints of the plans and specifications, for all required physical improvements to be installed, shall be prepared by an engineer or land surveyor and shall be submitted with the final plat to the agent for approval within 30 days. If approved, one copy, bearing certification of such approval, shall be returned to the subdivider. If denied, all papers, except for one copy, shall be returned to the subdivider, with written reason(s) for denial.

(J) *Bonding.*

(1) *Performance bond.*

(a) The subdivider shall furnish a cash bond or equivalent, a surety bond of a surety company, or a certified check, payable to the town, in an amount equal to the total cost of the public improvements determined by the Council using the most recent county unit price list. Such bond or check shall guarantee that the improvements will be installed within a reasonable length of time in a manner acceptable to the Council. The bond or check shall accompany the final plat. When construction has been completed, approved, and accepted on sections of the required improvements, the Council may release the bond submitted for the amount of the entire required improvements or a portion thereof leaving an amount adequate to cover the entire cost of the improvements yet to be constructed, approved, and accepted.

(b) Occupancy permits shall not be issued until all proposed public and private improvements on a site plan are completed; however, the Zoning Administrator shall have the authority, in his or her discretion and in appropriate cases, to accept a completion bond in a satisfactory amount to ensure completion of public or private improvements in lieu of actual completion where the Zoning Administrator finds that a completion bond adequately protects future owners.

(2) *Maintenance bond.* The subdivider shall be required to file a maintenance bond with the town in an amount considered adequate and in a form satisfactory to the town, in order to assure the

satisfactory condition of the required landscape improvements, for a period of one year after the date of their acceptance by the Town Council.

(3) *Phased development.* If development is projected over a period of years, the Planning Commission may authorize submission of final plats by section or phase of development, subject to requirements or guarantees for improvements in future sections or phases of development essential for the protection of any approved section of development.

(4) *Absence of bond.* In the absence of a performance bond or check, no final plat shall be approved or recorded until the required improvements have been installed and approved by the agent or his or her authorized representative.

(5) *Final as-built drawings.* Final as-built drawings, showing all subsurface utility conditions, shall be provided prior to release of the performance bond. Three certified reproducible copy shall be provided to the agent, with accompanying letter certifying accuracy, submitted in sufficient time to permit review prior to release of performance bond.

(K) *Sidewalks.* Sidewalks shall be constructed in all subdivisions in accordance with the specifications of VDOT.

(L) *Curb and gutter.* Where deemed necessary by the Planning Commission, curbs and gutters shall be installed in accordance with the standards and specifications of the Town Engineer and VDOT. (1998 Code, § 54-169) (Ord. passed 9-5-2017) Penalty, see § 156.999

§ 156.069 LOTS.

The following shall be taken into consideration when subdividing lots.

(A) *Shape.* The lot arrangement, design, and shape shall provide satisfactory and desirable sites for buildings and be properly related to topography. Lots shall not contain peculiarly shaped extensions solely to provide necessary square footage of area that would be unusable for normal purposes.

(B) *Location.* Each lot shall abut an existing or proposed dedicated public street, or on a street that has become public by right of use. If the existing streets are not 50 feet in width, the subdivider shall make provision, in the deeds to the lots, that all buildings be constructed so as to permit the widening of such roads or streets to a width of 50 feet by dedication.

(C) *Corner lots.* Corner lots shall have width sufficient for adequate site distance on both streets.

(D) *Side lines of lots.* Side lines of lots shall be approximately at right angles, or radial to the street line.

(E) *Separate ownership.* Where the land covered by a subdivision includes two or more parcels in separate ownership and the property ownership line divides one or more lots, the land in each divided

lot shall be transferred by deed to single ownership, simultaneously with the recording of the final plat. This deed is to be recorded with the Clerk of the Court and held with the final plat until the subdivider is ready to record same, and then both shall be recorded.

(F) *Off-street parking and delivery facilities.* All subdivisions, including those intended for business and industrial uses, shall include space set aside for off-street parking and/or delivery facilities, in accordance with Chapter 157 of this code.

(1998 Code, § 54-170) (Ord. passed 9-5-2017) Penalty, see § 156.999

APPROVAL OF PLATS

§ 156.080 PRELIMINARY PLAT.

(A) For subdivisions of 51 or more lots, the subdivider shall present to the authorized representative six prints of a preliminary layout, at a scale no larger than 100 feet per inch, as a preliminary plat.

(B) The preliminary plat shall include the following information.

(1) *Identification.* Name of subdivision, owner, subdivider, person preparing drawing, date of drawing, number of sheets, north point, and scale. If true north is used, method of determination must be shown.

(2) *Vicinity map.* Location of proposed subdivision, by an inset map, at a scale of not less than two inches equal one mile, showing adjoining roads, road names and numbers, towns, subdivisions, other landmarks.

(3) *Boundaries of subdivision.* A boundary survey or existing survey of record; total acreage; acreage of subdivided area; number, approximate area, and frontage of all building sites; existing buildings within the boundaries of the tract; names of owners and property lines within the boundaries of the tract and adjoining such boundaries.

(4) *Streets, utilities, and other data.* All existing, platted, and proposed streets, names, numbers, and widths; existing utility or other easements; public areas and parking spaces; culverts, drains, and watercourses and their names; flood profile; and other pertinent data.

(5) *Drainage.* The storm drainage layout, including drainage easements and means of transporting the drainage to a well-defined open stream that is considered natural drainage, or to another approved drainage control facility.

(6) *Water and sewer.* Proposed connections with existing sanitary sewers and existing water supply or alternate means of sewage disposal and water supply. The location of all sewers shall be shown. The distance between manholes shall not exceed 400 feet. The location of all water lines shall

be shown, as well as the location of necessary fire hydrants.

(7) *Grades.* Existing and proposed contours at a minimum interval of five feet, including tentative street grades.

(8) *Aerial or USGS map.* A location map tying the subdivision into the present road system, by using either aerial photographs, county topographic maps, or topographic maps of the United States Geological Survey.

(9) *Floodplain information.* A map showing the location of the proposed subdivision and/or land development with respect to any designated floodplain district, including information on, but not limited to, the 100-year flood elevations, boundaries of the floodplain districts, proposed lots and sites, fills, floods, or erosion protective facilities, and areas subject to special deed restrictions.

(10) *Chesapeake Bay areas.* All resources protection areas and resource management areas, as defined by § 157.150 through 157.163, Chesapeake Bay Preservation Overlay District. (1998 Code, § 54-202) (Ord. passed 9-5-2017)

§ 156.081 APPROVAL OF PRELIMINARY PLAT.

The agent shall discuss the preliminary plat with the subdivider in order to determine whether or not the preliminary plat generally conforms to the requirements of this chapter, Chapter 152 of this code, Chapter 157 of this code, VDOT, Health Department, and any other appropriate ordinance, rule, or regulation. Within 60 days of the preliminary plat submission, the subdivider shall be advised, in writing, by formal letter or by legible markings on the preliminary plat, of any additional data that may be required, and the character and extent of public improvements that will have to be made. (1998 Code, § 54-203) (Ord. passed 9-5-2017)

§ 156.082 NO GUARANTEE.

Approval of the preliminary plat does not guarantee approval of the final plat. (1998 Code, § 54-204) (Ord. passed 9-5-2017)

§ 156.083 FINAL PLAT.

(A) Within six months after receiving approval of the preliminary plat, the subdivider shall file with the agent a final subdivision plat in accordance with this chapter. Failure to do so shall make the preliminary approval null and void. The agent may, on written request by the subdivider, grant a one-time, six-month extension.

(B) The subdivision plat submitted for final approval and subsequent recording shall be clearly and legibly drawn, at a scale and sheet size acceptable to the County Clerk of the Circuit Court. The final plat shall conform to any approved site plan for the subdivision and include the following.

(1) *Drainage*. The drainage easements necessary for the conveyance of stormwater. The drainage easements shall match the approved plans.

(2) *Water and sewer*. The waterline and sanitary sewer easements necessary for the conveyance of public water and sewer.

(3) *Approval space*. A blank space, three inches by five inches, reserved for the use of the approving authority.

(4) *Certificates of title*. Certificates signed by a surveyor or engineer, setting forth the source of title of the owners of the land subdivided and the place of record of the last instrument in the chain of title.

(5) *Owner's statement*. A statement as follows: "The platting or dedication of the following described land (insert a correct description of the land being subdivided) is with the free consent and in accordance with the desire of the undersigned owners, proprietors, and trustees".

(6) *Identification of tracts*. When the subdivision consists of land acquired from more than one source of title, the outlines of the various tracts shall be indicated by dashes and the identification of the respective tracts shall be placed on the plat.

(7) *Streets, public uses, utilities*. Includes:

(a) The accurate location and dimensions by bearings and distances with all curve data on all lots and streets;

(b) Boundaries of all proposed or existing easements;

(c) Parks;

(d) School sites;

(e) All existing public and private streets, including names, numbers, and widths;

(f) Existing utilities, and those to be provided, such as sanitary sewers, storm drains, water mains, manholes, and underground conduits, including sizes and types;

(g) Watercourses and names; and

(h) Names of owners and the property lines, both within the boundary of the subdivision and adjoining such boundaries.

(8) *CBPA*. All CBPA information required by §§ 157.150 through 157.163, Chesapeake Bay Preservation Overlay District, as applicable.

(9) *RPA*s. The depiction of all resource protection area boundaries, including a notation to retain an undisturbed and vegetative 100-foot-wide buffer area, as specified in §§ 157.150 through 157.163, and a notation of the permissibility of only specified exemptions in resource protection areas.

(10) *Wetlands*. If the subdivided property contains wetlands and/or resource protection areas, there shall be a note on the plat which states the following: “Wetlands and land within resource protection areas shall remain in a natural and undisturbed state except for those activities and uses allowed by 9 VAC § 10-20-130 of the Chesapeake Bay Preservation Area designation and management regulations.”

(1998 Code, § 54-206) (Ord. passed 9-5-2017) Penalty, see § 156.999

§ 156.084 APPROVAL OF FINAL PLAT.

The completed plat shall be submitted to the Planning Commission for approval. The plat shall not be approved until the subdivider has complied with the general requirements and minimum standards of design in accordance with this chapter and has made satisfactory arrangements for performance bond, cash, or cash bond to cover the cost of necessary improvements, in lieu of construction, to the satisfaction of the town. Upon the approval by the Planning Commission, the plat will be signed by the Planning Commission or its agent, marked “approved”, and returned to the subdivider, who will cause the plat to be recorded in the Clerk’s office of the Circuit Court of the county. No plat shall be recorded until approval has been made. If the plat submission is denied, the Planning Commission will return the plat to the subdivider, indicating corrections to be made by the subdivider.

(1998 Code, § 54-207) (Ord. passed 9-5-2017)

§ 156.085 EXTENSION OF SUBDIVISION PLAT APPROVALS TO ADDRESS HOUSING CRISIS.

Provisions for extension of zoning approvals shall be in conformance with VA Code § 15.2-2209.1. (1998 Code, § 54-208) (Ord. passed 9-5-2017)

§ 156.999 PENALTY.

Any person violating the provisions of this chapter shall be subject to a fine of not more than \$500 for each lot or parcel of land subdivided, transferred, or sold. The description of such lot or parcel, by metes and bounds, in the instrument of transfer or other document used in the process of selling or transferring, shall not exempt the transaction from such penalties, or from the remedies provided in this chapter.

(1998 Code, § 54-5) (Ord. passed 9-5-2017)

CHAPTER 157: ZONING

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GENERAL PROVISIONS

§ 157.001 PURPOSE AND LEGISLATIVE AUTHORITY.

This chapter is adopted for the purpose of protecting and promoting the public health, safety, and general welfare in the town and accomplishing the goals, policies, and programs of the Comprehensive Plan. This chapter is established in accordance with the provisions of VA Code §§ 15.2-2280 et seq. to: provide for regulations governing nonconforming uses and structures; provide a Board of Zoning Appeals and for its powers and duties; provide for permits; establish and provide for the collection of fees; provide for the administration of this chapter and for the official whose duty it shall be to enforce the provisions of this chapter; provide penalties for the violation of this chapter; and provide for conflicts with other ordinances or regulations.

(1998 Code, § 66-1) (Ord. passed 9-5-2017)

§ 157.002 ASSUMPTION OF VALIDITY OF CONDITIONS OR LIMITATIONS.

Whenever any condition or limitation is included for a conditional use permit, variance, zoning permit, certificate of occupancy, site plan, or subdivision approval, it shall be conclusively presumed that the authorizing officer or body considered such condition or limitation necessary to carry out the spirit and purpose of this chapter or the requirement of some provision of this chapter, and to protect the public health, safety, and welfare, and that the officer or Board would not grant the authorization to which the condition or limitation pertains except in the belief that the condition or limitation was lawful.

(1998 Code, § 66-2) (Ord. passed 9-5-2017)

§ 157.003 RELATIONSHIP TO OTHER LAWS.

Whenever regulations or restrictions imposed by this chapter are either more or less restrictive than regulations or restrictions imposed by any governmental authority through legislation, rule, or regulation, the regulations, rules, or restrictions that are more restrictive or which impose higher standards or requirements shall govern. Regardless of any other provision of this chapter, no land shall be used and no structure erected or maintained in violation of any state or federal pollution control or environmental protection law or regulation.

(1998 Code, § 66-3) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.004 SCOPE OF CHAPTER.

(A) No building shall be erected and no existing building shall be moved, altered, added to, or enlarged, nor shall any land or building be used, designed, or arranged to be used for any purpose other than as included among the uses listed as permitted in the district in which such building or land is located, nor in any manner contrary to any other requirements specified in this chapter.

(B) The regulations listed for each district are hereby adopted and prescribed for each district and shall be deemed to be the minimum requirements in every instance of their application, subject to the provisions of other parts of this chapter.

(1998 Code, § 66-4) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.005 ADOPTION OF ZONING MAP.

(A) The incorporated territory of the town is divided into districts as set forth and indicated on the map entitled “Zoning Map”, which map, properly identified and dated, is adopted as a part of this chapter insofar as it indicates such designations, locations, and boundaries; and the map shall be deemed to be as much a part of this chapter as if the information set forth on the map were fully described and incorporated in this chapter.

(B) The Zoning Map is available at Town Hall and on the town website.

(1998 Code, § 66-5) (Ord. passed 9-5-2017)

§ 157.006 INTERPRETATION OF COMPREHENSIVE PLAN, THIS CHAPTER, AND MAP.

(A) The town’s Comprehensive Plan is intended to be no more than a textual and visual statement of goals and policies that will guide public actions, including land use regulation.

(B) This chapter, in addition to the Zoning Map of the town comprise the only definitive statement of land use.

(1998 Code, § 66-6) (Ord. passed 9-5-2017)

§ 157.007 ZONING MAP.

The Zoning Map serves as the best and most practical implementation of land use objectives of the town and supersedes all zoning maps and Comprehensive Plan maps in existence on the effective date of the ordinance from which this section derives.

(1998 Code, § 66-7) (Ord. passed 9-5-2017)

§ 157.008 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Additional definitions specific to their application in a division may be found in §§ 157.152 and 157.175. Sign definitions contained in § 157.301 also apply to this chapter.

ABANDON. To cease or discontinue a use or activity without intent to resume, but excluding temporary or short-term interruptions to a use or activity during periods of remodeling, maintaining, or

otherwise improving or rearranging a facility, or during normal periods of vacation or seasonal closure.

ABATTOIR. A commercial slaughterhouse.

ABUTTING/ADJOINING. Having a common point or border; having property or district lines in common. Properties separated from such a common border by public street or railroad right-of-way, and the like, shall be deemed adjacent but not be deemed **ABUTTING**. Property separated by an alley shall be deemed to **ABUT**.

ACCESSORY BUILDING USE OR STRUCTURE. A separate building, use, or structure on the same lot with and customarily incidental to the principal use of the parcel or principal structure.

ACCESSWAY. Landscaped strip of land intended for the passage of pedestrians but not vehicles.

ACREAGE. Parcel of land, regardless of area, described by metes and bounds which is not a numbered lot on any recorded subdivision plat.

ACTIVE STORAGE. The holding or safekeeping of goods in an area for use as a part of the routine operation of the business.

ADULT BUSINESS. Any adult bookstore, adult video store, adult model studio, adult motel, adult movie theater, adult nightclub, adult store, business providing adult entertainment, or any other establishment that regularly exploits an interest in matters relating to specified sexual activities or specified anatomical areas or regularly features live entertainment intended for the sexual stimulation or titillation of patrons.

ADULT DAY-CARE FACILITY. A facility operated for the purpose of providing care, protection, and guidance to adults during normal business hours. No overnight facilities permitted.

ADULT ENTERTAINMENT. Dancing, modeling, or other live entertainment, if the entertainment is characterized by an emphasis on specified sexual activities or specified anatomical areas or is intended for the sexual stimulation or titillation of patrons; or the showing of films, motion pictures, videotapes, slides, photographs, CDs, DVDs, streaming video, or other media that are characterized by their emphasis on matters depicting, describing, or relating to specified sexual activities or specified anatomical areas.

ADULT MERCHANDISE. Magazines, books, other periodicals, videotapes, films, motion pictures, photographs, slides, CDs, DVDs, virtual reality devices, or other similar media that are characterized by their emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas; instruments, devices, or paraphernalia either designed as representations of human genital organs or female breasts, or designed or marketed primarily for use to stimulate human genital organs; or, lingerie or leather goods marketed or presented in a context to suggest their use for sadomasochistic practices.

ADULT MODEL STUDIO. A commercial establishment, including a lingerie store or novelty store, in which a person performs or simulates specified sexual activities, exposes specified anatomical areas, or engages in other performances intended for the sexual stimulation or titillation of patrons.

ADULT MOTEL. A motel, hotel, or similar commercial establishment that: provides patrons with closed-circuit television transmissions, films, motion pictures, video cassettes, slides, or other

photographic reproductions that are characterized by the depiction or description of specified sexual activities or specified anatomical areas and advertises the availability of this sexually-oriented type of material by means of a sign visible from the public right-of-way, or by means of any off-premises advertising including, but not limited to, newspapers, magazines, pamphlets or leaflets, radio, or television; offers a sleeping room for rent for a time period less than ten hours; or allows a tenant or occupant to subrent the sleeping room for a time period of less than ten hours.

ADULT MOVIE THEATER. An enclosed building regularly used for presenting material distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas for observation by patrons, excluding movies that have been rated “G”, “PG”, “PG-13”, or “R” by the Motion Picture Association of America.

ADULT NIGHTCLUB. A restaurant, bar, club, or similar establishment that regularly features adult entertainment.

ADULT STORE. An establishment dealing in adult merchandise as a principal portion of its business.

ALLEY. A permanent service right-of-way providing a secondary means of access to abutting properties.

ALTERATION. Any change, reduction, or addition to part or all of the exterior of any structure including, but not limited to, color, height, floor area, use, or adaptability.

APARTMENT HOUSE. See *DWELLING, MULTIFAMILY*.

ARCHITECT. An individual who is qualified to engage in the practice of architecture as attested by the issuance of a currently valid license to such person as an architect by the State Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers, and Landscape Architects.

ARCHITECTURAL FEATURES. The exterior details of a building, created by the type of construction, the manner of assembly of the materials and the use of decorative details that establishes the overall appearance, period, and style of the structure but are generally not necessary for the structural integrity of the structure. **FEATURES** include, but are not limited to, fanlights, cornice designs, corner boards, window trim, gingerbread, and similar such items.

ASSEMBLY or ASSEMBLING. Conversion of finished material and/or subcomponents into a major product or component.

ASSEMBLY, PLACE OF. Land and/or structures used as a meeting place where persons gather together for purposes of attending civic, social, and/or religious functions, recreational events, or entertainment performances on a regular or recurring basis including, but not limited to, religious institutions, banquet facilities, funeral homes, theaters, conference centers, stadiums, or indoor or outdoor recreational facilities. Excluded are public dance halls and restaurants as defined by this chapter. A gathering of less than 25 persons shall not be considered a **PLACE OF ASSEMBLY** provided the gathering is accessory and incidental to the principal use.

AUTO SERVICES. A facility where motor vehicle maintenance and repairs are conducted for

compensation, such as body work, welding, painting, motor repairs, detailing, upholstery, installation of accessories, and like activities, but not including storage of junk vehicles.

BANK. Any establishment in which the primary business is concerned with state regulated activities, including banking, savings and loans, and consumer loan companies. A bank may not have a drive-in window.

BASEMENT. A story partly underground having more than half its floor-to-ceiling height below grade.

BED AND BREAKFAST. An owner or operator-occupied, single-family detached dwelling containing no more than one kitchen and ten or fewer guest rooms, occupied for sleeping purposes by guests for compensation with at least one meal being offered to guests of the establishment.

BIG BOX. A large single occupant building or unit used for retail or wholesale purposes exceeding 80,000 square feet of gross floor area located in a building or unit, or within a building group of less than five units connected by party walls, partitions, canopies, and similar features, and designed as a single or freestanding commercial use or group, which may be included or be part of a shopping center, possibly sharing parking areas and vehicular travel ways with other buildings or uses and which may be connected by walkways and access ways to other buildings or uses.

BOARDINGHOUSE. A building arranged or used for lodging for compensation, with or without meals, and not occupied as a single-family unit.

BUILDING. Any enclosed or open structure other than a tent or mobile home having a roof supported by columns or walls designed to support, shelter, house, or enclose persons, animals, or property of any kind.

BUILDING, HEIGHT OF. The vertical distance measured from the average elevation ten feet out from the finished grade adjoining the building on all exterior walls to the highest point of the roof for a flat roof or to the mean elevation between the main eaves and highest ridge or point of other types of roof. The term **ACTUAL HEIGHT OF BUILDING** as used in this chapter shall not be deemed to include any part of a building wall erected above a flat roof for the purpose of creating a false mansard or parapet to screen rooftop mechanical equipment or housings from public view.

BUILDING, MAIN. A building in which the principal use of the lot is conducted.

BUILDING/CODE OFFICIAL. The person appointed by the Town Council who issues the building permits for the structural design, construction, alteration, reconstruction, repair, restoration, demolition, or razing of all or part of any building. It includes a **DEPUTY BUILDING/CODE OFFICIAL**.

BUILDING PERMIT. An approval statement signed by the Zoning Administrator and the code official authorizing the construction, alteration, reconstruction, repair, restoration, demolition, or razing of all or a part of any building.

BUILDING REPAIR. Any or all work involving the replacement of existing architectural or structural components with equivalent material for the purpose of maintenance, but not including any addition, change, or modification in construction.

CARNIVAL. An aggregation of shows, amusements, concessions, eating places, and riding devices, or any combination thereof, operated together on one lot or street or on contiguous lots or streets, moving from place to place, whether or not they are owned and actually operated by separate persons.

CERTIFICATE OF APPROPRIATENESS. The approval statement signed by the Architectural Review Board which certifies the appropriateness of a particular request for the construction, alteration, reconstruction, repair, restoration, moving, relocation, demolition, or razing of all or part of any building within the historic district, subject to the issuance of all other permits needed for the matter sought to be accomplished.

CHILD CARE FACILITY. Any enterprise or facility operated for the purpose of providing care, protection, and guidance for more than five children separated from their parents or guardians during a part of a day. No overnight facilities permitted.

CHURCH. See **ASSEMBLY, PLACE OF.**

CIRCUS. A traveling or transportable show or exhibition of performances by persons and animals under at least one tent or similar structure with or without other sideshows.

CLUB or **LODGE.** A facility used by a group of people organized for a common purpose to pursue common goals, interests, or activities and usually characterized by certain membership qualifications, payment of fees and dues, regular meetings, and a constitution and bylaws. **CLUBS** and **LODGES** may engage in any activity that is consistent with nonprofit status.

COMMERCIAL AMUSEMENT/RECREATION FACILITY. Any establishment where for coin, slug, ticket, pass, token, or other compensation more than five devices such as pinball, billiards, pool, foosball, table tennis, shuffleboard, electronic or video game, or any other game of recreation or amusement are displayed for public patronage, and/or any courts, fields, or arena designed for commercial lease on an hourly, daily, or event basis for athletic activity such as basketball, hockey, skating, virtual reality games, wrestling, or other such sports or athletic activities not under the control of a public or semipublic agency.

CONDOMINIUM. A group of dwellings, offices, or stores situated on a single lot wherein ownership of individual units is conveyed separately with an undivided vested interest in the common elements pertaining to that unit as defined under the Condominium Act (VA Code §§ 55-79.39 et seq.) or any successor law.

CONGREGATE/CONTINUING CARE FACILITY. A housing project designed for the care of ambulatory elderly persons, with spouses or companions when applicable. Such **FACILITIES** shall provide a community atmosphere by providing amenities for the residents including, but not limited to, a minimum of one prepared meal per day in a central dining area, recreational areas, social activities, and 24-hour staffing, in addition to other conditions as may be required by the special use permit to minimize impact on surrounding residential communities.

CONSTRUCTION STANDARDS. The technical design standards as outlined in this chapter, and the County Design and Construction Standards Manual, as adopted periodically.

DEAD STORAGE. Holding or safekeeping goods in a warehouse or other depository to await the

happening of some future event or contingency, which will call for the removal of the goods.

DEMOLITION. The dismantling or tearing down of all, or part, of any building and incidental accessory buildings.

DOMESTICATED ANIMAL. Any dog or cat over four months of age that is maintained for companionship on residential property.

DRIVEWAY. The space specifically designated and reserved on the site for the movement of vehicles from one site to another or from a site to a public street.

DUPLEX. A building situated on a single lot and containing two dwelling units structurally attached, each having separate entrances.

DWELLING, ATTACHED. One of a series of three or more dwelling units separated from one another by common party walls without openings, i.e., townhouses.

DWELLING, DETACHED SINGLE-FAMILY. A detached dwelling designed for occupancy by only one family and not attached, duplex, or semidetached.

DWELLING, MULTIFAMILY. A building, or portion of a building, designed for occupancy by three or more dwelling units with shared principal entryways, including rental apartments and apartment condominiums.

DWELLING, SEMIDETACHED. A dwelling having a party wall in common with another dwelling but which otherwise is designed to be and is substantially separate from any other structure or structures except accessory buildings.

DWELLING UNIT. A room, or interconnected rooms, constituting a separate independent housekeeping establishment intended for permanent, full-time human occupancy and physically separated from any other rooms or dwelling units which may be in the same structure, and containing independent cooking and sleeping facilities.

EASEMENT. A grant or reservation by a property owner to another person for the use of a specified portion, or all, of his or her property for a specific purpose, without including title to the property.

EATING PLACE. See **RESTAURANT**.

ENGINEER. An individual who is qualified to engage in the practice of engineering or land surveying as attested by the issuance to such person of a currently valid license as a professional **ENGINEER** by the State Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers, and Landscape Architects.

FAMILY.

- (1) May be any of the following:

(a) An individual;

(b) Two or more persons related by blood, marriage, adoption, or guardianship, living and cooking together as a single housekeeping unit, exclusive of not more than one additional non-related person;

(c) A number of persons, not exceeding three, living and cooking together as a single housekeeping unit though not related by blood, marriage, adoption, or guardianship; or

(d) Not more than two unrelated persons and their dependent children living and cooking together as a single housekeeping unit.

(2) Any family meeting one of the four definitions in divisions (1)(a) through (1)(d) above may have up to four residential guests, as defined in this section. Also see **GROUP HOME**.

FAMILY DAY CENTER. A dwelling unit providing as an accessory use in return for compensation, care, protection and/or guidance for more than five children under the age of 13, separated from their parents or guardian during a part of a day, exclusive of the provider's own children and any children who reside in the structure as part of the family residing there and meeting the definition of family.

FAMILY DAY HOME. A dwelling unit providing as an accessory use in return for compensation, care, protection, and/or guidance for five or fewer children under the age of 13, separated from their parents or guardians during a part of a day, exclusive of the provider's own children and any children who reside in the structure as part of the family residing there and meeting the definition of family.

FLOOR AREA, LEASABLE. Gross floor area less area devoted to common corridors, stairs, elevators, utility spaces, enclosed parking areas, and general maintenance spaces.

FOOD TRUCK. Any modular unit, trailer, or self-propelled motor vehicle (such as a truck, bus, van, camper, or semitrailer truck), not located on a permanent foundation, and used for the purpose of dispensing in exchange for compensation, food, and/or beverages to the public from the unit.

FRONTAGE. See **LOT FRONTAGE**.

FUNERAL HOME. A structure designed specifically for the purpose of conducting the ritual ceremonies held in connection with the burial of the dead.

GARAGE, PRIVATE. An accessory building or space within a dwelling unit designed or used for the storage of not more than three automobiles owned and used by the occupants of the building to which it is accessory. On a lot occupied by a multifamily dwelling, a **GARAGE** may be designed and used for the storage of one and one-half times as many automobiles as there are dwelling units.

GASOLINE STATION. A facility for the retail sale and direct delivery to motor vehicles of fuel, lubricants, minor accessories, and including the sale of cigarettes, candy, soft drinks, and related items for the convenience of the motoring public.

GROUP HOME. A residential facility in which no more than eight mentally ill, mentally retarded, or developmentally disabled persons reside, with one or more resident counselors or other staff persons. The terms **MENTAL ILLNESS** and **DEVELOPMENTAL DISABILITY** shall not include

current illegal use of or addiction to a controlled substance as defined in VA Code § 54.1-3401 or any successor statute. The residential facility, to qualify as a **GROUP HOME**, must have a license from the State Department of Mental Health, Mental Retardation and Substance Abuse Services. For all purposes of this chapter, a **GROUP HOME** is a single-family dwelling.

HISTORIC DISTRICT. An area designated by the Town Council as an overlay district within which are found:

- (1) Historic landmarks as established by the State Board of Historic Resources;
- (2) Any historic structure;
- (3) Any historic areas;
- (4) Areas of unique architectural value located within designated conservation, rehabilitation, or redevelopment districts; and/or
- (5) Parcels of land contiguous to arterial streets or highways found by the Town Council to be significant routes of tourist access to the locality or to designated historic landmarks, buildings, structures, or districts in the town or a contiguous locality.

HOME BUSINESS. Any commercial activity that is conducted within a dwelling unit as an occupation accessory use to the principal residential use and that does not adversely impact or change the character of the neighborhood. A **HOME BUSINESS** occupation is permitted only with a home occupation certificate issued by the town and subject to the standards of § 157.010.

HOMESTAY. An accessory use of a residential dwelling unit, or portion thereof, intended for short-term rental as transient lodging in exchange for a charge for the occupancy. The primary use of the dwelling unit shall remain residential.

HOSPITAL. An institution that renders two or more of the following services: medical and surgical services with associated bed space; obstetrical or convalescent care; or urgent care services, including nursing homes and sanitariums.

HOSPITAL, ANIMAL. A building designed or occupied for the medical care of animals with ancillary overnight supervision of animals in recovery.

HOTEL. Any facility, with or without separate cooking facilities within individual units, where overnight lodging is provided to the public with compensation on a nightly, weekly, or monthly basis for a period of less than 91 nights per individual per year. This definition includes **HOTELS** and **MOTELS**.

JUNKYARD. Any land or building used for the storage, keeping, collecting, or baling of paper, rags, scrap metals, other scrap, or discarded materials, or for the storage of automobiles or other vehicles not in running condition or the storage of machinery or parts thereof.

KENNEL. Any place where for hire, as part of the customary and routine activity of the premises, more than two dogs, or five cats, that are more than four months of age are kept for the purpose of providing care, protection, guidance, breeding, training, or exercise.

LIBRARY. Any place where books are loaned, with or without compensation, as a major part of the enterprise operated on the premises.

LOT. A parcel of land created by a metes and bounds description or plat of subdivision meeting minimum zoning requirements for area, coverage, setbacks, and other spaces as required at time of recordation.

LOT AREA. The total horizontal area included within lot lines.

LOT, CORNER. A lot abutting upon two or more streets, at their intersection; the shortest side, fronting upon a street, shall be considered the front of the lot, and the longest side, fronting upon a street, shall be considered the side of the lot.

LOT FRONTAGE. The distance measured from side lot line to side lot line, along a line parallel to the street line at the required minimum front yard depth.

LOT, INTERIOR. Any lot other than a corner lot.

LOT LINE. Any line or curve in the boundary of a lot.

LOT LINE, FRONT. A street right-of-way line which forms the boundary of a lot, or in the case where a lot does not abut a street other than by its driveway, or is a through lot, that lot line which faces the principal entrance of, or approach to, the main building. On a corner lot, the shorter street right-of-way line shall be deemed to be the **FRONT LOT LINE**, regardless of the location of the principal entrance, or approach to the main building. On a corner lot, when sides abutting the streets are of equal length, the lot shall be considered to front on that street having the longest frontages within the same block. When frontage is on more than one street, all lot lines not otherwise defined as a **FRONT LOT LINE** shall be considered side lot lines.

LOT LINE, REAR. The lot line which is generally opposite the front lot line. If the lot is irregular in shape the following criteria will be used to determine the **REAR LOT LINE**:

(1) If a **REAR LOT LINE** is less than ten feet in length, or if the side lot lines come to a point at the rear, the **REAR LOT LINE** shall be deemed to be a line drawn parallel to the front lot line, that is not less than ten feet long, lying wholly within the lot and located as far as possible from the front lot line;

(2) If the lot has more than four contiguous lot lines that are not parallel to the front lot line, but all are greater than ten feet in length, the **REAR LOT LINE** shall include all the lot lines that have a beginning point greater than 65 feet from the front line and have an interior angle of 135 degrees or less; and

(3) Any lot line ten feet or less that has both ends intersecting with two lot lines with the same designation shall be deemed as being part of the same line.

LOT LINE, SIDE. Any lot line not otherwise defined as a front or rear lot line.

LOT OF RECORD. A lot which has been legally recorded in the Clerk's office.

LOT, THROUGH. An interior lot, fronting on two parallel or approximately parallel streets.

LOW-INTENSITY PROFESSIONAL, MEDICAL OFFICE OR FACILITY. A facility where there are no more than three clients on premises at a time.

MANUFACTURED HOME. A structure subject to federal regulation that is transportable in one or more sections; is eight body feet or more in width and 40 body feet or more in length in the traveling mode, or is 320 or more square feet when erected on-site; is built on a permanent chassis; is designed to be used as a single-family dwelling, with or without a permanent foundation, when connected to the required utilities; and includes the plumbing, heating, air conditioning, and electrical systems contained in the structure. For purposes of this chapter, a **MANUFACTURED HOME** must meet the standards promulgated by the United States Department of Housing and Urban Development (HUD), published at 24 C.F.R. part 3280, including the ANSI standards incorporated therein by reference. For purposes of this chapter, a **MANUFACTURED HOME** must bear a data plate declaring that it meets HUD standards. A recreational vehicle does not meet the definition of a **MANUFACTURED HOME**.

MANUFACTURING. The processing and/or converting of raw, unfinished materials, or products into articles or substances of different character for a different purpose.

MEDICAL USE. A facility providing emergency or nonemergency medical care, including surgery to patients on an outpatient basis.

MIXED USE DEVELOPMENT. Property that incorporates two or more different uses, and may include a variety of housing types, within a single development.

MOBILE HOME. See **MANUFACTURED HOME**.

MOBILE OR MANUFACTURED HOME PARK OR SUBDIVISION. Any area designed to accommodate two or more independent mobile or manufactured homes intended for residential use where residence is in mobile or manufactured homes exclusively.

MORTUARY or **MORGUE.** A place where dead human bodies are prepared or kept for identification prior to arrangement for burial.

MOTEL. See **HOTEL**.

NONCONFORMING LOT. An otherwise legally platted lot that has less than the minimum specifications required by this chapter, either on the effective date of this chapter or at the date of subsequent amendments to this chapter.

NONCONFORMING STRUCTURE. An otherwise legal building or structure not complying with minimum lot area, yard, height, lot coverage, or other area or dimensional requirements of this chapter, either on the effective date of this chapter or at the date of subsequent amendments to this chapter.

NONCONFORMING USE. A use that was legal upon its inception but does not conform to the use regulations of this chapter, either on its effective date or at the date of subsequent amendments to this chapter.

OFFICE BUILDING. A facility in which the administrative activities, record keeping, clerical work, and other similar affairs of a business, professional service, industry, or government are conducted and, in the case of professions such as dentists, physicians, lawyers, or engineers, the facility where such professional services are rendered.

OFF-SITE. All area and structures not falling within the boundary of the land to be developed or under review.

ON-SITE. All land and structures falling within the boundary of the land to be developed, or contiguous, under the same ownership, and with a common plan of development.

OPEN SPACE. Land area set aside for recreation, landscaping, or natural preservation and not used for residences or business activities. **OPEN SPACE** may not be occupied by a patio, deck, or other structure. **OPEN SPACE** on which an approved landscaping plan is in effect is considered **LANDSCAPED OPEN SPACE**.

PARKING STRUCTURE, MULTILEVEL. A structure with multiple stories designed for the parking of passenger vehicles.

PATIO. An exterior living space designed and constructed in a manner that no portion of it is more than eight inches above the adjacent yard surfaces. For the purpose of this chapter, a **PATIO** is not a structure nor can any part of it be counted as landscaped space. A **PATIO** may intrude into a required side or rear yard no more than six feet. A **PATIO** intruding into the front yard is permitted as a stoop in front of the front door and may be no larger than sixteen square feet.

PERSON. Any individual, firm, corporation, partnership, association, company, business, trust, joint venture, organization, or other legal entity, by whatever term customarily known.

PERSONAL IMPROVEMENT SERVICE. A facility providing informational, instructional, and similar services for personal improvement. Typical uses include, but are not limited to, driving instruction, health or physical fitness studios, dance studios, handicraft, or hobby instruction.

PROFESSIONAL OFFICE. Any office for the practice of a profession including, but not limited to, architecture, engineering, law, medicine, psychology, theology, real estate, and accounting.

PUBLIC ACCESS EASEMENT. A right of ingress and egress granted by a property owner over his or her privately owned land for the use of the public to travel to a public street in which right to enjoyment is vested in the public generally or in an entire community.

PUBLIC DANCE HALL. The use of any structure, or structure and premises, open to the general public on a regular basis regardless of whether or not an admission fee is charged, where dancing, or the rhythmic movement of body and feet ordinarily accompanied by music, is permitted and the occupancy load of the premises is greater than 50 persons.

PUBLIC USE. Any holding, use, or control, exclusively for public purposes, of any facility, place, site, or structure by any department or branch of government of the federal government, state, or any political subdivision, public authority, or school board, or any combination thereof.

PUBLIC UTILITY. A business or service having an appropriate franchise from the state engaged in regularly supplying the public with a commodity or service of public consequence and need such as electricity, gas, water, sanitary sewer, stormwater management, transportation, or communications.

RECONSTRUCTION. Work required to remake or rebuild all or a part of any building to a sound condition, but not necessarily using original materials.

RECREATIONAL VEHICLE. Any vehicle, trailer, or semitrailer designed for human occupation and not meeting the definition of manufactured home and is not meant for permanent occupancy.

RESIDENTIAL GUEST. Any person not included in the definition of family who sleeps, eats, or otherwise is sheltered by the legal family unit for a period of not more than 30 consecutive days, or 104 calendar days in a single calendar year and who does not compensate the legal family unit for room or board except to defray actual expenses incurred.

RESTAURANT. A building designed or altered, in whole or part, for the purpose of preparation and serving of food and/or beverage for consumption on the premises in exchange for compensation, except for an establishment that meets the definition of “drive-through restaurant” or “public dance hall restaurant” below. At no time shall a **RESTAURANT** dispense food directly to persons in a vehicle.

RESTAURANT, DRIVE-THROUGH. A building designed or altered, in whole or part, to cater to or accommodate the consumption of food and/or beverage on premises, and to customers awaiting the dispensing of such food while in their motorized vehicles, in exchange for compensation.

RESTAURANT, PUBLIC DANCE HALL. A formal or informal restaurant with an occupancy load of more than 50 persons and which meets the definition of “public dance hall” above.

RESTORATION. Work connected with the returning to or repair of a building, or a part of any building, to its original condition through the use of original or nearly original materials.

RETAIL STORE. A building in which merchandise is displayed and sold or personal services rendered to the general public, including an aerobic and dance studio, hardware store, or wellness facility, but not including an adult business, big box, commercial amusement/recreation facility, dead storage, gasoline station, hospital, animal hospital, junkyard, kennel, massage establishment as defined in § 112.02 of this code, multilevel parking structure, restaurant, truck terminal.

ROOMING HOUSE. See **BOARDINGHOUSE.**

SEMIPUBLIC. Any nonprofit use of a building, facility, structure, or land area by the general public for civic or philanthropically oriented uses not under the general supervision or responsibility of a government or governmental franchised utility. This term includes civic center, cultural arts, and similar activities.

SERVICE STATION. See **GASOLINE STATION.**

SETBACK. The minimum distance by which a structure must be separated from a lot line, measured from the nearest vertical wall of the structure to the property line. The term “nearest vertical wall” does not include bay windows, chimneys, eaves, and similar architectural features no more than two feet in depth. For portions of structures without vertical walls, such as decks, the **SETBACK** is

measured to the nearest corner or edge of the structure instead.

SHELTER, RESIDENTIAL. A structure operated not for profit, and licensed by the State Welfare Division as transient housing providing short-term or long-term occupancy by more than eight residents, with associated administrative offices.

SIGN. See § 157.301.

SITE PLAN, FINAL. A plan delineating the overall scheme of development of a tract of land, including, but not limited to, grading, engineering design, construction details, survey data for existing and proposed improvements, public utility, storm drainage, landscaping, lighting detail, and erosion and sediment control plans.

SITE PLAN, PRELIMINARY. A plan showing the proposed general layout, the general location of the various types of land uses, the proposed number of dwelling units and layout of lots, general location of streets, and a plan showing the location of recreational spaces, parks, schools, and other public or community uses, where applicable.

SPACE, LOADING. Any off-street parking space designed, designated, and available for loading and unloading of bulk goods.

SPACE, OFF-STREET PARKING. A space adequate for the temporary storage of a motor vehicle with room for opening doors on both sides, together with properly related access to a public street and maneuvering room, all located outside the dedicated street right-of-way.

SPECIAL EXCEPTION. A use or activity which is not permitted by the provisions of this chapter within a specific zoning district, without being reviewed and authorized by legislative action of the Town Council through the issuance of a special use permit.

SPECIAL USE PERMIT. A permit issued by the Town Council for a special exception after determining such permit to be in keeping with the provisions and intent of this chapter.

STORY. The portion of a building included between the surface of any floor and the surface of the floor next above it, or, if it is the topmost story, the portion included between the surface of its floor and the ceiling next above it.

STORY, HALF. A story under a gable, hip, or gambrel roof, the wall plates of which on at least two opposite exterior walls are not more than two feet above the floor of such story.

STREET. A strip of land, including the entire right-of-way intended to be dedicated for use as a means of vehicular and pedestrian circulation by the public at large. The term **STREET** includes avenues, boulevards, highways, roads, bridges, and the approaches thereto and all other public thoroughfares, but not alleys, in the town, and shall mean the entire width thereof between abutting property lines.

STRUCTURE. Any assembly of materials forming a construction or fixture for occupancy or use on, under, or over (or any combination thereof) land or water including, but not limited to, stadiums, tents, reviewing stands, platforms, stages, observation towers, telecommunications towers, solar energy devices, water tanks, trestles, piers, wharfs, swimming pools, storage bins, fences, private or public utility lines and other facilities, signs, buildings, parking lots, driveways, decks, gasoline pumps and

pump islands, underground storage tanks, stormwater management and retention facilities. The word **STRUCTURE** shall be construed as though followed by the words “or parts thereof” unless the context clearly requires a different meaning. The word **STRUCTURE** includes the word **BUILDING**.

STRUCTURE, CONTRIBUTING. Any structure more than 50 years old at the time under consideration and that represents the period in which it was built by material, design, or other physical features, or is a place of significance that preserves, protects or enhances the character of the historic district in which it is located as determined by the Zoning Administrator.

STRUCTURE, HISTORIC. Any building or physical improvement built before 1900.

STRUCTURE, NON-CONTRIBUTING. Any structure found within a historic overlay district that has not been identified and listed on the historic district structures list adopted by the Town Council.

SUBDIVISION. Any division or re-division of a lot, tract, or parcel of land into lots, tracts, or parcels for the purpose of recordation of any single division and subject to the provisions of Chapter 156 of this code, as amended.

TOWNHOUSE. See **DWELLING, ATTACHED**.

TRAVEL TRAILER. See **RECREATIONAL VEHICLE**.

TRUCK TERMINAL. A structure and site designed and used primarily for the loading, unloading, storage, refueling, and maintenance (limited to the changing of tires, fuses, and lights) of tractor trailers or other commercial vehicles.

VETERINARY. See **HOSPITAL, ANIMAL**.

WELLNESS FACILITY. A structure and use designed primarily to provide at least two of the following services: physical therapy; class instruction on physical fitness; aerobics; weight training; nutritional consultation; classes on personal hygiene; and similar activities.

WHOLESALE BUSINESS. A business selling merchandise to retailers, industrial, commercial, institutional, or professional business users, or to other wholesalers, but not including a “big box”, as defined herein.

YARD. An open area on a lot between the lot line and the building, measured from the nearest vertical wall of the building to the property line. The term “nearest vertical wall” does not include bay windows, chimneys, eaves, and similar architectural features no more than two feet in depth. A **YARD** shall be open space except as otherwise provided in this chapter.

YARD, FRONT. A yard provided along any street frontage for the full width of the lot and whose depth is measured from the street line perpendicular to the lot frontage to the nearest vertical wall of the structure. For portions of structures without vertical walls, such as decks, the yard is measured to the nearest corner or edge of the structure instead.

YARD, REAR. A yard provided between a structure and the rear lot line and measured perpendicular to the rear lot line to the nearest vertical wall of the structure. For portions of structures

without vertical walls, such as decks, the yard is measured to the nearest corner or edge of the structure instead.

YARD, SIDE. A yard provided between a structure and the side lot line and measured perpendicular to the side lot line to the nearest vertical wall of the structure. For portions of structures without vertical walls, such as decks, the yard is measured to the nearest corner or edge of the structure instead.

YARD SALE, RESIDENTIAL. A limited customary accessory use permitted in all residential districts which includes display and noncommercial sales, for the disposal of personal property accumulated by the family of a residential unit for family use and not for resale.

ZONING ADMINISTRATOR. The public official charged with interpretation and enforcement of the provisions of this chapter.

ZONING CERTIFICATION. An official document signed by the Zoning Administrator, or the designated agent, that certifies a specific use, or construction on a specific parcel in the town is consistent with the provisions and conditions of this chapter. An official certification must contain notice of appeal as required under VA Code § 15.2-2311 or successor statute.

(1998 Code, § 66-8) (Ord. passed 9-5-2017)

§ 157.009 DISCLOSURE OF INTERESTS.

(A) Any applicant for a special exception, a special use permit, an amendment to this chapter, or a variance shall make complete disclosure of the equitable ownership of the real estate to be affected including, in the case of corporate ownership, the name of stockholders, officers, and directors and in any case the names and addresses of all the real parties of interest. However, the requirement of listing names of stockholders, officers, and directors shall not apply to a corporation whose stock is traded on a national or local stock exchange and having more than 500 stockholders. In the case of a condominium, the requirement shall apply only to the title owner, contract purchaser, or lessee if he or she owns 10% or more of the units in the condominium.

(B) The disclosure of interests shall be made under oath, notarized, and provided to the body receiving the application simultaneously with the submission of the application.

(1998 Code, § 66-9) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.010 HOME OCCUPATION CERTIFICATE.

A home occupation certificate shall be required for all home business occupations and is subject to the following standards.

(A) No outside employees shall be permitted to work on the premises, except for family members residing in the dwelling.

(B) No employee, agent, customer, or client shall be permitted to come to the dwelling unit for business related purposes.

(C) No business signs, freestanding or otherwise, shall be permitted on-site.

(D) On-site storage of materials, merchandise, or equipment is limited to materials customarily found within a residential dwelling. Such as yarn, cloth, paint, and cosmetic or similar nontoxic or nonhazardous material, and a telephone, computer, or other typical light office equipment necessary to the home business occupation.

(E) One company vehicle shall be permitted. A company vehicle is a passenger motor vehicle or light duty truck less than 7,500 pounds gross vehicle weight exclusively used in a business or commercial activity and shall not include any of the following: contractor's equipment or other heavy equipment; a garbage truck; tractor; trailer of a tractor-trailer truck; dump truck; tow truck; passenger bus; cement truck; and step vans. The company vehicle must be kept in a garage, accessory building, or in designated parking spaces within off-street parking areas in such a manner that meets or exceeds other provisions of this code.

(F) The operation must be conducted entirely within the dwelling (not in any accessory structure, i.e., detached shed/garage) by the owner/occupant residing in the dwelling, and shall not change the character of the dwelling unit nor exhibit any exterior evidence of nonresidential use. No outside storage shall be permitted. Commercial deliveries and pickups of supplies associated with the use shall be limited to not more than one per day and shall be made only during business hours.

(G) The area devoted to the home occupation shall not exceed 25% of the gross floor area of the dwelling unit.
(1998 Code, § 66-10) (Ord. passed 9-5-2017)

§ 157.011 EXTENSION OF ZONING APPROVALS TO ADDRESS HOUSING CRISIS.

Provisions for extension of zoning approvals shall be in conformance with VA Code § 15.2-2209.1.
(1998 Code, § 66-11) (Ord. passed 9-5-2017)

§ 157.012 SETBACK ENCROACHMENTS FOR ADA RAMPS, STRUCTURES, AND EQUIPMENT.

Notwithstanding the setback requirements set forth in this chapter, upon application and demonstration to the satisfaction of the Zoning Administrator that the same is reasonably necessary to allow for access or egress or for emergency services ("modification"), the Zoning Administrator shall allow a reasonable modification of setback requirements by permitting ramps, structures, and equipment needed to provide access or egress or for emergency services for a specific, identified individual with disabilities under the United States Americans with Disabilities Act of 1990 to encroach into any setback to the minimum distance necessary to provide the access or egress or for emergency services. The Zoning Administrator may seek guidance from appropriate governmental building and life safety officials when considering the application for modification. The Zoning Administrator shall report approval of such modification to the Town Council at the next regularly scheduled meeting. Any such modification approved by the Zoning Administrator shall: be constructed in accordance with the State Uniform Statewide Building Code, being 13 VAC 5-63 and is subject to all applicable review permitting and inspections requirements and fees; and be promptly removed and the setback restored to conform to this chapter upon discontinuance of the need. The Zoning Administrator may require reasonable documentation and access to the property to substantiate the

extent of the need for the modification.
(1998 Code, § 66-12) (Ord. passed 9-5-2017)

DISTRICTS; GENERALLY

§ 157.025 ESTABLISHMENT OF DISTRICTS.

(A) For purposes of this chapter, the incorporated areas of the town are hereby divided into the following districts:

- (1) R-1 District, limited residential, low-density;
- (2) R-2 District, general residential, medium-density;
- (3) R-3 District, general residential, high-density;
- (4) R-4 District, residential, high-density; and
- (5) B-1 District, generally business, with mixed-use components.

(B) The locations and boundaries of these districts are shown on the Zoning Map.
(1998 Code, § 66-41) (Ord. passed 9-5-2017)

R-1 DISTRICT

§ 157.040 STATEMENT OF INTENT.

The R-1 District consists of low-density residential areas, together with open areas, wherein further low-density residential development appears likely to occur. The regulations for this district are designed to protect and promote the essential characteristics of this district, to promote and encourage a healthy and suitable environment for family life, especially for families that include children, and to ensure that the limited physical size of the town is developed in accordance with its historical character as a town that is primarily residential, with concentrated commercial uses. To this end, development in the R-1 District is limited to low-concentration residential use, mostly detached single-family residences, together with certain additional uses that would serve the residents of this district, including schools, parks, and utilities. To preserve the character of this district, no commercial or industrial use is allowed.

(1998 Code, § 66-61) (Ord. passed 9-5-2017)

§ 157.041 USES PERMITTED.

Structures to be erected or maintained, or land to be used, shall be restricted to one or more of the following uses.

(A) *Uses permitted by-right.*

- (1) Detached single-family dwellings;
- (2) Schools;
- (3) Town parks;
- (4) Places of assembly with less than 25 seats, as an accessory to the principal use;
- (5) Home business occupations conducted by a resident and occupant, as an accessory use, subject to the issuance of a home occupation certificate in accordance with § 157.010;
- (6) Homestay, as an accessory use;
- (7) Accessory buildings; except that a garage or other accessory structure, such as a carport, porch, or stoop, when attached to the main building, shall be considered part of the main building, subject to any property line or setback restrictions in effect at the time of construction;
- (8) Temporary seasonal display, subject to the following conditions: display must be accessory to the principal use of the property; and display may not be present for more than 45 days; and
- (9) Public utilities, including poles, lines, distribution transformers, pipes, meters, or other facilities necessary for the provision and maintenance of public utilities, including water and sewerage facilities.

(B) *Uses permitted by special exception permit approved by Town Council.* Bed and breakfast; professional offices within detached single-family dwellings, operated by a resident and occupant; and rooming houses and boardinghouses operated by a resident and occupant.
(1998 Code, § 66-62) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.042 SIGNS PERMITTED.

Signs shall be in conformance with §§ 157.300 through 157.309, 157.320 through 157.322, and 157.335 through 157.339.
(1998 Code, § 66-63) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.043 AREA REGULATIONS.

A residential lot containing or intended to contain a detached single-family dwelling shall have a minimum lot area of 10,000 square feet.
(1998 Code, § 66-64) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.044 SETBACK REGULATIONS.

Buildings shall be located 35 feet or more from any street right-of-way that is 50 feet or more in width, or 60 feet or more from the centerline of any street right-of-way less than 50 feet in width. This shall be known as the **SETBACK LINE**.

(1998 Code, § 66-65) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.045 FRONTAGE REGULATIONS.

For detached single-family dwellings, the minimum lot width at the setback line shall be 70 feet. The front of a corner lot shall be deemed to be the shorter of the two sides fronting on streets.

(1998 Code, § 66-66) (Ord. passed 9-5-2017)

§ 157.046 YARD REGULATIONS.

(A) *Side*. The minimum side yard shall be ten feet, and the total minimum width of the two required side yards shall be 25 feet. For corner lots, the side yard on the side facing the side street shall be 20 feet or more for both main and accessory buildings. Decks are not permitted in the minimum side yard area.

(B) *Rear*. The minimum rear yard, measured from the largest structure upon the premises, shall be 40 feet, of which no more than 15 feet may be occupied by a deck. However, the Zoning Administrator shall issue a zoning permit reducing the rear yard to 25 feet if the existing or planned building will not have any provision for a deck and a note is placed on all site plans, subdivision plans, building plans, and record plats associated with the property that no deck is permitted on the lot. No deck may be built in any rear yard subject to such a zoning permit. The Zoning Administrator shall issue a zoning permit for a deck larger than 15 feet, if the distance from the rear edge of the deck to the property line is at least 25 feet.

(1998 Code, § 66-67) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.047 HEIGHT REGULATIONS.

(A) Buildings may be erected up to 35 feet in height from the average of the finished ground level adjoining the building at all exterior walls.

(B) Public or semipublic buildings, such as a school, library, or hospital, may be erected to a height of 60 feet from grade, provided that required front, side, and rear yards shall be increased one foot for each foot in height over 35 feet.

(C) Spires, belfries, cupolas, monuments, water towers, chimneys, flues, flagpoles, television antennas, and radio aerials are exempt.

(D) Parapet walls may be up to four feet above the height of the building on which the walls rest.

(E) No accessory building shall be closer than five feet to any lot line, nor shall it be more than one story high. All accessory buildings shall be less than the main building in height.

(1998 Code, § 66-68) (Ord. passed 9-5-2017) Penalty, see § 10.99

R-2 DISTRICT

§ 157.060 STATEMENT OF INTENT.

The R-2 District consists of certain medium-density residential uses, generally located between detached single-family residential and commercial areas, together with certain open areas, where similar development appears likely to occur. The regulations for this district are designed to stabilize and protect the essential characteristics of the district, to promote and encourage, with compatible intensities of land use, a suitable environment for family life composed of an adult population with some children, and to permit certain commercial uses of a character unlikely to develop a general concentration of traffic, crowds of customers and general outdoor advertising. To this end, retail activity is sharply limited and this district is protected against encroachment of general commercial or industrial uses. All residential types of structures for both permanent and transient occupancy, including institutions, are permitted, as well as structures for commercial uses conforming to the pattern of the district. This residential district is not completely residential as it includes public, semipublic, institutional, and other related uses. However, it is mostly residential in character, and, as such, shall not be spotted with commercial and industrial uses.
(1998 Code, § 66-91) (Ord. passed 9-5-2017)

§ 157.061 USES PERMITTED.

Structures to be maintained or erected or land to be used shall be restricted to one or more of the following uses.

(A) *Uses permitted by right.* Uses permitted by right are as follows:

- (1) Detached single-family dwellings;
- (2) Two-family or duplex dwellings;
- (3) Places of assembly with less than 25 seats, as an accessory to the principal use;
- (4) Home business occupations conducted by a resident and occupant, as an accessory use, subject to the issuance of a home occupation certificate in accordance with § 157.010;
- (5) Homestay, as an accessory use;
- (6) Accessory buildings, except that a garage or other accessory structure, such as a carport, porch, or stoop, when attached to the main building, shall be considered a part of the main building and shall be subject to any property line or setback restrictions in effect within the town;
- (7) Temporary seasonal display, subject to the following conditions: display must be accessory to the principal use of the property; and display may not be present for more than 45 days; and
- (8) Public utilities, including poles, lines, distribution transformers, pipes, meters, or other

facilities necessary for the provision and maintenance of public facilities, including water and sewerage facilities.

(B) *Uses permitted by special exception permit approved by Town Council.* Uses permitted by special exception permit approved by Town Council are as follows:

(1) Bed and breakfast;

(2) Low-intensity professional and medical offices and facilities within detached single-family dwellings, not conducted by a resident and occupant;

(3) Rooming houses and boardinghouses operated by a resident and occupant; and

(4) Professional offices within detached single-family dwellings, operated by a resident and occupant.

(1998 Code, § 66-92) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.062 SIGNS PERMITTED.

Signs shall be in conformance with §§ 157.300 through 157.309, 157.320 through 157.322, and 157.335 through 157.339.

(1998 Code, § 66-93) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.063 AREA REGULATIONS.

Residential lots containing or intended to contain a detached single-family dwelling shall have a minimum lot area of 10,000 square feet. Residential lots containing or intended to contain two-family or duplex dwellings shall have a minimum lot area of 12,000 square feet. Further, that portion of the lot area used or intended to be used for erection or maintenance of a building shall not be less than 3,600 square feet in area. That portion of the total lot area used for property line setbacks, walkways, and outdoor recreational areas shall not be less than 6,600 square feet in area. That portion of the total lot area used for off-street parking shall not be less than 1,800 square feet in area.

(1998 Code, § 66-94) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.064 SETBACK REGULATIONS.

Dwellings shall be located 35 feet or more from any street right-of-way that is 50 feet or more in width, or 60 feet or more from the centerline of any street right-of-way less than 50 feet in width. This shall be known as the setback line.

(1998 Code, § 66-95) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.065 FRONTAGE REGULATIONS.

(A) For detached single-family dwelling, the minimum lot width at the setback line shall be 70 feet.

(B) For two-family or duplex dwellings, the minimum lot width at the setback line shall be 80 feet.

(C) The front of a corner lot shall be deemed to be the shorter of the two sides fronting on streets. (1998 Code, § 66-96) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.066 YARD REGULATIONS.

(A) *Side.* The minimum side yard for detached single-family dwellings shall be ten feet, and the minimum total width of the two required side yards shall be 25 feet. The minimum side yard for two-family or duplex dwellings shall be 15 feet, and the minimum total width of the two required side yards shall be 35 feet. For corner lots, the side yard on the side facing the side street shall be 20 feet or more for both main and accessory buildings. Decks are not permitted in the minimum side yard area.

(B) *Rear.* Each main building shall have a rear yard of 40 feet or more, of which no more than 15 feet may be occupied by a deck. However, the Zoning Administrator shall issue a zoning permit reducing the rear yard to 20 feet if the existing or planned building will not have any provision for a deck and a note is placed on all site plans, subdivision plans, building plans, and record plats associated with the property that no deck is permitted on the lot. No deck may be built in any rear yard subject to such a zoning permit. The Zoning Administrator shall issue a zoning permit for a deck larger than 15 feet if the distance from the rear edge of the deck to the property line is at least 25 feet. (1998 Code, § 66-97) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.067 HEIGHT REGULATIONS.

(A) Buildings may be erected up to 35 feet in height from the average of the finished ground level adjoining the building at all exterior walls.

(B) Public or semipublic buildings, such as a school, library, or hospital, may be erected to a height of 60 feet from grade, provided that required front, side, and rear yards shall be increased one foot for each foot in height over 35 feet.

(C) Spires, belfries, cupolas, monuments, water towers, chimneys, flues, flagpoles, television antennas, and radio aerials are exempt.

(D) Parapet walls may be up to four feet above the height of the building on which the walls rest.

(E) No accessory building shall be closer than five feet to any lot line, nor shall it be more than one story high. All accessory buildings shall be less than the main building in height.

(1998 Code, § 66-98) (Ord. passed 9-5-2017) Penalty, see § 10.99

R-3 DISTRICT

§ 157.080 STATEMENT OF INTENT.

The R-3 District consists of areas in which residential development is likely to take the form of dwellings designed to accommodate more than two families, such as two-family or duplex dwellings,

or townhouse projects. When possible, these higher density dwellings shall be built as unified projects rather than on a lot-by-lot basis. This district further consists of open areas which shall be preserved for use as parks and recreation property to ensure a healthful family environment in an area of high population density. This district shall not be spotted with business or commercial uses. (1998 Code, § 66-111) (Ord. passed 9-5-2017)

§ 157.081 USES PERMITTED.

Structures to be maintained or erected or land to be used shall be restricted to one or more of the following uses.

(A) *Uses permitted by right.* Uses permitted by right are as follows:

- (1) Detached single-family dwellings;
- (2) Duplex dwellings;
- (3) Townhouse development;
- (4) Rooming houses and boardinghouses, operated by a resident and occupant;
- (5) Home business occupations conducted by a resident and occupant, as an accessory use, subject to the issuance of a home occupation certificate in accordance with § 157.010;
- (6) Homestay, as an accessory use;
- (7) Professional offices within detached single-family dwellings, operated by a resident and occupant;
- (8) Accessory buildings; except that a garage or other accessory structure, such as a carport, porch, or stoop, when attached to the main building, shall be subject to any property line or setback restrictions in effect within the town;
- (9) Temporary seasonal display, subject to the following conditions: display must be accessory to the principal use of the property; and display may not be present for more than 45 days;
- (10) Public utilities, including poles, lines, distribution transformers, pipes, meters, or other facilities necessary for the provision and maintenance of public utilities, including water and sewerage facilities; and
- (11) Private or public recreation facilities; events shall be scheduled to complete all activity before or as near to 11:00 p.m., as practical.

(B) *Uses permitted by special exception permit approved by Town Council.* Uses permitted by special exception permit approved by Town Council are as follows:

- (1) Bed and breakfast;
- (2) Child care facilities;

(3) Professional offices within townhouse dwellings, operated by a resident and occupant;
and

(4) Private club facilities.
(1998 Code, § 66-112) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.082 SIGNS PERMITTED.

Signs shall be in conformance with §§ 157.300 through 157.309, 157.320 through 157.322, and 157.335 through 157.339.
(1998 Code, § 66-113) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.083 AREA REGULATIONS.

(A) Residential lots containing or intended to contain detached single-family dwellings shall have a minimum lot area of 6,000 square feet.

(B) Residential lots containing or intended to contain duplex dwellings shall have a minimum lot area of 12,000 square feet.

(C) The average lot width for any group of townhouses shall be at least 20 feet. At least 40% of the total area of any townhouse project, including area on individual lots, shall be devoted to landscaped open space. Preservation of desirable natural vegetation may substitute for landscape plantings upon approval of the Town Council. The maximum number of attached units in any one group or series shall be eight. No townhouse lot shall be arranged or developed in such a way as to necessitate vehicles backing out onto any public street. Individual townhouse lots may front on private streets, provided there is an access easement to a publicly maintained street. Individual townhouse lots shall be platted outside of any private streets or common parking areas. Private streets shall be constructed in accordance with § 156.068(B). The provisions of this division (C) may be modified by the Town Council as part of the approval of a rezoning or special use permit.

(D) The minimum lot area for any multifamily structure shall be at least 10,000 square feet, and the minimum width shall be 100 feet. Not more than 16 multifamily units may be established per acre. At least 30% of the land area in any project shall be devoted to landscaped open space.
(1998 Code, § 66-114) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.084 SETBACK REGULATIONS.

(A) Single-family dwellings within the R-3 District shall be located 25 feet or more from any public street right-of-way that is 50 feet or more in width, or 60 feet or more from the centerline of any public street right-of-way less than 50 feet in width. This shall be known as the setback line.

(B) Duplex and townhouse dwellings shall be set back at least 25 feet from the public or private street right-of-way; except that when parking is provided in the rear or side of a unit, the setback from a public or private street right-of-way or easement shall be a minimum of ten feet. In all cases, a minimum front yard of ten feet shall be required; and such front yard shall not be encumbered by

common parking areas, private streets, travel ways, or sidewalks other than the entrance walk to the individual unit or parking spaces for the individual unit. No more than two abutting attached units shall have the same setback. Minimum setback variations shall be two feet.

(C) Multifamily dwellings shall be set back at least 25 feet from street right-of-way or the private street portion of access easements, whichever is closer.

(D) The setback regulations in this section shall not apply in the Old and Historic Occoquan District.

(1998 Code, § 66-115) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.085 FRONTAGE REGULATIONS.

The front of a corner lot shall be deemed to be the shorter of the two sides fronting on streets.
(1998 Code, § 66-116) (Ord. passed 9-5-2017)

§ 157.086 YARD REGULATIONS.

(A) *Side.*

(1) The minimum side yard for detached single-family dwellings shall be ten feet on each side.

(2) The minimum side yard for duplex dwellings shall be ten feet on each side.

(3) For townhouse lots, there shall be no side yard required except for end units, which shall have a minimum ten-foot side yard for each end unit.

(4) Multifamily dwellings shall have a minimum side yard on each side of at least 25 feet.

(5) Decks are not permitted in the minimum side area.

(6) Side yards within the Old and Historic Occoquan District shall be exempt.

(B) *Rear.* Each main building shall have a rear yard of at least 20 feet, of which no more than ten feet may be occupied by an uncovered deck.

(C) *Closeness.* No accessory building shall be closer than five feet to any lot line.
(1998 Code, § 66-117) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.087 HEIGHT REGULATIONS.

(A) Buildings may be erected up to 35 feet in height from the average of the finished ground level adjoining the building at all exterior walls.

(B) Public or semipublic buildings, such as a school, library, or hospital, may be erected to a height of 60 feet from grade, provided that required front, side, and rear yards shall be increased one

foot for each foot in height over 35 feet.

(C) Spires, belfries, cupolas, monuments, water towers, chimneys, flues, flagpoles, television antennas, and radio aerials are exempt.

(D) Parapet walls may be up to four feet above the height of the building on which the walls rest.

(E) Accessory buildings shall not be more than one story. All accessory buildings shall be less than the main building in height.

(F) The height limitations contained in this section may be modified as part of the approval of a special use permit or rezoning.

(1998 Code, § 66-118) (Ord. passed 9-5-2017) Penalty, see § 10.99

R-4 DISTRICT

§ 157.100 STATEMENT OF INTENT.

The R-4 District consists of areas in which residential development is likely to take the form of dwellings designed to accommodate multifamily dwellings, garden, and high-rise apartment projects. When possible, these higher density dwellings shall be built as unified projects rather than on a lot-by-lot basis. This district further consists of open areas which shall be preserved for use as park and recreation property to ensure a healthful family environment in an area of high population density. This district shall not be spotted with business or commercial uses.

(1998 Code, § 66-119) (Ord. passed 9-5-2017)

§ 157.101 USES PERMITTED.

Structures to be maintained or erected, or land to be used, shall be restricted to the following uses.

(A) *Uses permitted by right.* Uses permitted by right are as follows:

(1) Multifamily dwellings or apartment houses, upon site plan approval by the Planning Commission;

(2) Accessory buildings, except that a garage or other accessory structure, such as a carport, porch, or stoop, when attached to the main building, shall be subject to any property line or setback restrictions in effect at the time of approval;

(3) Home business occupations conducted by a resident and occupant, as an accessory use, subject to the issuance of a home occupation certificate in accordance with § 157.010;

(4) Temporary seasonal display, subject to the following conditions: display must be accessory to the principal use of the property; and display may not be present for more than 45 days;

(5) Public utilities, including poles, lines, distribution transformers, pipes, meters, or other facilities necessary for the provision and maintenance of public utilities, including water and sewerage facilities; and

(6) Private or public recreation facilities; events shall be scheduled to complete all activity before or as near to 11:00 p.m. as practical.

(B) *Uses permitted by special exception permit approved by Town Council.* Uses permitted by special exception permit approved by Town Council are as follows: child care facilities; garden and high-rise apartment projects; and private club facilities.

(1998 Code, § 66-120) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.102 SIGNS PERMITTED.

Signs shall be in conformance with §§ 157.300 through 157.309, 157.320 through 157.322, and 157.335 through 157.339.

(1998 Code, § 66-121) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.103 AREA REGULATIONS.

The minimum lot area for any multifamily structure shall be at least 10,000 square feet, and the minimum width shall be 100 feet. No more than 16 multifamily units may be established per acre. At least 30% of the land area in any project shall be devoted to landscaped open space.

(1998 Code, § 66-122) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.104 SETBACK REGULATIONS.

(A) Multifamily dwellings shall be set back at least 25 feet from street right-of-way or the private street portion of access easements, whichever is closer.

(B) The setback regulations in this section shall not apply in the Old and Historic Occoquan District.

(1998 Code, § 66-123) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.105 FRONTAGE REGULATIONS.

The front of a corner lot shall be deemed to be the shorter of the two sides fronting on streets.

(1998 Code, § 66-124) (Ord. passed 9-5-2017)

§ 157.106 YARD REGULATIONS.

(A) Multifamily dwellings shall have a minimum side yard on each side of at least 25 feet.

(B) Each main building shall have a rear yard of at least 20 feet.

(C) No accessory building shall be closer than five feet to any lot line.

(D) The side and rear yards required by this section shall not apply in the Old and Historic Occoquan District.

(1998 Code, § 66-125) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.107 HEIGHT REGULATIONS.

(A) Buildings may be erected up to 35 feet in height from the average of the finished ground level adjoining the building at all exterior walls.

(B) Public or semipublic buildings, such as a school, library, or hospital, may be erected to a height of 60 feet from grade, provided that required front, side, and rear yards shall be increased one foot for each foot in height over 35 feet.

(C) Spires, belfries, cupolas, monuments, water towers, chimneys, flues, flagpoles, television antennas, and radio aerials are exempt. Parapet walls may be up to four feet above the height of the building on which the walls rest.

(D) No accessory structure shall be more than one story high. All accessory buildings shall be less than the main building in height.

(E) The height limitations contained in this section may be modified as part of the approval of a special use permit or rezoning.

(1998 Code, § 66-126) (Ord. passed 9-5-2017) Penalty, see § 10.99

B-1 DISTRICT

§ 157.120 STATEMENT OF INTENT.

Generally, the B-1 District covers that portion of the town intended for the conduct of general business to which the public requires direct and frequent access, but is not characterized either by constant heavy trucking, other than stocking and delivery of light retail goods, or by any nuisance factors, other than incidental light and noise of congregation of people and passenger vehicles. This includes such uses as retail stores, banks, theaters, business offices, newspaper offices, restaurants, and taverns. The B-1 District is also encouraged to incorporate mixed-use designs, characterized by business uses along the street or water front with high-density residential above, as new developments and redevelopment occurs.

(1998 Code, § 66-141) (Ord. passed 9-5-2017)

§ 157.121 USES PERMITTED.

Structures to be maintained or erected, or land to be used, shall be restricted to one or more of the

following uses.

(A) *Uses permitted by right.* Uses permitted by right are as follows:

- (1) Home appliance services;
- (2) Bakeries;
- (3) Banks;
- (4) Barbershops and beauty shops;
- (5) Bed and breakfasts;
- (6) Clubs and lodges;
- (7) Drugstores;
- (8) Festivals, town sponsored;
- (9) Hotels;
- (10) Laundry facilities;
- (11) Libraries;
- (12) Machinery sales and service;
- (13) Medical uses;
- (14) Office buildings;
- (15) Places of assembly with less than 25 seats, as an accessory to the principal use;
- (16) Plumbing and electrical supply stores (with storage under cover);
- (17) Public utilities, including poles, lines, distribution transformers, pipes, meters or other facilities necessary for the provision and maintenance of public utilities, including water and sewerage facilities;
- (18) Restaurants, eating places;
- (19) Retail food stores;
- (20) Retail stores;
- (21) Temporary seasonal display, subject to the following conditions: display must be accessory to the principal use of the property; and display may not be present for more than 45 days; and

(22) Waterfront business activities: wholesale and retail marine, such as boat docks, piers, small boat docks, yacht clubs and marine servicing facilities; dock and areas for receipt, storage, and transshipment of waterborne commerce; and recreational activities, primarily conducted on or about a waterfront. All such uses shall be contiguous to a waterfront.

(B) *Uses permitted by special exception permit approved by Town Council.* Uses permitted by special exception permit approved by Town Council are as follows:

(1) Auto services;

(2) Child care facilities;

(3) Funeral homes;

(4) General residential uses, subject to the following condition: residential uses may not occupy the floor of the building that is adjacent to the primary street and/or sidewalk;

(5) Lumber and building supply stores (with storage under cover);

(6) Places of assembly; and

(7) Wholesale businesses.

(1998 Code, § 66-142) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.122 SIGNS PERMITTED.

Signs shall be in conformance with §§ 157.300 through 157.309, 157.320 through 157.322, and 157.335 through 157.339.

(1998 Code, § 66-143) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.123 SETBACK REGULATIONS.

(A) Buildings shall be located five feet or more from any street right-of-way that is 50 feet or more in width, or 35 feet or more from the centerline of any street right-of-way less than 50 feet in width. This shall be known as the setback line.

(B) For those lots included in the plat recorded in the Clerk's office of the County Circuit Court on January 7, 1805, the setback line may be 30 feet from the center of the street.

(1998 Code, § 66-145) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.124 HEIGHT REGULATIONS.

Buildings may be maintained or erected up to 35 feet in height from the average of the finished ground level adjoining the building at all exterior walls; except that:

(A) A public or semipublic building, such as a school, library, or general hospital, may be erected

to a height of 60 feet from grade, provided that required front, side, and rear yards shall be increased one foot for each foot in height over 35 feet;

(B) Spires, belfries, cupolas, monuments, water towers, chimneys, flues, flagpoles, television antennas, and radio aeriels are exempt. Parapet walls may be up to four feet above the height of the buildings on which the walls rest; and

(C) No accessory building may be more than one story tall.
(1998 Code, § 66-146) (Ord. passed 9-5-2017) Penalty, see § 10.99

PARKS AND PUBLIC UTILITY DISTRICT (PPU)

§ 157.135 STATEMENT OF INTENT.

The Parks and Public Utility District (PPU) covers the portion of the town located along the Occoquan River and formerly used as a water treatment facility. This district is intended to provide for public water utility uses, as well as a riverfront public park.
(1998 Code, § 66-166) (Ord. passed 9-5-2017)

§ 157.136 USES PERMITTED.

Structures to be maintained or erected or land to be used shall be restricted to the following: public park; trails/boardwalk; open space; public water utilities including, but not be limited to: water supply intakes; water purification facilities; water storage, control, and pumping facilities; water utility transmission and distribution facilities including, but not limited to, pipes, conduits, vaults, laterals, valves, hydrants, or other similar equipment for the transmission and distribution of water; office and maintenance space related to water utility functions; and supporting utility infrastructure (electricity, telecommunications, gas, sanitary, and storm sewer) incidental to any use set forth in this paragraph including poles, structures, wires, conduits, cables, or other similar equipment; and uses ancillary to the permitted uses including, but not limited to, service roads and storage.
(1998 Code, § 66-167) (Ord. passed 9-5-2017) Penalty, see § 10.99

CHESAPEAKE BAY PRESERVATION OVERLAY DISTRICT

§ 157.150 FINDINGS OF FACT.

(A) The Chesapeake Bay and its tributaries are one of the most important and productive estuarine systems in the world, providing economic and social benefits to the citizens of the town and the state. The health of the bay is vital to maintaining the town's economy and the welfare of its citizens.

(B) The Chesapeake Bay waters have been degraded significantly by many sources of pollution, including nonpoint source pollution from land uses and development. Existing high-quality waters are worthy of protection from degradation to guard against further pollution. Certain lands that are

proximate to shorelines have intrinsic water quality value due to the ecological and biological processes they perform. Other lands have severe development constraints from flooding, erosion, and soil limitations. With proper management, significant ecological benefits can be achieved by providing water quality maintenance and pollution control, as well as flood and shoreline erosion control. The lands designated by the Town Council as Chesapeake Bay Preservation Areas need to be protected from destruction and damage in order to protect the quality of water in the bay and consequently the quality of life in the town and the state.

(1998 Code, § 66-191) (Ord. passed 9-5-2017)

§ 157.151 PURPOSE AND INTENT.

(A) This subchapter is enacted to implement the requirements of VA Code §§ 62.1-44.15:72 et seq. (the Chesapeake Bay Preservation Act), and 9 VAC §§ 25-830-20 et seq. Chesapeake Bay Preservation Area designation and management regulations.

(B) The intent of the Town Council and the purpose of the overlay district is to:

(1) Protect existing high-quality state waters;

(2) Restore all other state waters to a condition or quality that will permit all reasonable public uses and will support the propagation and growth of all aquatic life, including game fish, that might reasonably be expected to inhabit them;

(3) Safeguard the clean waters of the state from pollution;

(4) Prevent any increase in pollution;

(5) Reduce existing pollution; and

(6) Promote water resource conservation in order to provide for the health, safety, and welfare of the present and future citizens of the town.

(C) This district shall be in addition to and shall overlay all other zoning districts where they are applied so that any parcel of land lying in the Chesapeake Bay Preservation Area Overlay District shall also lie in one or more of the other zoning districts provided for by this chapter. Unless otherwise stated in the overlay district, the review and approval procedures provided for in Chapters 111, 151, 152, and 156 of this code shall be followed in reviewing and approving development, redevelopment, and uses governed by this division.

(D) This subchapter is enacted under the authority of VA Code §§ 62.1-44.15:72 et seq. (the Chesapeake Bay Preservation Act), and 9 VAC § 25-830-20, and VA Code § 15.2-2283, stating that “such ordinance may also include reasonable provisions, not inconsistent with applicable state water quality standards, to protect surface water and ground water as defined in VA Code § 62.1-255”.

(1998 Code, § 66-192) (Ord. passed 9-5-2017)

§ 157.152 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Words and terms not defined in this subchapter but defined in this chapter shall be given the meanings previously set forth.

APPLICANT. A person seeking any determination under this part or permit required by this subchapter.

BEST MANAGEMENT PRACTICE (BMPS). A practice, or a combination of practices, that is determined by a state or designated area-wide planning agency to be the most effective, practical means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals.

BUFFER AREA. Natural or established vegetation managed to protect other components of a resource protection area and state waters from significant degradation due to land disturbances.

CHESAPEAKE BAY PRESERVATION AREA (CBPA). Any land designated by the Town Council pursuant to part III of the Chesapeake Bay Preservation Area designation and management regulations, 9 VAC §§ 25-830-70 et seq. and 62.1-44.15:72. A **CBPA** shall consist of a resource protection area and a resource management area.

CONSTRUCTION FOOTPRINT. The area of all impervious surface including, but not limited to, buildings, roads and drives, parking areas, sidewalks, and the area necessary for construction of such improvements.

DEVELOPMENT. The construction or substantial alteration of residential, commercial, industrial, institutional, recreation, transportation, or utility facilities or structures.

DIAMETER AT BREAST. The diameter of a tree measured outside the bark at a point four and one-half feet above height (dBA) ground.

DRIPLINE. A vertical projection to the ground surface from the furthest lateral extent of a tree's leaf canopy.

FLOODPLAIN. All lands that would be inundated by floodwater as a result of a storm event of a 100-year return interval.

HIGHLY ERODIBLE SOILS. Soils (excluding vegetation) with an erodibility index (EI) from sheet and rill erosion equal to or greater than eight. The erodibility index for any soil is defined as the product of the formula $RKLS/T$, where K is the soil susceptibility to water erosion in the surface layer; R is the rainfall and runoff; LS is the combined effects of slope length and steepness; and T is the soil loss tolerance.

HIGHLY PERMEABLE SOILS. Soils with a given potential to transmit water through the soil profile. **HIGHLY PERMEABLE SOILS** are identified as any soil having a permeability equal to or greater than six inches of water movement per hour in any part of the soil profile to a depth of 72 inches, permeability groups rapid and very rapid, as found in the *National Soil Survey Handbook* of November 1996, in the *Field Office Technical Guide* of the U.S. Department of Agricultural Natural Resources Conservation Service.

IMPERVIOUS COVER. A surface composed of any material that significantly impedes or prevents natural infiltration of water into the soil. **IMPERVIOUS SURFACES** include, but are not limited to, roofs, buildings, streets, parking areas, and any concrete, asphalt, or compacted gravel surface.

INTENSELY DEVELOPED AREAS (IDEAS). A portion of a resource protection area or a resource management area designated by the Town Council where development is concentrated and little of the natural environment remains.

NONPOINT SOURCE POLLUTION. Pollution consisting of constituents such as sediment, nutrients, and organic and toxic substances from diffuse sources, such as runoff from agriculture and urban land development and use.

NONTIDAL WETLANDS. Wetlands other than tidal wetlands that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U.S. Environmental Protection Agency pursuant to § 404 of the Federal Clean Water Act, in 33 C.F.R. § 328.3b.

NOXIOUS WEEDS. Weeds that are difficult to control effectively, such as Johnson grass, kudzu, and multiflora rose.

PLAN OF DEVELOPMENT. The process for site plan or subdivision plat review to ensure compliance with 9 VAC § 25-830, and this subchapter prior to any clearing or grading of a site or the issuance of a building permit.

PRIVATE ROAD. A privately owned and maintained road designed and constructed in accordance with the State Department of Transportation standards.

PUBLIC ROAD. A publicly owned road designed in accordance with the State Department of Transportation standards.

REDEVELOPMENT. The process of developing land that is or has been previously developed, including in-fill development in intensely developed areas.

RESOURCE MANAGEMENT AREA (RMA). The component of the CBPA that is not classified as the resource protection area. **RMAS** include land types that, if improperly used or developed, have the potential for causing significant water quality degradation or for diminishing the functional value of the resource protection area.

RESOURCE PROTECTION AREA (RPA). The component of the CBPA comprised of lands adjacent to water bodies with perennial flow, that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts that may result in significant degradation to the quality of state waters. See § 157.153 for areas of applicability.

SUBSTANTIAL ALTERATION. The expansion or modification of a building or development within the resource management area that would result in land disturbance exceeding 2,500 square feet.

TIDAL SHORE or SHORE. Land contiguous to a tidal body of water between the mean low water level and the mean high water level.

TIDAL WETLANDS. Vegetated and non-vegetated wetlands as defined in VA Code § 28.2-1300.

WATER-DEPENDENT FACILITY. Development of land that cannot exist outside of the RPA and must be located on the shoreline due to the intrinsic nature of its operation. These facilities include, but are not limited to: ports; the intake and outfall structures of power plants, water treatment plants, sewage treatment plants, and storm sewers; marinas and other boat docking structures; beaches and other public water-oriented recreation areas; and fisheries or other marine resources facilities.

WETLANDS. Tidal and nontidal wetlands.
(1998 Code, § 66-193) (Ord. passed 9-5-2017)

§ 157.153 AREAS OF APPLICABILITY.

(A) The Chesapeake Bay Preservation Area Overlay District shall apply to all lands identified as CBPAs as designated by the Town Council and as shown on the Occoquan Chesapeake Bay Preservation Area Map. This map, together with all explanatory matter thereon, is adopted by reference and declared to be a part of this subchapter.

(1) The resource protection area (RPA) is hereby established and shall consist of lands adjacent to water bodies with perennial flow that include:

(a) Tidal wetlands;

(b) Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow;

(c) Tidal shores; and

(d) A 100-foot vegetated buffer area located adjacent to and landward of the components listed in divisions (A)(1)(a) through (A)(1)(c) above and along both sides of any water bodies with perennial flow.

(2) The RMA is composed of concentrations of the following land categories: floodplains; highly erodible soils, including steep slopes; highly permeable soils; nontidal wetlands not included in the RPA; and other lands, including all areas in the town necessary to protect the quality of state waters.

(B) The Occoquan Chesapeake Bay Preservation Area Map shows the general location of CBPAs and should be consulted by persons contemplating activities within the town prior to engaging in a regulated activity. The specific location of RPAs on a lot or parcel shall be delineated on each site or parcel as required under § 157.158.

(C) All areas within the town limits north of and including Mill Street and Poplar Lane are designated as IDEAS. These areas shall serve as redevelopment areas. Areas so designated shall comply with all erosion and sediment control requirements and the performance standards for redevelopment in § 157.159.

(1998 Code, § 66-194) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.154 USE REGULATIONS.

Permitted uses, special permit uses, accessory uses, and special requirements shall be as established by the underlying zoning district unless specifically modified by the requirements set forth in this subchapter.

(1998 Code, § 66-195) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.155 LOT SIZE.

Lot size shall be subject to the requirements of the underlying zoning district, provided that any lot shall have sufficient area outside the RPA to accommodate an intended development, in accordance with the performance standards in § 157.159, when such development is not otherwise allowed in the RPA.

(1998 Code, § 66-196) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.156 REQUIRED CONDITIONS.

(A) All development and redevelopment exceeding 2,500 square feet of land disturbance shall be subject to a plan of development process, including the approval of a site plan in accordance with the provisions of Chapter 155 of this code or a subdivision plat in accordance with Chapter 156 of this code.

(B) Development in RPAs may be allowed only when permitted by the Zoning Administrator and if it is: water-dependent; constitutes redevelopment; or constitutes development or redevelopment in the IDEA.

(1) A new or expanded water-dependent facility must meet the following criteria: it does not conflict with the Comprehensive Plan; it complies with all performance standards of § 157.159; all non-water-dependent components must be located outside of the RPA; and access to the water-dependent facility will be provided with the minimum disturbance necessary. Where practicable, a single point of access will be provided.

(2) Redevelopment on isolated redevelopment sites outside of locally designated intensely developed areas sites shall be permitted only if there is not an increase in the amount of impervious cover and no further encroachment within the RPA and it shall conform to the stormwater management requirements outlined under § 157.159(B)(7).

(C) A water quality impact assessment shall be required for any proposed land disturbance, development, or redevelopment within RPAs and for any development within RMAs when required by the Zoning Administrator because of the unique characteristics of the site or intensity of development, in accordance with the provisions of § 157.160.

(1998 Code, § 66-197) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.157 CONFLICT WITH OTHER REGULATIONS.

In any case where the requirements of this subchapter conflict with any other provision of the ordinances of the town or existing state or federal regulations, whichever imposes the more stringent restrictions shall apply.

(1998 Code, § 66-198) (Ord. passed 9-5-2017)

§ 157.158 INTERPRETATION OF RPA BOUNDARIES.

(A) The site-specific boundaries of the RPA shall be determined by the applicant through the performance of an environmental site assessment, subject to approval by the Zoning Administrator and in accordance with § 157.161 or through the submission of a water quality impact assessment in accordance with section § 157.160. The Occoquan Chesapeake Bay Preservation Area Map shall be used as a guide to the general location of RPAs.

(B) The Zoning Administrator, when requested by an applicant wishing to construct a single-family residence, may waive the requirement for an environmental site assessment and perform the delineation. The Zoning Administrator may use hydrology, soils, plant species, and other data, and consult other appropriate resources as needed, to perform the delineation.

(C) Where the applicant has provided a site-specific delineation of the RPA, the Zoning Administrator will verify the accuracy of the boundary delineation. In determining the site-specific RPA boundary, the Zoning Administrator may render adjustments to the applicant's boundary delineation, in accordance with § 157.161 or 157.160 (water quality impact assessment) of this subchapter. If the adjusted boundary delineation is contested by the applicant, the applicant may seek relief, in accordance with the provisions of section 66-202(i).

(1998 Code, § 66-199) (Ord. passed 9-5-2017)

§ 157.159 PERFORMANCE STANDARDS.

(A) Purpose and intent.

(1) The purpose and intent of this section is to prevent a net increase in nonpoint source pollution from new development and achieve a 10% reduction in nonpoint source pollution from redevelopment.

(2) The performance standards establish the means to minimize erosion and sedimentation potential, reduce land application of nutrients and toxics, and maximize rainwater infiltration. Natural ground cover, especially woody vegetation, is most effective in holding soil in place and preventing site erosion. Indigenous vegetation, with its adaptability to local conditions without the use of harmful fertilizers or pesticides, is an especially effective filter of stormwater runoff. Minimizing impervious cover enhances rainwater infiltration and effectively reduces stormwater runoff potential.

(B) General performance standards for development and redevelopment.

(1) Land disturbance shall be limited to the area necessary to provide for the proposed use or development.

(a) In accordance with an approved site plan, the limits of land disturbance, including clearing or grading, shall be strictly defined by the construction footprint. These limits shall be clearly shown on submitted plans and physically marked on the development site.

(b) Ingress and egress during construction shall be limited to one access point unless otherwise approved by the Zoning Administrator.

(2) Indigenous vegetation shall be preserved to the maximum extent practicable, consistent with the use or development proposed, and in accordance with the *Virginia Erosion and Sediment Control Handbook*.

(a) Existing trees over six inches dbh shall be preserved outside the construction footprint. Diseased trees or trees weakened by age, storm, fire or other injury may be removed.

(b) Clearing shall be allowed only to provide necessary access, positive site drainage, water quality BMPs, and the installation of utilities, as approved by the Zoning Administrator.

(c) Prior to clearing or grading, suitable protective barriers, such as safety fencing, shall be erected one foot outside of the dripline of any tree or stand of trees to be preserved. These protective barriers shall remain erected throughout all phases of construction. The storage of equipment, materials, debris, or fill shall not be allowed within the area protected by the barrier.

(3) Land development shall minimize impervious cover to promote infiltration of stormwater into the ground consistent with the proposed use or development permitted.

(4) Notwithstanding any other provisions of this division (B) or exceptions or exemptions to this division (B), any land disturbing activity exceeding 2,500 square feet, including construction of all single-family houses, shall comply with the requirements of Chapter 152 of this code.

(5) All existing sewage disposal systems not requiring a VPDES permit shall be pumped out at least once every five years, in accordance with the provisions of the County Health Code. New septic tanks and private sewage plants are not permitted.

(6) For any development or redevelopment, stormwater runoff shall be controlled by the use of BMPs that achieve the following.

(a) For development, the post-development nonpoint source pollution runoff load shall not exceed the predevelopment load, based on a Chesapeake Bay watershed-wide average impervious surface cover of 16%.

(b) For any redevelopment site and for sites within IDEAS, the nonpoint source pollution load shall be reduced by at least 10%. The Zoning Administrator may waive or modify this requirement for redevelopment sites that originally incorporated BMPs for stormwater runoff quality control, provided the following provisions are satisfied:

1. In no case may the post-development nonpoint source pollution runoff load exceed the predevelopment load;

2. Runoff pollution loads must have been calculated and the BMPs selected for the expressed purpose of controlling nonpoint source pollution; and

3. If BMPs are structural, evidence shall be provided that facilities are currently in good working order and performing at the design levels of service. The Zoning Administrator may require a review of both the original structural design and maintenance plans to verify this provision. A new maintenance agreement may be required to ensure compliance with this division (B)(6).

(c) For redevelopment, both the pre- and post-development loadings shall be calculated by the same procedures. However, where the design data is available, the original post-development nonpoint source pollution loadings can be substituted for the existing development loadings.

(7) Prior to initiating grading or other on-site activities on any portion of a lot or parcel, all wetlands permits required by federal, state, and local laws and regulations shall be obtained and evidence of such submitted to the Zoning Administrator, in accordance with § 157.161.

(8) Clearing, land disturbance, or development exceeding 500 square feet, on a recorded lot of record as of the date of this chapter amendment, on slopes 20% or greater is prohibited.

(C) Buffer area requirements.

(1) To minimize the adverse effects of human activities on the other components of RPAs, state waters, and aquatic life, a 100-foot buffer area of vegetation that is effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff shall be retained if present and established where it does not exist.

(2) The buffer area shall be located adjacent to and landward of other RPA components and along both sides of any waterbody with perennial flow. The full buffer area shall be designated as the landward component of the RPA, in accordance with sections § 157.153 and 157.161.

(3) The 100-foot buffer area shall be deemed to achieve a 75% reduction of sediments and a 40% reduction of nutrients.

(4) The buffer area shall be maintained to meet the following additional performance standards.

(a) In order to maintain the functional value of the buffer area, indigenous vegetation may be removed only, as permitted by the Zoning Administrator, to provide for reasonable sight lines, access paths, general woodlot management practices, including those that prevent upland erosion and concentrated flows of stormwater and BMPs, as follows.

1. Trees may be pruned or removed as necessary to provide for sight lines and vistas, provided that where removed, they shall be replaced with other vegetation that is equally effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff.

2. Any path shall be constructed and surfaced to effectively control erosion.

3. Dead, diseased, or dying trees or shrubbery and noxious weeds may be removed and thinning of trees may be allowed pursuant to sound horticulture practice as recommended by the

town.

4. For shoreline erosion control projects, trees and woody vegetation may be removed, necessary control techniques employed, and appropriate vegetation established to protect or stabilize the shoreline in accordance with the best available technical advice and applicable permit conditions or requirements.

(b) When the application of the buffer areas would result in the loss of a buildable area on a lot or parcel recorded prior to October 1, 1989, the Zoning Administrator may allow encroachments into the buffer area in accordance with § 157.161 and the following criteria.

1. Encroachments into the buffer areas shall be the minimum necessary to achieve a reasonable buildable area for a principal structure and necessary utilities.

2. Where practicable, a vegetated area that will maximize water quality protection, mitigate the effects of the buffer encroachment, and is equal to the area of encroachment into the buffer area shall be established elsewhere on the lot or parcel.

3. The encroachment may not extend into the seaward 50 feet of the buffer area.

(c) Redevelopment within IDEAS may be exempt from the buffer area, in accordance with § 157.161. Where possible a buffer area shall be provided in order to remove pollutants and protect water quality. Any and all buffer exemptions are to be granted by the Zoning Administrator. (1998 Code, § 66-200) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.160 WATER QUALITY IMPACT ASSESSMENT.

(A) The purpose of the water quality impact assessment is to:

(1) Identify the impacts of proposed development on water quality and lands within RPAs and other environmentally sensitive lands;

(2) Ensure that, where development does take place within RPAs and other sensitive lands, it will be in a manner that will be least disruptive to the natural functions of RPAs and other sensitive lands;

(3) Protect individuals from investing funds for proposed improvements on lands not suited for such development because of high groundwater, erosion, or vulnerability to flood and storm damage;

(4) Provide for administrative relief from the terms of this section when warranted and in accordance with the requirements contained in this section; and

(5) Specify mitigation that will address water quality protection.

(B) A water quality impact assessment is required for any proposed land disturbance, development, or redevelopment within an RPA, including any buffer area modification or encroachment as provided for in § 157.159; and any development in an RMA, floodplain, area of

highly erodible soils, or 20% or greater slopes.

(C) There shall be two levels of water quality impact assessments, minor and major.

(1) *Minor water quality impact assessment.*

(a) A minor water quality impact assessment pertains only to development within an RPA and its 100-foot buffer strip under the following conditions:

1. No more than 6,000 square feet of land disturbance; and
2. No disturbance of the seaward 50 feet of the 100-foot buffer area.

(b) A minor assessment must demonstrate that the undisturbed buffer area, enhanced vegetative plantings, and any required BMPs will result in removal of no less than 75% of sediments and 40% of nutrients from post-development stormwater runoff. It must also demonstrate that it will retard runoff, prevent erosion, and filter nonpoint source pollution the equivalent of the full undisturbed 100-foot buffer area. A minor assessment shall include a site drawing to scale, which shows the following:

1. Location of the components of the RPA, including the 100-foot buffer area;
2. Location and nature of the proposed encroachment into the buffer area, including: type of paving material; areas of clearing or grading; location of any structures, drives, or other impervious cover; and sewage disposal systems or reserve drainfield sites;
3. Type and location of proposed BMPs to mitigate the proposed encroachment;
4. If development is in an IDEA, proposed measures to restore all or part of the buffer strip, if possible;
5. Location of existing vegetation on-site, including the number and type of trees and other vegetation to be removed in the buffer to accommodate the encroachment or modification; and
6. Re-vegetation plan that supplements the existing buffer vegetation in a manner that provides for pollutant removal, erosion, and runoff control.

(2) *Major water quality impact assessment.*

(a) 1. A major water quality impact assessment shall be required for any development that:

- a. Exceeds 6,000 square feet of land disturbance within an RPA or its buffer strip;
- b. Disturbs any portion of the seaward 50 feet of the 100-foot buffer area; or
- c. Is located in an RMA and includes areas of floodplain, highly erodible soils,

or 20% or greater slopes.

2. The information required in this division (C)(2)(a) shall be considered a minimum unless the Zoning Administrator determines that some of the elements are unnecessary due to the scope and nature of the proposed use and development of land.

(b) The following elements shall be included in the preparation and submission of a major water quality assessment:

1. All of the information required in a minor water quality impact assessment, as specified in this division (C);

2. A hydrogeological element that:

a. Describes the existing topography, soils, hydrology, and geology of the site and adjacent lands; and

b. Describes the impacts of the proposed development on topography, soils, hydrology, and geology on the site and adjacent lands.

3. Indicates the following:

a. Disturbance or destruction of wetlands and justification for such action;

b. Disruptions or reductions in the supply of water to wetland, streams, lakes, rivers, or other water bodies;

c. Disruptions to existing hydrology, including wetland and stream circulation patterns;

d. Source location and description of proposed fill material;

e. Location of dredge material and location of dumping area for such material;

f. Location of and impacts on shellfish beds, submerged aquatic vegetation, and fish spawning areas;

g. Estimation of pre- and post-development pollutant loads in runoff;

h. Estimation of percentage of increase in impervious surface on the site and types of surfacing materials used;

i. Percentage of site to be cleared for the project;

j. Anticipated duration and phasing schedule of the construction project; and

k. Listing of all requisite permits from all applicable agencies necessary to develop the project.

4. Describes the proposed mitigation measures for the potential hydrogeological impacts. Potential mitigation measures include:

a. Proposed erosion and sediment control concepts; concepts may include minimizing the extent of the cleared area, perimeter controls, reduction of runoff velocities, measures to stabilize disturbed areas, schedule and personnel for site inspection;

b. Proposed stormwater management system;

c. Creation of wetlands to replace those lost; and

d. Minimizing cut and fill.

(c) A landscape element that:

1. Identifies and delineates the location of all significant plant material on-site, including all trees six inches or greater dbh. Where there are groups of trees, stands may be outlined;

2. Describes the impacts of the development or use on the existing vegetation, including:

a. General limits of clearing, based on all anticipated improvements, including buildings, drives, and utilities;

b. Clear delineation of all trees to be removed; and

c. Description of plant species to be disturbed or removed.

3. Describes the potential measures for mitigation. Possible mitigation measures include:

a. Replanting schedule for trees and other significant vegetation removed for construction, including a list of possible plants and trees to be used;

b. Demonstration that the design of the plan will preserve, to the greatest extent possible, any significant trees and vegetation on the site and will provide maximum erosion control and overland flow benefits from such vegetation; and

c. Demonstration that indigenous plants are to be used to the greatest extent possible.

(d) Submission and review requirements.

1. Ten copies of all site drawings and other applicable information as required by divisions (C)(2)(c)1. and (C)(2)(c)2. above shall be submitted to the Zoning Administrator for review.

2. All information required in this section shall be certified as complete and accurate by a professional engineer.

3. A water quality impact assessment shall be prepared and submitted to and

reviewed by the Zoning Administrator in conjunction with § 157.161.

4. As part of any major water quality impact assessment submittal, the Zoning Administrator may require review by the Chesapeake Bay Local Assistance Department (CBLAD). Upon receipt of a major water quality impact assessment, the Zoning Administrator will determine if such review is warranted and may request CBLAD to review the assessment and respond with written comments. Any comments by CBLAD will be incorporated into the final review by the Zoning Administrator, provided that such comments are provided by CBLAD within 90 days of the request.

(e) Evaluation procedure.

1. Upon the completed review of a minor water quality impact assessment, the Zoning Administrator will determine if any proposed modification or reduction to the buffer area is consistent with the provisions of this subchapter and make a finding based upon the following criteria:

- a. The necessity of the proposed encroachment and the ability to place improvements elsewhere on the site to avoid disturbance of the buffer area;
- b. Impervious surface is minimized;
- c. Proposed BMPs, where required, achieve the requisite reductions in pollutant loadings;
- d. The development, as proposed, meets the purpose and intent of this section;
and
- e. The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality.

2. Upon the completed review of a major water quality impact assessment, the Zoning Administrator will determine if the proposed development is consistent with the purpose and intent of this section and make a finding based upon the following criteria:

- a. The proposed development within the RPA is water dependent;
- b. The disturbance of any wetlands will be minimized;
- c. The development will not result in unnecessary disruption of the hydrology of the site;
- d. The development will not result in unnecessary degradation to aquatic vegetation or life;
- e. The development will not result in unnecessary destruction of plant materials on the site;
- f. Proposed erosion and sediment control concepts are adequate to achieve the reductions in erosion and minimize off-site sedimentation;

- g. Proposed stormwater management concepts are adequate to control the stormwater runoff and achieve the required performance standard for pollutant control;
- h. Proposed re-vegetation of disturbed areas will provide effective erosion and sediment control benefits;
- i. The development, as proposed, is consistent with the purpose and intent of the overlay district;
- j. The cumulative impact of the proposed development, when considered in relation to other development in the vicinity, both existing and proposed, will not result in a significant degradation of water quality;
- k. The Zoning Administrator shall require additional mitigation where potential impacts have not been adequately addressed. Evaluation of mitigation measures will be made by the Zoning Administrator based on the criteria listed in division (C)(2)(e)1. above and this division (C)(2)(e)2; and
- l. The Zoning Administrator shall find the proposal to be inconsistent with the purpose and intent of this section when the impacts created by the proposal cannot be mitigated. Evaluation of the impacts will be made by the Zoning Administrator based on the criteria listed in division (C)(2)(e)1. above and this division (C)(2)(e)2. (1998 Code, § 66-201) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.161 PLAN OF DEVELOPMENT PROCESS.

(A) Any development or redevelopment exceeding 2,500 square feet of land disturbance shall be accomplished through a plan of development process prior to any clearing, grading, or filling of the site or the issuance of any building permit, to assure compliance with all applicable requirements of this subchapter.

(B) In addition to the requirements of this section and Chapters 155 and 156 of this code, the plan of development process shall consist of the plans and studies identified in this division (B). These required plans and studies may be coordinated or combined, as deemed appropriate by the Zoning Administrator. The Zoning Administrator may determine that some of the following information is unnecessary due to the scope and nature of the proposed development. The following plans or studies shall be submitted unless otherwise provided for:

- (1) A site plan in accordance with the provisions of Chapter 155 of this code or a subdivision plat in accordance with the provisions of Chapter 156 of this code, as necessary;
- (2) An environmental site assessment;
- (3) A landscaping plan;
- (4) A stormwater management plan; and
- (5) An erosion and sediment control plan in accordance with the provisions of Chapter 152 of this code.

(C) An environmental site assessment shall be submitted in conjunction with preliminary site plan or preliminary subdivision plan approval.

(1) The environmental site assessment shall be drawn to scale and clearly delineate the following environmental features:

(a) Tidal wetlands;

(b) Tidal shores;

(c) Nontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow;

(d) A 100-foot buffer area located adjacent to and landward of the components listed in divisions (C)(1)(a) through (C)(1)(c) above and along both sides of any waterbody with perennial flow; and

(e) Other sensitive environmental features as determined by the Zoning Administrator.

(2) Wetlands delineations shall be performed consistent with the procedures specified in the current edition of the *Federal Manual for Identifying and Delineating Jurisdictional Wetlands*, 1987, or as determined by the Army Corps of Engineers (ACOE).

(3) The environmental site assessment shall delineate the site-specific geographic extent of the RPA.

(4) The environmental site assessment shall be drawn at the same scale as the preliminary site plan or subdivision plat and shall be certified as complete and accurate by a professional engineer. This requirement may be waived by the Zoning Administrator when the proposed use or development would result in less than 5,000 square feet of disturbed area.

(5) Any request for exemption from the buffer requirements for properties contained wholly within designated IDEAS, as allowed by § 157.159(C)(4), must be submitted in writing with the assessment.

(D) A landscaping plan shall be submitted in conjunction with site plan approval or as part of subdivision plat approval. No clearing, grading, or filling of any lot or parcel shall be permitted without an approved landscaping plan.

(1) *Contents of the plan.*

(a) The landscaping plan shall be drawn to scale and clearly delineate the location, size, and description of existing and proposed plant material. All existing trees on the site six inches or greater dbh shall be shown on the landscaping plan. Where there are groups of trees, stands may be outlined instead. The specific number of trees six inches or greater dBA to be preserved outside the construction footprint shall be indicated on the plan. Trees to be removed to create a desired construction footprint shall be clearly delineated.

(b) Any required buffer area shall be clearly delineated, and any plant material to be

added to establish or supplement the buffer area as required by this subchapter shall be shown.

(c) Within the buffer area, trees to be removed for sight lines, vistas, access paths, and BMPs, as provided for in this subchapter, shall be shown. Vegetation required by this subchapter to replace any existing trees within the buffer area shall also be shown.

(d) Trees to be removed for shoreline stabilization projects and any replacement vegetation required by this subchapter shall be shown on the landscaping plan.

(e) Grade changes or other work adjacent to trees that would affect adversely them. Specifications shall be provided as to how grade, drainage, and aeration will be maintained around trees to be preserved.

(f) Specifications for the protection of existing trees during clearing, grading, and all other phases of construction.

(2) *Plant specifications.*

(a) All plant materials necessary to supplement the buffer area or vegetated areas outside the construction footprint shall be installed according to standard planting practices and procedures.

(b) All supplementary or replacement plant materials shall be living and in a healthy condition. Plant materials shall conform to the standards of the most recent edition of the *American Standard for Nursery Stock*, published by the American Association of Nurserymen.

(c) Where areas that are to be preserved, as designated on an approved landscaping plan, are disturbed or encroached, replacement of existing trees and other vegetation will be achieved at a ratio of one planted tree to one removed. Replacement trees shall be of a similar species, a minimum of 12 feet in height and one and one-half inches dBA at the time of planting.

(3) *Maintenance.*

(a) The applicant shall be responsible for the maintenance and replacement of all vegetation as may be required by the provisions of this subchapter.

(b) In buffer areas and areas outside the construction footprint, plant material shall be tended and maintained in a healthy growing condition and free from refuse and debris for a period of one year after the developer has completed all real estate sales in the developed property. Unhealthy, dying, or dead plant materials shall be replaced during the next planting season, as required by the provisions of this subchapter.

(E) A stormwater management plan shall be submitted in accordance with Chapter 153 of this code in conjunction with site plan or subdivision plan approval. The stormwater management plan shall contain maps, charts, graphs, tables, photographs, narrative descriptions, explanations, and citations to supporting references as appropriate to communicate the information required by this subchapter.

(1) At a minimum, the stormwater management plan must contain the following:

(a) Location and design of all proposed stormwater control devices;

(b) Procedures for implementing nonstructural stormwater control practices and techniques;

(c) Pre- and post-development nonpoint source pollutant loadings with supporting documentation of all utilized coefficients and calculations; and

(d) For facilities, verification of structural soundness, including a professional engineer certification.

(2) All engineering calculations must be performed in accordance with procedures outlined in the current edition of the *Virginia Stormwater Management Handbook*.

(3) The plan shall establish a long-term schedule for inspection and maintenance of stormwater management facilities including all maintenance requirements and persons responsible for performing said maintenance. If the designated maintenance responsibility is with a party other than the town, a maintenance agreement shall be executed between the responsible party and the town.

(F) An erosion and sediment control plan shall be submitted that satisfies the requirements of this subchapter and in accordance with Chapter 152 of this code, in conjunction with site plan or subdivision plan approval.

(G) Final plans for property within CBPAs shall be final plats for land to be subdivided or site plans for land not to be subdivided as required in Chapters 155 and 156 of this code.

(1) Final plans for all lands within CBPAs shall include the following additional information:

(a) The delineation of the RPA boundary;

(b) The delineation of required buffer areas;

(c) All wetlands permits required by law;

(d) A maintenance agreement, as deemed necessary and appropriate by the Zoning Administrator, to ensure proper maintenance of BMPs in order to continue their functions;

(e) Measures to be taken for the protection of the resource protection areas (RPAs) during clearing, grading, and all other phases of construction. The following notations shall be included.

1. All existing vegetation within the RPA shall remain in its undisturbed natural state, except as allowed by this code.

2. Permissible development in the RPA is limited to water-dependent facilities, redevelopment, or other uses specifically allowed by this code.

(f) Gross acreages of the following physical land units shall be tabulated and computed by accurate planimetric methods at the final plan scale: 100-year floodplains; wetlands; existing water features (bodies of water, drainage channels, streams, and the like); and resource protection areas and

resource management areas as specified by this subchapter; and

(g) Buildable areas allowed on each lot based on the performance criteria specified in the Chesapeake Bay Preservation Area regulations in this chapter; front, side, and rear yard setback requirements established pursuant to this chapter, and any other relevant easements or limitations regarding lot coverage shall be graphically depicted on the site plan.

(2) Installation and bonding requirements are as follows.

(a) Where buffer areas, landscaping, stormwater management facilities, or other specifications of an approved plan are required, no certificate of occupancy shall be issued until the installation of required plant materials or facilities is completed in accordance with the approved site plan.

(b) When the occupancy of a structure is desired prior to the completion of the required landscaping, stormwater management facilities, or other specifications of an approved plan, a certificate of occupancy may be issued only if the applicant provides to the town a form of surety satisfactory to the Zoning Administrator in an amount equal to the remaining plant materials, related materials, and installation costs of the landscaping or other specifications and/or maintenance costs for any required stormwater management facilities.

(c) All required landscaping shall be installed and approved by the first planting season following issuance of a certificate of occupancy, or the surety may be forfeited to the town.

(d) All required stormwater management facilities or other specifications shall be installed and approved within 18 months of project commencement. Should the applicant fail, after proper notice, to initiate, complete, or maintain appropriate actions required by the approved plan, the surety may be forfeited to the town. The town may collect from the applicant the amount by which the reasonable cost of required actions exceeds the amount of the surety held.

(e) After all required actions of the approved site plan have been completed, the applicant must submit a written request for a final inspection with the as-built site plan or subdivision plan. If the requirements of the approved plan have been completed to the satisfaction of the Zoning Administrator, such unexpended or unobligated portion of the surety held shall be refunded in accordance with Chapters 155 and 156 of this code. The Zoning Administrator may require a certificate of substantial completion from a professional engineer before making a final inspection.

(H) Administration of the plan of development process shall be in accordance with Chapters 155 and 156 of this code.

(1) If the final plan or any component of the plan of development process, as related to this chapter, is not approved by the Zoning Administrator and/or recommended conditions or modifications are unacceptable to the applicant, the applicant may appeal such administrative decision to the Planning Commission.

(2) The appeal shall be made in writing to the Planning Commission. The Planning Commission shall review the appeal and make recommendation to the Town Council. In reviewing the appeal, the Planning Commission shall determine if:

(a) The plan is in accordance with all applicable ordinances and includes the necessary elements to mitigate any detrimental impact on water quality, adjacent properties, and the surrounding area; or

(b) Such plan meets the purpose and intent of the performance standards in this subchapter.

(3) If the Planning Commission finds that the applicant's plan does not meet the criteria stated in subsection (i)(2) of this section, it shall recommend denial of the plan to the Town Council. If the applicant's plan is found to meet the criteria stated in subsection (i)(2) of this section, the Planning Commission shall recommend approval of the plan to the Town Council.

(4) The Town Council shall consider the findings and rationale of the Planning Commission when voting to deny or approve the applicant's appeal.
(1998 Code, § 66-202) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.162 NONCONFORMING USES AND NONCOMPLYING STRUCTURES.

(A) The lawful use of a building or structure existing on the effective date of the ordinance from which this section derives or which exists at the time of any amendment to this subchapter, and which is not in conformity with the provisions of the overlay district may be continued in accordance with §§ 157.210 through 157.213.

(B) No change or expansion of use shall be allowed, with the exception that:

(1) The Town Council may grant a nonconforming use and development waiver for structures on legal nonconforming lots or parcels to provide for remodeling and alterations to such nonconforming structures, provided that:

(a) There will be no increase in nonpoint source pollution load; and

(b) Any development or land disturbance exceeding 2,500 square feet in area complies with all erosion and sediment control requirement of this subchapter.

(2) An application for a nonconforming use and development waiver shall be made to and upon forms furnished by the Zoning Administrator and shall include, for the purpose of proper enforcement of this section, the following information:

(a) Name and address of the applicant and the property owner;

(b) Legal description of the property;

(c) Type of proposed use and development;

(d) A sketch of the dimensions of the lot or parcel, location of buildings, and proposed additions relative to the lot lines, and boundary of the RPA; and

(e) Location and description of any existing private water supply or sewerage system.

(3) Requests for a nonconforming use and development waiver shall be reviewed by the Planning Commission, who shall forward a recommendation to the Town Council;

(4) A nonconforming use and development waiver shall become null and void 12 months from the date issued if no substantial work has commenced; and

(5) An application for the expansion of a nonconforming principal structure may be approved by the Town Council after an administrative review process provided that the following findings are made:

(a) The request for the waiver is the minimum necessary to afford relief;

(b) Granting the waiver will not confer upon the applicant any specific privileges that are denied by this subchapter to other property owners in similar situations;

(c) The waiver is in harmony with the purpose and intent of this subchapter and does not result in water quality degradation;

(d) The waiver is not based on conditions or circumstances that are self-created or self-imposed;

(e) Reasonable and appropriate conditions are imposed, as warranted, that will prevent the waiver from causing degradation of water quality;

(f) Other findings, as appropriate and required by the town, are met; and

(g) In no case shall this provision apply to accessory structures.

(1998 Code, § 66-203) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.163 EXEMPTIONS.

(A) Construction, installation, and maintenance of water, sewer, roads, natural gas lines, underground telecommunications, and cable television lines owned, permitted by the town, shall be exempt from the overlay district provided that:

(1) To the extent possible, the location of such utilities and facilities shall be outside RPAs;

(2) No more land shall be disturbed than is necessary to provide for the proposed utility installation;

(3) All construction, installation, and maintenance of such utilities and facilities shall be in compliance with all applicable state and federal requirements and permits and designed and conducted in a manner that protects water quality; and

(4) Any land disturbance exceeding 2,500 square feet in area shall comply with all town erosion and sediment control requirements.

(B) Water wells; passive recreation facilities such as boardwalks, trails, and pathways; and historic preservation and archaeological activities within the RPAs may be exempted from the overlay district, provided that it is demonstrated to the satisfaction of the Zoning Administrator that:

(1) Any required permits, except those to which this exemption specifically applies, shall have been issued;

(2) Sufficient and reasonable proof is submitted that the intended use will not deteriorate water quality;

(3) The intended use does not conflict with nearby planned or approved uses; and

(4) Any land disturbance exceeding 2,500 square feet in area shall comply with all town erosion and sediment control requirements.

(1998 Code, § 66-204) (Ord. passed 9-5-2017)

OLD AND HISTORIC OCCOQUAN DISTRICT

§ 157.175 DEFINITION.

For the purpose of this subchapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

BOARD. The Architectural Review Board.
(1998 Code, § 66-220) (Ord. passed 9-5-2017)

§ 157.176 CREATION OF BOUNDARIES.

In order to preserve the unique cultural heritage represented by the original section of the town, there is established in the town a district to be known as the “Old and Historic Occoquan District”. The boundaries of this district are shown on the Official Zoning Map of the town as an overlay district.
(1998 Code, § 66-221) (Ord. passed 9-5-2017)

§ 157.177 CERTIFICATE OF APPROPRIATENESS REQUIRED TO ERECT, RECONSTRUCT, ALTER, RESTORE, OR RAZE A BUILDING.

In order to promote the general welfare, through the preservation and protection of historic places and areas of historic interest, no building listed in this section and titled “Historic Occoquan Landmarks” may be demolished, in whole or in part, nor may any architectural features of such buildings, which are subject to public view from a public street, be altered, without prior application to the Board created in §§ 33.45 through 33.50 of this code. Neither shall any building or structure be erected, reconstructed, altered, or restored within the Old and Historic Occoquan District, unless an application for a certificate of appropriateness shall have been approved by the Board. Review of such application by the Board will include analysis of external architectural features, including signs, which

are subject to public view from a public street, way, or place.

<i>Historic Occoquan Landmarks</i>	
<i>Street</i>	<i>Number</i>
Commerce Street	202, 204, 205, 206, 208, 209, 303, 304, 306, 308, 309, 310, 312
Mill Street	206, 301, 302, 304, 306, 308, 309, 314, 400-402, 404, 406, 413, 440
Union Street	201, 202, 203, 204, 205, 206
Washington Street	202, 203, 205, 206, 207, 209

(1998 Code, § 66-222) (Ord. passed 9-5-2017)

§ 157.178 APPLICATION FOR CERTIFICATE OF APPROPRIATENESS.

Application for a certificate of appropriateness shall be made through the Town Clerk for any modifications described in § 157.179 within the boundaries of the Old and Historic Occoquan District. (1998 Code, § 66-223) (Ord. passed 9-5-2017)

§ 157.179 MATTERS TO BE CONSIDERED BY THE BOARD.

(A) The Board shall not consider interior arrangement, relative size of the building or structure, detailed design, or features not subject to any public view. The Board shall not make any requirements, except for the purpose of preventing developments obviously incongruous to the old and historic aspect of the surroundings.

(B) The Board shall consider the following in passing upon the appropriateness of architectural features:

(1) Exterior architectural features, including all signs that are subject to public view from a public street, way, or place;

(2) General design and arrangement;

(3) Texture, material, and color;

(4) The relation of the factors in division (B)(1) through (B)(3) above, to similar features of the buildings and structures in the immediate surroundings;

(5) The extent to which the building or structure would be in harmony with the old and historic aspect of the surroundings;

(6) In the case of a building to be razed, a primary consideration will be the extent to which its continued existence would tend to protect irreplaceable historic places and preserve the general historic atmosphere of the town; and

- (7) The extent to which the building or structure will promote the general welfare by:
- (a) Preserving and protecting historic places and areas;
 - (b) Maintaining and increasing real estate value;
 - (c) Generating business;
 - (d) Creating new positions;
 - (e) Attracting tourists, students, writers, historians, artists and artisans, and new residents;
 - (f) Encouraging study of and interest in American history;
 - (g) Stimulating interest in and study of architecture and design;
 - (h) Educating citizens in American culture and heritage; and
 - (i) Making the town a more attractive and desirable place in which to live.
- (1998 Code, § 66-224) (Ord. passed 9-5-2017)

§ 157.180 ISSUANCE OF CERTIFICATE OF APPROPRIATENESS.

Approval by the Board will be incorporated into certificates of appropriateness. Immediately upon approval by the Board of any application to erect, reconstruct, alter, restore, or raze a building, a certificate of appropriateness, signed by the Chairperson of the Board and bearing the date of issuance, shall be made available to the applicant. The Zoning Administrator shall refuse to honor any request for a zoning certificate without such certificate of appropriateness, but a certificate of appropriateness will in no way affect the requirement to comply with the other provisions necessary to obtain a zoning certificate.

(1998 Code, § 66-225) (Ord. passed 9-5-2017)

§ 157.181 RIGHT OF APPEAL.

(A) Whenever the Board shall deny an application for a certificate of appropriateness, it shall be done in writing.

(B) Any person shall have the right to appeal and be heard before the Town Council provided the person files, with the Zoning Administrator, on or before 14 days after the decision of the Board, a written notice of intention to appeal.

(C) Upon receipt of such notice, the Zoning Administrator shall schedule a public hearing before the Town Council, at a time not more than 30 days after the receipt of such notice of appeal.

(D) Such hearing shall be advertised in accordance with VA Code § 15.2-2204.

(1998 Code, § 66-226) (Ord. passed 9-5-2017)

§ 157.182 APPEAL TO CIRCUIT COURT.

Any person, following the final decision of the Town Council on an appeal of a denial of an application for a certificate of appropriateness, shall have the right to file a petition for appeal to the Circuit Court. Such petition must be filed within 30 days after the final decision is rendered by the Town Council and must otherwise comply with the requirements of VA Code § 15.2-2306.A.3. (1998 Code, § 66-227) (Ord. passed 9-5-2017)

OFF-STREET PARKING STANDARDS

§ 157.195 SCOPE OF SUBCHAPTER.

The intent of this subchapter is to regulate off-street parking in all zoning districts. (1998 Code, § 66-228) (Ord. passed 9-5-2017)

§ 157.196 GENERAL PROVISIONS.

(A) Parking spaces shall be located on the same parcel as the principal use. However, with approval of the Zoning Administrator, the required parking may be provided on an adjacent or nearby parcel, provided a legally sufficient easement is approved by the Town Attorney and recorded among the county land records to ensure the perpetual availability of the parking spaces for the principal use.

(B) No structure or site shall be altered in any manner that would enable the structure or site to accommodate any increase in business capacity unless the requirements of this subchapter are satisfied with respect to such alteration and increase in capacity. Whenever a building or use is changed or enlarged in floor area, number of employees, number of dwelling units, seating capacity, or otherwise, to create a need under the requirements of this subchapter for an increase in parking spaces of 10% or more, such additional spaces shall be provided on the basis of the change or enlargement. Under no circumstances shall alterations to existing structures reduce existing parking below that which would be required for the entire structure as altered.

(C) All off-street parking facilities shall be used solely for the parking of vehicles by patrons, occupants, or employees of the use to which such parking is accessory. No motor vehicle repair work, except emergency service, no storage of merchandise, and no motor vehicles for sale, shall be permitted in association with any required off-street parking facilities.

(D) Required off-street parking spaces may be provided cooperatively for two or more uses, subject to arrangements that will assure the permanent availability of such spaces to the satisfaction of the Zoning Administrator. The amount of such combined space shall equal the sum of the amounts required for the separate uses; however, the Zoning Administrator may reduce the total number of parking spaces required by strict application of these requirements when it can be determined the same spaces may adequately serve two or more uses by reason of the hours of operation of such uses.

(E) If a question shall arise regarding the classification of a use for application of this subchapter, the Zoning Administrator shall determine the classification/basis of the number of spaces to be provided.

(F) Due to the unique character of existing structures and amenities in the Old and Historic Occoquan District, the Zoning Administrator shall have the authority to waive the requirements of §§ 157.197 and 157.198 to approve nonstandard spaces.

(G) For the purposes of this section, net floor space is equal to 75% of the gross floor area. (1998 Code, § 66-229) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.197 REQUIRED PARKING.

(A) Residential uses: townhouse, multifamily, duplex, and single family units:

(1) One bedroom unit: two spaces; and

(2) Units with two or more bedrooms shall have one additional parking space per bedroom (i.e., three bedroom unit is required to have four parking spaces).

(B) Business uses (other than places of assembly) require the following spaces per 400 square feet (net floor space); except that in the Old and Historic Occoquan District, the number of required spaces shall be one for each 800 square feet (net floor space) or portion thereof:

(1) Commercial: one space; and

(2) Office: one space.

(C) Places of assembly require one space per four seats; except that in the Old and Historic Occoquan District, the required number of spaces shall be one per eight seats or portion thereof; except that no parking spaces shall be required for restaurants and places of assembly in the Old and Historic Occoquan District with fewer than 50 seats. Restaurants and places of assembly in the Old and Historic Occoquan District with more than 50 seats shall be one for eight seats or portion thereof, the difference of the total number of seats minus 50.

(D) Mixed use developments shall provide spaces in accordance with the percentage of floor space devoted to each use.

(E) For uses not otherwise set forth in this section, parking spaces shall be provided in sufficient quantity to accommodate the parking demand generated by the proposed use as determined by the Zoning Administrator.

(F) Parking areas shall be graded at a slope not to exceed 5%. Slope may be up to 10%, with approval of the Town Engineer.

(G) Parking computations yielding fractional spaces of one-half and above shall be rounded up to the next whole number, and fractional yields below one-half shall be rounded down to the nearest whole number.

(H) Parking spaces expressly designated for compact cars may be provided. Each space must be clearly marked by an above-grade sign. Such spaces shall not constitute more than 30% of the entire parking space requirements and meet the minimum dimensions outlined in Table B in § 157.198.

(I) All off-street parking spaces shall have an all-weather, dust-free, and impervious surface, where appropriate.

(J) Under no circumstances shall alterations to existing structures reduce existing parking below that which would be required for the entire structure as altered.

(1998 Code, § 66-230) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.198 GEOMETRICS.

The following tables represent the minimum size requirements for required automobile parking spaces (see § 157.197(A) through (C) for the required number of parking spaces per use):

<i>Table A. Standard Size Car Spaces</i>				
<i>Parking Angle (degrees)</i>	<i>Stall Width (feet)</i>	<i>Depth of Stall Perpendicular to Aisle (feet)</i>	<i>One-Way Aisle Width (feet)</i>	<i>Two-Way Aisle Width (feet)</i>
30	9	16.8	11	22
45	9	19.0	11	22
60	9	20.0	11	22
90	9	18.0	17	22
Parallel	9	22.0	11	22

<i>Table B. Compact Car Spaces</i>				
<i>Parking Angle (degrees)</i>	<i>Stall Width (feet)</i>	<i>Depth of Stall Perpendicular to Aisle (feet)</i>	<i>One-Way Aisle Width (feet)</i>	<i>Two-Way Aisle Width (feet)</i>
30	8	15.0	11	22
45	8	16.0	11	22
60	8	17.0	11	22
90	8	15.5	17	22
Parallel	9	22.0	11	22

(1998 Code, § 66-231) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.199 DISABLED PARKING PROVISIONS.

(A) Disabled parking and building or sidewalk accessibility shall be provided in accordance with the current adopted edition of the State Uniform Statewide Building Code, being 13 VAC 5-63.

(B) Disabled parking spaces shall be identified by above-grade signs and demarcated per typical detail HP-1 and HP-2 of the State Uniform Statewide Building Code, being 13 VAC 5-63.

(C) Disabled parking spaces shall be located as close as possible to a main building entrance,

ramp, or walkway.

(D) Inclined approaches shall be provided and arranged so as to allow convenient access to a building entrance. This approach shall have a slope of not more than one foot in 12 feet and be three-feet wide exclusive of flare sides.

(1998 Code, § 66-232) (Ord. passed 9-5-2017) Penalty, see § 10.99

NONCONFORMING USES, LOTS, AND STRUCTURES

§ 157.210 PURPOSE.

(A) Within the districts established by this chapter or amendments that may later be adopted there exist lots, structures, and uses of land and structures that were lawful before this chapter was passed or amended, but would be prohibited or restricted under the terms of this chapter or amendment. It is the purpose of this chapter to permit these nonconformities to continue.

(B) To avoid undue hardship, nothing in this chapter shall be deemed to require a change in building plans if a permit for construction was issued prior to the effective date of adoption or amendment of this chapter and where actual building construction is carried on diligently. Where excavation or demolition or removal of an existing building has been substantially begun preparatory to rebuilding, such excavation or demolition or removal shall be deemed to be actual construction, provided that work shall be carried on diligently.

(1998 Code, § 66-236) (Ord. passed 9-5-2017)

§ 157.211 NONCONFORMING LOTS OF RECORD.

In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory buildings may be erected on any single lot of record at the effective date of adoption or amendment of this chapter, except where specific limitations are imposed by other provisions of this chapter. This provision shall apply even though such lot fails to meet the requirements for area or width, or both, that are generally applicable in the district; provided that yard dimensions and requirements, other than those applying to area or width, or both, of the lot shall conform to the regulations for the district in which such lot is located.

(1998 Code, § 66-237) (Ord. passed 9-5-2017)

§ 157.212 NONCONFORMING STRUCTURES.

Where a lawful structure exists at the effective date of adoption or amendment of this chapter that could not be built under the terms of this chapter by reason of restrictions on area, lot coverage, height, yards, location on the lot, or other requirements concerning the structure, such structure may be continued so long as it remains otherwise lawful, subject to the following provisions.

(A) (1) Such nonconforming structure may be enlarged or altered to an extent not to exceed 20% of its original size.

(2) Such enlargement or alteration may be done only with approval from the Zoning Administrator and only if such action shall not increase the degree of nonconformance.

(B) Should such nonconforming structure or nonconforming portion of structure be destroyed or damaged by any means, it may be reconstructed, but not to an extent exceeding 50% of the current replacement cost of the original structure and only if such reconstruction shall not increase the degree of nonconformance.

(C) Where a nonconforming structure devoted to a nonconforming activity is damaged less than 50% of the cost of reconstructing the entire structure, or where a nonconforming structure is damaged less than 75% of the cost of reconstructing the entire structure, either may be repaired or restored, provided any such repair or restoration is started within 12 months and completed within 18 months from the date of partial destruction.

(D) Should such structure be moved for any reason to another parcel of land, regardless of distance, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

(E) Should any nonconforming structure be changed to a more limited nonconforming use, such newly created use may be changed only to an even more limited use.
(1998 Code, § 66-238) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.213 NONCONFORMING USES; PERMITS REQUIRED.

(A) All operators or owners of nonconforming uses, lots, or structures shall, within six months after the adoption of the ordinance from which this section derives, obtain from the Zoning Administrator a nonconforming use permit; and such nonconforming use, lot, or structure shall be recorded as part of the records of the town.

(B) Whenever the boundaries of a district are changed, any uses of land or buildings that become nonconforming as a result of such change shall be recorded as part of the records of the town.
(1998 Code, § 66-239) (Ord. passed 9-5-2017) Penalty, see § 10.99

ENFORCEMENT OF ZONING BY ZONING ADMINISTRATOR

§ 157.225 RIGHT OF ENTRY.

The provisions of this chapter shall be enforced by the Zoning Administrator, who shall serve at the pleasure of the Council, and whose compensation, if applicable, shall be fixed by the Council. The Zoning Administrator or any of his or her authorized assistants, upon proper identification, shall have the right to enter upon any land or into any building for the purpose of making an inspection or acquiring information to determine whether the property and its use conform to the requirements of this chapter.

(1998 Code, § 66-271) (Ord. passed 9-5-2017)

§ 157.226 QUESTIONS OF INTERPRETATION.

(A) Unless otherwise provided in this chapter, the Zoning Administrator shall make all determinations and issue all rulings and orders authorized in this chapter or otherwise necessary in the interpretation and enforcement of this chapter.

(B) Any person aggrieved by a zoning violation, written order, or determination issued by the Zoning Administrator may appeal as provided in § 33.30 of this code. Decisions of the Zoning Administrator shall be final and not appealable if not appealed within 30 days.
(1998 Code, § 66-272) (Ord. passed 9-5-2017)

§ 157.227 WRITTEN ORDER, REQUIREMENT, DECISION, OR DETERMINATION BY THE ZONING ADMINISTRATOR.

(A) Notwithstanding the provisions of § 157.226, the Zoning Administrator may issue a written order, requirement, decision, or determination regarding the permissibility of a specific use or density of a landowner's property only in accordance with this section and with the concurrence of the Town Attorney. Except to the extent expressly delegated in writing, no other town officer or employee is authorized to issue such orders, requirements, decisions, or determinations.

(B) The Zoning Administrator does not have the authority to issue an order, requirement, decision, or determination regarding the permissibility of a specific use or density of a landowner's property that is inconsistent with this chapter. Such an inconsistency, if it occurs, shall be considered nondiscretionary error.

(C) The Zoning Administrator is hereby authorized and directed to establish a written policy which governs the issuance of written orders, requirements, decisions, or determinations regarding the permissibility of a specific use or density of a landowner's property.

(D) (1) The Zoning Administrator is hereby authorized and directed to create a standard form of application that is to be used by landowners or their authorized agents in order to obtain a written order, requirement, decision, or determination regarding the permissibility of a specific use or density of their property.

(2) The Zoning Administrator shall not issue a written order, requirement, decision, or determination regarding the permissibility of a specific use or density of a landowner's property, unless said landowner or their authorized agent submits the standard form of application and provides all of the information that is requested therein.

(E) The fee for processing an application requesting a written order, requirement, decision, or determination regarding the permissibility of a specific use or density of a landowner's property shall be equal to the fee associated with obtaining a zoning certification.

(F) (1) Unless earlier suspended by action of the Council, a written order, requirement, decision, or determination issued under this section remains in effect for one year.

(2) If the owner or developer incurs extensive obligations or substantial expenses in diligent pursuit of the specific project in reliance on the written order, requirement, decision, or determination, however, it shall remain in effect while such diligent pursuit continues.
(1998 Code, § 66-273) (Ord. passed 9-5-2017)

SPECIAL USE PERMITS

§ 157.240 GENERALLY.

Special use permits, as specified in this chapter, may be authorized by the Town Council in the district indicated, upon a finding that the use will not be detrimental to the character and development of the adjacent land and will be in harmony with the purposes of the town’s plan of land use.
(1998 Code, § 66-301) (Ord. passed 9-5-2017)

§ 157.241 FEE SCHEDULE.

A fee, as established by separate ordinance, shall be paid for a special use permit, to defray costs incurred for a public hearing, which is to be held in accordance with the provisions of this chapter. Special use permits shall be subject to time limitations and such other conditions as the Town Council deems necessary to carry out the intent of this chapter.
(1998 Code, § 66-302) (Ord. passed 9-5-2017)

Statutory reference:

Advertisement of plans, ordinances, and the like, joint public hearings, written notice of certain amendments, see VA Code § 15.2-2204

§ 157.242 REVIEW AND APPROVAL PROCESS.

(A) Before the formal submission of an application seeking approval of a special use permit, the applicant (who must be the property owner or contract purchaser) shall hold a conference with the Zoning Administrator concerning the proposal and shall provide, at or before that conference, a concept plan that specifies the following:

- (1) The general location and amount of land proposed for development;
- (2) The number of dwelling units, gross floor area, and acreage for each use or land area;
- (3) The general location and number of parking spaces;
- (4) Bearings and distances for all property lines and existing and/or proposed division lines;
- (5) Scale;

- (6) North arrow; and
- (7) Names of boundary roads or streets and widths of existing rights-of-way.

(B) Within 15 days after the conference, the Zoning Administrator or designee shall provide the applicant with a summary of the meeting.

(C) Within one year of the required pre-application meeting, the applicant must submit a special use permit application, accompanied by the required fee. The application must contain all of the following materials in order to be complete.

(1) A fully-complete application form obtained from the town; the application may be signed by the owner, the contract purchaser (with special power of attorney from the owner or that person's agent. However, if the application is signed by an agent, then a copy of written authority, or power of attorney form, from the owner (or contract purchaser) must accompany the application.

(2) A generalized development plan (GDP) with the following elements on or submitted in conjunction with, prepared by an appropriately licensed professional:

(a) All existing improvements, proposed changes, and new improvements anticipated if the request is approved;

(b) A landscape plan indicating the general location and type of significant or specimen trees located within the limits of the planned development area;

(c) All plans shall be to a scale no less than one-inch equals 50 feet;

(d) All plans shall be of sufficient detail to show the location of all existing utilities affected by the request;

(e) Each submission shall include one eight-and-one-half-inch by 11-inch reduction of the plan;

(f) Any model must be accompanied by eight-inch by ten-inch clear photographs showing a top view, an isometric view, and each side view of the model;

(g) Two copies of a narrative statement shall be provided outlining operational conditions and special provisions proposed by the applicant to minimize the impact of the use on surrounding properties;

(h) A general vicinity map providing information concerning existing street and cross street locations within one-half mile or greater shall be provided. Vicinity map may be on the plan itself or as an addendum;

(i) Topography of the site (using town maps if alternative sources of topography are not available);

(j) A traffic impact analysis (TIA), if deemed necessary by the Zoning Administrator at the pre-application meeting;

- (k) Wetlands on-site and the source of delineation;
- (l) Resource protection areas on-site and their source of delineation;
- (m) Locations of floodplains; and
- (n) Location of the Old and Historic Occoquan District adjoining or encompassing the

site.

(3) If the requested use would not result in the exterior alteration of a structure or parking area, a current building location plan may be submitted for site information only, in lieu of the generalized development plans.

(4) The applicant shall submit building elevation drawings of all buildings and structures to be altered, relocated, or constructed, showing any proposed exterior alterations.

(D) The Zoning Administrator shall report to the Planning Commission regarding the application before the opening of the public hearing and provide a recommendation, citing appropriate principles of zoning practice and applicable provisions of the Comprehensive Plan; however, failure of the Zoning Administrator to perform this duty shall not affect the authority of the Planning Commission or Town Council to take action or the validity of that action. The Planning Commission shall hold a public hearing after due advertisement according to law, and may close or continue the public hearing from time to time. The applicant may revise the application at any time before the closing of the public hearing. After the public hearing is closed, the Planning Commission may take any of the following actions:

(1) Require additional information from the applicant and schedule a further hearing for other action after receipt of the additional information;

(2) Recommend that the Town Council approve the application as requested by the applicant;

(3) Recommend that the Town Council approve the application with changes to the scope, duration, or conditions; or

(4) Recommend that the Town Council deny the application.

(E) (1) After the Planning Commission makes a recommendation regarding the application, the Town Council shall hold a public hearing after due advertisement according to law, and may close or continue the public hearing from time to time. The applicant may revise the application at any time before the closing of the public hearing, in which case the Town Council may refer the application back to the Planning Commission for review and a new recommendation. After the public hearing is closed, the Town Council may take any of the following actions:

(a) Require additional information from the applicant and schedule a further hearing for other action after receipt of the additional information;

(b) Approve the application as requested by the applicant;

(c) Approve the application with changes to the scope, duration, or conditions; or

(d) Deny the application.

(2) Only an affirmative majority vote in favor of an action can result in a decision by the Town Council to take action on the application.

(F) If the Town Council approves the application, the Zoning Administrator shall issue the special use permit, noting any changes or conditions made by the Town Council.
(1998 Code, § 66-303) (Ord. passed 9-5-2017)

§ 157.243 REFILEING FOLLOWING DENIAL.

If an application for a special use permit is denied, the Zoning Administrator shall not accept any new application that includes any of the uses sought in the previously denied application and that is filed within one year of the denial on all or any part of the same parcel of land.
(1998 Code, § 66-304) (Ord. passed 9-5-2017)

§ 157.244 WITHDRAWAL OF AN APPLICATION.

An applicant may withdraw an application for a special use permit at any time; however, if the withdrawal is made after publication of the notice for the public hearing, the Zoning Administrator shall not accept an application that includes any of the uses sought in the withdrawn application and that is filed within six months of the withdrawal date on all or any part of the same property. There shall be no refund of special use permit application fees in the case of withdrawal, regardless of the time of withdrawal.
(1998 Code, § 66-305) (Ord. passed 9-5-2017)

§ 157.245 DEFERRAL OF APPLICATION BY APPLICANT.

(A) Deferral of consideration of any application for a special use permit may be requested in writing by the applicant at any time.

(B) If a request for deferral is made after publication of the notice of public hearing, it may be granted only by the Town Council. In that case, the applicant shall bear the additional costs to re-advertise the public hearing.

(C) A request for deferral by the applicant cannot extend more than six months or the application shall be deemed withdrawn.
(1998 Code, § 66-306) (Ord. passed 9-5-2017)

§ 157.246 DURATION AND EXPIRATION OF PERMIT.

(A) If a special use permit application is approved by the Town Council, the applicant has one

calendar year from the date of the approval to initiate and diligently pursue construction authorized under the permit, or (if no construction was authorized or all construction is complete) to begin the use permitted under the permit. If no such action is taken, then at the end of that year the permit shall lapse and be of no further force or effect. If the permitted use lapses for a period of one year or more on the property, then the permit shall terminate without further action by the town. The Zoning Administrator will notify the Town Council of that fact.

(B) Unless otherwise specified by the Town Council in the permit, the duration of any special use permit shall be five years, renewable at the Town Council's sole discretion upon application by the then-owner or contract purchaser. However, the expiration or nonrenewal of a special use permit shall not require the removal of any building or structure constructed under a valid special use permit, unless specifically stated in the special use permit itself. Rather, any such building or structure will be treated as a nonconforming building or structure under this chapter. After the expiration or termination of the special use permit, any use of the parcel, including any use of such building or structure, must conform to the then-existing zoning restrictions.

(1998 Code, § 66-307) (Ord. passed 9-5-2017)

§ 157.247 REVOCATION OF SPECIAL USE PERMITS.

(A) The Town Council may revoke a special use permit at any time upon notice to the holder of the permit that the conditions of such permit have not been met or that failure to comply with any town regulation poses a nuisance to the surrounding properties.

(B) Such revocation shall not occur until such time as the holder of such permit and/or the owner of the property have been notified in writing by the Zoning Administrator advising him or her of the violations of the permits and giving him or her a reasonable time to comply, not to exceed 30 days.

(C) A certified letter shall be mailed to the address of record advising the permit holder and/or property owner of the date and time of a public hearing to be held before the Town Council on the consideration of revocation of the permit.

(D) After the Town Council holds a public hearing on the matter, the Council may, based on evidence provided and the nature of the violations, revoke the special use permit.

(1998 Code, § 66-308) (Ord. passed 9-5-2017)

ZONING AMENDMENTS

§ 157.260 INITIATION OF AMENDMENTS.

(A) The text of this chapter and any zoning district boundary shown on the Zoning Map may be amended, changed, modified, or repealed by the Town Council.

(B) Proceedings for any amendment shall be initiated only:

(1) By the adoption of a resolution by the Planning Commission of intention to propose an amendment;

(2) By the adoption of a resolution by the Town Council of intention to amend, which resolution, upon adoption, shall be referred to the Planning Commission; or

(3) By the filing of a petition by the owner or contract purchaser of the land proposed to be rezoned (Zoning Map amendment).
(1998 Code, § 66-331) (Ord. passed 9-5-2017)

§ 157.261 APPLICATION REQUIREMENTS.

(A) All applications for amendments to the Zoning Map or rezoning, initiated in the manner prescribed by § 157.260, shall be filed with the Zoning Administrator. No application shall be officially accepted for filing until all of the information identified in this section is furnished, unless specific items are authorized by the Zoning Administrator for later submission, or unless otherwise provided for in this section in accordance with the provisions of this subchapter. The application shall not be scheduled for a public hearing until all required data have been filed.

(B) Applications and supplemental information, unless qualified below, shall include the following elements:

- (1) Two copies of a completed application for Zoning Map amendment (rezoning) application form: the application may be signed by the owner, the contract purchaser (with special power of attorney from the owner), or that person’s agent. However, if the application is signed by an agent, then a copy of the written authority, or power of attorney, must accompany the application;
- (2) Two copies of a plat of the property proposed for rezoning showing:
 - (a) Bearings and distances for all existing property lines and proposed division lines;
 - (b) Area of proposed zoning changes in square feet or acres, outlined in red;
 - (c) Scale, not less than one inch equals 50 feet with match lines, if necessary;
 - (d) North arrow; and
 - (e) Names of boundary roads or streets and widths of existing rights-of-way.
- (3) Two copies of a written metes and bounds description of the proposed rezoning that shall conform to plat information;
- (4) Two copies of a generalized development plan (GDP) shall be submitted in accordance with the provisions of § 157.262, unless determined to not be necessary by the Zoning Administrator;
- (5) Statements to address the following:

- (a) Surrounding areas that have scenic assets or natural features deserving of protection and preservation with a statement of how protection and maintenance will be accomplished;
- (b) The relationship of the proposed development to the town's adopted Comprehensive Plan;
- (c) How adjacent and neighboring properties shall be protected from any adverse effects prompted by the proposed development. This includes vehicular access plans, proposed screening and buffering, and peripheral setback requirements;
- (d) The maximum height of any proposed buildings in the development;
- (e) The maximum number of dwelling units and square footage of office, assembly, commercial, and industrial space proposed;
- (f) Special amenities that are proposed within the development;
- (g) Anticipated off-site improvements that are proposed for the development, such as roads, water and sewer, and drainage facilities; and
- (h) Any proposed phasing plan and the projected wastewater flows for each phase.

(6) Any additional information that the applicant may desire to proffer in the consideration of the application;

(7) Nonrefundable filing fee set forth by the uncodified ordinance of the town in a check or money order payable to the Town Treasurer; and

(8) Based on the size and scale of the parcel, or complexity of the proffers submitted, the Zoning Administrator may require additional copies of all submitted materials as needed for supplemental reviewing agencies.
 (1998 Code, § 66-332) (Ord. passed 9-5-2017)

§ 157.262 GENERALIZED DEVELOPMENT PLANS (GDP).

Generalized development plans shall include the following:

- (A) Topography shown with contour lines on an interval not exceeding two feet;
- (B) A schematic land use plan, at a scale of one inch equals 100 feet or less, for parcels equal to or larger than ten acres; or one inch equals 30 feet or less, for parcels less than ten acres;
- (C) A proposed traffic circulation plan, including: major streets connections; major pedestrian, bike, and/or bridge paths; all proposed major open space areas; the approximate location of all proposed community and public facilities; and the proposed plan for all major sanitary sewer, water systems, and storm drainage improvements;

(D) A landscape plan indicating the general location and type of significant or specimen trees located within the limits of the planned development area;

(E) A plan showing sensitive environmental features including steep slopes (those over 20%), highly permeable soils, highly erodible soils, resource protection areas, wetlands, floodplains, and other such features as may be designated by the Zoning Administrator;

(F) Location of any overlay district boundaries adjoining or encompassing the site; and

(G) Location of any portion of the Old and Historic Occoquan District adjoining or encompassing the site.

(1998 Code, § 66-333) (Ord. passed 9-5-2017)

§ 157.263 PROFFER DECLARATION.

(A) In accordance with the VA Code, all statements, plans, profiles, elevations, and other demonstrative material submitted with an application for rezoning shall be annotated with one of the following statements. Each statement shall be signed by the applicant; however, the applicant is not restricted to use the same statement on every submitted document. The applicant may vary statements as necessary to proffer certain statements, plans, profiles, and elevations, and not proffer other information or pieces of demonstrative material related to the same application.

(B) One of the following statements should accompany any application for zoning modification.

(1) *Commitment to proffer.* “I hereby proffer that the development of the subject property of this application shall be in strict accordance with the conditions set forth in this submission, unless an amendment thereto is mutually agreed upon by the Town Council and the undersigned.”

(2) *Noncommitment to proffer.* “The conditions set forth in this submission are not to be construed as to be binding on the development of the subject property of this application.”
(1998 Code, § 66-334) (Ord. passed 9-5-2017)

§ 157.264 VALIDITY AND CONFORMANCE WITH PROFFERED CONDITIONS.

(A) If an amendment to the Zoning Map is adopted subject to the conditions proffered by the applicant as set forth in § 157.263, the property in question shall be appropriately annotated on the Zoning Map and all other land records referencing the conditions as adopted.

(B) Such proffered conditions shall become a part of the zoning regulations applicable to the property in question unless subsequently changed by an amendment to the Zoning Map, and such conditions shall be in addition to the specific regulations set forth in this chapter for the zoning district in question.

(C) Upon approval, any site plan, subdivision plat, or general development plan submitted for the property in question shall be in substantial conformity with all proffered statements, plans,

profiles, elevations, or other demonstrative materials; and no development shall be approved by any town official in the absence of substantial conformity.

(D) For the purpose of this section, substantial conformance shall allow for a reasonable margin of adjustment due to final engineering data, but conform to the general nature of the proposed development, the specific uses and the general layout depicted by the plans, profiles, elevations, and other demonstrative materials presented by the applicant.

(1998 Code, § 66-335) (Ord. passed 9-5-2017)

§ 157.265 PUBLIC HEARING REQUIREMENTS.

(A) The Planning Commission shall not recommend, nor the Town Council adopt, any zoning ordinance or Zoning Map amendment (rezoning) to change district boundaries or classification of property until notice of intention to do so has been published and/or mailed in accordance with the law.

(B) The cost of any such notice shall be paid by the applicant.

(C) When any notice is required by law to be sent to units in a condominium or cooperative, the written notice may be mailed to the unit owners' association or proprietary lessees' association, respectively, in lieu of each individual unit owner.

(1998 Code, § 66-336) (Ord. passed 9-5-2017)

§ 157.266 REFERRAL TO PLANNING COMMISSION.

(A) In accordance with VA Code Title 15.2, proposed amendments to this chapter, changes in district boundaries, amendments to proffers, or classification of property shall be referred by the Town Council, or the Zoning Administrator (in cases of amendments proposed by the property owner, contract purchaser with the owner's written consent, or owner's agent), to the Planning Commission for its recommendations.

(B) In accordance with VA Code § 15.2-2214, the Planning Commission shall annually fix a calendar for holding regular meetings, and may also, by resolution, fix certain days to which any meeting shall be continued if the Chairperson, or Vice-Chairperson if the Chairperson is unable to act, finds and declares that weather conditions are such that it is hazardous for members to attend the meeting. Such findings shall be communicated to the members and the press as promptly as possible. All hearings and other matters previously advertised shall be conducted at the continued meeting and no further advertisement is required, provided the resolution setting the schedule is inserted in a newspaper having general circulation in the locality at least seven days prior to the first meeting held pursuant to the adopted schedule.

(C) The Planning Commission shall hold a public hearing on such application or resolution with advertising as provided by § 157.265.

(D) At the conclusion of the Planning Commission public hearing, the Planning Commission shall report to the Town Council its recommendation with respect to the proposed amendment. After that time, any material change made in the application shall necessitate the return of the application to the Planning Commission and the scheduling of another public hearing.

(E) The Planning Commission need not confine its recommendation to the proposed amendment as set forth in the petition/application/resolution.

(1) If the proposed amendment consists of a change in the text of this chapter, it may recommend a revision to the proposal.

(2) If the proposed amendment consists of a change in zoning district boundaries, it may reduce or enlarge the extent of land that it recommends to be rezoned or it may recommend that the land be rezoned to a different zoning district classification than that petitioned for if, in either case:

(a) The Commission is of the opinion that such revision is in accordance with sound zoning practice and is in furtherance of the purpose of this chapter; and/or

(b) Before recommending a larger extent of land or a rezoning to a less restricted classification than was set forth in the petition, the Commission shall hold a further hearing on the matter, of which notice shall be given as in the first instance.

(F) In recommending the adoption of any amendment to this chapter, the Planning Commission shall state its reasons for such recommendation, describing any changes in conditions, if any, that it believes makes the amendment advisable and specifically setting forth the manner in which, in its opinion, the amendment would be in harmony with the adopted Comprehensive Plan and would be in furtherance of the purposes of this chapter.

(G) The Planning Commission shall have 90 days following its first meeting after the proposed amendment has been referred to the Commission to transmit its recommendation to the Council. Failure to provide a recommendation within such specified time shall be deemed a recommendation of approval unless a deferral is requested by the applicant in conformance with this chapter.

(1998 Code, § 66-337) (Ord. passed 9-5-2017)

§ 157.267 TOWN COUNCIL ACTION.

(A) Following the report to the Town Council by the Planning Commission of any proposed amendment to this chapter, change in district boundaries, amendment to proffers, or classification of property, and before approving and adopting any ordinance or amendment thereof, the Town Council shall hold at least one public hearing thereon, pursuant to public notice as required by law.

(B) In order to approve an application, Town Council must find the following conditions have been addressed:

(1) The fees for zoning requests, as established by an un-codified ordinance, have been paid; and

(2) Proposed amendments have been considered with reasonable regard for the existing use and character of the property, the suitability of the property for various uses, the trends of growth or change, and the current and future requirements of the town. Considerations shall include, but not be limited to, comprehensive plans or parts thereof, capital outlay programs, timing of

development, relation of development to utilities and public facilities. Other elements to be considered include:

- (a) Various purposes as determined by population and economic studies and other studies;
- (b) Transportation requirements of the community and the town;
- (c) Requirements for schools, parks, playgrounds, recreation areas, and other public services;
- (d) Conservation of natural resources, and preservation of floodplains; and
- (e) Conservation of properties and their values and the encouragement of the most appropriate use of land throughout the town.

(C) The Town Council shall determine that the following requirements are met, or be assured that they will be met, in acting upon a petition to change the zoning boundaries, proffer amendment, or classification of property on the Zoning Map.

(1) *General conformance.* The requested zoning district shall be in general conformance with the adopted Comprehensive Plan that includes the area of the parcel subject to the requested change.

(2) *Change of classification.* Parcels which are the subject of requests for changes of zoning classification shall have direct access to arterial, thoroughfare, or collector streets without creating unsafe traffic conditions along minor streets. Rezoning requests requiring enlargement or extension of new or existing arterial thoroughfare and collector streets to provide proper access to the parcel under the proposed zoning district shall:

(a) Be consistent with the improvements and timing of the Comprehensive Plan and protect against danger and congestion in travel and transportation; and

(b) Provide for the reservation or dedication of rights-of-way required on the subject parcel for the future enlargement or extension of new or existing streets that are shown in the adopted Comprehensive Plan.

(3) *Relation to utilities.*

(a) Parcels subject to requests for changes of zoning classification shall be located in relation to sanitary sewers, treatment plants, waterlines, storm drainage systems, and other utilities or installations that any required enlargement or extension of such system will be generally consistent with local and regional water quality management plans, the adopted capital improvements program, and the adopted Comprehensive Plan for the area in which the subject parcel is located.

(b) The applicant shall provide, where necessary, sanitary sewers, waterlines, storm drainage systems and other utilities and installations, or for the enlargement or improvement of existing systems, to serve the development in a manner consistent with applicable plans and policies.

(4) *Relation to public facilities.*

(a) Parcels subject to requests for changes of zoning classification shall be located, designed, scaled, and scheduled for development such that either existing public facilities or planned public facilities that are contained in an adopted capital improvements program will be adequate to serve the proposed development.

(b) In the event that new or enlarged public facilities are necessary to serve development permitted as a result of the requested change in zoning, the applicant shall provide for these facilities. (1998 Code, § 66-338) (Ord. passed 9-5-2017)

§ 157.268 REFILEING FOLLOWING DENIAL.

Upon denial of any petition to change a zoning district boundary, proffers, or classification of property, applications for any or all of the same property for amendment to the same zoning district or use as applied for in the previously denied application shall not be filed within one year of the original denial.

(1998 Code, § 66-339) (Ord. passed 9-5-2017)

§ 157.269 WITHDRAWAL OF APPLICATION.

(A) An application for an amendment of this chapter may be withdrawn at any time. If the request for withdrawal is made after publication of the notice of public hearing before Town Council, then no application for all or any part of the same property may be filed within six months of the withdrawal date.

(B) There shall be no refund of rezoning fees in the case of withdrawal, regardless of the time of withdrawal.

(1998 Code, § 66-340) (Ord. passed 9-5-2017)

§ 157.270 DEFERRAL OF APPLICATION BY APPLICANT.

(A) Petitioner may request deferral of consideration of the application for rezoning.

(B) If the request for deferral is made after publication of the notice of hearing, such deferral shall only be with the consent of either the Planning Commission or the Town Council, whichever body advertised the hearing.

(C) The applicant shall bear the costs to re-advertise the application.

(D) Applications deferred by the Planning Commission at the request of the petitioner will not be deemed as being referred to the Planning Commission until such time as the matter has been rescheduled on the Commission's agenda.

(1998 Code, § 66-341) (Ord. passed 9-5-2017)

OUTDOOR LIGHTING REQUIREMENTS

§ 157.285 GENERAL REQUIREMENTS AND EXEMPTIONS.

(A) *Purpose and intent.* The purposes of the outdoor lighting regulations are to protect dark skies and the general welfare by controlling the spillover of light onto adjacent properties, and to prevent glare from outdoor luminaires and limit the intensity of light on adjacent properties and roadways to further public safety.

(B) *Conformance with applicable codes and ordinances.* All outdoor artificial illuminating devices shall be installed in conformance with the provisions of this subchapter, and applicable provisions of this chapter. The most restrictive shall govern.

(C) *General requirements.*

(1) All outdoor light fixtures except those exempted by division (D) below and those otherwise regulated by § 157.287 shall be fully shielded. A fully shielded fixture must be a full cutoff luminaire or a decorative luminaire with full cutoff optics, and defined as an outdoor lighting fixture that is shielded or constructed so that all light emitted is projected below a horizontal plane running through the lowest part of the fixture. The light source visibility shall be shielded from the adjoining property (See Figures 1 and 2 in § 157.288).

(2) Spillover light, vertical or horizontal, shall not exceed one-half foot-candles at the property line.

(3) Building- and pole-mounted luminaires shall not have adjustable features.

(D) *Exemptions.* Exemptions include:

(1) Outdoor light fixtures installed prior to the effective date of this subchapter are exempt from the provisions of this subchapter, provided, however, that no change in use, increase in lumen output, or structural alteration of outdoor light fixtures shall be made unless it thereafter conforms to the provisions of this subchapter. Replacement of a fixture shall mean a change of fixture type or change to the mounting height of location of a fixture. Routine lighting fixture maintenance, such as changing lamps or light bulbs, ballast, starter, photo control, and other similar components shall not constitute replacement and shall be permitted provided such changes do not result in a higher lumen output. Changing of housing or lenses in a fixture shall not constitute an exemption to the requirements of this subchapter;

(2) Lighting required by state or federal law, to the extent that compliance with state or federal law is inconsistent with compliance with this subchapter;

(3) Roadway lighting and security lighting controlled and activated by motion sensor devices for a duration of 15 minutes or less;

(4) Lighting of the U.S. or state flags and other noncommercial flags expressing constitutionally-protected speech;

(5) Temporary circus, fair, carnival, or civic uses; and/or

(6) Construction and emergency lighting provided that said lighting is temporary and is discontinued immediately upon completion of the construction work or abatement of the emergency necessitating said lighting.

(1998 Code, § 66-350) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.286 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

FOOT-CANDLE. A quantitative unit of measure referring to the measurement of illumination at a single point. One **FOOT-CANDLE** is equal to one lumen uniformly distributed over an area of one square foot.

FULL CUTOFF ANGLE. The angle formed by a line drawn from the light source and a line perpendicular to the ground from the light source, beyond which no light is emitted. (See Figure 1 in § 157.288.)

FULLY SHIELDED. Fixtures that are shielded in such a manner that light emitted by the fixture, either directly from the lamp or indirectly from the fixture, is projected below a horizontal plane running through the lowest point on the fixture where light is emitted. This means that a **FULLY SHIELDED** fixture is one used in a way that allows no direct or internally reflected light to shine above the fixture. (See Figure 1 in § 157.288.)

INITIAL LUMENS. The lumens emitted from a lamp as specified by the manufacturer of the lamp.

LAMP. The component of a luminaire that produces light. A **LAMP** is also commonly referred to as a bulb.

LUMEN. A standard unit of measurement referring to the amount of light energy emitted by a light source without regard to the effectiveness of its distribution.

LUMINAIRE. A complete lighting unit consisting of a lamp or lamps together with the components designed to distribute the light, to position and protect the lamps, and to connect the lamps to the power supply. A **LUMINAIRE** is also commonly referred to as a fixture.

OUTDOOR LIGHT. Outdoor artificial illuminating devices, outdoor fixtures, lamps, or other fixture devices, permanent or portable, used for illumination, direction, or advertisement. Such devices shall include, but are not limited to, search, spot, or floodlights for: buildings and structures including canopies and overhangs; recreational areas; parking lot lighting; landscape lighting; signs, including billboards; and display and service areas.

OUTDOOR LUMINAIRE. A luminaire which is permanently installed outdoors including, but not limited to, devices used to illuminate any site, structure, or sign.

PHOTOMETRIC PLAN. A point by point plan depicting the intensity and location of lighting on the property. (See Figure 4 in § 157.288.)

TEMPORARY. Not used more than seven consecutive days and not used more than 15 days in any calendar year.
(1998 Code, § 66-351) (Ord. passed 9-5-2017)

§ 157.287 USE AND ZONING DISTRICT SPECIFIC REQUIREMENTS.

(A) *Public or private outdoor recreational facilities.* Outdoor night-time recreational events have unique and site specific lighting needs. This section is intended to permit adequate illumination for such events, while minimizing sky-glow and reducing glare and lighting spillover onto surrounding streets and properties.

(1) *Primary playing areas with the exception of residential accessory uses.* Where playing fields or other recreational areas are to be illuminated, lighting fixtures shall be specified, mounted, and aimed so that their beams fall within the primary playing area. Direct illumination shall be confined to within the property lines of the recreational use. External shields may be required in order to reduce spillover light.

(2) *Lighting plans.* Lighting plans shall comply with special provisions listed in § 157.288.

(3) *Event hours.* Under no circumstances shall any illumination of the playing field, court, or track be permitted after 11:00 p.m. except to conclude an event that was reasonably scheduled to conclude prior to 11:00 p.m. All newly lighted fields, or existing fields being upgraded or refitted (public or private) shall be equipped with override timing devices which will automatically cut off the lights to ensure curfew compliance.

(B) *Outdoor lighting of buildings, parking lots, loading areas, sales areas, display areas, aprons/canopies, landscaping, signs, flags, statues, and other objects.* The following lighting requirements apply to single-family attached, multifamily, educational, institutional, commercial recreation, public, commercial business and retail, motor vehicle related, wholesaling, and industrial uses identified in this chapter.

(1) Lighting of the aforementioned uses shall consist of fully cut-off or directionally shielded lighting fixtures that are aimed and controlled so that the directed light is confined to the object intended to be illuminated.

(2) Directional control shields shall be used where necessary to limit stray light.

(3) No light from any illuminated sign shall cause or direct non-reflected light from the fixture to shine onto any adjoining property or public right-of-way.

(4) Lighting for all parking, display, and loading areas shall not exceed an average horizontal illumination level of two and one-half foot-candles. All lighting fixtures serving these areas shall be fully cut-off fixtures.

(5) Maximum mounting height is 20 feet for residential uses and 25 feet for nonresidential uses. Height is measured from the ground surface to the bottom of the lighting fixture. (See Figure 3 in § 157.288.)

(6) The lighting fixture bulbs in aprons and canopies shall be recessed into a canopy ceiling so that the bottom of the fixture is flush with the ceiling so that light is restrained to no more than 85 degrees from vertical.

(a) As an alternative to recessed ceiling lights, indirect lighting may be used where the light is directed upward and then reflected down from the underside of the canopy. In this case, light fixtures shall be shielded so that direct illumination is focused exclusively on the underside of the canopy.

(b) Lights shall not be mounted on the top or sides (facial) of the canopy and the sides of the canopy shall not be illuminated.

(7) The lighting for pump islands and under canopies shall have a minimum of one foot-candle at grade, and the average horizontal illumination cannot exceed ten foot-candles at grade level, subject to a uniformity ratio (ratio of average to minimum illuminance) no greater than four to one. The standards herein are based on the Illuminating Engineering Society of America (IESNA) RP-33, Lighting for Exterior Environments.

(8) Lamps shall not exceed 400 watts.

(C) *Outdoor fixtures for single-family detached residential structures.* Outdoor fixtures for single-family detached residential structures shall be limited to lamps with a maximum of 180 watts per fixture and shall be installed so that light does not spill onto an adjoining property. (1998 Code, § 66-352) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.288 SITE PLAN REQUIREMENTS.

(A) Application requirements.

(1) Any person applying for a site plan in accordance with Chapter 155 of this code or applying for a building, electrical, or sign permit to install outdoor lighting fixtures shall, as a part of said application, submit evidence that the proposed work will comply with this subchapter.

(2) The lighting plan application shall include the following:

(a) A site plan drawn to scale showing building(s), landscaping, parking areas, and proposed exterior lighting fixtures;

(b) Location of all post, canopy, supports, and light fixtures, including the height of each fixture, relative to the buildings, structures, parking, and display and loading areas;

(c) Specifications of the illuminating devices, lamps, supports, and other devices including designation as Illuminating Engineering Society of North America (IESNA) “cut-off” fixtures. This description may include, but is not limited to, manufacturers catalog cuts, and drawings

including sections where required; and

(d) A photometric plan indicating the minimum and maximum foot-candle levels within the lighted area of the site. Such plan shall show locations of all pole mounted and building mounted fixtures and a numerical 25 foot by 25 foot grid of lighting levels, in foot-candles, that the fixtures will produce on the ground. (See Figure 4 below.)

(3) The required plans and descriptions shall be sufficiently complete to enable the Planning Commission, Zoning Administrator, Building Official, or their designee to readily determine compliance with the requirements of this subchapter. If such plans and descriptions cannot enable this ready determination by reason of the nature or configuration of the devices, fixtures, or lamps proposed, the applicant shall submit evidence of compliance by test reports performed by a testing lab certifying that the tests were conducted according to the standards of the Illuminating Engineering Society of North America (IESNA).

(B) Conformance with this subchapter.

(1) Prior to issuance of a building, electrical, or sign permit, the Zoning Administrator or designee shall determine that the submitted plans and details for said permit are in conformance with this subchapter.

(2) The stamping of the plans and the signature of the Building Official or designated representative and the date of the signature shall indicate that the plans are in conformance.

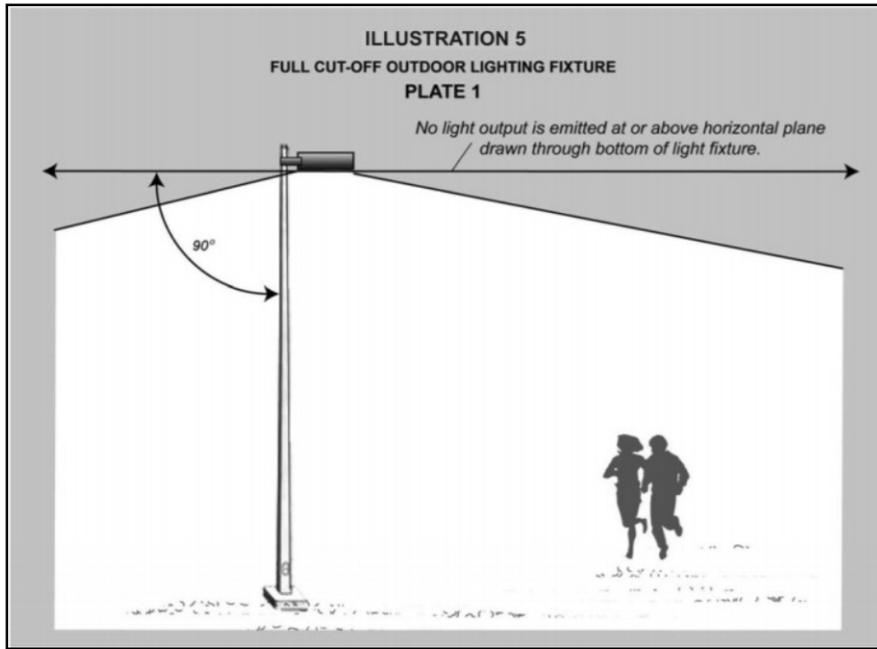
(C) Changes after approval. Should the applicant desire to substitute outdoor light fixtures or lamps to be installed on private property after a lighting plan has been approved, the applicant shall submit said changes to the Zoning Administrator or designee for approval, with adequate information to assure compliance with this subchapter.

(D) Special requirements for public or private outdoor recreational facilities.

(1) For each athletic field or complex to be illuminated, a lighting plan shall be submitted detailing the property lighting installation. The plan shall include the lighting requirements for each sports field, the lighting specifications, and technical measures showing how those requirements will be achieved. Special tree planting and/or buffering to assist in light control and protection of adjacent properties and roadways may be required.

(2) All applications for lighted outdoor recreational facilities shall include an accurate photometric plan in conjunction with a site plan for the proposed field and associated facilities.

Figure 1: Full Cut-off Lighting Fixture



Source: Fairfax County, Virginia Zoning Ordinance - Appendix 2 (Illustrations)

Figure 2: Full Cut-Off Light Fixtures

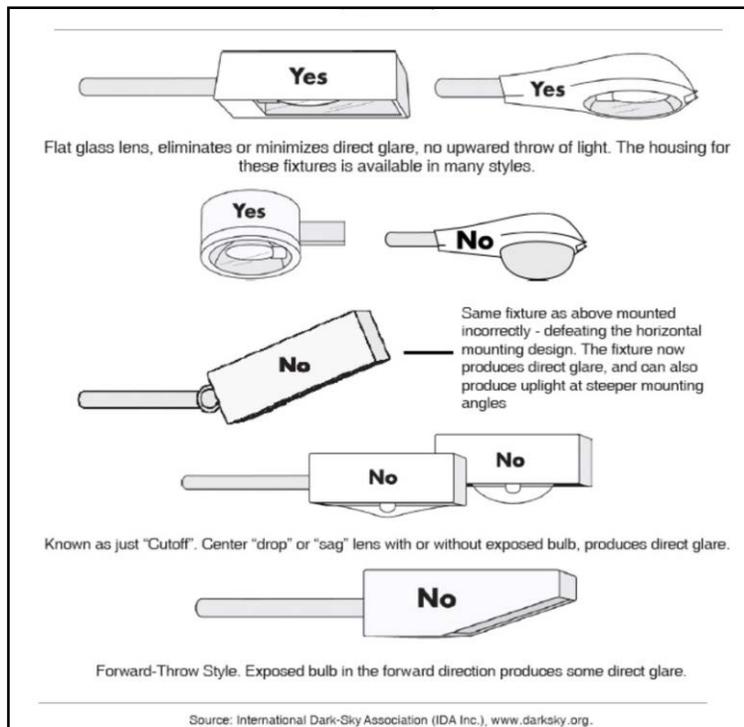
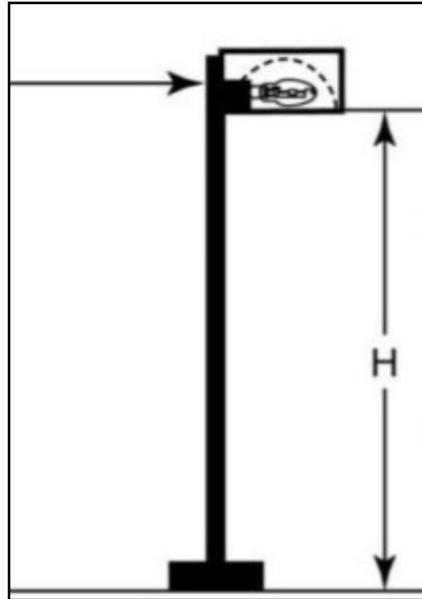


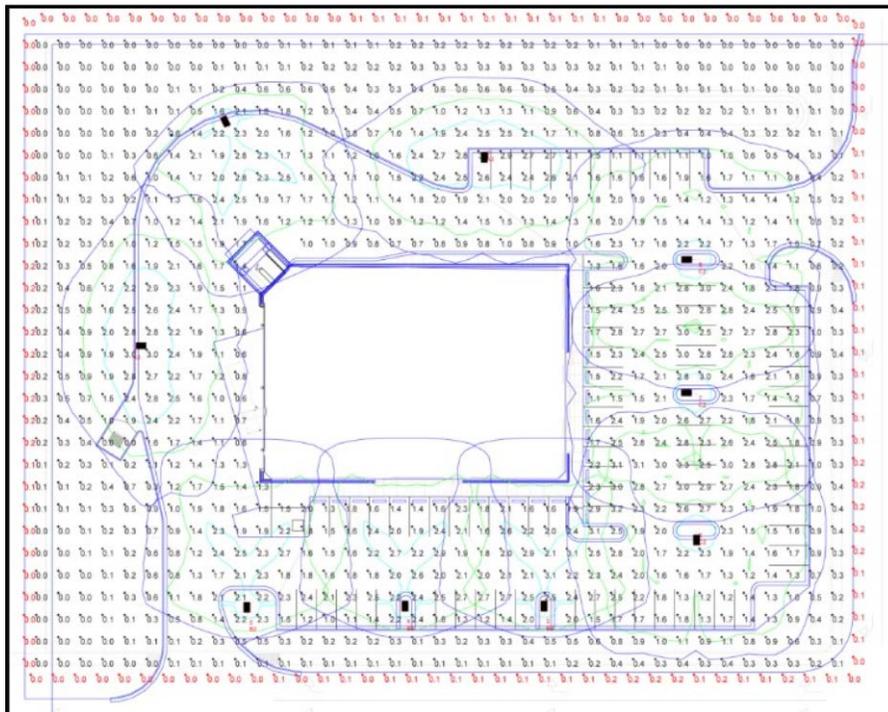
Figure 3: Mounting Height



Source: Fairfax County, Virginia

Zoning Ordinance - Appendix 2 (Illustrations)

**Figure 4:
Photometric
Plan**



Source: Hubbell Outdoor Lighting

(1998 Code, § 66-353) (Ord. passed 9-5-2017)

SIGNS; GENERAL PROVISIONS

§ 157.300 FINDINGS, PURPOSE, AND INTENT; INTERPRETATION.

(A) Signs obstruct views, distract motorists, displace alternative uses for land, and pose other problems that legitimately call for regulation. The purpose of this subchapter is to regulate the size, color, illumination, movement, materials, location, height, and condition of all signs placed on private property for exterior observation, thus ensuring the protection of property values, the character of the various neighborhoods, the creation of a convenient, attractive, and harmonious community, protection against destruction of or encroachment upon historic areas, and the safety and welfare of pedestrians and wheeled traffic, while providing convenience to citizens and encouraging economic development. This subchapter allows adequate communication through signage while encouraging aesthetic quality in the design, location, size, and purpose of all signs. This subchapter shall be interpreted in a manner consistent with the First Amendment guarantee of free speech. If any provision of this subchapter is found by a court of competent jurisdiction to be invalid, such finding shall not affect the validity of other provisions of this subchapter which can be given effect without the invalid provision.

(B) Signs not expressly permitted as being allowed by right or by special use permit under this subchapter, by specific requirements in another portion of this chapter, or otherwise expressly allowed by the Town Council are forbidden.

(C) A sign placed on land or on a building for the purpose of identification, protection, or directing persons to a use conducted therein shall be deemed to be an integral but accessory and subordinate part of the principal use of land or building. Therefore, the intent of this subchapter is to establish limitations on signs in order to ensure they are appropriate to the land, building, or use to which they are appurtenant and are adequate for their intended purpose while balancing the individual and community interests identified in division (A) above.

(D) These regulations are intended to promote signs that are compatible with the use of the property to which they are appurtenant, landscape and architecture of surrounding buildings, are legible and appropriate to the activity to which they pertain, are not distracting to motorists, and are constructed and maintained in a structurally sound and attractive condition.

(E) These regulations distinguish between portions of the town designed for primarily vehicular access and portions of the town designed for primarily pedestrian access.

(F) These regulations do not regulate every form and instance of visual speech that may be displayed anywhere within the jurisdictional limits of the town. Rather, they are intended to regulate those forms and instances that are most likely to meaningfully affect one or more of the purposes set forth above.

(G) These regulations do not entirely eliminate all of the harms that may be created by the installation and display of signs. Rather, they strike an appropriate balance that preserves ample channels of communication by means of visual display while still reducing and mitigating the extent of the harms caused by signs.

(1998 Code, § 66-360) (Ord. passed 9-5-2017)

Statutory reference:

Outdoor advertising in sight of public highways, see VA Code §§ 33.2-1200 et seq.

§ 157.301 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

A-FRAME SIGN. A two-faced chalkboard sign with supports that are connected at the top and separated at the base, forming an “A” shape. These are also referred to as **SANDWICH BOARD SIGNS**. They are included in the term **PORTABLE SIGN**.

ADVERTISING. Any words, symbol, color, or design used to call attention to a commercial product, service, or activity.

ANIMATED SIGN. A sign or part of a sign that is designed to rotate, move, or appear to rotate or move.

AWNING SIGN. A sign placed directly on the surface of an awning.

BANNER. A temporary sign of flexible material designed to be installed with attachments at each of four corners.

BOX SIGN. A sign contained in a box, transparent on one side, which is not more than four and a half square feet in area and not more than one foot deep.

BUSINESS SIGN. A sign which directs attention to a product, service, or commercial activity available on the premises.

CANOPY SIGN. A sign attached to a canopy.

CHANGEABLE COPY SIGN. A sign or part of a sign that is designed so that characters, letters, or illustrations can be changed or rearranged without altering the face or surface of the sign.

COMPREHENSIVE SIGN PLAN. A plan for the signage of a property that includes multiple tenants or owners with shared parking or other facilities, with special use permit (SUP) from Town Council.

FEATHER SIGN. A lightweight, portable sign mounted along one edge on a single, vertical, flexible pole. The physical structure may resemble a sail, bow, or teardrop.

FLAG. A piece of cloth or similar material, typically oblong or square, attachable by one edge to a pole or rope, and used as a symbol or decoration; this includes **PENNANTS**.

FLASHING SIGN. A sign that includes lights that flash, blink, or turn on and off intermittently.

FREESTANDING SIGN. A non-portable sign that is supported by structures or supports in or upon the ground and independent of any support from any building or wall.

HEIGHT. The maximum vertical distance from the base of the sign at normal grade to the top of the highest attached component of the sign. Normal grade shall be construed to be the lower of: existing grade immediately prior to construction of the sign; or the newly established grade after construction, exclusive of any filling, berming, mounding, or excavating primarily for the purpose of mounting or elevating the sign.

ILLEGAL SIGN. Any sign erected without a required permit or which otherwise does not comply with any provisions of this subchapter.

ILLUMINATED SIGN. A sign that is backlit, internally lighted, or indirectly lighted, but does not include a neon sign.

INFLATABLE SIGN. Any sign which uses compressed or forced gas to provide support.

MARQUEE. A permanent structure projecting beyond a building wall at an entrance to a building or extending along and projecting beyond the building's wall and generally designed and constructed to provide protection against the weather.

MARQUEE SIGN. A sign attached to and made a part of a marquee or any similar projections from a building, with changeable, fixed, or both types of lettering in use.

MINOR SIGN. A wall or freestanding sign, as per the tables in §§ 157.320 through 157.322 and not illuminated.

MONUMENT SIGN. A sign affixed to a structure built on grade in which the sign and the structure are an integral part of one another; not a pole sign.

NEON SIGN. A sign containing exposed tubes filled with light-emitting gas.

NONCONFORMING SIGN. Any sign which was lawfully erected in compliance with applicable regulations of the town and maintained prior to the effective date of this chapter and which fails to conform to current standards and restrictions of this chapter.

OFF-PREMISES SIGN. A sign that directs attention to a business, product, service, or activity conducted, sold, or offered at a location other than the premises on which the sign is erected.

POLE SIGN. A sign that is mounted on one or more freestanding poles.

PORTABLE SIGN. Any temporary sign not affixed to a building, structure, vehicle, or the ground. It does not include a flag or banner.

PROJECTING SIGN. Any sign, other than a wall, awning, or marquee sign, affixed to a building and supported only by the wall on which it is mounted.

PUBLIC AREA. Any public place, public right-of-way, any parking area, or right-of-way open to use by the general public, or any navigable body of water.

ROOF SIGN. A sign erected or constructed, in whole or in part, upon or above the highest point of a building with a flat roof, or the lowest portion of a roof for any building with a pitched roof.

SIGN. Any device (writing, letter work or numeral, pictorial presentation, illustration or decoration, emblem, device, symbol or trademark, flag, banner or pennant or any other device, figure, or character) visible to and designed to communicate information to persons in a public area. However, the term **SIGN** does not include architectural features, except those that identify products or services or advertise a business use. The term **SIGN** also does not include the display of merchandise for sale on the site of the display.

SIGN FACE. The portion of a sign structure bearing the message.

SIGN STRUCTURE. Any structure bearing a sign face.

TEMPORARY SIGN. A sign constructed of cloth, canvas, vinyl, paper, fabric, or other lightweight material not well suited to provide a durable substrate or, if made of some other material, is neither permanently installed in the ground nor permanently affixed to a building or structure which is permanently installed in the ground.

VEHICLE OR TRAILER SIGN. Any sign attached to or displayed on a vehicle, if the vehicle or trailer is used for the primary purpose of advertising a business establishment, product, service, or activity. Any such vehicle or trailer shall, without limitation, be considered to be used for the primary purpose of advertising if it fails to display current license plates, inspection sticker, or municipal decal, if the vehicle is inoperable, if evidence of paid-to-date local taxes cannot be made available, or if the sign alters the standard design of such vehicle or trailer.

WALL SIGN. Any sign attached to a wall or painted on or against a flat vertical surface of a structure.

WATERFRONT SIGN. A sign facing the river on riverfront property.

WINDOW SIGN. Any sign visible outside the window and attached to or within 18 inches in front of or behind the surface of a window or door.
(1998 Code, § 66-361) (Ord. passed 9-5-2017)

§ 157.302 SIGNS REQUIRING A PERMIT.

(A) *Permit required.* A sign permit is required prior to the display and erection of any sign except as provided in § 157.303.

(B) *Application for permit.*

(1) An application for a sign permit shall be filed with the town on forms furnished by the town. The applicant shall provide sufficient information to determine if the proposed sign is permitted under this chapter and other applicable laws, regulations, and ordinances. An application for a temporary sign shall state the dates intended for the erection and removal of the sign.

(2) The Town Zoning Administrator or designee shall promptly process the sign permit application and approve the application, deny the application, or notify the applicant of deficiencies in the application within 20 business days after receipt. Any application that complies with all provisions

of this chapter, the Building Code, and other applicable laws, regulations, and ordinances shall be approved.

(3) If the application is denied, the town shall provide a list of the reasons for the denial in writing. An application shall be denied for noncompliance with the terms of this chapter, the Building Code, or other applicable law, regulation, or ordinance.

(C) *Nonrefundable fee.* A nonrefundable fee as set forth in the uncodified fee schedule adopted by the Town Council shall accompany all sign permit applications.

(D) *Permit void after one year.* If a sign is not installed within one year following the issuance of a sign permit (or within 20 days in the case of a temporary sign permit), the permit shall be void. The permit for a temporary sign shall state its duration, not to exceed 20 days unless another time is provided in this chapter. The town may revoke a sign permit under any of the following circumstances:

(1) The town determines that information in the application was materially false or misleading;

(2) The sign as installed does not conform to the sign permit application; or

(3) The sign violates this chapter, the Building Code, or other applicable law, regulation, or ordinance.

(E) *Signs in Old and Historic Occoquan Overlay District.* All signs in the Old and Historic Occoquan Overlay District (HOD) require compliance with Architectural Review Board (ARB) guidelines except when a sign permit is not required as provided in § 157.303.

(F) *Comprehensive sign plans approval by Town Council.* The Town Council shall approve comprehensive sign plans in the B-1 District. The comprehensive sign plan shall establish the time, manner, and placement of signs, frequency of message changes, the materials, the hours of lighting, the height of signs, the total number of square feet of sign surface, and the number of signs to be placed on a site. Height of signs shall not be modified above the height permitted in this chapter. (1998 Code, § 66-362) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.303 SIGNS NOT REQUIRING A PERMIT.

A sign permit is not required for the following:

(A) Signs erected by a governmental body or required by law;

(B) Flags up to 16 square feet in size not containing any advertising; provided, that no freestanding pole shall be erected in the public right-of-way nor be within five feet of a service drive, travel lane, or adjoining street;

(C) The changing of messages on marquees and the repair of an existing permitted sign, except that repair of a nonconforming sign must comply with § 157.308(E);

(D) Temporary signs as follows:

(1) One sign, no more than 16 square feet in area, located on property where a building permit is active;

(2) On any property for sale or rent, not more than one sign with a total area of up to 16 square feet and a maximum height of six feet when the sign abuts a road with a speed limit of 25 mph or less, and when the sign abuts a road with a speed limit greater than 25 mph not more than one sign with a total area of up to 32 square feet and a maximum height of eight feet;

(3) Official notices or advertisements posted or displayed by or under the direction of any public or court officer in the performance of his or her official or directed duties; provided, that all such signs shall be removed no more than ten days after their purpose has been accomplished;

(4) On residential use property, one or more temporary signs with a total area of no more than eight square feet, and which are removed within 90 days after being erected. Once removed, temporary signs may not be erected again; and

(5) On residential use property, window signs, provided that the total extent of window signs do not obstruct more than 25% of the total area of all windows on each building façade.

(E) Not more than four minor signs per parcel, consistent with the tables in §§ 157.320 through 157.322. Additional minor signs are permitted in certain districts with a permit;

(F) A-frame signs not in the public right-of-way, consistent with the tables in §§ 157.320 through 157.322;

(G) A permanent window sign, provided that the aggregate area of all window signs on each window or door does not exceed 25% of the total area of the window or door; and

(H) Box signs, consistent with the tables in §§ 157.320 through 157.322.
(1998 Code, § 66-363) (Ord. passed 9-5-2017)

§ 157.304 PROHIBITED SIGNS.

In addition to signs prohibited elsewhere in this code or by applicable state or federal law, the following signs are prohibited.

(A) *General prohibitions.* General prohibitions include:

(1) Signs that violate any law of the state relating to outdoor advertising;

(2) Signs attached to natural vegetation;

(3) Signs simulating, or which are likely to be confused with, a traffic control sign or any other sign displayed by a public authority. Any such sign is subject to immediate removal and disposal by an authorized town official as a nuisance;

(4) Vehicle or trailer signs;

(5) Freestanding signs more than 15 feet in height;

(6) Vending machines within the Old and Historic Occoquan District that are outside of a wholly enclosed structure; and

(7) Any sign displayed without complying with all applicable regulations of this chapter.

(B) *Prohibitions based on materials.* Prohibitions based on materials include:

(1) Signs painted directly on a building, driveway, or road, except where expressly permitted by this chapter;

(2) Animated signs;

(3) Flashing signs;

(4) Signs consisting of illuminated tubing or strings of lights outlining property lines or open sales areas, rooflines, doors, windows, or wall edges of any building, except for temporary decorations not to exceed three months per year or not to exceed 60 consecutive days;

(5) Signs that emit smoke, flame, scent, mist, aerosol, liquid, or gas;

(6) Signs that emit sound;

(7) Any electronic sign that is generated by a series of moving images, such as a TV, digital display, or other video technology, whether displayed on a building, vehicle, or mobile unit;

(8) Strings of flags (two or more connected together) visible from, and within 50 feet of, any public right-of-way;

(9) Pole signs less than six feet in height;

(10) Feather signs;

(11) Inflatable signs;

(12) Illuminated signs, except for box signs; and

(13) Neon signs.

(C) *Prohibitions based on location.* Prohibitions based on location include:

(1) Off-premises signs;

(2) Signs erected on public land other than those approved by an authorized town official in writing, required by law without such approval, or permitted under VA Code § 24.2-310 E. Any sign not so authorized is subject to immediate removal and disposal by any authorized official. Removal of the sign under this provision does not preclude prosecution of the person responsible for the sign;

- (3) Signs on the roof surface or extending above the roofline of a building or its parapet wall;
- (4) Any sign which obstructs visibility for motorists or pedestrians at an intersection; and
- (5) Window signs whose aggregate area on a window or door exceed 25% of the total area of the window or door.

(1998 Code, § 66-364) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.305 MEASUREMENTS OF SIGN AREA AND HEIGHT.

(A) *Supports, uprights, or structures in determining sign area.* Supports, uprights, or structures on which any sign is supported shall not be included in determining the sign area unless such supports, uprights, or structures are designed in such a way as to form an integral background of the display; except, however, when a sign is placed on a fence, wall, planter, or other similar structure that is designed to serve a separate purpose other than to support the sign, the entire area of such structure shall not be computed. In such cases, the sign area shall be computed in accordance with the preceding provisions.

(B) *Sign area.*

- (1) Sign area is calculated under the following principles.

(a) With signs that are regular polygons or circles, the area can be calculated by the mathematical formula for that polygon or circle. With signs that are not regular polygons or circles, the sign area is calculated using all that area within a maximum of three abutting or overlapping rectangles that enclose the sign face.

(b) The permitted area of a double-faced sign shall be considered to be the area on one side only. If one face contains a larger sign area than the other, the larger face shall be used in calculating the sign area. A double-faced sign must have an internal angle between its two faces of no more than 45 degrees.

(c) For projecting signs with a thickness of four inches or more, the sign area also includes the area of the visible sides of the sign, calculated as a rectangle enclosing each entire side view.

(2) The maximum height for any sign shall be 15 feet unless otherwise specified within this chapter.

(3) Maximum sign area is 16 square feet unless otherwise specified within this chapter.
(1998 Code, § 66-365) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.306 MAINTENANCE AND REMOVAL.

(A) All signs shall be constructed and mounted in compliance with the State Uniform Statewide Building Code, 13 VAC 5-63.

(B) All signs and components thereof shall be maintained in good repair and in a safe, neat, and clean condition.

(C) The Building Official may take action under the State Maintenance Code, after such notice as is provided by law, to address any sign which, in his or her opinion, has become insecure, in danger of falling, or otherwise unsafe, and, as such, presents an immediate threat to the safety of the public. If such action is necessary to render a sign safe, the cost of such emergency removal or repair shall be at the expense of the owner or lessee thereof as provided in Chapters 92 and 150 of this code.

(D) Where the use or business has ceased operating, the owner of the sign or property owner shall remove the sign within 60 days of the cessation of use or business operation, or remove/replace the sign face with a blank face until such time as a new use or business has resumed operating on the property.

(E) Any sign which becomes a safety hazard or which is not kept in a reasonably good state of repair shall be put in a safe and good state of repair within 30 days of a written notice to the owner and permit holder. Any sign which constitutes a nuisance may be abated by the town under the requirements of VA Code §§ 15.2-900, 15.2-906, and/or 15.2-1115. (1998 Code, § 66-366) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.307 GENERAL REQUIREMENTS.

(A) *Placement.* Except as otherwise permitted, all freestanding signs shall leave a vertical clearance over any sidewalk of at least seven feet and shall not overhang any vehicular right-of-way.

(B) *Illumination.* All permitted signs may be indirectly lighted, unless such lighting is specifically prohibited in this subchapter. Box signs may be internally lighted.

(1) In the case of indirect lighting, the source shall be so shielded that it illuminates only the face of the sign. However, wall signs shall be indirectly illuminated or have shielded direct lighting, unless otherwise prohibited within this chapter. Indirect lighting shall consist of full cut-off or directionally shielded lighting fixtures that are aimed and controlled so that the directed light shall be substantially confined to the sign to minimize glare, sky glow, and light trespass. The beam width shall not be wider than that needed to light the sign.

(2) Internal illumination shall be limited to the illumination standards for outdoor lighting in § 157.287. No sign shall be permitted to have an illumination spread of more than five-hundredths foot-candle at the lot line, shine into oncoming traffic, affect highway safety, or shine directly into a residential dwelling unit. In no event shall the illumination of any sign resulting from any internal or external artificial light source exceed 100 lumens. All lighting fixtures used to illuminate a sign shall be full-cutoff, as defined by the Illuminating Engineering Society of North America (IESNA), and shall have fully shielded or recessed luminaires with horizontal-mount flat lenses that prevent upward light scatter and protect the dark night sky.

(3) All illumination for signs shall comply with provisions of §§ 157.285 through 157.288.

(C) *Waterfront signs.* See chart in §§ 157.320 through 157.322.

(D) *Banners*. In the Old and Historic Occoquan District, banner colors shall be consistent with the ARB guidelines.

(1) A banner shall not contain more than four colors.

(2) Such banners shall be attached to an existing principal structure (with a clearance of at least 12 inches from the edge of the store or building) or sign pole. They must not obscure architectural features of the building (such as windows, railings, or ornamentation) and shall not exceed 16 square feet in total area. They may be hung in a horizontal or vertical manner and shall be attached at all four corners in a taut manner.

(3) Banner permits shall be for 20 consecutive days and no more than twice in one calendar year per property.

(4) Banners installed and used for special events and festivals sponsored by the town may be erected without a permit and shall be removed within two days after the event. (1998 Code, § 66-367) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.308 NONCONFORMING SIGNS.

(A) Signs lawfully existing on the effective date of this chapter or prior ordinances, which do not conform to the provisions of this chapter, and signs which are accessory to a nonconforming use shall be deemed to be nonconforming signs and may remain except as qualified below. The burden of establishing nonconforming status of signs and of the physical characteristics/location of such signs shall be that of the owner of the property. Upon notice from the Zoning Administrator, a property owner shall submit verification that sign(s) were lawfully existing at time of erection. Failure to provide such verification shall be cause for order to remove sign(s) or bring sign(s) into compliance with the current ordinance.

(B) No nonconforming sign shall be enlarged nor shall any feature of a nonconforming sign, such as illumination, be increased.

(C) (1) Nothing in this section shall be deemed to prevent keeping in good repair a nonconforming sign.

(2) Nonconforming signs shall not be extended or structurally reconstructed or altered in any manner, except a sign face may be changed so long as the new face is equal to or reduced in height and/or sign area.

(D) No nonconforming sign shall be moved for any distance on the same lot or to any other lot unless such change in location will make the sign conform in all respects to the provisions of this subchapter.

(E) (1) A nonconforming sign that is destroyed or damaged by any casualty to an extent not exceeding 50% of its area may be restored within two years after such destruction or damage but shall not be enlarged in any manner.

(2) If such sign is so destroyed or damaged to an extent exceeding 50%, it shall not be reconstructed but may be replaced with a sign that is in full accordance with the provisions of this

subchapter.

(F) A nonconforming sign which is changed to becoming conforming or is replaced by a conforming sign shall no longer be deemed nonconforming, and thereafter such sign shall be in accordance with the provisions of this subchapter.

(G) A nonconforming sign structure shall be subject to the provisions of § 157.212. In addition, a nonconforming sign structure shall be removed if the use to which it is accessory has not been in operation for a period of two years or more. Such sign structure shall be removed by the owner or lessee of the property. If the owner or lessee fails to remove the sign structure, the Zoning Administrator or designee shall give the owner 15 days' written notice to remove it. Upon failure to comply with this notice, the Zoning Administrator or designee may enter the property upon which the sign is located and remove any such sign or may initiate such action as may be necessary to gain compliance with this provision. The cost of such removal shall be chargeable to the owner of the property.

(1998 Code, § 66-368) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.309 NONCOMMERCIAL SIGNS.

Wherever this subchapter permits a sign with commercial content, noncommercial content is also permitted subject to the same requirements of size, color, illumination, movement, materials, location, height, and construction.

(1998 Code, § 66-369) (Ord. passed 9-5-2017) Penalty, see § 10.99

SIGN REGULATIONS BY USE AND DISTRICT

§ 157.320 RESIDENTIAL DISTRICT SIGNS (R-1, R-2, R-3, R-4).

(A) Except as otherwise prohibited in this subchapter, Table 1 below includes signs that are permitted as accessory to residential uses in residential districts. Animated signs and electronic message signs are prohibited on residential properties in all residential districts.

(B) Except as provided otherwise in this subchapter, Table 2 below includes signs that are permitted as accessory to nonresidential uses in residential districts. Animated signs are prohibited as accessory uses for nonresidential uses in all residential districts.

<i>Table 1: Residential Signs</i>					
<i>Type</i>	<i>Flags</i>	<i>Temporary</i>	<i>Permanent-Box, Freestanding, Monument, Pole, Projecting, and Wall</i>	<i>Minor</i>	<i>Waterfront</i>
Duration	Unlimited	90 days	Unlimited	Unlimited	Unlimited
Illumination	As required by law	None	Indirect	None	Indirect
Location	See § 157.303(B)	See § 157.303 (D)	Wall, window, freestanding, or affixed to mailbox	Wall, window, freestanding, or affixed to mailbox	Wall, window, freestanding, or affixed to mailbox

<i>Table 1: Residential Signs</i>					
<i>Type</i>	<i>Flags</i>	<i>Temporary</i>	<i>Permanent-Box, Freestanding, Monument, Pole, Projecting, and Wall</i>	<i>Minor</i>	<i>Waterfront</i>
Max. height	15 ft	6 ft	6 ft	6 ft	6 ft
Setback	See § 157.303(B)	None	None	None	None
Size (each/total)	16 sf/no limit	16 sf/16 sf 1 total	3 sf/3 sf	1 sf/4 sf	16 sf

<i>Table 2: Nonresidential Signs</i>							
<i>Type</i>	<i>Flags</i>	<i>Temporary</i>	<i>Variable Message Signs</i>	<i>Permanent Box, Freestanding, Monument, Pole, Projecting, and Wall</i>	<i>Minor</i>	<i>Monument</i>	<i>Waterfront</i>
Duration	Unlimited	20 Days	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited
Illumination	As required by law	None	Indirect	Indirect	None	Indirect	Indirect
Materials	See flag definition	See § 157.303(D)	-	-	-	-	-
Max. height	15 ft	6 ft	6 ft	6 ft	6 ft	6 ft	6 ft
Setback	See § 157.303(B)	None	None	None	None	None	None
Size (each/total)	16 sf/no limit	8 sf/8 sf	16 sf/16 sf	16 sf/16 sf	1 sf/4 sf	16 sf	16 sf

(1998 Code, § 66-391) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.321 COMMERCIAL DISTRICT SIGNS (B-1).

(A) (1) Except as provided otherwise in Table 3 below, the following signs are permitted as accessory uses in commercial districts.

(2) In addition, up to one minor sign per business is permitted as a wall sign.

(B) Window signs are permitted up to 25% of the area of a window and count toward the maximum square footage of wall signs. Window signs are permitted only on the first floor of a building unless the business advertised is only on the floor where the window sign is displayed.

<i>Table 3: Commercial Signs</i>						
<i>Type</i>	<i>Permanent-Box, Freestanding, Monument, Pole, Projecting, and Wall</i>	<i>Temporary</i>	<i>Flags</i>	<i>Minor</i>	<i>Waterfront</i>	<i>Marquee</i>

<i>Table 3: Commercial Signs</i>						
<i>Type</i>	<i>Permanent-Box, Freestanding, Monument, Pole, Projecting, and Wall</i>	<i>Temporary</i>	<i>Flags</i>	<i>Minor</i>	<i>Waterfront</i>	<i>Marquee</i>
Duration	Unlimited	20 days	Unlimited	Unlimited	Unlimited	Unlimited
Illumination	Indirect	None	As required by law	None	Indirect	Backlit, internally or indirectly
Location	Wall, window sign, freestanding or affixed to mailbox	See § 157.303(D)	See § 157.303(B)	Wall, window, freestanding, or affixed to mailbox	Wall, window, freestanding, or affixed to mailbox	SUP req.
Maximum number	4 (with no flags)*	Unlimited	4 (with no signs)*	4 signs total without a permit; up to 2 additional with a permit	Unlimited up to maximum size	1
Maximum height	6 ft	6 ft	15 ft	6 ft	Height of building	Height of building
Setback	None	See § 157.303(D)	See § 157.303(B)	None	None	None
Size (each)	16 sf (except box signs, which are limited to 4.5 sf by definition)	16 sf total for commercial use property; 8 sf total for residential use property	16 sf	1 sf total	Total: 2 sf/linear foot of building riverfront width, divided into as many signs as occupant wishes	SUP req.
SUP req.	No	No	No	No	No	Yes
Table notes: *: Maximum number is a combination of signs and flags. There shall be no more than four signs and/or flags on any one property at a given time.						

(1998 Code, § 66-392) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.322 HISTORIC DISTRICT SIGNS.

(A) In the Old and Historic Occoquan District, a certificate of appropriateness is required before erection or alteration of any structure.

(B) Repair of an existing sign, or replacement of an existing sign with like materials and colors, does not require a certificate of appropriateness.

(1998 Code, § 66-393) (Ord. passed 9-5-2017) Penalty, see § 10.99

SIGNS; ADMINISTRATION

§ 157.335 SIGN PERMIT PROCEDURES.

(A) *Applicability.* A sign permit shall be required for all signs erected after December 12, 1995, except for those signs specifically excluded from the sign permit requirements as provided in § 157.307.

(B) *Filing of application; fees.* Applications for sign permits shall be filed on a form provided by the town by the applicant or his or her agent. Applications for permits for signs in the Old and Historic Occoquan District shall be subject to review and approval by the Architectural Review Board. All applications for permits for signs outside the Old and Historic Occoquan District shall be subject to the review and approval of the Town Zoning Administrator, and shall contain information required in division (C) below, and shall be accompanied by a fee, as established from time to time by resolution of the Town Council.

(C) *Information required.* All applications for sign permits shall contain or have attached thereto the following information in either written or graphic form:

- (1) Name, address, and telephone number of the sign erector and the sign owner;
- (2) Positions of the sign in relation to adjacent lot lines, buildings, sidewalks, streets, and intersections;
- (3) Type of sign and general description of structural design and construction materials to be used; and
- (4) Drawings of the proposed sign, which shall contain specifications indicating the height, perimeter, and area dimensions, means of support, method of illumination, colors, and other significant aspects of the proposed sign.

(D) *Inspections.* A final inspection shall be completed after installation of approved signs. Any discrepancies between the approved sign and the sign as constructed shall be identified and may result in the halt of construction or sign removal, if so ordered by the town.

(E) *Revocations.* The town may revoke a permit or approval if it is found that there has been concealment or misrepresentation of material facts in either the application or plans. (1998 Code, § 66-401) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.336 TEMPORARY SIGN PERMIT PROCEDURES.

(A) All applications for signs requiring the issuance of a temporary sign permit, as established in § 157.308, shall contain all information requested by the Architectural Review Board prior to the issuance of such permit. The approved permit shall include the expiration date of the temporary permit. The applicant may request extensions of the permit for good cause. Temporary signs remaining after the expiration of the permit shall be considered obsolete.

(B) All applications for banners, as established in § 157.308, shall contain all information requested by the town prior to the issuance of such permit. The approved permit shall include the expiration date of the temporary permit. The applicant may request extensions of the permit for good cause. Banners remaining after the expiration of the permit shall be considered obsolete.

(1998 Code, § 66-402) (Ord. passed 9-5-2017) Penalty, see § 10.99

§ 157.337 EXPIRATION OF SIGN PERMITS; SIGNS NOT CONSTRUCTED.

A sign permit shall expire and become null and void if the approved sign is not erected within a period of 12 months from the date the permit was originally issued. The town may grant one extension of the sign permit for a period of six months, but in no case shall a permit be valid for more than a total of 18 months. Extensions may be granted only when the proposed sign is in compliance with all current applicable regulations.

(1998 Code, § 66-403) (Ord. passed 9-5-2017)

§ 157.338 VARIANCES TO SIGN REGULATIONS NOT PERMITTED.

(There is no text for this section.)

(1998 Code, § 66-404) (Ord. passed 9-5-2017)

§ 157.339 REMOVAL OF SIGNS.

(A) *Illegal signs.* The town may remove or order the removal of any illegal sign at the expense of the property owner.

(B) *Structurally unsafe signs.* Whenever in the opinion of the Zoning Administrator or building official, board a sign becomes structurally unsafe or endangers the safety of a building or premises, or endangers the public safety, or is in need of maintenance, the Zoning Administrator shall order that such sign be made safe, repaired, or removed. Such order shall be complied with within five days of receipt of the order by the person owning or using the sign or the owner of the building or premises on which such unsafe sign is affixed or erected.

(1998 Code, § 66-405) (Ord. passed 9-5-2017) Penalty, see § 10.99



TOWN OF OCCOQUAN
TOWN COUNCIL MEETING
 Agenda Communication

2. Work Session Regular Agenda	Meeting Date: January 15, 2019
2B: FY 2020 Budget Work Session	

Explanation and Summary:

This is the first of three scheduled work sessions to discuss the proposed Fiscal Year 2020 Budget and Capital Improvement Plan. The proposed budget will be published by March 22, 2019, and a public hearing on the budget will be held on April 2, 2019, and a public hearing on the proposed tax rates will be on April 23, 2019. The budget and tax rates are scheduled for adoption during the May 7, 2019 meeting.

BUDGET SCHEDULE

Town Council Budget Work Session	Tuesday, January 15, 2019	7:00 p.m.
Town Council Budget Work Session	Tuesday, February 19, 2019	7:00 p.m.
Town Council Budget Work Session (if needed)	Tuesday, March 5, 2019	After Regular Meeting
Proposed FY20 Budget Submitted to Council, Available to Public	Friday, March 22, 2019	COB
Public Hearing: Proposed FY20 Budget	Tuesday, April 2, 2019	7:00 p.m.
Public Hearing: Proposed FY20 Tax Rates	Tuesday, April 23, 2019	7:00 p.m.
Adoption of FY20 Tax Rates and Budget	Tuesday, May 7, 2019	7:00 p.m.



TOWN OF OCCOQUAN

TOWN COUNCIL MEETING

Agenda Communication

2. Work Session Regular Agenda	Meeting Date: January 15, 2019
2C: Occoquan Elementary School Boundary Discussion	

Explanation and Summary:

Prince William County School Board had proposed moving the Occoquan Elementary School Boundaries. This would effectively change Town resident's elementary school from Occoquan Elementary to Rockledge Elementary. This item was brought to Council's attention by a Town resident who provided significant details on this matter at the December 4, 2018 Regular Meeting.

Mayor Porta has updates that he would like to provide to Town Council and members of the public in attendance.

Attachments: None



TOWN OF OCCOQUAN
TOWN COUNCIL MEETING
Agenda Communication

2. Work Session Regular Agenda	Meeting Date: January 15, 2019
2D: Visitor Center Kiosk Discussion	

Explanation and Summary:

In a previous meeting there had been discussion about the possibility of the Visitor Center installing kiosk in Town. Mayor Porta has updates that he would like to provide to Town Council and members of the public in attendance.

Attachments: None