

CODE

TOWN OF

CHILHOWIE, VIRGINIA

Codified through
Ordinance of Oct. 9, 1997.

Updated on September 12, 2014

PART I

CHARTER*

CHAPTER 1. INCORPORATION AND BOUNDARIES

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***Editor's note**--Printed herein is the Charter of the Town of Chilhowie, Virginia, as adopted by Acts of 1984, Ch. 243. 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.

CHAPTER 1. INCORPORATION AND BOUNDARIES

§ 1.1. Incorporation.

The inhabitants of the territory comprised within the present limits of the Town of Chilhowie as such limitations are now, or may hereafter be altered and established by law, shall constitute a body politic and corporate, to be known and designated as the Town of Chilhowie, and as such shall have perpetual succession, may sue and be sued,

plead and be impleaded, contract and be contracted with, and may have a corporate seal which it may alter, renew or amend at its pleasure.

§ 1.2. Boundaries.

The boundaries of the town are those established by the original charter issued November 5, 1913, by the Circuit Court of Smyth County and recorded in Common Law Order Book 8, Page 150, in the Smyth County Circuit Court Clerk's Office and by the annexation granted on December 15, 1972, by the Circuit Court and recorded in Common Law Order Book 20, Page 91, in the Smyth County Circuit Court Clerk's Office and by the boundary line change on June 16, 1988, by the Circuit Court and recorded in Common Law Order Book 39, Page 495, in the Smyth County Circuit Court Clerk's office.
(Acts of 1988)

CHAPTER 2. POWERS

§ 2.1. Powers.

The Town of Chilhowie shall have all powers conferred upon towns under the Constitution of Virginia and all other laws of the Commonwealth. All powers set forth in Code of Virginia, §§ 15.1-837 through 15.1-907 are hereby specifically conferred upon the Town of Chilhowie.

Editor's note--The provisions formerly contained in Code of Virginia, § 15.1-837 et seq. are now contained in Code of Virginia, § 15.2-1100 et seq.

CHAPTER 3. GOVERNING BODY

AN ORDINANCE AMENDING AND REENACTING §§3.1 AND 3.2 OF THE CHARTER OF THE TOWN OF CHILHOWIE, VIRGINIA REGARDING THE DATE OF ELECTIONS

WHEREAS, Va. Code §15.2-1400, effective January 1, 2022, mandates that "beginning with any election held after January 1, 2022, elections for mayor, members of a local governing body…shall be held at the time of the November general election for terms to commence January 1.";

WHEREAS, the Town of Chilhowie charter calls for elections for the office of Mayor in May, and for the town council (the Town's local governing body) in May; and

WHEREAS, the Chilhowie Town Council is therefore required to change the date for elections for 2022 and thereafter.

BE IT HEREBY ORDAINED AS FOLLOWS:

§§3.1 and 3.2 of the Town of Chilhowie Charter currently state as follows:

§ 3.1. Council.

A. The Town of Chilhowie shall be governed by a town council, composed of six members, elected at large.

B. The members of council in office at the time of the passage of this Act shall continue until the expiration of the terms for which they are elected, or until their successors are duly elected and qualified.

C. Every two years, on the dates specified by general law for municipal elections, three members of the council shall be elected for terms of four years each. The persons so elected shall qualify and take office on the first day of July following their election, and they shall continue to serve until their successors are duly elected, qualified and assume office.

D. Any person qualified to vote in town elections shall be eligible for the office of councilman.

E. Vacancies on the council shall be filled for the unexpired term by a majority vote of the remaining members of the council. All vacancies shall be filled within sixty days. Any person qualified for the office of councilman may be chosen to fill a council vacancy.

§ 3.2. Mayor.

A. In each even-numbered year, on the date specified by general law for municipal elections, a mayor of the Town of Chilhowie shall be elected for a term of two years. Persons so elected shall so qualify and take office on the first day of July following their election. Mayors shall continue to serve until their successors are duly elected, qualify and assume office.

B. Any person qualified to vote in town elections shall be eligible for the office of the mayor.

C. Vacancies in the office of mayor shall be filled for the unexpired term by a majority vote of the members elected to the council from among the qualified voters of the town. Vacancies shall be filled within sixty days. A member of council shall not be qualified to fill a vacancy in the office of mayor.

D. The mayor shall be president of the council, but he shall have no vote except in case of a tie. He shall be recognized as head of the town government for ceremonial

purposes and by the Governor for purposes of military law. He shall perform such other duties as may be assigned to him by council not inconsistent with the Constitution of Virginia, the general laws of the Commonwealth or the provisions of this charter.

E. The town council at its first regular meeting in July following a general election shall elect one of its members as vice-mayor of the town, who shall exercise all the powers and duties of the mayor in the event of the absence of the mayor.

As no other provisions concerning the date of elections can be found in the Code of the Town of Chilhowie outside of §§3.1 and §3.2 of the Charter, a new provision in the Code of the Town of Chilhowie is hereby created reflecting an amendment, reenactment, and replacement of the abrogated provisions of the Town Charter as follows:

§§3.1 and 3.2 are amended, reenacted, and replaced as follows:

§ 3.1. Council.

A. The Town of Chilhowie shall be governed by a town council, composed of six members, elected at large.

B. The members of council in office at the time of the passage of this Act shall continue until the expiration of the terms for which they are elected, or until their successors are duly elected and qualified.

C. Every two years, on the dates specified by general law for municipal elections in November, three members of the council shall be elected for terms of four years each. The persons so elected shall qualify and take office on the first day of January following their election, and they shall continue to serve until their successors are duly elected, qualified and assume office.

D. Any person qualified to vote in town elections shall be eligible for the office of councilman.

E. Vacancies on the council shall be filled for the unexpired term by a majority vote of the remaining members of the council. All vacancies shall be filled within sixty days. Any person qualified for the office of councilman may be chosen to fill a council vacancy.

§ 3.2. Mayor.

A. In each even-numbered year, on the date specified by general law for municipal elections in November, a mayor of the Town of Chilhowie shall be elected for a term of two years. Persons so elected shall so qualify and take office on the first day of

January following their election. Mayors shall continue to serve until their successors are duly elected, qualify and assume office.

B. Any person qualified to vote in town elections shall be eligible for the office of the mayor.

C. Vacancies in the office of mayor shall be filled for the unexpired term by a majority vote of the members elected to the council from among the qualified voters of the town. Vacancies shall be filled within sixty days. A member of council shall not be qualified to fill a vacancy in the office of mayor.

D. The mayor shall be president of the council, but he shall have no vote except in case of a tie. He shall be recognized as head of the town government for ceremonial purposes and by the Governor for purposes of military law. He shall perform such other duties as may be assigned to him by council not inconsistent with the Constitution of Virginia, the general laws of the Commonwealth or the provisions of this charter.

E. The town council at its first regular meeting in January following a general election shall elect one of its members as vice-mayor of the town, who shall exercise all the powers and duties of the mayor in the event of the absence of the mayor.

This Ordinance shall be effective upon passage.

Adopted October 14, 2021

CHAPTER 4. MISCELLANEOUS

§ 4.1. Ordinances Continuing.

All ordinances now in force in the Town of Chilhowie not inconsistent with this charter shall remain in force until altered, amended, or repealed by the council.

§ 4.2. Legislative Procedure.

Except in dealing with parliamentary procedure, the council shall act only by ordinance or resolution, and with the exception of ordinances making appropriations or authorizing the contracting of indebtedness, each ordinance or resolution shall be confined to one general subject.

§ 4.3. Town Officers.

A. At its organizational meeting held following the qualifications of the mayor and members of council in each even-numbered year, the council may, in its discretion, appoint a town manager who shall serve as the chief administrative officer of the town.

B. The council may, in its discretion, appoint a town attorney, town clerk, town treasurer, chief of police and such other town officers as it deems appropriate. The council shall further provide the terms of each officer, or, if there be no terms, shall indicate that the officers serve at the pleasure of the appointing authority.

C. Each officer shall have such duties and shall receive such compensation as specified by the appointing authority not inconsistent with the Constitution and general laws of the Commonwealth and this charter.

D. The same person may be appointed to more than one office; provided, that no person may serve both as member of council and as mayor.

E. In accordance with the provisions of Code of Virginia, § 15.1-796, there shall not be created in the town the office of town sergeant.

Editor's note--The provisions formerly contained in Code of Virginia, § 15.1-796 have been repealed.

§ 4.4. Water and Sewer Charges.

In operating public water and sewer services, the town may charge a different rate for services furnished to customers without the corporate limits from the rates charged for similar services to customers within the corporate limits. The town may provide by ordinance that all unpaid water or sewer service charges and intersects [interest] thereon shall constitute a lien on the real estate served by the water or sewer line through which the service is provided.

§ 4.5. Eminent Domain.

The powers of eminent domain which may be exercised by municipal corporations under the provisions of Titles 15.2 and 25 of the Code of Virginia, as amended, are hereby conferred upon the Town of Chilhowie.

CHARTER COMPARATIVE TABLE

ACTS

This table shows the location of the sections of the basic Charter and any amendments thereto.
TABLE INSET:

Acts of	Chapter	Section	Section this Charter
1984	243	1.1--4.5	1.1--4.5
1988			1.2

PART II

CODE

Chapter 1

GENERAL PROVISIONS

Sec. 1-1.	How Code designated and cited.
Sec. 1-2.	Rules of construction and definitions.
Sec. 1-3.	Catchlines of sections.
Sec. 1-4.	History notes.
Sec. 1-5.	References to chapters or sections.
Sec. 1-6.	References and editors notes.
Sec. 1-7.	Provisions of Code constructed as continuations of existing ordinances.
Sec. 1-8.	Effect of repeal of ordinances.
Sec. 1-9.	Code does not affect prior offenses, rights, etc.
Sec. 1-10.	Miscellaneous ordinances not affected by Code.
Sec. 1-11.	Amendments to Code.
Sec. 1-12.	Supplementation of Code.
Sec. 1-13.	Copies of Code, supplements available for public inspection.
Sec. 1-14.	Severability of parts of Code.
Sec. 1-15.	Penalties; continuing violations.

GENERAL PROVISIONS

Sec. 1-1. How Code designated and cited.

The ordinances embraced in this and the following chapters and sections shall constitute and be designated the "Code of the Town of Chilhowie, Virginia (1998)," and may be so cited. Such ordinances may also be cited as the "Chilhowie Town Code (1998)."
(Code 1986, § 1-1)

State law reference(s)--Authority of town to codify and recodify its ordinances, Code of Virginia, § 15.2-1433.

Sec. 1-2. Rules of construction and definitions.

In the interpretation and construction of this Code and of all ordinances of the town, the following rules of construction and definitions shall be observed, unless they are inconsistent with the manifest intent of the council or the context clearly requires otherwise:

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

State law reference(s)--Bond with surety, Code of Virginia, § 1-13.1:1.

Charter. The term "Charter" shall mean the Charter of the town printed in part I of this volume or as it may be amended.

Code. Whenever the term "Code" is used without further qualification, it shall mean the Code of the Town of Chilhowie, Virginia, 1998, as designated in section 1-1.

Code of Virginia. Whenever the term "Code of Virginia" is used it shall refer to the Code of Virginia, as amended, and including all amendments adopted hereafter, unless otherwise indicated.

Computation of time. Whenever a Code provision or ordinance requires a notice to be given or any act to be done a certain time before any proceeding, there must be that time, exclusive of the day for such proceeding, but the day on which such notice is given or such act is done may be counted as part of the time. When a notice is required to be given or any other act to be done within a certain time after any event, that time shall be allowed, in addition to the day on which the event occurred.

State law reference(s)--Similar provisions, Code of Virginia, § 1-13.3.

Council. The term "council" or "town council" shall mean the council of the Town of Chilhowie, Virginia.

State law reference(s)--Definition of council, Code of Virginia, § 1-13.5.

County. The term "county" shall mean the County of Smyth in the Commonwealth of Virginia.

Following. The term "following," when used by way of reference to any section in this Code, shall be construed to mean next following that in which such reference is made.

State law reference(s)--Similar provisions, Code of Virginia, § 1-13.6.

Gender. A term importing the masculine gender only may extend and be applied to females and to corporations, as well as males.

State law reference(s)--Similar provisions, Code of Virginia, § 1-13.7.

Joint authority. Terms purporting to give authority to three or more officers or other persons shall be construed as giving such authority to a majority of such officers or other persons, unless it is otherwise expressly stated.

State law reference(s)--Similar provisions, Code of Virginia, § 1-13.1.

Month. The term "month" shall mean a calendar month.

State law reference(s)--Similar provisions, Code of Virginia, § 1-13.13.

Number. A term 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.

State law reference(s)--Similar provisions, Code of Virginia, § 1-13.15.

Oath. The term "oath" shall be construed to include an affirmation in all cases in which, by law, an affirmation may be substituted for an oath.

State law reference(s)--Similar provisions, Code of Virginia, § 1-13.16.

Occupant; tenant. The term "occupant" or "tenant," applied to a building or land, shall mean any person who holds a written or oral lease of, or actually occupies, the whole or a part of such building or land, either alone or with others.

Officers, boards, etc. Whenever reference is made to a particular officer, employee, department, board, commission or other agency, without further qualification, such reference shall be construed as if followed by the words "of the Town of Chilhowie, Virginia." A reference to a specific officer shall include that officer's duly authorized deputies and agents.

State law reference(s)--Delegation of powers and duties, Code of Virginia, § 15.2-1502.

Official time standard. Whenever particular hours are referred to, the time applicable shall be official Eastern Standard Time or daylight saving time, whichever may be in current use in the town.

State law reference(s)--Similar provisions, Code of Virginia, § 1-15.

Owner. The term "owner," 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.

Percent. The term "percent" shall be equivalent to the term "percentum."
State law reference(s)--Similar provisions, Code of Virginia, § 1-13.18.

Person. The term "person" shall include a firm, partnership, association of persons, corporation, organization or any other group acting as a unit or any body politic or corporate, as well as an individual.
State law reference(s)--Similar provisions, Code of Virginia, § 1-13.19.

Preceding. The term "preceding," when used by way of reference to any section in this Code, shall be construed to mean next preceding that in which such reference is made.
State law reference(s)--Similar provisions, Code of Virginia, § 1-13.23.

Property. The term "property" shall mean real, personal or mixed property.

Section numbers. Whenever reference is made to a section by number only (e.g., "section 1-1"), without further qualification, it shall be construed as referring to that section of this Code.

Shall. The term "shall" shall be mandatory.

Sidewalk. The term "sidewalk" shall mean any portion of a street between the curbline, or the lateral lines of a roadway where there is no curb, and the adjacent property line intended for the use of pedestrians.

Signature; subscription. The terms "signature" and "subscription" shall include a mark when the person cannot write, his name being written near it and being witnessed by a person who writes his own name as a witness.

State; commonwealth. The word "state" or "commonwealth" shall be construed as if followed by the words "of Virginia."

State code. References to the "state code" or the "Code of Virginia" shall mean the Code of Virginia, 1950, as amended.

Street. The word "street" shall include avenues, boulevards, highways, roads, alleys, lanes, viaducts, bridges and the approaches thereto, and all other public thoroughfares in the town, and shall mean the entire width thereof between abutting property lines. It shall also be construed to include a sidewalk or footpath, unless the contrary is expressed or unless such construction would be inconsistent with the manifest intent of the council.

Swear; sworn. The term "swear" or "sworn" shall be equivalent to the word "affirm" or "affirmed" in all cases in which, by law, an affirmation may be substituted for an oath.

State law reference(s)--Similar provisions, Code of Virginia, § 1-13.28.

Tense. Words used in the past or present tense include the future as well as the past and present.

Town. The word "town" shall mean the Town of Chilhowie, in the County of Smyth and Commonwealth of Virginia.

State law reference(s)--Definition of town, Code of Virginia, § 1-13.29.

Written; in writing. The terms "written" and "in writing" shall include typewriting, printing on paper and any other mode of representing words and letters.

(Code 1986, § 1-2)

State law reference(s)--Similar provisions, Code of Virginia, § 1-13.32; similar rules of construction and definitions applicable to state law, Code of Virginia, § 1-13.3 et seq.

Sec. 1-3. Catchlines of sections.

The catchlines of the sections of this Code printed in boldface type 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.

(Code 1986, § 1-3)

State law reference(s)--Similar provisions as to sections of state code, Code of Virginia, § 1-13.9.

Sec. 1-4. History notes.

The history notes appearing in parentheses after sections of this Code are not intended to have any legal effect, but are merely intended to indicate the source of matter contained in the section.

Sec. 1-5. References to chapters or sections.

All references in this Code to chapters or sections are to the chapters and sections of this Code, unless otherwise specified.

Sec. 1-6. References and editor's notes.

References and editor's notes following certain sections of this Code are inserted as an aid and guide to the reader and are not controlling or meant to have any legal effect.

Sec. 1-7. Provisions of Code construed as continuations of existing ordinances.

The provisions appearing in this Code, so far as they are the same as those of the Chilhowie Town Code adopted September 11, 1986, and ordinances adopted subsequent thereto and included in this Code, shall be construed as continuations thereof and not as new enactments.
(Code 1986, § 1-5)

Sec. 1-8. 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.
State law reference(s)--Similar provisions, Code of Virginia, § 1-17.

Sec. 1-9. Code does not affect prior offenses, rights, etc.

Nothing in this Code or 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, or any prosecution, suit or proceeding pending or any judgment rendered, on or before the effective date of this Code.
(Code 1986, § 1-7)
State law reference(s)--Similar provisions, Code of Virginia, § 1-6.

Sec. 1-10. Miscellaneous ordinances not affected by Code.

Nothing in this Code or the ordinance adopting this Code shall affect:

(1) Any ordinance promising or guaranteeing the payment of money by or for the town or authorizing the issuance of any bonds of the town or any evidence of the town's indebtedness or any contract or obligation assumed by the town.

(2) Any ordinance granting any franchise or right.

(3) Any ordinance appropriating funds, levying or imposing taxes or relating to any public improvement or assessments therefor.

(4) Any ordinance authorizing, providing for or otherwise relating to any public improvement or assessments therefor.

(5) Any ordinance prescribing through streets, parking and traffic regulations, speed limits, one-way traffic, limitations on load of vehicles or loading zones.

(6) Any ordinance establishing and prescribing the street grades of any street in the town.

(7) Any ordinance dedicating or accepting any plat or subdivision in the town.

(8) Any ordinance annexing territory or excluding territory or any ordinance extending the boundaries of the town.

(9) Any ordinance establishing positions, classifying positions, setting salaries of town officers and employees or any personnel regulations, or any ordinance regarding pension or retirement plans, funds or benefits.

(10) Any ordinance calling elections or prescribing the manner of conducting the election in accordance with state law.

(11) Any ordinance or resolution dedicating, naming, establishing, locating, relocating, opening, paving, widening, repairing, vacating, etc., any street or public way in the town.

(12) Any ordinance not included in this Code which prescribes the rate, fee or charge for any permit or license issued by the town or for any service rendered by the town.

(13) The zoning ordinance or any amendment thereto, including amendments to the zoning map and ordinances zoning or rezoning specific property.

(14) Any ordinance adopted for purposes which have been consummated.

(15) Any ordinance which is temporary, although general in effect, or special, although permanent in effect.

All such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this Code and they are on file in the town clerk's office.
(Code 1986, § 1-6)

Cross reference(s)--Zoning ordinance, App. A.

Sec. 1-11. Amendments to Code.

(a) All ordinances passed subsequent to this Code of Ordinances which amend, repeal or in any way affect this Code of Ordinances may be renumbered in accordance with the numbering system of this Code and printed for inclusion therein, or in the case of repealed chapters, sections and subsections or any part thereof, by subsequent ordinances, such repealed portions may be excluded from this Code by the omission thereof from reprinted pages affected thereby, and the subsequent ordinances as numbered and printed, or omitted, in the case of repeal, shall be prima facie evidence of such subsequent

ordinances until such time that this Code of Ordinances and subsequent ordinances numbered or omitted are readopted as a new Code of Ordinances by the town council.

(b) Amendments to any of the provisions of this Code shall be made by amending such provisions by specific reference to the section of this Code in substantially the following language: "That section _____ of the Code of Ordinances, Town of Chilhowie, Virginia, is hereby amended to read as follows: . . . ." The new provisions shall then be set out in full as desired.

(c) If a new section not then existing in the Code is to be added, the following language is to be used: "That the Code of Ordinances, Town of Chilhowie, Virginia, is amended by adding a new section to be numbered _____, which section reads as follows: . . . ." The new section shall then be set out in full as desired.

(d) All sections, articles, chapters or provisions of this Code desired to be repealed should be specifically repealed by section number or chapter number, as the case may be.

Sec. 1-12. 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 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 replaced shall be excluded from the Code by the omission thereof from reprinted pages.

(c) When preparing a supplement to this Code, the codifier (meaning the person 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 subdivisions.

(2) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the Code printed in the supplement, and make changes in such catchlines, headings and titles.

(3) Assign appropriate numbers to sections and other subdivisions to be inserted in the Code and, where necessary to accommodate new material, change existing section or other subdivision numbers.

(4) Change the words "this ordinance" or words of the same meaning to "this chapter," "this article," "this division," etc., as the case may be, or to "sections _____ to _____" (inserting section numbers to indicate the sections of the Code which embody the substantive sections of the ordinance incorporated into the Code).

(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.

(Code 1986, § 1-8)

State law reference(s)--Authority to supplement Code, Code of Virginia, § 15.2-1433.

Sec. 1-13. Copies of Code, supplements available for public inspection.

At least three copies of this Code and every supplement thereto shall be kept in the office of the town clerk and shall be available for public inspection, during normal business hours.

(Code 1986, § 1-9)

State law reference(s)--Similar provisions, Code of Virginia, § 15.2-1433.

Sec. 1-14. Severability of parts of Code.

It is hereby declared to be the intention of the town council that the sections, paragraphs, sentences, clauses and phrases of this Code are severable and, if any phrase, clause, sentence, paragraph or section of this Code is declared unconstitutional or 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, paragraphs and sections of this Code.

(Code 1986, § 1-4)

State law reference(s)--Similar provisions, Code of Virginia, § 1-17.1.

Sec. 1-15. Penalties; continuing violations.

(a) Whenever in this Code or any other ordinance of the town it is provided that a violation of any provision thereof shall constitute a class 1, 2, 3 or 4 misdemeanor, such violation shall be punished as follows:

(1) For class 1 misdemeanor, confinement in jail for not more than 12 months and a fine of not more than $2,500.00, either or both.

(2) For class 2 misdemeanor, confinement in jail for not more than six months and a fine of not more than $1,000.00, either or both.

(3) For class 3 misdemeanor, a fine of not more than $500.00.

(4) For class 4 misdemeanor, a fine of not more than $250.00.

(b) Whenever in any provision of this Code or in any other ordinance of the town any act is prohibited or is made or declared to be unlawful or an offense or misdemeanor, or the doing of any act is required, or the failure to do any act is declared to be unlawful or an offense or a misdemeanor, where no specific penalty is provided for the violation of such provision and such violation is not described as being of a particular class of misdemeanor, such violation shall constitute a class 1 misdemeanor and be punished as prescribed in subsection (a)(1) of this section.

(c) Notwithstanding any other provision of this section or any other section of this Code, no penalty for a violation of this Code or other ordinance of the town shall exceed that prescribed by general law for a like offense.

(d) Each day any violation of this Code or any other ordinance shall continue shall constitute a separate offense, except where otherwise provided.
(Code 1986, § 1-10)

State law reference(s)--Classification of misdemeanors and punishment therefor, Code of Virginia, §§ 18.2-9, 18.2-11; authority of town to provide penalties for violation of ordinances and provisions similar to subsection (c) above, Code of Virginia, § 15.2-1429; arrest procedure, Code of Virginia, § 19.2-74; searches without warrant, Code of Virginia, § 19.2-59; town to have use of county jail, Code of Virginia, § 53.1-73.

Chapter 2

ADMINISTRATION*

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*Charter reference(s)--Powers of the town, § 2.1; legislative procedure, § 4.2.
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Sec. 2-251. Created; name.
Sec. 2-252. Board of directors.
Sec. 2-253. Powers.
Sec. 2-254-----2.285. Reserved.

Article V. Financial Matters

Sec. 2-286. Annual budget.
Sec. 2-287. Fee for dishonored checks.

ARTICLE I. IN GENERAL

Secs. 2-1--2-30. Reserved.

ARTICLE II. TOWN COUNCIL*

DIVISION 1. GENERALLY

Secs. 2-31--2-65. Reserved.

DIVISION 2. MEETINGS†

Sec. 2-66. Appeal of ruling on point of order at council meeting.

At a council meeting, any member of the council may appeal any ruling by the mayor on a point of order to a vote of the town council at the meeting.
(Code 1986, § 2-1)

Secs. 2-67--2-95. Reserved.

ARTICLE III. OFFICERS AND EMPLOYEES‡

DIVISION 1. GENERALLY

Secs. 2-96--2-125. Reserved.

DIVISION 2. TOWN MANAGER**

Sec. 2-126. Office created.

There is hereby created the office of town manager.
(Code 1986, § 2-16)

Charter reference(s)--Appointment of town manager, § 4.3A.

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*__Charter references__---Town council, § 3.1; mayor, § 3.2.

__State law reference__----General powers, Code of Virginia, § 15.2-1407.

†__State law reference__---Meetings open to the public, Code of Virginia, §§ 2.1-343----2.1-346.1.

‡__Charter references__---Town council, art. 3; mayor, § 3.2; town officers, § 4.3.

__Cross references__---Zoning administrator, app. A, § 5.1; administrator of the subdivision regulations, § 46-66 et seq.

**__Charter reference__----Authority of council to appoint a town manager to serve as town's chief administrative officer, § 4.3.

Sec. 2-127. General powers and duties.

The town manager shall have the power and it shall be his duty to:

(1) Supervise the administration of the affairs of the town.

(2) Make such recommendations to the town council concerning the affairs of the town and the condition and future needs of the town as he deems necessary.

(3) Prepare and submit to the town council the annual budget estimates.

(4) Prepare and submit to the town council such reports as may be required by that body.

(5) See that all laws, ordinances, resolutions, and bylaws of the town council with respect to the departments under his management and control are faithfully enforced.

(6) Attend all meetings of the town council with the right to take part in the discussion, but having no vote.

(7) Recommend to the town council for adoption such measures as he may deem necessary or expedient.

(8) Supervise and control all encumbrances, expenditures and disbursements to ensure that budget appropriations are not exceeded.

(9) Perform such other duties as may be prescribed by the Charter or required of him by this Code or order or resolution of the town council, not inconsistent with the Charter.

(Code 1986, § 2-18)

Sec. 2-128. General authority with respect to town personnel.

Except as otherwise provided in the Charter, the town manager, subject to the consent of the town council, may appoint or employ, and he may remove or discharge, town employees. The salaries and terms of office or employment of the officers and employees shall be fixed by the town manager, subject to the approval of the town council.
(Code 1986, § 2-19)

Charter reference(s)--Appointment of certain officers by the town council, § 4.3B.

Sec. 2-129. Administrative control of town departments.

Unless otherwise provided by the Charter or provisions of this Code, and to the extent permitted thereby, the town manager shall have administrative control over all town departments.
(Code 1986, § 2-20)

Sec. 2-130. Council shall not interfere with administrative appointments, orders.

Except for the purpose of inquiry, the town council and its members shall deal with administrative service solely through the town manager and neither the town council nor any member of the council shall give orders to any subordinates of the town manager, either publicly or privately. Neither the town council nor any of the members shall direct or request the appointment of any person to office by the town manager or by any of his subordinates.
(Code 1986, § 2-21)

Sec. 2-131. Role as purchasing agent; council approval required for certain purchases.

The town manager shall act as the purchasing agent for the town. All purchases exceeding $3,000.00 must be approved by the town council.
(Code 1986, § 2-22) **Adopted May 9, 2002.**

State law reference(s)--Virginia Public Procurement Act, Code of Virginia, § 11-35 et seq.

State law reference(s)—Virginia Public Procurement Act, Code of Virginia, §§ 2.2-4300 et seq.; Powers of Cities and Towns, Code of Virginia §§ 15.2-1100 et seq.

Sec. 2-132. Council review of actions; accountability to council.

All actions of the town manager shall be subject to review by the town council and he shall be accountable to the council only.
(Code 1986, § 2-23)

Secs. 2-133--2-160. Reserved.

DIVISION 3. TOWN ATTORNEY*

Sec. 2-161. Employment; general duties.

The town council may employ an attorney to advise the town officers and the town council and to represent the town in any proceeding requiring the services of an attorney.
(Code 1986, § 2-34)

Charter reference(s)--Authority of council to appoint town attorney, § 4.3.

Secs. 2-162--2-190. Reserved.

ARTICLE IV. BOARDS, COMMITTEES, COMMISSIONS†

DIVISION 1. GENERALLY

Secs. 2-191--2-220. Reserved.

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*Charter reference(s)--Town council may appoint town attorney, § 4.3B.
†Charter reference(s)--Town officers, § 4.3.

DIVISION 2. PLANNING COMMISSION

Sec. 2-221. Created; powers and duties.

A town planning commission is hereby created pursuant to the provisions of Code of Virginia, §§ 15.2-2212 through 15.2-2214. The planning commission shall exercise such powers and have such duties as are conferred upon the planning commission by state law.
(Code 1986, § 2-45)

Secs. 2-222--2-250. Reserved.

DIVISION 3. INDUSTRIAL DEVELOPMENT AUTHORITY*

Sec. 2-251. Created; name.

There is hereby created a political subdivision of the state, the name of which shall be the industrial development authority of the town.
(Code 1986, § 2-56)

Sec. 2-252. Board of directors.

The industrial development authority shall be governed by a board of seven directors, to be appointed by the town council. All appointments shall be for terms of four years, except that appointments to fill vacancies shall be for the unexpired term.
(Code 1986, § 2-57)

State law reference(s)--Appointment, terms, etc., of directors, Code of Virginia, § 15.2-4904.

Sec. 2-253. Powers.

The industrial development authority shall have such public and corporate powers as are set forth in the Industrial Development and Revenue Bond Act, Code of Virginia, § 15.2-4900 et seq., including such powers as may hereafter be set forth from time to time in such act.
(Code 1986, § 2-58)

Secs. 2-254--2-285. Reserved.

ARTICLE V. FINANCIAL MATTERS†

Sec. 2-286. Annual budget.

At least 90 days prior to July 1 of each year, the town council shall prepare a budget for the following fiscal year and the budget shall be prepared, published, a public hearing held, and adopted under the Code of Virginia, § 15.2-2506.
(Code 1986, § 2-3)

State law reference(s)--Preparation of budget, Code of Virginia, § 15.2-2503 et seq.

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*__State law reference(s)__--Authority to create industrial development authority, Code of Virginia, § 15.2-4903.

†__Cross reference(s)__--Taxation, ch. 50.

__State law reference(s)__--Annual audit required, Code of Virginia, § 15.2-2510.

Sec. 2-287. Fee for dishonored checks.

If any person shall utter, publish or pass any check or draft for payment of any taxes or other sums due the town, which check or draft is subsequently returned for insufficient funds, or because there is no account or the account has been closed, there shall be added to such taxes or sums a fee of $25.00 for each such check or draft.
(Code 1986, § 2-5)

State law reference(s)--Authority to adopt a fee for bad checks, Code of Virginia, § 15.2-106

Chapter 3 Planned Residential Development

3.2-2-10 Planned Residential Development.

3.2-2-10-1 Purpose.

(1) General. This section establishes standards and criteria for planned residential developments (PRDs). Both processes allow for flexibility in project design and match the unique features of a project and a site to established sets of review criteria.

(2) Planned Residential Development. The primary purpose of a PRD is to enhance the design of a residential development by allowing for flexibility and variation from the established site requirements. PRD's are a mechanism by which the Town of Chilhowie may allow for variation in the design and arrangement of structures as well as provide for the coordination of project characteristics with features of a particular site in a manner that is consistent with the public health, safety and welfare of the community. A PRD allows for innovations and special features in site development, including the location and type of structures, the conservation of natural features, allowances for housing serving a range of incomes, the conservation of energy, and the efficient use of open space.

3.2.2-10-2 Applicability.

(1) Planned Residential Development. PRDs are allowed only in residential (R-2) zones of the Town. The primary use of a PRD shall be residential. Uses that are accessory to the primary residential use are also allowed, as are open space and recreation uses as permitted by the zone. The PRD process may not be applied to single-family lots that are incapable of further subdivision, and may not serve as a means of avoiding procedures more appropriately reviewed under the provisions of Chilhowie Town Code governing variances.

(2) Planned Residential Development must be a minimum of two acres and must be owned by the same person or entity at the time of application.

3.2.2-10-3 Scope of the Approval.

(1) General. The PRD approval shall be superimposed on the underlying zoning district. The PRD shall constitute a limitation on the use and design of the site.

(2) Planned Residential Development.

(a) An applicant may elect to undergo either a one step or a two-step approval process for a PRD. The specific development regulations which may be modified based on the PRD approval and all special requirements applied to the property within the PRD shall be specified in the approval and shown or listed on any approved PRD plan, subdivision, or binding site plan which is approved by the Town of Chilhowie and recorded in Smyth County's real property records. Where a one-step PRD process is used, the approved PRD plan shall be filed in Smyth County's real property records. Where a two-step process is used, either the second detailed PRD plan, subdivision, or building site plan shall be filed in Smyth County's real property records.

(b) A one step approval process would include the Town of Chilhowie's review and consideration of not only the general project concept, including its intensity and overall design, but also of all specific site and development requirements associated with the proposed development.

(c) In a two-step approval process, an applicant would first seek approval of an overall project design and concept before extending significant time and resources in developing the specific site and development features of the proposal. The second approval associated with the PRD would then relate to specific site and development requirements as defined by the first approval. An applicant may also elect to obtain approval of an overall project design and then proceed with either a subdivision or a binding site plan application based on the initial PRD approval.

3.2.2-10-4 Decision Criteria.

(1) Design Criteria. The Town may approve, or approve with modifications, a PRD if the proposal meets the requirements of this chapter and the design of the proposed development achieves two or more of the following results:

(a) High-quality architectural design, placement, relationship or orientation of structures;
(b) Achieving allowable densities for the subject property;
(c) Providing housing types that effectively serve the affordable housing needs of the community;
(d) Improving circulation patterns or the screening of parking facilities;
(e) Minimizing the use of impervious surfacing materials;
(f) Increasing open space or recreational facilities on-site;
(g) Landscaping, buffering, or screening in or around the proposed PRD;
(h) Providing public facilities;

(i) Preserving, enhancing or rehabilitating natural features of the subject property such as significant woodland, wildlife habitats or streams;
(j) Incorporating energy-efficient site design or building features;
(k) Providing for an efficient use of infrastructure;
(l) Incorporating a historic structure(s) or a historic landmark in such a manner as preserves its historic integrity and encourages adaptive reuse.

(2) Public Facilities. The PRD shall be served by adequate public facilities including streets, bicycle and pedestrian facilities, fire protection, water, storm water control, sanitary sewer, and parks and recreation facilities.

(3) Perimeter Design. The perimeter of the PRD shall be appropriate in design, character and appearance with the existing or intended character of development adjacent to the subject property and with the physical characteristics of the subject property.

(4) Open Space and Recreation. Open space and recreation facilities shall be provided and effectively integrated into the overall development of a PRD and surrounding uses.

(5) Streets and Sidewalks. Existing and proposed streets and sidewalks within a PRD shall be suitable and adequate to carry anticipated traffic within the proposed project and in the vicinity of the subject property.

3.2.2-10-5 Modification of Development Regulations.

(2) Density Bonus. Within the standards established by this section, dwelling units may be shifted to suitable locations on residential locations on residential PRD. For larger projects (more than 20 units), the maximum residential density that the Town may approve in a PRD is 110 percent of that permitted in the zone in which the project is located. For smaller projects (less than 20 units), one bonus unit shall be permitted for projects of three to 10 units, and two bonus units shall be permitted for a project of 11 to 20 units. No bonus units are available for projects of less than three units. Utilizing this bonus will not affect the ability of a project to use other bonuses allowed by the Community Development Guide. However, the calculation of the PRD shall be based solely on the underlying zoning and shall not incorporate any other bonuses in its calculation.

(3) Authorization of Housing Types.

(a) A PRD may authorize a variety of housing types including, but not limited to, detach single-family homes with a variety of lot configurations; common wall dwellings; townhouses (including those on

individual lots to be sold in fee and those sharing common lots); zero lot line homes; and "Zero" lot Open space.

(b) The authorization shall specify the number of various types of dwelling authorized and the number of dwellings that may be allowed in any one building or in any one building or in particular buildings.

(c) Since PRDs do not authorize the division of land, housing types that require the division of land require short subdivision, long subdivision, or binding site plan approval.

(4) Average Lot Size. In order to increase project design flexibility and as long as the overall density requirements of the PRD are met, no average lot size or minimum lot size per dwelling unit is established, but may be required as a condition of approval.

(5) Minimum Lot Width Circle. In order to increase project design flexible for PRD applications involving a subdivision, a minimum lot width circle of 30 feet is established. The conditions of approval may establish specific minimum lot width requirements for individual PRD applications, so long as they are not less than 30 feet.

(6) Building Setbacks. PRDs are subject to minimum front, rear and side street setbacks of 20 feet. No minimum interior setback is established, but may be required as a condition of approval.

(7) Minimum Building Separation. No minimum building separation requirement is established so long as all building and fire regulations are met. A minimum building separation may be established as a condition of approval for individual PRD applications.

(8) Maximum Lot Coverage and Impervious Surface Area. For PRDs, requirements governing maximum lot coverage for structures and maximum impervious surface area may be exceed in the R-2 zone by as much as 10 percent, so long as in no case does a proposed maximum lot coverage exceed 60 percent and a proposed maximum impervious surface area exceed 80 percent unless a higher percentage is established by the underlying zone in which case they shall not exceed that standards by more than five percent. Specific lot coverage and impervious surface area requirements may be established for individual PRD applications as a condition of approval.

(9) Maximum Height of Structures.

(a) Modification of Building Heights. Requirements for building height may be modified as described below with a PRD when it assists in maintaining open space and natural resources. For sites in R-2, the maximum height

allowed in a PRD is 45 feet. Belfries, cupolas, chimneys, flues, and flagpoles and exempt.

(10) Street and utility Standards. Street and utility standards for PRDs may be modified by the Planning Commission. Standards for water and sewer facilities are governed by the Director of Public Works in conjunction with the Town Engineer. All utilities must be underground, including but not limited to electrical, gas, cable, telephone, water, & sewer.

(11) Planned Residential Developments must be substainally site manufactured and constructed to existing building and fire codes. Roof trusses, wall panel systems, and floor truss systems will be considered as components and are therefore suitable for site manufacturing designation. Any housing units predominantly manufactured off site are not allowed in PRD's including manufactured buildings and modular buildings with less than five (5) large modular units.

(12) Each individual structure in the PRD must have one general contractor responsible for all work, including subcontracted services, performed on said structure.

3.2.2-10-7 Open Space and Recreation.

(1) Open Space.

(a) Requirement. PRD's must achieve the minimum open space requirements. Open space created as a result of a PRD approval must be dedicated to otherwise held in common. A performance bond may be required until such time that all common areas included in the approved plan are fully developed.

(b) Design. Open space created as part of a PRD shall, to the greatest extent possible, be located and configured to protect sensitive areas, provide for recreational opportunities, and create urban separators, open space corridors, green belts and connections between existing or planned parks, trails or open space. Open space created under this section may also include above-ground surface water management facilities and non-commercial structures such as community meeting rooms, swimming pools and other recreational facilities that serve the residents of the PRD.

(2) Recreation. Recreation space may be included in the open space required by this section. For PRDs with site areas under 25 acres, there is no specific requirement to provide recreation space; however , to the extent feasible, a PRD application should include provisions for recreation space. PRDs that are 25 acres in size or larger, shall include recreation space as a part of the proposed development. To the extent that adequate public recreation spaces

are already available in proximity to the site, the need for on-site recreation space will be diminished. Recreation space may be active or passive recreation areas designed and set aside exclusively for individual or group activity, amusement or entertainment. Recreation space may include, but shall not be limited to, swimming pools, community rooms, tennis courts, rest areas, or picnicking areas.

(3) Maintenance. Permanent provisions for the maintenance of open space, private trails, private parks and recreation areas, and other common areas shall also be provided. These provisions shall run with the land and be recorded.

3.2.2-10-8 Design Guidelines and Review

All submitted plans shall be subject to review and compliance to the guidelines of development as administered by, but not limited to:

- **The Smyth County Building Department and all applicable building codes**
- **The Director of Public Works, in conjunction with the Town Engineer**
- **All affected State and Federal agencies including, but not limited to Virginia Department of Transportation, Virginia Department of Health, Department of Environmental Quality, Department of Historic Resources, etc.**

3.2.2-10-9 Minimum Conditions of Approval.

(1) In approving a PRD application, conditions of approval shall at a minimum establish:

- a master site plan for the entire PRD showing the location of sensitive areas and buffers, open spaces, as well as the locations and ranges of densities for development;
- the period of time for which the PRD approval is valid
- project phasing and other project specific conditions necessary to mitigate impacts on the environment, public facilities and services including transportation, utilities, drainage, police and fire protection, schools, and parks;
- road design standards that shall apply to the various phases of the project;
- the range of residential units and types of residential structures for the PRD;
- whether future PRDs are planned for specific areas of a PRD application.

(2) A PRD shall be valid for at least five years and shall be renewable at least once for two more years. The Town may modify the approval or conditions of approval as a condition of any renewal. The approval conditions may provide for longer periods of validity. If no time period is specified, the PRD shall be valid for five years and

the Town may grant one renewal, if requested by the applicant before the approval expires, for not more than two years.

3.2.2-10-10 Definitions

attached single-family homes - Attached single-family homes live like a semi-custom single-family home in an attached configuration, allowing buyers to forego maintenance and yard work

binding site plan approval – Upon the approval and recording of a Binding Site Plan the applicant may develop the subject property in conformance with the Binding Site Plan and without regard to lot lines internal to the subject property. The applicant may sell or lease parcels subject to the Binging Site Plan

common wall dwellings – Duplex dwelling, including individual ownership of each unit through the establishment of a property line through the common wall between the two individual units of a duplex.

detached single-family homes – single family, stand-alone structures on individual building lots

long subdivision – If you are proposing to create any new public rights-of-way and/or your proposed Plan of Subdivision does not comply with the existing zoning classification

Open space – any part of the property not improved with a vertical structure. This can include driveways, sidewalks, grass areas, planting/landscaping, etc

Planned Residential Development

short subdivision – If you are not proposing to create any new public rights-of-way and your proposed Plan of Subdivision complies with the existing zoning classification,

townhouses – a home that is attached to one or more other houses, but which sits directly on a parcel of land that you also own

zero lot line homes – zero-lot line homes are built on or toward the edge of a lot's outer boundary (hence the "zero-lot" moniker), have either small front yards or small back yards (big enough for gardening), and just a thin strip of turf for side yards, thus minimizing maintenance Also known as a patio home, garden home or narrow-lot home

Adopted August 10, 2006

Chapters 4--5

RESERVED

Chapter 6

AMUSEMENTS AND ENTERTAINMENTS*

Article I. In General

Secs. 6-1-----6-30. Reserved.

Article II. Pool or Billiard and Amusement Centers

Sec. 6-31. Hours of operation.
Sec. 6-32. Minors prohibited.
Secs. 6-33---6-65. Reserved.

Article III. Public Dancehalls

Division 1. Generally

Sec. 6-66. Description.
Sec. 6-67. Exemptions.
Sec. 6-68. Violations.
Sec. 6-69. Right of entry by law enforcement officers.
Sec. 6-70. Change of ownership, management or location.
Sec. 6-71. Minimum seating requirements.
Sec. 6-72. Hours of operation.
Sec. 6-73. Intoxicated and disorderly persons prohibited.
Sec. 6-74. Minors prohibited if alcoholic beverages are consumed, sold, or dispensed; exception.
Secs. 6-75-----6-105. Reserved.

Division 2. Permit

Sec. 6-106. Required.
Sec. 6-107. Prerequisite to issuance of license.
Sec. 6-108. Filing, contents of application.
Sec. 6-109. Fee.
Sec. 6-110. Grant or denial generally.
Sec. 6-111. Council action upon grant.
Sec. 6-112. Term; issued for specified location only.
Sec. 6-113. Conditions and restrictions.
Sec. 6-114. Transfer.
Sec. 6-115. Revocation generally.
Sec. 6-116. Appeal from denial or revocation.

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*State law reference(s)--Places of amusements and dancehalls, Code of Virginia, § 18.2-432 et seq.

ARTICLE I. IN GENERAL

Secs. 6-1--6-30. Reserved.

ARTICLE II. POOL OR BILLIARD ROOMS AND AMUSEMENT CENTERS*

Sec. 6-31. Hours of operation.

It shall be unlawful and a class 3 misdemeanor for any person to operate or keep open any pool or billiard room or amusement center within the town between the hours of 11:00 p.m. and 9:00 a.m.
(Code 1986, § 3-1)

State law reference(s)--Authority to regulate, Code of Virginia, § 18.2-432.

Sec. 6-32. Minors prohibited.

It shall be unlawful for the owner, operator or manager of any pool or billiard room or amusement center within the town to allow any person under the age of 18 years to enter such establishment or to play any game in the establishment, and it shall be unlawful for any person under the age of 18 years to enter or play at any game in any pool or billiard room or amusement center within the town. Any person violating the provisions of this section shall be guilty of a class 3 misdemeanor.
(Code 1986, § 3-2)

Cross reference(s)--Penalty for class 3 misdemeanor, § 1-15; curfew for minors, § 34-3.

State law reference(s)--Authority of town to regulate minors frequenting or playing in public places of amusement, Code of Virginia, § 18.2-432.

Secs. 6-33--6-65. Reserved.

ARTICLE III. PUBLIC DANCEHALLS†

DIVISION 1. GENERALLY

Sec. 6-66. Description.

A "public dancehall," within the meaning of this article, is any place open to the general public where dancing is permitted, to which an admission fee is charged, or for which compensation is in any manner received, either directly or indirectly, by cover charge or otherwise, or where refreshments or food or any form of merchandise are served for compensation before, during or after dancing; provided, however, that a restaurant, licensed under Code of Virginia, § 4.1-210 to serve food and beverages, having a dance floor with an area not exceeding ten percent of the total floor area of the establishment, shall not be considered a public dancehall. The sale of any refreshments, food or any

form of merchandise at any such place, or the exhibiting of such for sale, shall be deemed direct compensation for any such dancehall within the meaning of this section.
(Code 1986, § 3-13)

State law reference--Similar provisions, Code of Virginia, § 18.2-433.

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***Cross reference**--Businesses, ch. 18.

***Cross reference**--Businesses, ch. 18; license tax on dancehalls, § 50-274.

State law reference--Authority of council to regulate public dancehalls, Code of Virginia, § 18.2-433.

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Sec. 6-67. Exemptions.

This article shall not apply to dances held for benevolent or charitable purposes, or when the dances are conducted under the auspices of religious, educational, civic or military organizations.
(Code 1986, § 3-14)

State law reference(s)--Authority for exemptions, Code of Virginia, § 18.2-433.

Sec. 6-68. Violations.

Unless otherwise specifically provided, a violation of any provision of this article shall constitute a class 3 misdemeanor.
(Code 1986, § 3-15)

Cross reference(s)--Penalty for class 3 misdemeanor, § 1-15.

State law reference(s)--Penalty authorized, Code of Virginia, § 18.2-433.

Sec. 6-69. Right of entry by law enforcement officers.

Members of the town police department, the sheriff's department of the county, the state police, and state alcoholic beverage control agents may enter any public dancehall operated pursuant to a permit issued under the provisions of this article at all hours, to ensure that the peace and quiet of the town are preserved and that the conditions and restrictions of this article are observed.
(Code 1986, § 3-16)

Sec. 6-70. Change of ownership, management or location.

The ownership, management or location of a public dancehall shall not be changed, without the approval of the town council or the designated agent of the town council. If the location of a public dancehall is changed, with permission, a new permit fee shall be required under the provisions of this article.
(Code 1986, § 3-17)

Sec. 6-71. Minimum seating requirements.

The total seats available in a public dancehall shall not be less than the total number of patrons present at any one time.
(Code 1986, § 3-18)

Sec. 6-72. Hours of operation.

No public dancehall shall be operated or kept open between the hours of midnight and 12:00 noon; provided, however, that such hall may be open from 12:00 noon on Saturday until 2:00 a.m. on Sunday.
(Code 1986, § 3-19)

Sec. 6-73. Intoxicated and disorderly persons prohibited.

It shall be unlawful for any person operating a public dancehall in the town to suffer or permit any person who is intoxicated and under the influence of alcoholic beverages or drugs or any disorderly person to enter or remain in such dancehall, whether participating in dancing or not.
(Code 1986, § 3-20)

Cross reference(s)--Disorderly conduct, § 34-74.

Sec. 6-74. Minors prohibited if alcoholic beverages are consumed, sold or dispensed; exception.

(a) It shall be unlawful for any minor to enter, be or remain in any public dancehall in the town or any other place in the town open to the public where dancing is permitted, where alcoholic beverages are consumed or are sold or dispensed for consumption except on business, and when on business, such minor shall be required to depart the premises as soon as his business is transacted.

(b) It shall be unlawful for the owner, operator or person in charge of any public dancehall in the town or of any other place in the town open to the public where dancing is permitted, where alcoholic beverages are consumed or are sold or dispensed for consumption, to allow or permit any minor to enter, be or remain in any such public dancehall or place, except on business, and when on business, such minor shall be required to depart from the premises as soon as business has been transacted.

(c) For the purposes of this section, the presence of any minor in any public dancehall or other place for the purpose of dancing or watching dancing shall not be considered as being on business.

(d) The term "alcoholic beverages," as used in this section, shall have the meaning prescribed by the state alcoholic beverage control act, Code of Virginia, § 4.1-1 et seq.

(e) The owner, operator or person in charge of any public dancehall or other place open to the public where dancing is permitted shall have and keep posted in a conspicuous manner at the entrance or entrances of such hall or place, a sign or signs, in bold letters not less than two inches in height, reading "NO MINORS ALLOWED."
(Code 1986, § 3-21)

Cross reference(s)--Curfew for minors, § 34-3.

State law reference(s)--Authority of council to regulate presence of minors in places of amusement, Code of Virginia, § 18.2-432.

Secs. 6-75--6-105. Reserved.

DIVISION 2. PERMIT*

Sec. 6-106. Required.

No person shall operate a public dancehall in the town without having first obtained either a single operation permit or an annual permit issued pursuant to this division.
(Code 1986, § 3-27)

Sec. 6-107. Prerequisite to issuance of license.

No town license shall be granted for the operation of a public dancehall, until the permit required by this division has been issued.
(Code 1986, § 3-28)

Cross reference(s)--License tax on dancehalls, § 50-274.

Sec. 6-108. Filing, contents of application.

(a) Any person desiring to obtain a permit for the operation of a public dancehall shall make written application to the town manager. Such application shall be filed with the town manager and shall contain the following information:

(1) The location of the proposed dancehall.

(2) The names and addresses of all persons who are owners, operators or managers of the dancehall, together with the names and addresses of all persons having a financial interest in the dancehall, including stockholders, lienholders or partners.

(3) If the owner or operator is a corporation, the names and addresses of the true or equitable owners of the stock of the corporation.

***State law reference**(s)--Dancehall ordinance shall contain permit provisions, Code of Virginia, § 18.2-433.

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(4) A detailed statement of the facilities to be provided, including type of food or beverages to be offered, the seating capacity of the dancehall and the amount of off-street parking space available for patrons.

(b) The application shall be accompanied by a sketch showing the floor plan of the building in which the dancehall is to be located.
(Code 1986, § 3-29)

Sec. 6-109. Fee.

The fee for a permit required by this division shall be as follows:
(1) For a single permit, $25.00.
(2) For an annual permit, $600.00.

No application for a permit shall be considered until the required fee has been paid, either by cash, certified check or bank money order.
(Code 1986, § 3-30)

Sec. 6-110. Grant or denial generally.

(a) Upon receipt of an application for a permit under this division, the town manager shall either grant or deny the permit. In making his decision, the manager shall receive and consider statements and evidence as to:

(1) The suitability of the location of the proposed dancehall, preference being given to ground floor locations.

(2) The suitability and adequacy of the facilities.

(3) The fitness and financial responsibility of the person who will own, conduct or manage the dancehall.

(b) No permit shall be issued unless it shall appear that all persons having a financial interest in, or connected with, the management or operation of the dancehall, including stockholders or lienholders, are of good reputation and have no convictions for a felony.
(Code 1986, § 3-31)

Sec. 6-111. Council action upon grant.

(a) Upon the granting of a dancehall permit by the town manager, information concerning the permit shall be transmitted to the town council, at its next regular meeting, for information purposes only. Within ten days after such transmission, any member of the council may request a hearing before a panel of three members of the council appointed by the mayor on whether or not the permit should have been granted by the town manager.

(b) Upon referral of the matter of the granting of a permit to the panel pursuant to subsection (a) above, the panel shall conduct a hearing upon not less than five days' notice in writing to the applicant for the permit and the hearing shall be conducted within ten days of the referral to the panel. Should the decision of the town manager be upheld, the permit shall be issued. If the application for the permit is denied by the panel, the applicant shall have 20 days to appeal to the circuit court of the county from the decision of the panel.
(Code 1986, § 3-32)

Sec. 6-112. Term; issued for specified location only.

A single permit shall be issued under this division for a single date specified in the permit. An annual permit shall be issued for a calendar year beginning January 1 and ending December 31. The permit shall be issued for the location described therein only.
(Code 1986, § 3-33)

Sec. 6-113. Conditions and restrictions.

Every permit to operate a public dancehall in the town shall be subject to the conditions and restrictions of this article.
(Code 1986, § 3-34)

Sec. 6-114. Transfer.

In no case shall a permit to operate a public dancehall be transferable from one location to another. With the prior consent of the town council, such a permit may be transferred from one person to another for the operation of the dancehall at the same location for which it was originally granted.
(Code 1986, § 3-35)

Sec. 6-115. Revocation generally.

Upon the violation of any provision of this article, the town manager shall have the right, in addition to any other remedies allowed by law, to revoke the permit for the operation of the public dancehall involved in the violation, after due hearing and upon not less than five days' notice in writing to the holder of the permit. Such notice shall be sent by registered mail to the address given by the holder of the permit when applying for the permit.
(Code 1986, § 3-36)

Sec. 6-116. Appeal from denial or revocation.

(a) From the decision of the town manager denying or revoking a permit under this division, an appeal may be made to a panel composed of three members of the town council appointed by the mayor. The person aggrieved by the decision of the town

manager shall file such appeal to the panel within ten days from the date of the decision of the manager.

(b) Within ten days after receipt of an appeal under this section, and upon not less than five days' written notice to the appellant, the panel shall conduct a hearing on the appeal. The hearing shall be conducted by the town attorney as presiding officer, but the attorney shall have no vote therein.

(c) The panel shall make its decision within ten days after the date of the hearing held pursuant to this section. If the decision of the town manager is reversed, the panel shall direct the manager to issue or reinstate the permit. If the decision of the manager is upheld, the person aggrieved shall have 20 days to appeal to the circuit court of the county from the decision of the panel.
(Code 1986, § 3-37)

Chapters 7--9

RESERVED

Chapter 10

ANIMALS*

Article I. In General

Sec. 10-1. Town designed as bird sanctuary; exception for nuisance abatement.
Sec. 10-2---10-35. Reserved.

Article II. Dogs

Sec. 10-36. Running at large.
Sec. 10-37. Impoundment of dogs.
Sec. 10-38. Creating a disturbance.
Sec. 10-39. Keeping vicious dogs.
Sec. 10-40. Destruction or removal of vicious dog.
Sec. 10-41. Penalty.
Sec. 10-42. Repeal of Former Article.
Sec. 10-43-----10-75. Reserved.

Article III. Livestock

Sec. 10-76. Running at large.
Sec. 10-77. Keeping hogs.

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*State law reference(s)--Animals, Code of Virginia, § 3.1-796.66 et seq.; authority to adopt regulations regarding animals, Code of Virginia, § 3.1-796.94:1; control of rabies, Code of Virginia, § 32.1-48.1 et seq.

ARTICLE I. IN GENERAL

Sec. 10-1. Town designated as bird sanctuary; exception for nuisance abatement.

(a) The entire area embraced within the corporate limits of the town is hereby designated as a bird sanctuary.

(b) It shall be unlawful to trap, hunt, shoot or attempt to shoot or molest in any manner any bird or wildfowl or to rob bird nests. However, if starlings or similar birds are found to be congregating in such numbers in a particular locality that they constitute a nuisance or menace to health or property in the opinion of the proper health authorities as determined by the town, then this section will not be binding. If, as a result of this determination, no satisfactory alternative is found to abate such nuisance, then the birds may be destroyed in such numbers and in such manner as is deemed advisable by the health authorities under the supervision of the chief of police of the town.

(c) Anyone violating the provisions of this section shall be punished by a fine of not more than $100.00.
(Code 1986, § 4-5)

Secs. 10-2--10-35. Reserved.

ARTICLE II. DOGS*

Sec. 10-36. Nuisance animals

It shall be unlawful for any owner or custodian of an animal to fail to exercise proper care and control of his animal to prevent it from becoming a public nuisance. Such acts of nuisance shall include, but are not limited to, the following:

(1) Damages property other than that of the animal's owner;

(2) Attacks or disturbs other animals, persons or vehicles by chasing, barking, or biting;

(3) Excessively makes disturbing noises including, but not limited to, continued or repeated howling, barking, whining, or other utterances causing unreasonable annoyance, disturbance or discomfort to neighbors or others in close proximity to the premises where the animal is kept or harbored;

(4) Creates unsanitary conditions or offensive and objectionable odors in enclosures or surroundings where the animal is kept and thereby creates unreasonable annoyance or discomfort to neighbors or others in close proximity to the premises where the animal is kept;

(5) Defecates upon any public place or upon premises not owned or controlled by the owner;

(6) Creates an unsanitary condition or insect breeding site due to an accumulation of excreta or filth;

(7) Habitually running at large.

Sec. 10-37. Injury or damage caused by animals

Nothing in this Article shall preclude any person who is caused injury to their person or property by any animal from exercising their civil remedies against the owner or custodian of said animal.

Sec. 10-38. Animals running at large

It shall be unlawful for the owner or custodian of any animal, whether such animal be licensed or not, to let, allow, or otherwise cause such animal to run at large. For the purpose of this section, an animal shall be deemed to run at large whenever roaming, walking, running, or hunting off the premises of its owner or custodian, while neither on a leash nor under the immediate control of and accompanied by such owner or custodian. Any dog or cat found not wearing a license tag or not having been vaccinated, as required by Smyth County or Virginia state law, or found running at large, even though lawfully licensed and vaccinated, may be captured and impounded in conformance with Virginia state law.

Sec. 10-39. Feeding of feral or perceived unowned cats

Any person who provides nourishment or care for feral or perceived unowned cats shall do as follows:

These provisions include, but are not limited to:

- - - not creating a traffic hazard
- - - only feeding and providing care on private or public land with written permission obtained from the owner
- - - not allowing any unconsumed food to remain after 5:00 p.m. It shall be the responsibility of the person providing the food to meet this provision

Sec. 10-40. State law adopted as parallel ordinances

Except as otherwise provided herein above in the Article and pursuant to the provision of Section 3.1-796.94 of the Code of Virginia (1950), as amended, all of the provisions and requirements of the laws of the state contained in Code of Virginia, (Sections 3.1-796.73, 3.1-796.84 through 3.1-796.93, 3.1-796.97 through 3.1-796.103, 3.1-7906.115 through 3.1-796.119, 3.1-796.121, 3.1-796.122, and 3.1-796.127 through 3.1-796.129) as amended, and as subsequently amended from time to time by state law, and as may be authorized, codified and contained in the Code of the County of Smyth, Virginia, except those provisions and requirements which, by their very nature, can have no application as parallel ordinances within the town as fully as if set out at length in this chapter. Those sections also contained in the Code of the County of Smyth, Virginia, may be enforced solely by the county or in conjunction with enforcement by the town. It shall be unlawful for any person within the town to violate or fail, neglect or refuse to comply with any section of the Code of Virginia which is adopted by this section.

Sec. 10-41. Penalty

Any person found in violation of this Article may be charged with a Class 4 Misdemeanor and fined in accordance therewith, except where increased penalty is provided by state law.

Sec. 10.42. Repeal of Former Article

By the adoption of this Article, the former Article II. Dogs of the Chilhowie Code, which consists of Section 10-36 through 10-40 is hereby repealed.

Secs. 10-43--10-75. Reserved.

ARTICLE III. LIVESTOCK

Sec. 10-76. Running at large.

It shall be unlawful and a class 3 misdemeanor for any person having the custody or control of any horse, mule, pony, cattle, ass, hog, sheep or goat to allow such animal to run at large within the town.
(Code 1986, § 4-1)

Cross reference(s)--Penalty for class 3 misdemeanor, § 1-15.

State law reference(s)--Authority to adopt regulations regarding animals running at large, Code of Virginia, § 3.1-796.94:1.

Sec. 10-77. Keeping hogs.

It shall be unlawful and a class 3 misdemeanor for any person to keep or maintain any live hog or any hog pen within the town.

(Code 1986, § 4-2)

Cross reference(s)--Penalty for class 3 misdemeanor, § 1-15.

State law reference(s)--Authority to regulate the keeping of animals, Code of Virginia, § 3.1-796.94:1.

Chapters 11--13

RESERVED

Chapter 14

BUILDINGS AND BUILDING REGULATIONS*

Sec. 14-1. Virginia Uniform Statewide Building Code adopted.
Sec. 14-2. Construction permits.
Sec. 14-3. Removal or repair of unsafe structures.

***Cross reference(s)**--Businesses, ch. 18; fire prevention and protection, ch. 26; placing building materials on streets or sidewalks, § 42-4; use of sidewalks by contractors or builders, § 42-5; street numbers for lots and buildings, § 42-46 et seq.; excavations, § 42-81 et seq.; license tax on dancehalls, § 50-274; cross connection control, § 54-301 et seq.; zoning regulations, app. A.

State law reference(s)--Uniform Statewide Building Code, Code of Virginia, § 36-97 et seq.

Sec. 14-1. Virginia Uniform Statewide Building Code adopted.

(a) *Adoption*. There is hereby adopted by reference in the town the Virginia Uniform Statewide Building Code, the provisions of which are adopted and shall control all matters concerning the design, construction, alteration, addition, enlargement, repair, removal, demolition, conversion, use, location, occupancy and maintenance of buildings, and all other functions which pertain to the installation of systems vital to buildings and structures and their service equipment as defined by the Virginia Uniform Statewide Building Code, and shall apply to buildings or other structures in the town.

(b) *Enforcement*. In that the town council is responsible for the enforcement of the Virginia Uniform Statewide Building Code by hiring building officials, or by contracting with other localities for the enforcement thereof, therefore if the necessary contractual arrangements shall be made, the county shall enforce the Virginia Uniform Statewide Building Code in the town.

State law reference(s)--Enforcement of Uniform Statewide Building Code, Code of Virginia, § 36-105.

Sec. 14-2. Construction permits.

It shall be unlawful for any person to begin any construction of buildings or any other structures within the town without first obtaining a zoning permit from the town, and providing to the town a copy of the building or other permit obtained from the county for such construction.

Sec. 14-3. Removal or repair of unsafe structures.

(a) The owners of property within the town shall, at such time as the town council may prescribe, remove, repair or secure any building, wall or other structure which might endanger the public health or safety of other residents of the town or which might constitute an obstruction or hazard to the lawful use of the streets, highways or sidewalks within the town.

(b) The town council, through its own agents or employees, may remove, repair or secure any building, wall or other structure which might endanger the public health or safety of other residents of the town, when the owner and lienholder of such property, after reasonable notice and a reasonable time to do so, has failed to remove, repair or secure the building, wall or other structure.

(c) For the purposes of this section, repair may include maintenance work to the exterior of a building to prevent deterioration of the building or adjacent buildings. For purposes of this section, reasonable notice shall include a written notice mailed by certified or registered mail, return receipt requested, sent to the last known address of the property owner and published in a newspaper having general circulation in the town in accordance with the applicable provisions of Code of Virginia, §§ 15.2-1426, 15.2-1427, as amended. No action shall be taken by the town 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.

(d) If the town council, through its own agents or employees, removes, repairs or secures any building, wall or other structure after complying with the notice provisions of this section, the cost or expenses thereof shall be chargeable to and paid by the owner of such property and may be collected by the town as taxes and levies are collected.

(e) Every charge authorized by this section with which the owner of any property has been assessed and which remains unpaid shall constitute a lien against the property ranking on a parity with liens for unpaid local taxes and enforceable in the same manner as provided in Code of Virginia, §§ 58.1-3940 et seq. and 58.1-3965 et seq., as amended. (Code 1986, § 5-1)

Cross reference(s)--Nuisances, § 22-36 et seq.

State law reference(s)--Authority to adopt ordinance regarding unsafe, etc., structures, Code of Virginia, § 15.2-906.

Chapters 15--17

RESERVED

Chapter 18

BUSINESSES*

Article I. In General

Secs. 18-1-----18-30. Reserved.

Article II. Massage and Health Establishments

Division 1. Generally

Sec. 18-31. Definitions
Sec. 18-32. Violations.
Sec. 18-33. Exemptions.
Sec. 18-34. Operator shall not permit unlawful activities.
Sec. 18-35. Patrons' dressing rooms, separate facilities for each sex.
Sec. 18-36. Toilet facilities.
Sec. 18-37. General maintenance requirements.
Sec. 18-38. Ventilation.
Sec. 18-39. Lighting.
Sec. 18-40. Cleanliness, storage of linen.
Sec. 18-41. Common use of brushes, combs, towels, drinking cups.
Sec. 18-42. Disposal of liquid waste.
Sec. 18-43. Storage and disposal of refuse.
Sec. 18-44. Use as sleeping quarters.
Sec. 18-45. Employees.
Sec. 18-46. Employee information furnished health officer.
Sec. 18-47. Employee clothing and cleanliness.
Sec. 18-48. Service to patrons exhibiting skin disorders.

Division 2. Permit

Sec. 18-81. Required.
Sec. 18-82. Application.
Sec. 18-83. Fee.
Sec. 18-84. Issuance.
Sec. 18-85. Term.
Sec. 18-86. Posting.
Sec. 18-87. Transfer.
Sec. 18-88. Suspension or revocation.
Sec. 18-89-----18-120. Reserved.

*Cross reference(s)—Pool or billiard rooms and amusement centers, § 6-31 et seq.; public dancehalls, § 6-66 et seq.; buildings and building regulations, ch. 14; storage and removal of solid waste from business premises, § 38-2; bank franchise tax, § 50-91 et seq.; cigarette tax, § 50-126 et seq.; consumer utility services tax, § 50-171 et seq.; food and beverage tax, § 50-216 et seq.; business license taxes, § 50-266 et seq.; vehicles for hire, ch. 58; zoning, app. A.
State law reference(s)—Professions and occupations, Code of Virginia, § 54.1-100 et seq.

Article III. Peddler and Solicitors

Sec. 18-121. Definitions.
Sec. 18-122. Violations.
Sec. 18-123. Exemptions.
Sec. 18-124. Permit required; application.
Sec. 18-125. Permit fee.
Sec. 18-126. Issuance, term of permit.
Sec. 18-127. Entering posted premises.

ARTICLE I. IN GENERAL

Secs. 18-1--18-30. Reserved.

ARTICLE II. MASSAGE AND HEALTH ESTABLISHMENTS*

DIVISION 1. GENERALLY

Sec. 18-31. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Health officer means the health officer of the state or his duly authorized agent.

Health or massage establishment means any place, establishment or institution in the town which is operated for the purpose of providing one or more of the following services at such establishment or on a house call basis: physical massage of the body of another, steam bath, sauna, hot tub, electrical, mechanical or chemical magnetic bath and stimulation exercises.

Health or massage establishment or club operator means the owner, assignee, agent, contractor, employee, individual, officer of a firm, company, corporation, association, club, institution or any other person or entity operating a health parlor.

Masseur; masseuse means a masseur (male) or masseuse (female) is a person who practices or administers one or more of the acts of body massage, either by hand, towel or mechanical apparatus, oil rubs, corrective gymnastics, mechanotherapy, including color therapy, dietetics, hot packs, cabinet, tub, shower, sitz bath, vapor, steam or any other special bath.
(Code 1986, § 7-1)

Cross reference(s)--Definitions generally, § 1-2.

Sec. 18-32. Violations.

Unless otherwise specifically provided, a violation of any provision of this article shall constitute a class 2 misdemeanor.
(Code 1986, § 7-2)

Cross reference(s)--Penalty for class 2 misdemeanor, § 1-15.

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*State law reference(s)--Massage therapy, Code of Virginia, § 54.1-3029.

Sec. 18-33. Exemptions.

This article shall not apply to hospitals, nursing homes, medical clinics or offices of duly licensed physicians, chiropractors or osteopaths or facilities operated by federal, state or municipal agencies or barbershops and beauty parlors.
(Code 1986, § 7-3)

Sec. 18-34. Operator shall not permit unlawful activities.

No operator of a massage or health establishment or club shall permit therein any activity or behavior prohibited by the laws of the state or the ordinances of the town or county.
(Code 1986, § 7-4)

Sec. 18-35. Patrons' dressing rooms; separate facilities for each sex.

In every health or massage establishment, each patron shall be provided with a separate dressing room and each dressing room shall contain a tub or shower and a locker capable of being locked. If male and female patrons are to be served simultaneously, the health or massage establishment shall contain separate massage rooms and separate dressing facilities for male and female patrons.
(Code 1986, § 7-5)

Sec. 18-36. Toilet facilities.

Separate toilet facilities shall be provided for each sex and such facilities shall be conveniently located within the health or massage establishment.
(Code 1986, § 7-6)

Sec. 18-37. General maintenance requirements.

(a) The premises of all health or massage establishments shall be maintained in a clean condition and free of litter, rubbish, refuse or any material which affords breeding or harborage places for rats, mosquitoes or other vermin or insects.

(b) All walls, ceilings, floors, pools, showers, bathtubs, steam rooms, toilet rooms, lavatories, sinks and all other physical facilities in a health or massage establishment shall be in good repair and maintained in a clean condition. Wet and dry steam rooms or vapor rooms shall be thoroughly cleaned each day the business is operated. Bathtubs shall be cleaned and sanitized after each use. Nondisposable equipment shall be cleaned and sanitized after use on a patron.
(Code 1986, § 7-7)

Sec. 18-38. Ventilation.

Ventilating facilities shall be maintained and operated so as to adequately ventilate each health or massage establishment and keep the facility free from excessive heat, steam, condensation, vapor, smoke or odors.
(Code 1986, § 7-8)

Sec. 18-39. Lighting.

A minimum of 20 footcandles of light, including natural and artificial sources, shall be maintained in all rooms, including toilet rooms, of a health or massage establishment.
(Code 1986, § 7-9)

Sec. 18-40. Cleanliness, storage of linen.

Linen used in a health or massage establishment shall be cleaned and laundered. All towels and tissues and all sheets or other covering shall be used only once for each patron and discarded for laundry or disposal immediately after use. Closed containers shall be required for storage of wet or soiled linens.
(Code 1986, § 7-10)

Sec. 18-41. Common use of brushes, combs, towels, drinking cups.

The common use of brushes, combs, towels and drinking utensils is prohibited in a health or massage establishment.
(Code 1986, § 7-11)

Sec. 18-42. Disposal of liquid waste.

All liquid waste originating at a health or massage establishment shall be disposed of in a public sanitary sewage system or by another method approved by the health officer.
(Code 1986, § 7-12)

Cross reference(s)--Sewers and sewage disposal, § 54-36 et seq.

Sec. 18-43. Storage and disposal of refuse.

All refuse in a health or massage establishment shall be stored in suitable tight containers with lids. Refuse disposal methods shall meet applicable town standards.
(Code 1986, § 7-13)

Cross reference(s)--Solid waste, ch. 38.

Sec. 18-44. Use as sleeping quarters.

No room or part of any room of a health or massage establishment shall be used for, or connected with, any bedroom or sleeping quarters, nor shall any person sleep in a health or massage establishment, except for limited periods incidental to or directly related to a massage or bath service.
(Code 1986, § 7-14)

Sec. 18-45. Employees.

No person shall practice as a masseur or masseuse at a health or massage establishment without a certificate issued by the state pursuant to Code of Virginia, § 54.1-3029, as amended. No person afflicted with any communicable disease shall work or be employed in any health or massage establishment. The health officer may require an employee suspected of having any communicable disease to submit to an examination by a practicing physician, such examination to be at the expense of the employee. The health officer may notify state authorities of any person who is suspected to be suffering from a communicable disease or who refuses a physical examination to determine whether such person is suffering from a communicable disease.
(Code 1986, § 7-15)

Sec. 18-46. Employee information furnished health officer.

Whenever an operator or proprietor of a health or massage establishment employs a person to work or provide service in the establishment, the operator or proprietor shall so inform the health officer and furnish the health officer with the number of the state certificate, name, date of birth, sex and address of the employee.
(Code 1986, § 7-16)

Sec. 18-47. Employee clothing and cleanliness.

All employees of a health or massage establishment shall wear outer garments covering the body from the neck to the knees and shall maintain a high degree of personal cleanliness while on duty. They shall wash their hands thoroughly before starting service to each patron and as often as may be necessary to remove soil and contamination.
(Code 1986, § 7-17)

Sec. 18-48. Service to patrons exhibiting skin disorders.

No person shall provide any of the services of a health or massage establishment to any patron exhibiting symptoms of being infected with any fungus or other skin infections, nor shall service be performed on any patron exhibiting skin inflammation or eruptions, unless a physician licensed in the state certifies that the person may be safely served.
(Code 1986, § 7-18)

Secs. 18-49--18-80. Reserved.

DIVISION 2. PERMIT

Sec. 18-81. Required.

It shall be unlawful for any person who does not possess a valid health or massage establishment operator's permit issued under this article to operate a health or massage establishment in the town.
(Code 1986, § 7-30)

Sec. 18-82. Application.

Application for a health or massage establishment operator's permit shall be made in writing on a form prescribed by the town council wherein the applicant shall agree to conform to the ordinances, rules and regulations governing health or massage establishments and to permit such examinations and inspections of the facility as may be deemed necessary by the health officer. The application shall be filed with the town manager.
(Code 1986, § 7-31)

Sec. 18-83. Fee.

The fee for a permit required by this article shall be $600.00.
(Code 1986, § 7-32)

Sec. 18-84. Issuance.

Upon payment of the prescribed fee and approval by the town council of an application for a permit under this article, the town manager shall issue the permit. The permit shall be issued only to an individual.
(Code 1986, § 7-33)

Sec. 18-85. Term.

A permit issued under this article shall be valid for the calendar year in which issued, unless sooner suspended or revoked.
(Code 1986, § 7-34)

Sec. 18-86. Posting.

A permit issued under this article shall be posted in full view of the public at each health or massage establishment location.
(Code 1986, § 7-35)

Sec. 18-87. Transfer.

A health or massage establishment operator's permit is not transferable to another operator or from one establishment or location to another.
(Code 1986, § 7-36)

Sec. 18-88. Suspension or revocation.

A health parlor operator's permit may be suspended or revoked by the town council upon conviction of the holder thereof, of a violation of this chapter or of any offense involving moral turpitude.
(Code 1986, § 7-37)

Secs. 18-89--18-120. Reserved.

Resolutions for Amendments to Code of Ordinances, Town of Chilhowie

A. Pursuant to § 1-11 (b) Amendments to Code, of the Code of the Town of Chilhowie, Virginia (1998) ("Code") and pursuant to §§ 15.2-1427 and 1428, of the Code of Virginia, and upon majority vote of those Town Council members present and voting at a lawful meeting of the Town Council of Chilhowie, on March 14, 2002, the following amendments and additions to the Code are hereby enacted by the Chilhowie Town Council:

1. That the catch line title for Article III of the Code of Ordinances, Town of Chilhowie, Virginia, is hereby amended to read as follows:

ARTICLE III. PEDDLERS, ITINERANT MERCHANTS AND SOLICITORS

2. That section 18-121. (Definitions) of the Code of Ordinances, Town of Chilhowie, Virginia, is hereby amended to read as follows:

Sec. 18-121. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Peddler means any person who, on his own behalf or on the behalf of some other person or entity, carries from place to place any goods, wares or merchandise and offers to sell or actually sells them, which includes any person who does not keep a regular place of business, but offers to sell goods, wares and merchandise, or any person who keeps a

regular place of business, with regular business hours at the same place, but who, other than at that regular place of business, personally or through agents, offers for sale or sells and, at the time of such offering for sale, delivers goods, wares and merchandise.

Itinerant merchant means any person who, on his own behalf or on the behalf of some other person or entity, engages in or transacts any temporary or transient business, either in one locality or in traveling from place to place in the sale of goods, wares and merchandise, and who, for the purpose of conducting such business, hires, leases, uses or occupies any building or structure, motor vehicle, tent, car, boat or public room or any part thereof including rooms in hotels, lodging houses, or houses of private entertainment, or in, on or along side of any road, street, alley or public place, for a period of less than one year, for the exhibition or sale of such goods, wares or merchandise.

Sales Solicitor means any person who, on his own behalf or on behalf of some other person or entity, goes from house to house or place to place in the town for the purpose of selling, or soliciting orders for the sale of, any goods, wares, services or subscriptions, or for the purpose of requesting donations for any purpose.

Non-sales Solicitor means any person who, on his own behalf or on behalf of some other person or entity, goes from house to house or place to place in the town for the purpose of taking a survey, gathering information, or for any other purpose not defined in section 18-121.
(Code 1986, § 14-1)

Cross reference - Definitions generally, § 1-2.

State law references - Ordinances regulating certain vendors, Code of Virginia, § 15.2-913; . . . peddling. . . , Code of Virginia, § 15.2-1114; Peddlers, itinerant merchants, Code of Virginia, § 58.1-3717.

3. That section 18-124 (Permit required; application) of the Code of Ordinances, Town of Chilhowie, Virginia, is hereby amended to include item (d) as follows:

(d) Upon approval by the town manager of the application for a permit required by this section, a registration certificate or card shall be issued to the person whose application has been approved. Every such person shall carry such certificate or card with him or her at all times while engaged in any activity mentioned in section 18-121, and while so engaged, shall display such certificate or card to any person who shall demand to see it.

4. That section 18-127 (Entering posted premises) of the Code of Ordinances, Town of Chilhowie, Virginia, is hereby amended to read as follows:

Sec. 18-127. Entering posted premises.

It shall be unlawful for any person engaged in any activity mentioned in section 18-121, with or without a permit as required by section 18-124, to enter upon any property in the town where the owner or occupant has displayed a sign indicating that any or all of the activities defined in section 18-121 are not wanted on said property.

State law reference - Trespass after being forbidden by a sign, Code of Virginia, § 18.2-119.

5. That the Code of Ordinances, Town of Chilhowie, Virginia, is hereby amended by adding a new section to be numbered 18-128, which section reads as follows:

Sec. 18-128. Designation of place.

The town manager may designate the streets or other public places on or in which any person may engage in any activity mentioned in section 18-121.

State law reference - Peddlers; itinerant merchants, Code of Virginia, § 58.1-3717.

6. That the Code of Ordinances, Town of Chilhowie, Virginia, is hereby amended by adding a new section to be numbered 18-129, which section reads as follows:

Sec. 18-129. Waiver

The town manager may waive any or all of the requirements of this article at times and during events declared special by the town council.

B. Pursuant to § 1-11 (b) Amendments to Code, of the Code of the Town of Chilhowie, Virginia (1998) ("Code") and pursuant to §§ 15.2-1427 and 1428, of the Code of Virginia, and upon two-thirds vote of the Town of Chilhowie Council members, on March 14, 2002, the following amendments to the Code are hereby enacted by the Chilhowie Town Council:

1. That section 50-274. (Fee and Tax), subsection under and including subheading *Vendors and peddlers*, of the Code of Ordinances, Town of Chilhowie, Virginia, is hereby amended to read as follows:

> *Peddlers, itinerant merchants and sales solicitors.* There shall be an annual fee of $500.00 imposed on all peddlers, itinerant merchants, and sales solicitors engaged in the activities of section 18-121.
>
> **Cross reference -** Peddlers, itinerant merchants and solicitors, § 18-121 et seq.
> **State law reference -** Peddlers; itinerant merchants, Code of Virginia, § 58.1-3717.

2. That section 18-125. (Permit fee) of the Code of Ordinances, Town of Chilhowie, Virginia, is hereby amended to read as follows:

> **Sec. 18-125. Permit fee.**
>
> A fee of $20.00 shall be paid to the town manager when an application is filed pursuant to section 18-124, except that for a non-sales solicitor, as defined in section 18-121, the permit fee may be waived by the town manager. Such fee is not returnable, whether the permit is issued or not.
> (Code 1986, § 14-4)
>
> **State law references -** Authority for fee, Code of Virginia, § 15.2-913; Counties, cities and towns may impose local license taxes and fees; limitations of authority, Code of Virginia, § 58.1-3703.

Adopted March 14, 2002

Chapter 19

YARD SALES AND GARAGE SALES

Sec. 19-1.
The definition of a yard sale or garage sale shall be the common definition of such sale at which is offered for sale, secondhand, used or new clothing or merchandise or articles of whatever character.

Sec. 19.2.
Yard sales, garage sales and the like shall be permitted in all districts in the Town of Chilhowie subject to the following conditions and limitations:

(1) No more than three such sales may be held within a given calendar year by the same household and/or at the same location and may not last more than three consecutive days.

(2) All signs must be located upon stakes, not on any utility pole or tree, and shall not exceed two square feet maximum aggregate area.

(3) Signs shall not be installed until the night prior to the event.

(4) Signs shall be removed the last evening of the event and not be allowed to remain beyond the date of the event.

(5) No more than five off-premise signs may be used to direct traffic to the site.

(6) Any person violating this section may be subject to a fine *of* not less than twenty dollars ($20.00) nor more than one hundred dollars ($100.00).

Sec 19.3
For any sales conducted by anyone on property other than the property owner, including public property, a permit will be required, along with an authorization letter from the landowner. Such permits will be limited to two per year and will be required to be displayed at the setup location during all operating hours. Participation of town sponsored events will be exempt from the two sale limit. The sale of produce exclusively is also exempt from the two sale limit on public property.

Sec 19.4
This ordinance does not apply to valid businesses conducting “sidewalk sales” or any other extension of their normal business activities on their own property.
Having no public comment, Mayor Heninger closed the public hearing at 7:33 p.m.

Chapters 19—21

RESERVED

Chapter 22

ENVIRONMENT*

Article I. In General

Sec. 22-1. Littering.
Sec. 22-2-----22-35. Reserved

Article II. Nuisances

Division 1. Generally

Sec. 22-36. Violations.
Sec. 22-37. Specific nuisances enumerated.
Sec. 22-39. Creating, maintaining nuisance generally.
Sec. 22-40. Responsibility for property maintenance.
Sec. 22-41-22-47 Weed and Trash Abatement
Secs. 22-48-----22-70. Reserved.

Division 2. Abatement

Sec. 22-71. Inspections to determine existence.
Sec. 22-72. Notice to cease and desist activity constituting nuisance.
Sec. 22-73. Notice to abate.
Sec. 22-74. Abatement by town.
Sec. 22-75. Article does not prohibit arrest for committing or maintaining nuisance.
Sec. 22-76-----22-105. Reserved.

Article III. Noise

Sec. 22-106. Unlawful noise.

***Cross reference(s)**--Abandoned vehicles, § 30-126 et seq.; solid waste, ch. 38; placing building materials on streets or sidewalks, § 42-4; cellar doors, gratings in sidewalks, § 42-7; duty to keep sidewalks clean, § 42-9; washing vehicles in streets prohibited, § 42-12; sewers and sewage disposal, § 54-36 et seq.

State law reference(s)--Authority of the town to prevent injury or annoyance from anything dangerous, offensive or unhealthy and cause any nuisance to be abated, Code of Virginia, §§ 15.2-901, 15.2-967, 15.2-1227, 15.2-2013, 15.2-2029; authority of town to abate nuisances, Code of Virginia, §§ 15.2-900, 15.2-1115; nuisances, Code of Virginia, § 48-1 et seq.

ARTICLE I. IN GENERAL

Sec. 22-1. Littering.

(a) No person shall dump, throw or otherwise deposit any trash, garbage, refuse or other unsightly matter on any street, highway, right-of-way or property adjacent to such street, highway or right-of-way, or on any other property, public or private, within the town, without the written consent of the owner of such property or his agent.

(b) When any person is arrested for a violation of this section and the matter alleged to have been deposited in violation of this section has been ejected from a motor vehicle, the arresting officer may comply with the provisions of Code of Virginia, § 46.2-936 in making such arrest.

(c) When a violation of the provisions of this section has been observed by any person, and the matter deposited in violation of this section has been ejected from a motor vehicle, the owner or operator of the motor vehicle shall be presumed to be the person ejecting such matter; provided, however, that such presumption shall be rebuttable by competent evidence.

(d) Any person violating this section shall be guilty of a class 1 misdemeanor.
(Code 1986, § 17-3)

Cross reference(s)--Penalty for class 1 misdemeanor, § 1-15.

State law reference(s)--Similar provisions and authority of council to adopt above section, Code of Virginia, § 33.1-346.

Secs. 22-2--22-35. Reserved.

ARTICLE II. NUISANCES*

DIVISION 1. GENERALLY

Sec. 22-36. Violations.

Unless otherwise specifically provided, a violation of any provision of this article shall constitute a class 3 misdemeanor.
(Code 1986, § 10-1)

Cross reference(s)--Penalty for class 3 misdemeanor, § 1-15.

***Cross reference(s)**--Removal or repair of unsafe structures, § 14-1.

State law reference(s)--Definition of nuisance, authority to abate, Code of Virginia, § 15.2-900.

Sec. 22-37. Specific nuisances enumerated.

The following acts when committed, or conditions when existing, within the town are hereby defined and declared to be nuisances:

(1) An act done or committed, or aided or assisted to be done or committed, by any person, or any substance, being or thing kept, maintained, placed or founded in or upon any public or private place, which is injurious or dangerous to the public health or safety.

(2) All trees and other appendages of or to realty kept or maintained, or which are permitted by any person owning or having control thereof to be kept or maintained, in a condition unsafe, dangerous, unhealthy, injurious or annoying to the public.

(3) All ponds or pools of stagnant water, and all foul or dirty water or liquid when discharged through any drain, pipe or spout, or thrown into or upon any street, public place or lot to the injury or annoyance of the public.

(4) All obstructions caused or permitted on any street or sidewalk to the danger or annoyance of the public, and all stones, rubbish, dirt, filth, slops, vegetable matter or other articles thrown or placed by any person on or in any street, sidewalk or other public place, which in any way may cause any injury or annoyance to the public.

(5) All sidewalks, gutters or curbs permitted to remain in an unsafe condition or out of repair.

(6) All stables, cattle yards, sheep or cow pens or yards or structures for poultry, permitted by the owner thereof or the person responsible therefor to be harboring or breeding places for rodents or otherwise to be in such a condition as to become offensive, annoying or injurious to the public or to persons in the neighborhood thereof.

(7) All houses or buildings used for special storage of gun powder, dynamite or other explosive substances, except those maintained pursuant to a permit issued by competent authority.

(8) All septic tanks, privies, cesspools and privy vaults of a type prohibited by state law or by rules and regulations promulgated by authority of state law, or which are maintained in any manner contrary to state law or rules and regulations promulgated by authority of state law, or which otherwise constitute a menace to the health of, or are offensive to, persons in the neighborhood.

(Code 1986, § 10-4)

State law reference(s)--Authority to require repair, etc., of buildings, etc., Code of Virginia, § 15.2-906.

Sec. 22-39. Creating, maintaining nuisance generally.

(a) It shall be unlawful for any person to cause, harbor, commit or maintain, or suffer to be caused, harbored, committed or maintained, any nuisance, as defined by the statutes or common law of this state or as defined by this Code or other ordinance of the town, at any place within the town.

(b) The nuisances described in section 22-37 shall not be construed as exclusive, and any act of commission or omission and any condition which constitutes a nuisance by statutes or common law of the state, when committed, omitted or existing within the town limits, is hereby declared to constitute a nuisance.
(Code 1986, §§ 10-2, 10-3)

State law reference(s)--Nuisances prohibited, Code of Virginia, §§ 15.2-901, 15.2-1227.

Sec. 22-40. Responsibility for property maintenance.

Each owner, lessee, tenant, occupant or person in charge of any real property within the town, and each agent or representative of any such person, is hereby charged with responsibility for the maintenance and use of such real property in such manner that no use of, or activity or condition upon or within, such real property shall constitute a nuisance, and all such persons are hereby charged with the duty of observing all of the provisions of this article, but such responsibility shall not be construed to permit any other person not charged with such responsibility to commit or maintain any nuisance upon or within any real property in the town.
(Code 1986, § 10-5)

§§22-41, 22-42, 22-43, 22-44, 22-45, and 22-46 OF THE CODE OF THE TOWN OF CHILHOWIE are hereby amended and replaced as follows:

Sec. 22-41 WEED, TRASH, AND CLUTTER ABATEMENT

PURPOSE:

An Ordinance for the preservation of the public health, safety, and welfare and to maintain property in a reasonable safe condition within the Town limits of the Town of Chilhowie.

By authority of Section 15.2-901 of the Code of Virginia, as amended.

Sec. 22-42 WEED, TRASH, AND CLUTTER ABATEMENT

Definitions

Trash means abandoned personal property, garbage, refuse, litter, weeds, debris, or other like substances openly lying on any parcel, which might endanger the health or safety of residents of the town.

Weed or weeds means any plant, grass or other vegetation which might endanger the health or safety of residents of the town growing upon private property within the Town of Chilhowie. The term includes any sage brush, poison oak, poison ivy, Ailanthus Altissima (commonly called Tree of Heaven or Paradise Tree), ragweed, dandelions, milkweed, Canada thistle, and any other undesirable growth. The term excludes trees, ornamental shrubbery, vegetable, and flower gardens, purposefully planted, and maintained by the property owner or occupant free of weed hazard or nuisance. The term excludes cultivated crops, for example, hay, or undisturbed woodland not otherwise in violation. Ground cover purposefully planted for bank stabilization is not included. The term excludes cultivated crops, hay grown, mown, and stored for animal feed, or undisturbed woodland.

Clutter means mechanical equipment, household furniture, containers, and similar items that may be detrimental to the well-being of a community when they are left in public view for an extended period or are allowed to accumulate.

Reasonable time means a time period not less than forty-eight (48) hours and not more than ten (10) calendar days, unless extended by the Town Manager in writing by request within the ten (10) calendar days, which will afford the owner a fair opportunity to abate the violation, given the time of year, type of violation, amount of weeds or trash, and other relevant factors, while achieving the goal of eradicating the public nuisance. The term "reasonable time" with respect to a property with repeat notices of violation within any twelve (12) month time period shall mean a time period not less than twenty-four (24) hours and not more than ten (10) calendar days, with due consideration to the factors listed above.

Owner means the owner of record of real property.

Owner's agent shall mean any person appointed or employed by the owner for the purpose of managing the owner's real estate.

Occupant means any person age eighteen (18) or older who resides in a single family dwelling, duplex, or townhouse, whether or not the person is the lessor. "Occupant" means any person who possesses and uses commercial or other property, with permission of or by contract or lease with the owner.

Costs means the cost to the Town to abate a weed or trash nuisance, including but not limited to the cost of delivering the notice, labor, equipment, tipping fees, contractor's fees, and any other cost directly associated with the action taken to abate the nuisance.

Sec. 22-43 ACCUMULATION OF TRASH, WEEDS, OR CLUTTER PROHIBITED;

DUTY OF OWNER AND OCCUPANT

(a) Weeds growing, trash and/or clutter lying on any parcel shall constitute a public nuisance. It shall be unlawful for the owner or occupant of real property to permit the accumulation thereon of any trash, ~~or~~ weeds, or clutter. It shall be the joint and several duty of the owner and occupant of any parcel to immediately cut, remove or destroy any and all weeds and to remove trash and/or clutter from his or her parcel.

(b) The owner and the occupant of property shall also cut weeds along public sidewalks, curb lines or alleys, and within tree wells.

(c) The owners of vacant developed or undeveloped property therein, including such property upon which buildings or other improvements are located, shall cut the grass, weeds and other foreign growth on such property or any part thereof at such time or times as the governing body shall prescribe; The Town Council deems it necessary for the public health and safety that all grass, weeds and other foreign growth on such property or any part thereof shall at no time be allowed to grow to a length of 10 inches or greater. Vacant land used for the production of hay or other agricultural uses are exempted.

Sec. 22-44 NOTICE TO REMOVE WEEDS, TRASH, OR CLUTTER

(a) When the town manager determines that a violation of this article exists with respect to any parcel, the manager shall deliver written notice to the owner, via one (1) or more of the following methods:

(1) Mail written notice thereof to the owner, at the owner's address as determined from public records, via certified mail;

(2) Mail written notice thereof to the occupant, at the address where the violation is observed, via certified mail;

(3) Hand-deliver written notice to the owner, the owner's agent, or occupant personally, noting the date, time, and place of personal delivery.

(b) The notice shall:

(1) Set forth the alleged violation of this article;

(2) Describe the parcel of real property by street address or reasonable alternative means;

(3) Demand the removal of the weeds, trash, or clutter;

(4) Advise that if the weeds, ~~or~~ trash, or clutter are not removed within a specified reasonable time, as defined herein, of the delivery of the notice, the town will proceed to remove them, with the costs thereof together with an administrative fee authorized by this article being specially assessed against the owner and the parcel;

(5) Trash, garbage, refuse, litter, clutter, and other debris shall be disposed of in personally owned or privately owned receptacles that are provided for such use and for the use of the persons disposing of such matter or in authorized facilities provided for such purposes and in no other manner not authorized by law;

(6) Advise that the town's costs together with the administrative fee will constitute a lien against the property in favor of the town, and a personal liability of the owner or occupant;

(7) Afford the owner or occupant an opportunity to meet with the town manager for a hearing on the alleged violation, the proposed action, and the consequences thereof.

(c) The owner or occupant may request a hearing with the Town manager, in writing, within the reasonable time period set forth in the notice. In the event the owner or occupant requests a hearing, the town manager shall set a hearing and notify the owner of the time and location of the hearing, to be held within five (5) days or as soon as possible as agreed by the parties in writing from the date of the manager's receipt of the request for a hearing. The town will postpone any enforcement action until after the date and time set for the hearing.

(1) The Town Manager shall not act on the Notice to remove upon objection by the owners or occupants, as provided herein, without hearing before Town Council at the next regularly scheduled meeting of counsel. Upon the requested hearing and upon proper authority

and upon Notice, the resources of the Town shall used be to enforce the removal pursuant to Section 15.2-901 (A) (1) of the Code of Virginia as amended, to enforce the violations, which might endanger the health of other residents of the town.

(2) The Town Manager shall obtain proper authority from Town Council to enforce the violation pursuant to Section 15.2-901 (A) (1) by the resources of the Town should the owner or occupant not comply with the Notice for removal within the reasonable time pursuant to the Notice to remove should a hearing not be requested.

Sec. 22-45 TOWN ACTION TO ABATE THE VIOLATION

If the owner or occupant shall fail to complete the abatement of the weeds, trash, or clutter within the reasonable time specified in the written notice, the town manager may direct that town forces abate or complete the abatement of the violation or in the alternative, the town manager may contract for this work to be done by a private contractor upon approval by Town Council as provided herein.

Sec. 22-46 COSTS OF TOWN ACTION CONSTITUTE LIEN ON PROPERTY; ADMINISTRATIVE FEE AUTHORIZED

(1) In any case where the town has delivered written notice to the owner through one of the methods prescribed above, the costs of any town action to abate weeds, trash, or clutter violation shall constitute a lien against the parcel. In addition, an administrative fee of one hundred fifty dollars ($150.00) or twenty-five (25) percent of the cost, whichever is less, but in no event less than twenty-five dollars ($25.00), is hereby ordained to be assessed against the owner. The costs plus the administrative fee shall constitute a lien against the parcel, ranking on a parity with liens for unpaid local taxes, and are enforceable in the same manner. Such liens may be waived in order to facilitate the sale of the property, and 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 as of the date of enforcement the time the liens were imposed.

(2) Violations of this section shall be subject to a civil penalty, not to exceed $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 not exceed $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 24 month period.

(3) The Town of Chilhowie ordains that violations shall be a Class 3 misdemeanor in the event three civil penalties have been previously been imposed on the same person or persons for the same or similar violation, not arising from the same set of facts, within a 12-month period. Classifying such subsequent violations as criminal offenses shall preclude the imposition of civil penalties for the same violation.

(4) Every charge authorized by this section with which the owner of any such property shall have been assessed and which 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 Articles 3 (§ 58.1-3940 et seq.) and 4 (§ 58.1-3965 et seq.) of Chapter 39 of Title 58.1. A locality may 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.

(5) Notice of the Notice of Violation may be filed by the Town Manager, at its discretion, in the land records of the Clerk's Office of Smyth County, Virginia. Once violation has been corrected as determined by the Town Manager, the Notice of Violation will be released by the Town Manager.

State law references: Authority for above section, Code of Virginia, § 15.1-11; Authority for the above section, Code of Virginia, § 15.2-901 (1950, as amended).

This ordinance shall be effective upon passage.

Adopted October 14, 2021

State law references: Authority for above section, Code of Virginia, § 15.1-11; Authority for the above section, Code of Virginia, § 15.2-901 (1950, as amended).

Sec. 22-47 EXEMPTIONS

The requirement to cut, remove, or destroy any and all weeds, shall not apply to any property which meets the following conditions:

(1) a. The parcel is vacant and is located within the town limits of Chilhowie; and the purpose for which the grass or other vegetation growing therein is intended to be used for agriculture purposes, for example, hay; and is being overseen by the owner or occupant for

such purposes; and is not otherwise a situation *which might endanger the health or safety of residents of the town.*

or

b. The parcel is open space (or equivalent) designated as such as a zoning classification, on a subdivision plat, or as a conservation easement; the parcel is not used for active recreation; and the designation contemplates that the area is set aside to remain in a natural state; or

c. The parcel is a public area set aside by the town to remain in a natural state on a temporary or permanent basis.

and

d. The parcel is free from the accumulation of *trash.*

(2) The owner or occupant mows a buffer swath at the perimeter of the property, ten (10) feet in width where the property line adjoins public or private property in residential, civic, commercial, office, or industrial use; and five (5) feet in width where the property line adjoins a public right-of-way. The vegetation in this buffer area shall not exceed ten (10) inches in height.

State Law References - Authority for article, Code of Virginia, §§ 15.2-900, 15.2-1115, 15.2-901, 15.2-1429.

Adopted October 14, 2010

Secs. 22-48-22-70 Reserved

DIVISION 2. ABATEMENT*

Sec. 22-71. Inspections to determine existence.

It shall be the duty of the town manager, the chief of the fire department and the chief of police to cause inspections to be made from time to time of all portions of the town to determine whether any condition exists or activity is being practiced which constitutes a nuisance, and they shall cause an investigation to be made upon complaint by any responsible person. Such officers shall have the right to enter upon private premises for the purposes specified in this section upon compliance with all applicable provisions of law.

(Code 1986, § 10-16)

Sec. 22-72. Notice to cease and desist activity constituting nuisance.

If at any time a town officer finds that an activity or practice which constitutes a nuisance is occurring within the town, he shall promptly and by the most expeditious means notify the violator to cease and desist such nuisance.
(Code 1986, § 10-17)

Sec. 22-73. Notice to abate.

If at any time a town officer finds that a condition which constitutes a nuisance exists within the town, he shall give notice, in writing, to the owner, occupant or person in charge of the premises upon which the condition exists, stating the condition which constitutes a nuisance and directing the addressee to remedy the condition within the time stated in the notice, which shall be not more than ten days. It shall be unlawful for any person receiving such notice to fail to comply with the terms of the notice.

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***State law reference(s)--**Authority of town as to abatement and removal of nuisances, Code of Virginia, § 15.2-1115.

_____

Any owner, occupant or person in charge may, within two days from the service of the notice, appeal to the town council, in which case the terms of such notice shall be stayed pending action of the council. The action of the town shall be final. If the officer giving the notice states in the notice that the condition which constitutes a nuisance is an imminent hazard to the health, safety or welfare of the public or any person within or near the premises upon which the nuisance exists, the addressee shall comply with the terms of the notice in the most expeditious and timely manner.
(Code 1986, § 10-18)

Sec. 22-74. Abatement by town.

(a) Upon the failure of any person to whom notice has been given pursuant to section 22-73 to comply with the terms of the notice, or with the terms imposed by the town council on appeal, the officer giving the notice shall forthwith direct the appropriate town officer to remedy the condition which is the subject of the notice, and the expense incurred by the town in so doing shall be charged to the addressee of the notice, to be collected as town taxes are collected or in any other manner authorized by law.

(b) Abatement by the town of any condition which constitutes a nuisance and reimbursement to the town for expenses incurred thereby shall not bar prosecution for maintenance of a nuisance.
(Code 1986, § 10-19)

State law reference(s)--Similar provisions, Code of Virginia, § 15.2-1115.

Sec. 22-75. Article does not prohibit arrest for committing or maintaining nuisance.

Nothing in this article shall be construed to prohibit any police officer from arresting a person for committing or maintaining a nuisance, when the arrest is made pursuant to law.
(Code 1986, § 10-20)

Secs. 22-76--22-105. Reserved.

ARTICLE III. NOISE*

Sec. 22-106. Unlawful noise.

Any person operating within the town any radio, phonograph, record player, juke box or other music making machine, or any apparatus for reproducing or amplifying music or speech, including sound apparatus mounted on vehicles, shall operate the same with due regard for the rights of other persons in the town, and it shall be unlawful to operate or cause to be operated any such machine or apparatus in such manner as to produce,

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*State law reference(s)--Noise regulations authorized, exceptions, Code of Virginia, §§ 15.2-917--15.2-919.

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on the streets of the town or on the premises of any other person within the town, such a degree of noise or sound as will interfere with the ordinary conduct of affairs by other persons or cause undue discomfort to other persons. A violation of this section is a class 4 misdemeanor punishable as provided in section 1-15.
(Code 1986, § 12-16)

Cross reference(s)--Sounding of locomotive whistles or horns, § 30-246.

Chapters 23--25

RESERVED

Chapter 26

FIRE PREVENTION AND PROTECTION*

Article I. In General

Sec. 26-1. Containers required for burning trash, debris.
Sec. 26-2-----26-35. Reserved.

Article II. Volunteer Fire Department

Sec. 26-36. Definitions.
Sec. 26-37. Created; name.
Sec. 26-38. Adoption of bylaws, rules and regulations.
Sec. 26-39. Participation by certain minors in department activities.
Sec. 26-40. Acquisition, storage of equipment.
Sec. 26-41. Unauthorized riding on department vehicle.
Sec. 26-42-----26-70. Reserved.

Article III. Fireworks

Sec. 26-71. Violations.
Sec. 26-72. Sale, possession, use prohibited; exceptions.
Sec. 26-73. Permit for display.

Article IV. Fire Prevention Ordinance

Sec. 26-74 Open Burning
Sec. 26-75 Purpose
Sec. 26-76 Open Burning Prohibited
Sec. 26-77 Bonfires
Sec. 26-78 Recreational Fire
Sec. 26-79 Penalty; Enforcement
Sec. 26-80 Open Burning Ban
Sec. 26-81 Authority of Fire Chief
Sec. 26-82------26-89. Reserved.

Article V – Emergency Service Billing

Sec. 26-90 Service Fees for Emergency Medical Transport.
Sec. 26-91 Definitions.
Sec. 26-92 Fees
Sec. 26-93 Billing Policy.

Article VI - Fire Prevention Code

Sec 26-86. Virginia Statewide Fire Prevention Code; Adoption.
Sec 26-87. Definitions
Sec. 26-88. Virginia Statewide Fire Prevention Code; Enforcement.
Sec. 26-89. Powers and Duties of Fire Official, Fire Marshals and Technical Assistants
Sec. 26-90. Powers and Duties of Fire Investigators.
Sec. 26-91. Board of Fire Prevention Code Appeals
Sec. 26-92. Appeals

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*Cross reference(s)--Buildings and building regulations, ch. 14.
State law reference(s)--Fire protection, Code of Virginia, § 27-1 et seq.
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ARTICLE I. IN GENERAL

Sec. 26-1. Containers required for burning trash, debris.

It shall be unlawful for any person to burn any paper, cardboard boxes or other trash or debris within the town. Any person violating this section shall be guilty of a class 4 misdemeanor.
(Code 1986, § 6-1) **Repealed 06-12-2008**

Secs. 26-2--26-35. Reserved.

ARTICLE II. VOLUNTEER FIRE DEPARTMENT*

AN ORDINANCE CREATING THE TOWN OF CHILHOWIE FIRE AND EMS DEPARTMENT

WHEREAS, the Council of the Town of Chilhowie believes that additional clarification is needed with regard to the TOWN OF CHILHOWIE FIRE AND EMS DEPARTMENT;

WHEREAS, the Council of the Town of Chilhowie believes that the provisions herein provide that clarification and also provide the department with the legislative tools necessary to fulfill its responsibilities; and

WHEREAS, this Ordinance has been requested and supported by the Fire Chief.

BE IT HEREBY ORDAINED AS FOLLOWS:

Article I – General

Article I, Section. 26-01. Impersonation.

It shall be unlawful and a Class 1 misdemeanor for any person falsely to use a fire department badge, uniform or credentials to identify himself as, or otherwise to impersonate a fire marshal, fire officer, firefighter, paramedic, fire inspector, fire investigator or another authorized representative of the fire department.

Article I, Section. 26-02. Interference with fire and EMS department personnel.

(a) It shall be unlawful to interfere with, obstruct, or restrict the mobility of, or block the path of travel of any fire department emergency vehicle or other firefighting or rescue equipment, or to interfere with a fire officer, firefighter, fire marshal, paramedic, fire inspector or fire investigator in the discharge of their duty, or to interfere with, obstruct or hamper any fire department operation.

(b) It shall be unlawful for any person to damage, deface or render inoperable any fire department emergency vehicle or firefighting equipment or apparatus without lawful authority.

(c) Any person violating any provision of this section shall be guilty of a Class 1 misdemeanor.

Article I, Section. 26-03. Definition of Authorized Emergency Vehicle.

Authorized emergency vehicles shall be restricted to those which are defined and authorized under the laws of the Commonwealth of Virginia.

Article I, Section. 26-04. Response of Equipment.

All fire apparatus and emergency medical equipment responding within the Town of Chilhowie to a fire or emergency medical incident within the jurisdiction shall be under the control and direction of the Fire Chief or his/her designee.

Exceptions:

1. Any duly dispatched fire or emergency medical equipment from another city, town, or county that is (a) merely passing through the Town of Chilhowie; or (b) merely transporting a patient to receive medical services.

2. Any private ambulance service certified to do business within the Commonwealth of Virginia.

Article I, Section. 26-05. Blocking of Fire Hydrants and Fire Service Connections.

It shall be unlawful to damage, deface, obscure from view, obstruct or restrict access to any fire hydrant or any fire department connection for the pressurization of fire suppression systems, including fire hydrants and fire department connections on private property.

(a) No person shall park a motor vehicle or place any other object within 15 feet of either side of a fire hydrant used or to be used for fire protection. When such hydrant is located on private property, except that sign or fence posts, shrubbery and protective bollards shall not be within 4 feet of any such hydrant. No person shall plant, erect or place any obstruction within 4 feet of any other fire department connection point, whether mounted on the exterior of a structure of freestanding.

(b) Where fire hydrants are located at or close to a curb line or the edge of a road and face on a public parking lot or private road open to public use, no person shall park a motor vehicle or place any other object within 15 feet of such hydrants. Further, no person shall park a motor vehicle or place any other object within an area perpendicular to the curb line or the edge of the roadway within 15 feet of such a hydrant extending to the centerline of the roadway, or, if in a cul-de-sac or court, to the point where the cul-de-sac or court intersects with the street. Sign or fence posts, shrubbery and protective bollards shall not be placed within 4 feet of any such hydrant.

(c) Any law enforcement officer shall have power to enforce the provisions of this section, to issue tickets and citations for violations of any such provisions and to remove by towing or otherwise, or make arrangements to remove or tow, any vehicle or other object parked within fifteen feet of either side of a fire hydrant, with all costs of such towing or removal to be paid by the person violating any such provisions.

(d) The law enforcement official charged with the duty of enforcing Sections 26-05 and 26-06 shall attach to a vehicle parked in violation of the provisions of such sections a Notice of Violation indicating that such vehicle has been parked in violation of one of these sections.

(e) In any prosecution charging a violation of the provisions of these sections or any rule or regulation promulgated hereunder, proof that the vehicle described in the complaint, summons, Notice of Violation, citation or warrant was parked in violation of this chapter, together with proof that the defendant was, at the time of such violation, a registered owner of the vehicle, shall constitute in evidence a prima-facie presumption that such registered owner was the person who parked the vehicle at the place where, and for the time during which, such violation occurred.

(f) Prior to the issuance of a warrant or summons for a violation of any of the provisions of Article I, Section 26-05, such violation may be disposed of by payment to the office of the Clerk-Treasurer of the Town of Chilhowie of the full amount of the fine. If payment is not received within thirty days, the fine will be increased by ten dollars ($10.00) for each outstanding Notice of Violation. Nothing in this section shall affect any fine, forfeiture or penalty for a violation of any Town ordinance after the issue of a summons or warrant.

(g) Whoever violates any of the provisions of Article I, Section 26-05, may dispose of such violation by the payment of a fine of forty dollars ($40.00) prior to the issuance of a summons or warrant, subject to the provisions of sub-section f.

State law reference: Parking near fire hydrants, Code of Virginia, § 46.2-1306.

Article I, Section. 26-06. Fire Hydrants and Water Mains.

(a) It shall be unlawful for any person to use, tamper with, damage or destroy any fire hydrant, valve or water main belonging to the town, except that the fire department may use fire hydrants for firefighting or training purposes, and persons who have obtained a permit as provided for in this section from the Director of Public Works, or his designee, may use the hydrants in accordance with the terms of the permit.

(b) Application for a permit for use of fire hydrants shall be made to the Director of Public Works, or his designee, on forms provided for this purpose. Any permit shall be subject to the conditions and specifications imposed by the Director of Public Works, or his designee, for the purpose of protecting equipment and preventing water leakage. A separate permit shall be required for each hydrant used and each time the hydrant is used. A fee of $25.00 ($10 for charitable or nonprofit groups) in addition to fees for water usage will be charged for each permit issued. A permit holder shall be responsible for the costs of labor and materials for any repair or replacement needed after hydrant use. A permit must be in the possession of the actual user at the time of use.

Article I, Section. 26-07. Fire Hydrants, Installation.

All fire hydrants, including fire hydrants installed as part of a private fire protection system, shall meet the following fire hydrant requirements. Fire hydrants shall be approved by the Director of Public Works and the Fire Chief. The hydrant shall have a 1 1/2 inch pentagon-operating nut, left turn to open, two 4 1/2 inch NST nipple outlets capped. The hydrant shall be connected to a 6" gate valve by a 6 inch water supply line and have a minimum 5 1/4 inch valve opening.

Additional requirements are as follows:

1. The hydrant shall be supported by hard, compacted block with hard gravel bedding.

2. Fire hydrant branch connections placed in fill material shall be installed using restrained joint pipe or tie rods as approved by the Town of Chilhowie.

3. The hydrant shall be located so that the thrust block is placed in undisturbed soil. Where this is not practical, the soil beneath the surrounding thrust block shall be compacted to 95% of maximum density in accordance with VDOT Sections 523.03, 302, 303.10 and 200.02.

4. The hydrant shall be plumb and the center of the hydrant (4 1/2 inch nozzle cap) shall be a minimum of 18 inches and maximum of 24 inches from the top face of the curb or groundline.

5. Excavation shall contain one ton of coarse washed gravel around base of hydrant for drainage.

6. The bottom of the safety flange shall be 2 1/2 inches above the edge of the shoulder on streets without curb and gutter and 2 1/2 inches above the elevation of curb on streets with curb and gutter.

7. Bends in underground piping shall be rodded and blocked.

8. Laterals shall be equipped with shut-off valves at tees or tapping sleeves. Valves shall be secured by rods or bolts, to tees or mains. Valves shall be equipped with standard two-inch square operating nuts and valve boxes with covers. Valves shall have right hand closure.

9. All hydrant branches shall have a minimum cover of two feet at the ditch line.

10. Sidewalks shall be wrapped around hydrants located in areas where the grass area is shown as two feet or less.

11. Fire Hydrants shall be located at least 40 feet from all buildings served by the hydrant. When a hydrant cannot be placed at the required distance, the Director of Public Works will consider exceptions to the requirement if the conditions are within the parameters listed in the currently adopted edition of NFPA 24, Installation of Private Fire Service Mains and their Appurtenances.

12. Four-inch steel pipe bollards shall be installed around hydrants as needed for industrial and commercial developments where curbs are not available and in locations where the potential for damage is greater than normal due to vehicular traffic as determined by the Director of Public Works. Bollards shall be located adjacent to the hydrant and in such a manner as not to interfere with the ability to connect hoses or operate the hydrant. Where possible, bollards shall be at least 30 inches from the center of the hydrant-operating nut in all directions. The bottom of the bollards and encasement shall not be located above the hydrant supply piping and valve or within the area of the hydrant supply piping to prevent the possibility of damage to the underground piping should the bollard be displaced by vehicular contact. Exact locations of bollards will be determined by the engineer of record and approved by the Director of Public Works and the Fire Chief.

Article I, Section. 26-08. Driving over Unprotected Fire Hose

(a) No person shall drive or propel any vehicle over any unprotected fire hose of the fire department, when laid down on any street, alley, private drive or any other vehicular roadway without the consent of the fire chief or other officer in charge of the scene.

(b) A violation of this section shall constitute a traffic infraction.

State Law Reference – Driving over fire hose, Code of Virginia, § 46.2-922

Article I, Section. 26-09. Designation of Fire Lanes

The Fire Official shall designate fire lanes on public streets and on private property where necessary for the purpose of prevention parking in front of or adjacent to fire hydrants and fire department connections and to insure access to buildings and structures for firefighting and rescue apparatus.

Article I, Section. 26-10. Fire Lanes; Signs and Markings

(a) Signs and markings to delineate fire lanes as designated by the Fire Official shall be provided, installed and maintained in a method and manner approved by the Fire Official.

(b) It shall be unlawful for any person to deface, injure, tamper with, or remove, destroy, or impair the usefulness of any posted fire lane sign installed under the provisions of this article.

Article I, Section. 26-11. Prohibited Parking within a Designated Fire Lane; Unauthorized Use.

It shall be unlawful for any person to park or stand a vehicle in any designated fire lane, except as follows:

(a) Fire lanes within commercial or school properties may be used for temporary stopping to pick up or discharge passengers or supplies; provided that, a vehicle shall be so stopped parallel and immediately adjacent to the curb and a licensed operator shall occupy and be in control of the vehicle while it is so stopped.

(b) Fire lanes adjacent to commercial or business establishments which have no alternate loading zone or rear entrance may be used for temporary parking by vehicles engaged solely in loading or unloading supplies or merchandise to or from the establishment, provided the licensed operator of such vehicle is engaged solely in the loading or unloading operation.

(c) Fire lanes within residential and industrial areas may be used for temporary stopping to pick up or discharge passengers or supplies; provided that, a vehicle shall be so stopped parallel and immediately adjacent to the curb and a licensed operator shall occupy and be in control of the vehicle while it is so stopped.

The placement of a vehicle, for any purpose, within a fire lane perpendicular to the curb or edge is prohibited.

Any police officer who finds any vehicle in violation of this section shall have the authority to remove such vehicle at the owner's expense. This authority shall extend to any fire department officer in charge of a fire or rescue operation who finds any such violation to be interfering with such emergency operations.

Police officers are authorized to enter any fire lane for the purpose of enforcing the provisions of this section.

No provision of this section shall apply to fire, rescue or police vehicles while they are involved in emergency operations.

Article I, Section. 26-12. Routes for Vehicles Transporting Explosives, Blasting Agents, Dangerous or Hazardous Materials.

(a) The Town may establish routes for vehicles transporting explosives, blasting agents, dangerous or hazardous materials. Designated routes will be marked with appropriate signage.

(b) This ordinance will not apply to vehicles making local delivery of products to residences or businesses.

Article I, Section. 26-13. Penalties

(a) Any person who shall violate any of the provisions of this article or fail to comply therewith, or who shall violate or fail to comply with any order made or notice given thereunder, or who shall build in violation of any detailed statement of specifications or plans submitted and approved thereunder, or any certificate or permit issued thereunder, and from which no appeal has been taken, or who shall fail to comply with such an order or notice as affirmed or modified by the town council or by a court of competent jurisdiction within the time therein stated, shall be guilty of a class 1 misdemeanor, as defined in the Code of Virginia, 18.2-11, unless another penalty is expressly called for in this article. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue; and all such persons shall be required to correct or remedy such violations or defects within a reasonable time. When not otherwise specified,

(b) The application of the above penalty shall not be construed to prevent the enforced removal of prohibited conditions.

Article II – Fire and EMS Department

Article II, Section. 26-26. Established, Town of Chilhowie Fire & EMS Department.

The Town Council of the Town of Chilhowie hereby establishes pursuant to Section 27-6.1 of the Virginia Code (1950, as amended), a fire department known as the "Town of Chilhowie Fire & EMS Department" and referred to herein as such or as "fire department". The head of the department shall be known as the "Fire Chief", who shall be appointed by the Town Manager. This fire department shall be the only fire department officially recognized and authorized to operate within the Town of Chilhowie, Virginia. Where the fire department is referred to in this Chapter, this reference shall include career, part-time and volunteer members.

The Department shall be responsible for fire suppression, rescue, technical rescue, emergency medical services, hazardous materials response, fire code enforcement, fire investigations and fire prevention activities.

Article II, Section. 26-27. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

Department or *Fire Department:* Means the fire department created by section 26-26 of this code.

Fire Chief: The chief officer of the fire department serving the jurisdiction.

Members: This term is used to describe all members of the department, whether paid or volunteer.

Article II, Section. 26-28. Powers and Duties of the Fire Chief.

(a) The Fire Chief shall be the department head. He shall have responsibility and authority for all operations and administration of the department and shall be directly responsible to the Town Manager. The Fire Chief shall have full authority and complete supervisory control of all equipment and personnel in attendance at an emergency incident. In the absence of the Fire Chief, all such authority and control shall be vested with the next-in-rank officer of the department.

(b) The Fire Chief is empowered to designate such subordinate officers and officials among the employees and members of the fire department as he may deem appropriate. All appointments shall be approved by the Town Manager.

(c) The Fire Chief shall have charge of the facilities assigned to the fire department, and shall keep such property in good condition.

(d) The Fire Chief shall have authority to purchase (subject to applicable procurement laws, regulations and policies) operate, man and maintain equipment for fighting fires, performing emergency medical services, and for otherwise responding to emergency incidents, and to prescribe the terms and conditions upon which such equipment will be utilized. The Fire Chief shall perform all actions and shall have all duties as may be necessary to properly care for and to keep such property and equipment in good condition and working order.

(e) The Fire Chief shall keep and maintain records of all emergency incidents, their place and time of occurrence and such other information as the he shall deem necessary or proper or the Town Manager may require. The Fire Chief shall deliver to his successor in office all such records, and all other records pertaining to the operation and management of the fire department that may be in his possession or control.

(f) The Fire Chief shall have general supervision of all fire hydrants owned by the town, and shall report in writing to the Director of Public Works whenever it is deemed necessary or expedient that any fire hydrants should be erected, repaired or removed.

(g) The Fire Chief's responsibilities shall include, but not be limited to:

(1) Assign duties and tasks as required for all personnel.

(2) Ensure that all fire and rescue personnel meet or exceed the minimum physical qualifications and training requirements as established.

(3) Recommend the hiring of all fire department personnel to the Town Manager.

(4) Evaluate the performance of personnel on an annual basis.

(5) Ensure that appropriate training is made available for members.

(6) Establish and enforce standard operating procedures for the Department with the approval of the Town Manager.

(7) Establish and enforce minimum training standards for the Department with the approval of the Town Manager.

(8) Carry out other responsibilities as assigned by the Town Manager.

Article II, Section. 26-29. Control of the Scene of an Emergency.

(a) As set forth within section 26-02(a), above, the Fire Chief, or in his absence another authorized member of the fire department, shall have control of the scene of an emergency incident. While the town's fire department is in the process of answering an alarm or operating at an emergency incident and returning to the station, the Fire Chief or other officer in charge of such operations at that time shall have the authority to:

(1) Maintain order at the emergency incident or its vicinity,

(2) Direct the actions of the firefighters and emergency services personnel at the emergency incident or its vicinity;

(3) Keep bystanders or other persons at a safe distance from the emergency incident and emergency equipment;

(4) Facilitate the efficient movement and operation of emergency equipment, firefighters and emergency medical services personnel;

(5) Cause an investigation to be made into the origin and cause of the emergency incident;

(6) Until the arrival of a police officer, direct and control traffic in person or by deputy and facilitate the movement of traffic; and

(7) Restrict the entry of personnel from the news media into the area of an emergency incident, as follows: personnel from the news media, when gathering the news, may enter at their own risk into the area of an emergency incident only when the Fire Chief or other officer in charge has deemed the area safe, and only into those areas of the emergency incident that do not, in the opinion of the Fire Chief or other officer in charge, interfere with firefighters or emergency medical services personnel dealing with such emergencies, in which case the Fire Chief or other officer in charge may order such person to leave the scene of the emergency incident.

(b) The Fire Chief or other officer in charge of the area of an emergency incident shall display his firefighter's or emergency medical services personnel badge, or other proper means of identification. Any person refusing to obey the order(s) of the Fire Chief or other officer in charge, or his deputies, shall be guilty of a Class 4 misdemeanor. The authority described within this section may not be exercised to inhibit or obstruct members of law-enforcement agencies from performing their normal duties when operating at an emergency incident.

Article II, Section. 26-30. Acquisition, Storage of Equipment.

All equipment, including trucks, purchased by or for the fire department shall be acquired in the name of the town for the use and benefit of the fire department. Such equipment

shall be stored in the fire hall or station used by the department and shall not be removed therefrom without proper authorization from the officers or agents of the department.
(Code 1986, § 6-16)

Article II, Section. 26-31. Unauthorized Riding on Department Vehicle.

(a) It shall be unlawful for any person not a member of the fire department to ride on a truck or other vehicle carrying the equipment of the department to and from any fire, without the express permission of an officer or agent of the department or the driver of the vehicle.

(b) A violation of this section shall constitute a class 3 misdemeanor.
(Code 1986, § 6-17)

State law reference(s)--Penalty for class 3 misdemeanor, Code of Virginia, § 18.2-11.

Article II, Section. 26-32. Members, Town of Chilhowie Fire/EMS Department.

(a) The Town of Chilhowie Fire Department may be composed of full-time, part-time and volunteer personnel. The qualifications for positions, whether full-time, part-time or volunteer shall be the same.

(b) All fire department personnel shall attend a minimum of 40 hours of training each year. The training program shall be approved by the Fire Chief.

Article II, Section. 26-33. Participation by Certain Minors in Department Activities

(a) Any minor person who is 16 years of age or older may, with parental or guardian approval, work with, or participate fully in all activities of, the fire department, provided such person has attained certification under National Fire Protection Association 1001, level one, firefighter standards, as administered by the state department of fire programs.

(b) Any trainer or instructor of a person mentioned in subsection (a) of this section, or any member of the fire department who supervises such person, shall be exempt from the provisions of Code of Virginia, § 40.1-103, provided the fire department or the town council has purchased insurance which provides coverage for injuries to or the death of such person in his performance of activities under this section.
(Code 1986, § 6-15)

State law reference(s)--Authority for permitting participation in volunteer fire company activities, Code of Virginia, § 40.1-79.1.

Adopted December 11, 2014.

Sec. 26-36. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Department or fire department means the volunteer fire department created by section 26-37.
(Code 1986, § 6-12)

Cross reference(s)--Definitions generally, § 1-2.

Sec. 26-37. Created; name.

For fire protection, a volunteer fire department, known as the Chilhowie Volunteer Fire Department, is hereby created.
(Code 1986, § 6-13)

Sec. 26-38. Adoption of bylaws, rules and regulations.

The members of the department shall adopt bylaws, rules and regulations for the election and terms of office of such officers of the department as they may designate and for the proper functioning of the department.
(Code 1986, § 6-14)

Sec. 26-39. Participation by certain minors in department activities.

(a) Any minor person who is 16 years of age or older may, with parental or guardian approval, work with, or participate fully in all activities of, the fire department, provided such person has attained certification under National Fire Protection Association 1001, level one, firefighter standards, as administered by the state department of fire programs.

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*State law reference(s)--Local fire departments and fire companies, Code of Virginia, § 27-6.1 et seq.

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(b) Any trainer or instructor of a person mentioned in subsection (a) of this section, or any member of the fire department who supervises such person, shall be exempt from the provisions of Code of Virginia, § 40.1-103, provided the fire department or the town council has purchased insurance which provides coverage for injuries to or the death of such person in his performance of activities under this section.
(Code 1986, § 6-15)

State law reference(s)--Authority for permitting participation in volunteer fire company activities, Code of Virginia, § 40.1-79.1.

Sec. 26-40. Acquisition, storage of equipment.

All equipment, including trucks, purchased by or for the fire department shall be acquired in the name of the town for the use and benefit of the fire department. Such equipment shall be stored in the fire hall or station used by the department and shall not be removed therefrom without proper authorization from the officers or agents of the department.
(Code 1986, § 6-16)

Sec. 26-41. Unauthorized riding on department vehicle.

(a) It shall be unlawful for any person not a member of the fire department to ride on a truck or other vehicle carrying the equipment of the department to and from any fire, without the express permission of an officer or agent of the department or the driver of the vehicle.

(b) A violation of this section shall constitute a class 3 misdemeanor.
(Code 1986, § 6-17)
State law reference(s)--Penalty for class 3 misdemeanor, Code of Virginia, § 18.2-11.

Secs. 26-42--26-70. Reserved.

ARTICLE III. FIREWORKS*

Sec. 26-71. Violations.

A violation of any provision of this article shall constitute a class 1 misdemeanor punishable as provided in section 1-15.
(Code 1986, § 6-28)
State law reference(s)--Penalty for class 1 misdemeanor, Code of Virginia, § 18.2-11.

Sec. 26-72. Sale, possession, use prohibited; exceptions.
(a) Except as otherwise provided in this article, it shall be unlawful for any person to sell, offer for sale or expose for sale, or to buy, use, ignite or explode, any firecracker, torpedo, skyrocket or other substance or thing, of whatever form or construction,

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***State law reference(s)--**Fireworks, Code of Virginia, § 59.1-142 et seq.

containing nitrates, chlorates, oxalates, sulphides of lead, barium, antimony, nitroglycerine, phosphorus or any other explosive or inflammable compound or substance, and intended, or commonly known, as fireworks, within the town.

(b) This section shall have no application to any officer or member of the armed forces of this state or of the United States, while acting within the scope of his authority and duties as such, nor to any offer of sale or sale of fireworks to any authorized agent of such armed forces, nor shall it be applicable to the sale or use of materials or equipment, otherwise prohibited by this section, when such material or equipment is used or to be used by any person for signalling or other emergency use in the operation of any boat, railroad train or other vehicle for transportation of persons or property.

(c) This section shall not apply to the use or sale of sparklers, fountains, Pharoah's serpents, caps for pistols or pinwheels commonly known as whirligigs or spinning jennies; provided, however, that such fireworks may only be used, ignited or exploded on private property with the consent of the owner of the property.
(Code 1986, § 6-29)

State law reference(s)--Similar provisions, Code of Virginia, §§ 59.1-142, 59.1-146, 59.1-147; authority of town to prohibit sale, use, etc., of fireworks, Code of Virginia, § 59.1-148.

Sec. 26-73. Permit for display.

(a) The town council may provide for the issuance of permits, upon application in writing, for the display of fireworks within the town by fair associations and amusement parks or by any organization or group of individuals, under such terms and conditions as the council may prescribe. After such permit has been issued, sales of fireworks may be made for use under the permit and the association, organization or group to which it is issued may make use of the fireworks under the terms and conditions of the permit.

(b) It shall be unlawful for any person to violate the terms and conditions of any permit issued under this section.
(Code 1986, § 6-30)

State law reference(s)--Authority to permit public displays, Code of Virginia, § 59.1-144.

ARTICLE IV. FIRE PREVENTION ORDINANCE

26.74 OPEN BURNING

26.75 *Purpose*

The purpose of this Ordinance is to protect public health, safety, and welfare by regulation of open burning within the Town to achieve and maintain, and to the greatest extent practicable, a level of air quality that will provide comfort and convenience while promoting economic and social development; and, for the protection of life and property of the residents and visitors to the Town. This article is intended to supplement the applicable regulations promulgated by the State air pollution control board and other applicable regulations and laws. (Adopted 6-9-2011)

26.76 Open Burning Prohibited

(a) Except as provided in this section, there shall be no open burning of any material, substance, or thing within the Town. No one shall burn leaves, tree, yard and garden trimmings, except as may be allowed in this ordinance.

(b) Subparagraph (a) shall not apply to the kinds of open burning described below in this subsection, which shall be allowed within the Town, under written permit from the Fire Chief, on written application made no less than five day prior to the proposed burning. The permit may be issued at no charge and shall assure that the open burning shall comply with this Ordinance, State Laws and Regulations; with any other applicable legal rule, and with any condition imposed by the Fire Chief to assure the safety and propriety of the open burning.

1. Open burning is permitted for training and instruction of government and public firefighters under the supervision of the designated official or industrial in-house firefighting personnel. The designated official in charge of the training shall notify and obtain the approval of the Town Manager and by permit from the Fire Chief prior to conducting the training exercise. Training schools where permanent facilities are installed for firefighting instruction are exempt from this notification requirement.

2. Open burning is permitted on land in the Town that is in an agricultural zoning district, or that is within a current agricultural or forestal or agricultural and forestal district of the Town, or that is used for bona fide agricultural or forestal, or both, purposes and further burning is permitted for forest management and (in the absence of other means of disposal) agricultural practices under the following conditions:

(a) The burning shall be at least fifty feet from any occupied building, other than an unoccupied building located on the property on which the burning is conducted by permit from the Fire Chief. The burning shall be conducted at the greatest distance practicable from highways, schools and nursing homes. If the Fire Chief determines that it is necessary to protect public health and welfare, the Fire Chief may direct that this distance be increased.

(b) The burning shall be attended at all times.

(c) Forest management, and agricultural practices, respectively, shall mean:

Forest management practices: Reduction of forest fuels and minimization of the effects of wildfires; control of undesirable growth of hardwoods; control of disease in pine seedlings; preparation of land for planting or seeding; creation of a favorable habitat for certain species of wildlife; and removal of dead vegetation for the maintenance of railroad, highway, or public utility right-of-way.

(d) Agricultural practices: Destruction of undesirable vegetation; clearance of orchards and orchard pruning; destruction of fertilizer and chemical containers;

denaturing of seed and grain which may no longer be suitable for agricultural purposes; prevention of loss from frost or freeze damage; creation of a favorable habitat for certain species of wildlife; and destruction of strings and plastic ground covering remaining in the field after being used in growing staked tomatoes.

3. Open burning is permitted for disposal of land-clearing refuse on the site of clearing operations resulting from the development or modification of roads or highways, parking areas, or sanitary landfills; or from any other land-clearing operation which may be first approved by the Fire Chief and Town Manager. Any burning permitted under this subparagraph shall meet, as determined by the Town Manager, and Fire Chief, the following conditions:

(a) The burning shall be at least fifty feet from any occupied building, other than an unoccupied building located on the property on which the burning is conducted by permit from the Fire Chief. The burning shall be conducted at the greatest distance practicable from highways, schools and nursing homes. If the Fire Chief determines that it is necessary to protect public health and welfare, the Fire Chief may direct that this distance be increased.

(b) All reasonable efforts shall be made to minimize the amount of material burned. Such efforts shall include, but are not limited to, the removal of pulpwood, saw logs, and firewood.

(c) The material to be burned may consist of brush, stumps, and similar land clearing refuse generated at the site and shall not include demolition material or any refuse brought in from other sites.

(d) The burning shall be attended at all times and conducted in such a matter as to ensure the best possible combustion with a minimum of smoke being produced. The burning shall not be allowed to smolder beyond the minimum period necessary for the destruction of the materials.

(e) The burning shall be conducted only when the prevailing winds are away from any city, town, or built-up area.

4. Upon declaration of an alert, warning, or emergency stage of an air pollution episode, as defined by state law or regulation, or when deemed advisable by the Virginia Department of Air Pollution Control to prevent hazard to, or an unreasonable burden upon, public health and welfare, no owner or other person shall cause or permit open burning in the Town. Any such in-process burning shall be immediately terminated. (Adopted 6-9-2011)

26.77 Bonfires

(a) No person shall kindle or maintain any bonfire or authorize any such fire to be kindled or maintained on any private land, unless the location is not less than fifty (50)

feet from any structure and adequate provision is made to prevent fire from spreading to within fifty (50) feet of any structure.

(b) Bonfires shall be constantly attended by a competent person until such fires are extinguished. This person shall have a garden hose connected to the water supply or other fire extinguishing equipment readily available for use.

(c) A permit must be obtained by the Fire Chief. The Fire Chief may prohibit any or all bonfires when atmospheric conditions or local circumstances make such fires hazardous and may be determined by the Fire Chief.

(d) Here, "bonfire" shall mean a campfire or other fires that are used solely for recreational purposes, for ceremonial occasions, for outdoor noncommercial preparation of food, and for warming of outdoor workers, and that are not fueled by any rubber tires, asphaltic materials, crankcase oil, impregnated wood or other rubber or petroleum based materials, hazardous waste, or hazardous waste containers. (Adopted 6-9-2011)

26.78 Recreational Fire

An outdoor fire burning ordinary and customary materials, other than rubbish contained in an outdoor fireplace, barbeque grill or barbeque pit which has a total fuel area of 3 feet or less in diameter and 2 feet or less in height may be made for pleasure, religious, ceremonial, cooking, warmth or similar purpose, but open burning that is offensive or objectionable because of smoke or odor emissions shall be extinguished and all such burning shall be subject to the authority of the Fire Chief. (Adopted 6-9-2011)

26.79 Penalty; Enforcement

(a) It shall be unlawful and constitute a Class 3 misdemeanor to violate any provision of this article, unless otherwise specified.

(b) This article shall be enforced by the Town Manager and Fire Chief. The Town Manager shall allocate adequate Town resources for this purpose and practice intergovernmental cooperation and exchange of information.

(c) Any violation or failure to conform to the provisions of this Ordinance may be abated or eliminated by suit for injunction or other appropriate legal proceeding by action of the Fire Chief.

(d) If any person carelessly, negligently or intentionally set any woods or marshes on fire, or set fire to any stubble, brush, straw, grass lands, trash, leaves, or any other substance capable of spreading fire on lands, whereby the property of another is damaged or jeopardized, he shall be guilty of a Class 4 misdemeanor, and shall be liable for the full amount of all expenses incurred in fighting the fire. (18.2-88). (Adopted 6-9-2011)

26.80 Open Burning Ban

(a) The Chief of the Fire Department is authorized to place a ban or conditions on open burning within the Town. The ban shall continue until the Chief of the Fire Department has determined that the dry conditions endangering lives and property within the Town no longer exist at its sole discretion or that of the Town Manager should the Fire Chief not be available. Any such ban or conditions will be effective after a notice is published one time in a newspaper of general circulation in the town.

(b) Any person violating an Order of the Chief of the Fire Department, issued in accordance with this section, shall be guilty of a Class 1 misdemeanor. (Adopted 6-9-2011)

26.81 Authority of Fire Chief

(a) At any fire, within the Town the Fire Chief shall have command over his assistants and over all other persons who may be present and may appoint the stations and operations of the companies with their engines and of all others for the purpose of extinguishing the fire, removing things from any building on fire or in danger thereof, guarding the same and suppressing all tumult and disorder. (Adopted 6-9-2011)

Adopted this 9th day of June, 2011.

Secs. 26-82 – 26-89. Reserved

ARTICLE V - EMERGENCY SERVICE BILLING

Article V, Section. 26-90. Service Fees for Emergency Medical Transport.

Reasonable fees, reviewed annually, shall be charged for rescue and emergency medical transport services provided by all fire and emergency medical services personnel, whether by volunteer or town employees. The funds received from the payment of this fee shall be paid into a separate account of the town to aid in defraying the cost of providing emergency services.

Article V, Section. 26-91. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Basic Life Support (BLS): Services shall be medical treatment or procedures to a patient as defined by the National Emergency Medicine Services (EMS) Education and Practice Blueprint for the Emergency Medical Technician Basic (EMT).

Advanced Life Support, Level 1 (ALS1): Services shall be medical treatment or procedures provided to a patient beyond the scope of an EMT-Basic as defined by the National EMS Education and Practice Blueprint as amended.

Advanced Life Support, Level 2 (ALS2): Services shall be defined as advanced life support services provided to a patient including one or more of the following medical procedures:

a) Manual Defibrillation/Cardioversion/12-Lead EKG
b) Endotracheal Intubation
c) Central Venous Line
d) Cardiac Pacing
e) Chest Decompression
f) Surgical Airways
g) Intraosseous Line; and/or
h) Administration of three (3) or more medications.

Ground Transport Mileage (GTM): Mileage shall be assessed in statute miles from the location of the incident to a hospital or other facility where a patient is transported.

Article V, Section. 26-92. Fees

(a) The schedule of rates for emergency ambulance transport and rescue services by the Town of Chilhowie Fire Department shall be based on a schedule which will be developed and reviewed yearly to maintain compliance within the allowances established by the Center for Medicare and Medicaid Services.

(b) The Town Manager, or his designee, is hereby authorized and directed to establish rules and regulations for the administration of the charges imposed by this article, including, but not limited to, payment standards for those persons who demonstrate economic hardship, as permitted by applicable law.

(c) Fees for emergency medical transport and rescue services shall be charged per patient transported for services rendered and transportation provided, as initially set and reviewed annually.

Article V, Section. 26-93. Billing Policy

(a) A bill will be generated for rescue services and ambulance transports by all emergency medical personnel whether volunteer or town employees.

(b) Patients will fall into one of the following categories for billing purposes:

(1) *Insured resident of the Town of Chilhowie or Smyth County.* The appropriate insurance carrier will be billed.

(2) *Uninsured resident of the Town of Chilhowie or Smyth County.* The Town of Chilhowie billing policy provides for a waiver of emergency transport fees for eligible uninsured Town residents. A statement showing zero balance will be sent to any patient qualifying for such waiver.

(3) *Uninsured non-resident.* A bill will be sent to the patient transported. The payment for all services rendered is expected in full.

(c) No one will be denied necessary medical transport service due to either his or her inability to pay or a lack of insurance.

(d) All consumers of rescue or ambulance services will be asked, in writing, to provide information regarding available insurance coverage. All consumers of these services will receive written notification of the value of services received and notice of billing forwarded to their insurer(s).

(e) Billing is intended to eliminate or minimize out-of-pocket expenses for rescue and ambulance services received by Town of Chilhowie and Smyth County residents. The Town regards taxes paid by these residents as inclusive of co-pays and/or deductibles for ambulance service for all persons living in a taxpaying household.

(f) The town's emergency medical services billing company will not pursue payment recovery through a debt collection agency without express authorization of the Town Manager or his designee.

(g) Nonresidents receiving Town rescue or medical transport services will receive a bill and will be expected to make payment in full. The Town Manager or his designee is authorized to seek recovery through means as he sees fit, including the use of debt collection services.

(h) If any Town of Chilhowie or Smyth County insured party requires rescue or medical transport within a given calendar year that exceeds his or her policy limits and no additional insurance coverage is available, the fees for service beyond coverage limits will be waived.

(i) For any Town of Chilhowie or Smyth County resident, if the insurance provider deems the transport is not medically necessary the billing company will verify the information that was submitted to the insurance company and resubmit the claim for reconsideration. If the insurance carrier still deems the transport not medically necessary the Town Manager or his designee will review the individual case for possible waiver of the fees.

Adopted July 12, 2012

Article VI - Fire Prevention Code

Article VI, Section. 26-86. Virginia Statewide Fire Prevention Code; Adoption.

Pursuant to the provisions of the Code of Virginia Title 27, Section 27-97, as amended, repealed, reenacted, or recodified from time to time, the Virginia Statewide Fire Prevention Code ("SFPC") is hereby adopted and made a part of this Code with amendments as hereinafter set forth.

Article VI, Section. 26-87. Definitions

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Board of Fire Prevention Code Appeals (BFPCA): The Board of Fire Prevention Code Appeals (BFPCA) is a five member board, appointed by the Town Council, to hear appeals brought by interested parties concerning the Fire Official's application of the Statewide Fire Prevention Code (SFPC) or the Fire Official's refusal to grant a modification under Section 106.5 of the SFPC.

Code Official: See "Fire Official".

Fire Chief: The chief officer of the fire department serving the jurisdiction.

Fire Code Official: See "Fire Official".

Fire Investigator: For the purpose of this Code, a Fire Investigator is a fire department employee or member who has been appointed by the Fire Chief to make an investigation into the cause of fires. A Fire Investigator is considered a Fire Marshal under 27-30 of the Code of Virginia and a Technical Assistant under the provisions of the SFPC.

Fire Marshal: For the purpose of this Code, and as specified in Section 27-30 of the Code of Virginia, a Fire Marshal may be the Fire Official a Fire Inspector or a Fire Investigator. Fire Marshals shall also be considered to be Technical Assistants to the Fire Official.

Fire Official: The officer or other designated authority charged with administration and enforcement of the SFPC. For the purpose of this ordinance and the enforcement of the SFPC, the terms "code official" and "fire official" shall have the same meaning as the term "fire code official" and, in addition, such official shall have the powers outlined in Section 27-98.1 of the Code of Virginia.

Statewide Fire Prevention Code(SFPC): The Virginia Statewide Fire Prevention Code (SFPC) is a state regulation promulgated by the Virginia Board of Housing and Community Development in cooperation with the Virginia Fire Services Board, both Governor appointed boards, for the purpose of establishing statewide standards to safeguard life and property from the hazards of fire or explosion arising from the improper maintenance of life safety and fire prevention materials, devices, systems and structures and the unsafe storage handling, and use of substances, materials, and devices, including fireworks, explosives and blasting agents.

Technical Assistants: Any person appointed to assist the Fire Official in carrying out his duties. Technical Assistants may perform the functions of Fire Inspector, Fire Investigator, Public Fire and Life Safety Educator, Fire Plans Reviewer, or Permit Technician. The title Technical Assistant is found in the SFPC and is used to designate persons who provide technical assistance to the Fire Official.

Technical Review Board: The Technical Review Board (TRB) is a Governor appointed board established to hear appeals of the local Board of Fire Prevention Code Appeals (BFPCA).

Article VI, Section. 26-88. Virginia Statewide Fire Prevention Code; Enforcement.

(a) It shall be the policy and practice of the town to enforce, in its entirety, the Virginia Statewide Fire Prevention Code ("SFPC") adopted by the Virginia Board of Housing and Community Development of the Commonwealth of Virginia.

(b) From time to time the Town Council may approve a schedule of permits and or fees applicable to inspections, approvals and appeals conducted for purposes of enforcement of the SFPC. Once a schedule of permits and/or fees is approved it shall be maintained in the Office of the Town Manager.

(c) The Town's fire department shall have the responsibility to serve as the local enforcing agency for the SFPC. In carrying out such responsibility, the fire department shall act by and through an executive official ("Fire Official") designated by the Town Manager. Unless otherwise specified by the Town Manager, the Town's Fire Chief shall serve as the Fire Official. The Fire Official and any fire department employees appointed to assist him shall have authority to exercise the powers authorized within the SFPC and relevant provisions of the Statewide Fire Prevention Code Act, 27-94 et seq. of the Code of Virginia, as amended. The Fire Official may delegate duties and powers to his

assistants, but the Fire Official shall remain responsible for ensuring that any such delegated duties and powers are carried out in accordance with applicable provisions of law.

(d) The Fire Official and all Technical Assistants shall have or obtain the qualifications and certifications specified within the SFPC.

(e) The Fire Official shall keep and maintain official records of applications received, permits and certificates issued, fees collected, reports of inspections, and notices and orders issued. The Fire Official shall deliver to his successor in office all such records that may be in his possession or control.

Article VI, Section. 26-89. Powers and Duties of Fire Official, Fire Marshals and Technical Assistants

(a) The Fire Official may appoint employees or members of the fire department to serve as Fire Marshals and/or Technical Assistants, and they shall have the powers, functions and responsibilities described within Title 27, Chapter 3 (Local Fire Marshals) of the Code of Virginia.

The appointment of Fire Marshals and/or Technical Assistants shall be approved by the Town Manager. Any person lawfully appointed to the position of Fire Marshal or Technical Assistant by the Fire Chief is hereby deemed to have been appointed by the council to such position within the meaning of the Code of Virginia 27-30 and 27-36 for the purpose of exercising the powers and duties as prescribed in this article.

(1) In addition to any other duties prescribed by law, the Fire Official and his Technical Assistants shall have the authority to arrest, upon approval by Town Council, to procure and serve warrants of arrest, and to issue summons in the manner authorized by general law for violation of fire prevention and fire safety laws and related ordinances. The authority granted in this section shall not be exercised by the Fire Official or any Technical Assistant until such person has satisfactorily completed a training course designed specifically for local fire marshals and their assistants and approved by the Virginia Fire Services Board and authorized by the Town Council specifically.

(2) The Fire Official and all Technical Assistants shall, before entering upon their duties, take an oath before an officer authorized to administer oaths, to faithfully discharge the duties of such office(s). The certificate of the oath shall be returned to and preserved by the Clerk of the Town Council.

(b) In accordance with the provisions of 27-31 of the Code of Virginia, the Fire Chief shall appoint a person to make investigations into the cause of every fire and explosion

occurring within the limits of the Town. This person shall have the authority to arrest, to procure and serve warrants of arrest, and to issue summons in the manner authorized by general law. The authority granted in this section shall not be exercised by the Fire Investigator or any assistant until such person has satisfactorily completed a training course designed specifically for fire investigators and their assistants and approved by the Virginia Fire Services Board and authorized by the Town Council specifically.

(c) The Fire Official, Fire Marshals and/or Technical Assistants 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 10.1-1400 or 62.1-44.34.8 of the Code of Virginia, has occurred or is reasonably suspected to have occurred, and which has entered into ground water, surface water or soils of the town. The right of entry authorized by this provision is to allow the Fire Official and/or a Fire Marshal to investigate the extent and cause of any such release and shall be exercised in accordance with the provisions of 27-37.1 of the Code of Virginia.

Article VI, Section. 26-90. Powers and Duties of Fire Investigators.

(a) In addition to such other duties as may be prescribed by law, the fire investigator and those assistants appointed, assigned or designated pursuant to Section 26-89, shall have the same police powers as a law enforcement officer.

(b) The fire investigator and his assistants shall make or cause to be made an investigation into the origin and cause of every fire occurring within the Town.

(c) In making the investigation required by Section 26-89, Sub-Section b, the fire investigator may issue a summons to order witnesses to attend before him at such time and place as he may direct.

(d) Witnesses on whom the summons mentioned in subsection (a) above is served may be compelled by the fire investigator to attend and give evidence and shall be liable in like manner as if the summons had been issued by a court officer in a criminal case. They shall be sworn by the fire investigator before giving evidence, and their evidence shall be reduced to writing by him, or under his direction, and subscribed by them respectively.

(e) If, in making an investigation pursuant to this article, the fire investigator or his assistant, shall make complaint under oath that there is good cause of suspicion or belief that the burning of any land, building or any object was caused by an act constituting a crime, as defined in article 1 (section 18.2-77 et seq.), chapter 5, of Title 18.2, Code of Virginia, and that he has been refused admittance to the land or building or to examine the object in or on which any fire occurred within fifteen (15) days after the extinguishment of such, any court officer of the county, authorized to issue warrants, may

issue a warrant requiring him to enter such land or building or the premises upon which the object is located, in the company of law enforcement, for the purposes of conducting a search for evidence showing that such fire was caused by an act defined in article 1, chapter 5, of Title 18.2 of the Code of Virginia.

(f) Whenever a fire occurs, it shall be the duty of the fire investigator or his designated representative to be present at the same and advise and act in concert with such officers of police as may be present, and, for preserving order at and during the existence of such fire, and for the protection of property, but shall not exercise any authority which will conflict with the powers of any chief or other officer in command of the fire department in the discharge of his special duties as such.

(g) The fire marshal or fire investigator or the designated representative of either is authorized to take and preserve any property found at the scene of a fire during his presence there, while in the act of extinguishing such, or found later, with the consent of the owner or pursuant to section 26-90, Sub-Section e, which property indicates the fire was intentionally caused. Any person whose property is so taken and held may petition the circuit court of the county, or the judge thereof in vacation, for return of the property, and the court may order restitution upon such conditions as are appropriate for the preservation of evidence, including the posting of bond.

Article VI, Section. 26-91.
Repealed January 8, 2015.

AN ORDINANCE TO ESTABLISH
THE TOWN OF CHILHOWIE
GENERAL BOARD OF APPEALS

WHEREAS, The Virginia Statewide Fire Prevention Code and the Uniform Statewide Building Code both require that a Board of Appeals exist for the Town of Chilhowie to allow for appeals of decisions made by the respective town officials;

WHEREAS, The Town of Chilhowie does not have such a Board of Appeals;

WHEREAS, additional appeals may be necessary for other town decisions determined at a later date.

Be it hereby **ORDANED** and **RESOLVED** that the Town of Chilhowie hereby establishes its General Board of Appeals. The General Board of Appeals shall be created and vested as follows:

(1) The General Board of Appeals shall hear all appeals related to Virginia Statewide Fire Prevention Code and the Uniform Statewide Building Code and comparable town statues and ordinances as required by law.

(2) The General Board of Appeals shall meet whenever directed by the appointing authorities to interpret the provisions of the respective codes or to rule on a properly filed appeal from a decision of the authority having jurisdiction. All such meetings shall be open to the public. All appeals must be filed within thirty (30) days after the receipt of the decision being appealed with regard to the Uniform Statewide Building Code and 14 (fourteen) days after the receipt of the decision being appealed with regard to the Virginia Statewide Fire Prevention Code. There shall be a requirement that all appeals be filed in writing with the Town Clerk. Appropriate fees may be levied by the Town Manger to defray the costs of such appeals and shall be due upon the filing of the appeal.

(3) The General Board of Appeals shall consist of five (5) members, with two (2) members appointed for a one (1) year term, two (2) members appointed for two (2) year terms, and one (1) members appointed for a three (3) year term. There shall also be two alternate members appointed for three year terms. The membership of the Board shall consist of persons who are qualified by experience and training to pass on matters pertaining to Virginia Statewide Fire Prevention Code and the Uniform Statewide Building Code issues, and should comply with the requirements of the respective codes with regard to membership to the extent mandated and/or possible. No more than one of the said members or alternate shall be engaged in the same business profession or line of endeavor. Appointment of said members shall be by the Town Council. No member may be an employee of the Town.

(4) The means of appeal from the Virginia Statewide Fire Prevention Code and the Uniform Statewide Building Code shall be as defined by those respective Codes in §119.1, et. seq. of the Virginia Statewide Fire Prevention Code and §112.1, et. seq. of the Uniform Statewide Building Code. Said sections are hereby adopted in their entirety by reference except to the extent that they are in conflict with the provision of this Ordinance.

Adopted December 11, 2014

Article VI, Section. 26-92. Appeals

(a) The owner of a structure, the owner's agent or any other person involved in the design, construction or maintenance of the structure may appeal a decision of the Fire Official concerning the application of the SFPC or the Fire Officials refusal to grant

modification under Section 106.5 to the provisions of the SFPC. The appeal shall first lie to the local Board of Fire Prevention Code of Appeals (BFPCA) and then to the State Technical Review Board (TRB). The appeal shall be submitted to the BFPCA within 14 calendar days of the application of the SFPC. The application shall contain the name and address of the owner of the structure and the person appealing if not the owner. A copy of the written decision of the Fire Official shall be submitted along with the application for appeal and maintained as part of the record. The application shall be stamped or otherwise marked by the BFPCA to indicate the date received. Failure to submit an application for appeal within the time limit established by this section shall constitute acceptance of the Fire Official's decision.

(b) The BFPCA shall meet within 30 calendar days after the date of receipt of the application for appeal. Notice indicating the time and place of the hearing shall be sent to the parties in writing to the address listed on the application at least 14 calendar days prior to the date of the hearing. Less notice may be given if agreed upon by the applicant.

(c) All hearings before the BFPCA shall be open to the public. The appellant, the appellant's representative, the Fire Official and/or Fire Marshal and any person whose interests are affected shall be given an opportunity to be heard. The chairman of the BFPCA shall have the power and duty to direct the hearing, rule upon the acceptance of evidence and oversee the record of all proceedings.

(d) The BFPCA shall have the power to uphold, reverse or modify the decision of the Fire Official by a concurring vote of the majority of those present. Decisions of the BFPCA shall be final if no appeal is made therefrom and the appellant and the Fire Official shall act accordingly.

(e) After the final determination by the BFPCA, any person who was a party to the local appeal may appeal to the State Technical Review Board (TRB). Application shall be made to the TRB within 21 calendar days of receipt of the decision to be appealed. Appeals to the TRB shall be accompanied by copies of inspection reports and other relevant information. Failure to submit an application for appeal within the time limit established by this section shall constitute an acceptance of the BFPCA's resolution or the Fire Official's decision.

Adopted December 12, 2013

Chapters 27--29

RESERVED

Chapter 30

MOTOR VEHICLES AND TRAFFIC*

Article I. In General

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Sec. 30-2. Compliance with chapter; penalty for violations.
Sec. 30-3. State law adopted.
Sec. 30-4. Summons for violation forms.
Sec. 30-5. Removal of vehicle involved in accident from street.
Sec. 30-6-----30-40. Reserved.

Article II. Stopping, Standing, Parking

Sec. 30-41. Issuance of citation for illegally parked vehicle.
Sec. 30-42. Defendant's option as to parking violations.
Sec. 30-43. Complaint entered and warrant issued upon failure to comply with summons.
Sec. 30-44. Records, reports of chief of police relative to traffic violations.
Sec. 30-45. General authority of town manager in regulation of parking and traffic.
Sec. 30-46. Designation, marking of stop and yield intersections.
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Article III. Vehicle License

Sec. 30-81. Violations.
Sec. 30-82. Required.
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Article IV. Abandoned Vehicles

Sec. 30-126. Definitions.
Sec. 30-127. Leaving on public property of private property without consent.

***Cross reference(s)**--Streets, sidewalks and certain other public places, ch. 42; vehicles for hire, ch. 58.

State law reference(s)--General authority of town to regulate traffic, Code of Virginia, § 46.2-100 et seq.

Sec. 30-128. Authority to impound.
Sec. 30-129. Notice of impoundment.
Sec. 30-130. Sale.
Sec. 30-131. Vehicles abandoned in garages.
Sec. 30-132. Disposition of inoperable vehicles; duties of demolisher.
Sec. 30-133. Inoperable motor vehicles.
Sec. 30-134. Disposition of inoperable abandoned vehicles.
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Sec. 30-202. Application.
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Article VI. Railroads

Sec. 30-246. Sounding of locomotive whistles or horns.
Sec. 30-247. Trains obstructing crossing.
Sec. 30-248. Standing vehicles on tracks.

ARTICLE I. IN GENERAL

Sec. 30-1. Definitions.

Unless otherwise clearly indicated, words and terms used in this chapter which are defined in Code of Virginia, § 46.2-100 shall have the meanings ascribed to them in such state law.
(Code 1986, § 9-1)

Cross reference(s)--Definitions generally, § 1-2.

State law reference(s)--Definitions, Code of Virginia, § 46.2-100.

Sec. 30-2. Compliance with chapter; penalty for violations.

It shall be unlawful for any person to refuse, fail or neglect to comply with any of the provisions of this chapter. Except as otherwise provided, a violation of any provision of this chapter shall constitute a traffic infraction punishable by a fine of not more than $200.00.
(Code 1986, § 9-2)
State law reference(s)--Similar provisions as to violations of state traffic laws and local ordinances adopted pursuant thereto, Code of Virginia, § 46.2-113.

Sec. 30-3. State law adopted.

Pursuant to the provisions of Code of Virginia, § 46.2-1313, all of the provisions and requirements of the laws of the state contained in Code of Virginia, title 46.2 and Code of Virginia, § 18.2-266 et seq., as amended, and as subsequently amended from time to time by state law, except those provisions and requirements which, by their very nature, can have no application within the town, are hereby adopted and incorporated and made applicable within the town as fully as if set out at length in this chapter. References in the provisions of the Code of Virginia hereby adopted to "highways of the state" and any and all other references to locations throughout the state shall be deemed to refer to the streets, highways, alleys and other applicable properties within the town. It shall be unlawful for any person within the town to violate or fail, neglect or refuse to comply with any section of the Code of Virginia which is adopted by this section.
(Code 1986, § 9-8)

State law reference(s)--Authority to adopt state law, Code of Virginia, § 46.2-1313.

Sec. 30-4. Summons for violation forms.

The town manager shall obtain suitable serially numbered forms, in triplicate, for summoning violators of the provisions of this chapter or any other traffic ordinance to appear and answer to the charge of violating this chapter or any other traffic ordinance as provided in Code of Virginia, § 46.2-388, as amended.
(Code 1986, § 9-3)

Sec. 30-5. Removal of vehicle involved in accident from street.

Whenever a motor vehicle, trailer or semitrailer involved in an accident is found upon a highway or street in the town and is so located as to impede the orderly flow of traffic, the police may, at no cost to the owner or operator, remove the vehicle from the highway or street to some point in the vicinity where the vehicle will not impede the flow of traffic or 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. If the vehicle is removed to a storage area, the owner shall pay to the parties entitled thereto all costs incidental to its removal and storage.
(Code 1986, § 9-12)

State law reference(s)--Authority for above section, Code of Virginia, § 46.2-1212.

Secs. 30-6--30-40. Reserved.

ARTICLE II. STOPPING, STANDING, PARKING*

Sec. 30-41. Issuance of citation for illegally parked vehicle.

Whenever any motor vehicle without a driver is found parked or stopped in violation of any of the restrictions imposed by this chapter, the officer finding such vehicle shall take its registration number and may take any other information displayed on the vehicle which may identify its user, and shall conspicuously affix to such vehicle a summons, in writing, on the form required by Code of Virginia, § 46.2-388, for the driver to answer to the charge against him within seven days at the hour and place specified in the summons. The officer shall send one copy of the summons to the general district court.
(Code 1986, § 9-4)

State law reference(s)--Presumption as to violation, Code of Virginia, § 46.2-1220.

Sec. 30-42. Defendant's option as to parking violations.

(a) Any person charged with a violation of this chapter in reference to stopping, standing and parking generally, shall have the option of paying the minimum fine of $2.00 to the town treasurer at the municipal building within the time specified in the summons of arrest, upon entering a plea of guilty and waiving appearance in court, or he may deposit the required lawful bond, and upon a plea of not guilty, he shall be entitled to a trial as authorized by law.

(b) The payment of a fine to the town treasurer pursuant to this section shall be deemed an acknowledgment of conviction of the alleged offense.
(Code 1986, § 9-5)

***State law reference(s)--**Authority to regulate, Code of Virginia, §§ 46.2-1220, 46.2-1300; enforcement of citation, Code of Virginia, § 46.2-1225.

Sec. 30-43. Complaint entered and warrant issued upon failure to comply with summons.

If any person fails to comply with a summons given to such person or attached to a vehicle as provided in this article, or fails or refuses to post bond, if required, the officer issuing the summons shall forthwith have a complaint entered against such person and secure and serve a warrant for his arrest.
(Code 1986, § 9-6)

Sec. 30-44. Records, reports of chief of police relative to traffic violations.

The chief of police shall keep records and submit summarized monthly reports to the town council of all summonses issued and arrests made for violations of traffic regulations in the town and of all fines collected therefor and of the final disposition or present status of every case of violation. Such records shall be so maintained as to show the nature of each violation and the total number of violations of each kind. Such records shall be public records.
(Code 1986, § 9-7)

Sec. 30-45. General authority of town manager in regulation of parking and traffic.

The town manager, except as otherwise provided by this chapter and except as otherwise directed by the town council, shall have power and is hereby authorized to:

(1) Regulate the operation and parking of vehicles within the town by the erection or placing of proper signs or markers indicating prohibited or limited parking, angle parking, the parking of buses, trucks and other vehicles of various weights, U-turns, turning at intersections, hazardous intersections, school zones, hospital zones, loading and unloading zones, quiet zones, traffic control signals exhibiting colored lights or the words "go," "caution" or "stop" and other signs or markers indicating the place and manner of operating or parking vehicles in the town. If any such regulation regulates parking on the interstate highway system or the arterial network of the primary system or any extension thereof of the arterial network, it shall be subject to the approval of the state transportation commissioner.

(2) Regulate the movement of pedestrians upon the streets and sidewalks of the town by the erection or placing of proper signs or markers indicating the flow of pedestrian traffic.

(3) Secure all necessary signs, signals or markers to be erected or placed on any street or part of a street.

(4) Designate bus stops and to erect signs prohibiting the parking of vehicles other than buses at such stops.

(5) Mark off traffic lanes on streets and parts of streets indicating and directing the flow of traffic.

(Code 1986, § 9-9)

State law reference(s)--Authority of town manager to regulate parking, Code of Virginia, § 46.2-1220.

Sec. 30-46. Designation, marking of stop and yield intersections.

(a) The town manager, except as otherwise provided by this chapter and except as otherwise directed by the town council, may designate intersections, other than intersections at which one or more of the intersecting streets has been designated as a part of the state highway system, at which vehicles shall come to a full stop or yield the right-of-way.

(b) The town manager shall have power and is hereby authorized to secure all necessary signs, signals or markers to be erected or placed on or at any intersection designated pursuant to this section, so that an ordinarily observant person, who may be affected by such regulation, may be aware of such regulation.

(Code 1986, § 9-10)

State law reference(s)--Authority for regulations, Code of Virginia, § 46.2-1301.

Sec. 30-47. Effect of, obedience to signs, signals and markers.

(a) The existence of signs, signals or markers referred to in sections 30-45 and 30-46 at any place within the corporate limits of the town shall be prima facie evidence that such signs, signals or markers were erected or placed by and at the direction of the town manager in accordance with the provisions of such sections.

(b) It shall be unlawful for any person to fail or refuse to comply with the directions indicated on any sign, signal or marker erected or placed in accordance with the provisions of section 30-45 or 30-46, when such sign, signal or marker so placed or erected is visible and legible.

(Code 1986, § 9-11)

Secs. 30-48--30-80. Reserved.

***Cross reference(s)**--Taxation, ch. 50.

State law reference(s)--Authority for license, Code of Virginia, § 46.2-752.

ARTICLE III. VEHICLE LICENSE*

Sec. 30-81. Violations.

A violation of the requirements in this article regarding vehicle licenses shall constitute a misdemeanor the penalty for which shall not exceed that of a class 4 misdemeanor. A violation by the owner of the vehicle may not be discharged by payment of a fine except upon presentation of satisfactory evidence that the required license has been obtained.
(Code 1986, § 9-23)

Sec. 30-82. Required.

No person shall operate and no owner shall permit to be operated, upon the streets or alleys of the town, any motor vehicle, trailer or semitrailer for which a license fee is levied by section 30-84, unless such vehicle is currently licensed pursuant to the provisions of this article.
(Code 1986, § 9-25)

Sec. 30-83. Exemptions.

A license shall not be required when:

(1) A similar tax or fee is imposed by the county, city or town wherein the vehicle is normally garaged, stored or parked.

(2) The vehicle is owned by a nonresident of the town and is used exclusively for pleasure or personal transportation and not for hire or for the conduct of any business or occupation other than that set forth in subsection (3) of this section.

(3) The vehicle is owned by a nonresident and used for transporting into and within the town, for sale in person or by his employees, wood, meats, poultry, fruits, flowers, vegetables, milk, butter, cream, or eggs produced or grown by him, and not purchased by him for sale.

(4) The motor vehicle, trailer or semitrailer is owned by an officer or employee of the state who is a nonresident of the town and who uses the vehicle in the performance of his duties for the state under an agreement for such use.

(5) The motor vehicle, trailer or semitrailer is kept by a dealer or manufacturer for sale or for sales demonstration.

(6) The motor vehicle, trailer or semitrailer is operated by a common carrier of persons or property operating between cities and towns in the state and not in intracity transportation or between cities and towns on the one hand and points and places outside cities and towns on the other and not in intracity transportation.

(7) The motor vehicle is owned and used personally by any veteran who holds a current state motor vehicle registration card establishing that he has received a disabled veteran's exemption from the state department of motor vehicles and has been issued a disabled veteran's motor vehicle license plate as prescribed in Code of Virginia, § 46.2-739, as amended.

(8) The motor vehicle is used as a daily rental passenger car, the rental of which is subject to the tax imposed by Code of Virginia, § 58.1-2402.A.4, as amended.

(Code 1986, § 9-24)

State law reference(s)--Exemptions from local vehicle license fees, Code of Virginia, § 46.2-755.

Sec. 30-84. Levy, amount of fee.

(a) For each year, beginning on March 1, there is hereby levied, subject to the applicable provisions of the state law, and shall be collected a license fee for each motor vehicle, trailer or semitrailer, owned, kept or used by any person when the motor vehicle, trailer or semitrailer is normally garaged, stored or parked in the town. If it cannot be determined where the personal property is normally garaged, stored or parked, the situs shall be the domicile of its owner.

(b) The annual license fee on motor vehicles, trailer and semitrailers as provided in this section shall be $15.00.

(c) The license fee shall be required for antique motor vehicles licensed by the state as such.

(Code 1986, § 9-26)

State law reference(s)--Authority for fee, Code of Virginia, § 46.2-752.

(Code 1986, § 9-35)

Secs. 30-85--30-125. Reserved.

ARTICLE IV. ABANDONED VEHICLES*

Sec. 30-126. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Abandoned motor vehicle means a motor vehicle, trailer or semitrailer or part thereof that:

(1) Is inoperable and is left unattended on public property for more than 48 hours;

(2) Has remained illegally on public property for a period of more than 48 hours;

(3) Has remained on private property without the consent of the owner, whether or not such vehicle was brought onto or left at such property with or without the consent of the owner or person in control of the property, for more than 48 hours.

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***Cross reference(s)--**Environment, ch. 22.

State law reference(s)--Authority of town to adopt ordinance regarding abandoned vehicles, Code of Virginia, § 46.2-1201.

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Demolisher means any person whose business is to convert a motor vehicle, trailer or semitrailer into processed scrap or scrap metal or otherwise to wreck or dismantle such vehicle.

Inoperable abandoned motor vehicle means an abandoned motor vehicle which is inoperable and whose fair market value, as determined by the town official responsible for assessing motor vehicles under Code of Virginia, § 58.1-3503, as amended, is less than the cost of its restoration to an operable condition.

Cross reference(s)--Definitions generally, § 1-2.

State law reference(s)--Similar provisions, Code of Virginia, §§ 46.2-1220, 46.2-1204.

Sec. 30-127. Leaving on public property or private property without consent.

It shall be unlawful for any person to leave an abandoned motor vehicle on public property or on private property without the consent of the owner or person in control of the property.

(Code 1986, § 9-47)

State law reference(s)--Similar provisions, Code of Virginia, § 46.2-1215.

Sec. 30-128. Authority to impound.

The town may take into custody any abandoned motor vehicle. In this connection, the town may employ its own personnel, equipment and facilities or hire persons, equipment and facilities or firms or corporations who may be independent contractors for the purpose of removing, preserving and storing abandoned motor vehicles.

(Code 1986, § 9-48)

State law reference(s)--Similar provisions, Code of Virginia, § 46.2-1201.

Sec. 30-129. Notice of impoundment.

(a) When the town takes into custody an abandoned motor vehicle, it shall notify, within 15 days, by registered or certified mail, return receipt requested, the owner of record of the motor vehicle and all persons having security interests therein of record, that the vehicle has been taken into custody. The notice shall describe the year, make, model and serial number of the vehicle, set forth the location of the facility where the vehicle is being held, inform the owner and any persons having security interests of their right to reclaim the vehicle within 15 days after the date of the notice, upon payment of

all towing, preservation and storage charges resulting from placing the vehicle in custody. The notice shall state that failure of the owner or persons having security interests to exercise their right to reclaim the vehicle within the time provided shall be deemed a waiver, by the owner and all persons having any security interests, of all right, title and interest in the vehicle and consent to the sale of the vehicle at a public auction.

(b) If the records of the state department of motor vehicles contain no address for the owner or no address of any person shown by such records to have a security interest, or if the identity and addresses of the owner and all persons having security interests cannot be determined with reasonable certainty, notice by publication once in a newspaper of general circulation in the area where the motor vehicle was abandoned shall be sufficient to meet all requirements of notice pursuant to this section as to any person who cannot be notified pursuant to the provisions of subsection (a) of this section. Such notice by publication may contain multiple listings of abandoned motor vehicles. Any such notice shall be within the time requirements prescribed for notice by mail and shall have the same contents required for a notice by mail.

(c) The consequences of failure to reclaim an abandoned motor vehicle shall be as set forth in a notice given in accordance with and pursuant to this section.
(Code 1986, § 9-49)

State law reference(s)--Similar provisions, Code of Virginia, § 46.2-1202.

Sec. 30-130. Sale.

(a) If an abandoned motor vehicle has not been reclaimed as provided in section 30-129, the town or its authorized agents shall, notwithstanding the provisions of Code of Virginia, § 46.2-617, as amended, sell the vehicle at public auction. The purchaser of the vehicle shall take title free and clear of all liens and claims of ownership of others, shall receive a sales receipt at the auction and shall be entitled to, upon application to the state department of motor vehicles, a certificate of title and registration card therefor.

(b) The sales receipt referred to in subsection (a) above shall be sufficient title only for purposes of transferring the vehicle to a demolisher for demolition, wrecking or dismantling, and in such case, no further titling of the vehicle shall be necessary.

(c) From the proceeds of the sale of an abandoned motor vehicle, the town, or its authorized agents, shall reimburse itself for the expenses of the auction, the cost of towing, preserving and storing the vehicle which resulted from placing the vehicle in custody, and all notice and publication costs incurred. Any remainder from the proceeds of the sale shall be held for the owner of the vehicle or any person having security interests therein, as their interest may appear, for 90 days, and then shall be deposited into the treasury of the town.
(Code 1986, § 9-50)

State law reference(s)--Similar provisions, Code of Virginia, § 46.2-1203.

Sec. 30-131. Vehicles abandoned in garages.

(a) Notwithstanding section 30-127, any motor vehicle, trailer, semitrailer or part thereof shall be considered abandoned and may be reported by the garagekeeper to the town if it has been left in a garage for more than ten days or for more than ten days beyond the period the vehicle was to remain on the premises pursuant to a contract, after notice by registered or certified mail, return receipt requested, to the owner of record and all persons having security interests of record therein, to reclaim the vehicle within 15 days of the notice. Any abandoned motor vehicle left in a garage may be taken into custody by the town in accordance with this article and shall be subject to the notice and sale provisions contained in sections 30-129 and 30-130. If, however, the vehicle is reclaimed in accordance with section 30-129, the person reclaiming it, in addition to the other charges required to be paid, shall pay the reasonable charges of the garagekeeper, unless otherwise provided by contract or ordinance. If the vehicle is sold pursuant to section 30-130, any garagekeeper's charges shall be paid from, and to the extent of, the excess of the proceeds of sale after paying the expenses of the auction, the costs of towing, preserving and storing the vehicle which resulted from placing the vehicle in custody and all notice and publication costs incurred pursuant to section 30-129. Except as otherwise provided in this article, nothing in this section shall restrict any rights conferred on any person under Code of Virginia, §§ 43-32 through 43-36, as amended.

(b) For the purposes of this section, "garage" means any commercial parking place, motor vehicle storage facility or establishment for the servicing, repair, maintenance or sale of motor vehicles whether or not the vehicle had been brought to that location with the consent of the owner or person in control of the premises and "garagekeeper" means the operator of a garage.
(Code 1986, § 9-51)

State law reference(s)--Similar provisions, Code of Virginia, § 46.2-1204.

Sec. 30-132. Disposition of inoperable vehicles; duties of demolisher.

(a) Notwithstanding any other provisions of this article or the provisions of Code of Virginia, § 46.2-617, as amended, when, in the opinion of officials of the town designated by the town council to have duties which include the disposal of abandoned vehicles, any motor vehicle, trailer, semitrailer or part thereof is inoperable and by virtue of its condition, cannot be feasibly restored to operable condition, such vehicle may be disposed of to a demolisher by the person, including the town, on whose property or in whose possession the vehicle is found. The demolisher, upon taking custody of the vehicle, shall notify the state department of motor vehicles, on forms and in the manner prescribed by the commissioner of such department, and notwithstanding any other provision of law, no other report or notice shall be required in such instance.

(b) Any demolisher who purchases or otherwise acquires a motor vehicle for purposes of wrecking, dismantling or demolition shall not be required to obtain a certificate of title for such vehicle in his own name. After the vehicle has been

demolished, processed or changed, so that it physically is no longer a motor vehicle, the demolisher shall surrender to the state department of motor vehicles, for cancellation, the certificate of title or sales receipt therefor.

(c) A demolisher shall keep an accurate and complete record of all motor vehicles purchased or received by him in the course of his business. These records shall contain the name and address of the person from whom each motor vehicle was purchased or received and the date when the purchase or receipt occurred. Such records shall be open for inspection by the state department of motor vehicles at any time during normal business hours.
(Code 1986, § 9-52)

State law reference(s)--Similar provisions, Code of Virginia, §§ 46.2-1205, 46.2-1206.

Sec. 30-133. Inoperable motor vehicles.

It shall be unlawful for any person to keep, except within a fully enclosed building or structure or otherwise shielded or screened from public view, on any property zoned for residential, agricultural or commercial purposes any motor vehicle, trailer or semitrailer, as defined in Code of Virginia, § 46.2-100, as amended, which is not in operating condition, or which for a period of 60 days or longer has been partially or totally disassembled by the removal of tires and wheels, the engine or other essential parts required for operation of the vehicle or on which there are displayed neither valid license plates nor a valid inspection decal; provided, however, that the provisions of this section shall not apply to a licensed business which on June 26, 1970, is regularly engaged in business as an automobile dealer, salvage dealer or scrap processor. The owners of property zoned for residential, industrial, agricultural or business purposes shall, at such time or times as the town council may prescribe, remove therefrom any such inoperative motor vehicles, trailers or semitrailers that are not kept within a fully enclosed building or structure or otherwise shielded or screened from public view. The town council through its own agencies or employees may remove any such inoperative motor vehicles, trailers or semitrailers, whenever the owner of the premises, after reasonable notice, has failed to do so. If the town, through its own agents or employees, removes any such motor vehicles, trailers or semitrailers after giving additional notice to the owner of the vehicle, the cost of any such removal and disposal shall be chargeable to the owner of the vehicle or premises and 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 shall have been assessed shall constitute a lien against the property from which the vehicle was removed, the lien to continue until actual payment of such costs shall have been made to the town.
(Code 1986, § 9-53)

State law reference(s)--Authority to restrict keeping of vehicles, Code of Virginia, § 15.2-904.

Sec. 30-134. Disposition of inoperable abandoned vehicles.

Notwithstanding any other provisions of this article, any inoperable motor vehicle, trailer, semitrailer or part of a motor vehicle, trailer or semitrailer which has been taken

into custody pursuant to other provisions of this article may be disposed of to a demolisher, without the title and without the notification procedures, by the person or locality on whose property or in whose possession the motor vehicle, trailer or semitrailer is found. The demolisher, on taking custody of the inoperable abandoned motor vehicle shall notify the state department of motor vehicles on forms and in the manner prescribed by the commissioner. Notwithstanding any other provision of law, no other report or notice shall be required in this instance.

State law reference(s)--Similar provisions, Code of Virginia, § 46.2-1205.

Secs. 30-135--30-165. Reserved.

ARTICLE V. PARADES*

DIVISION 1. GENERALLY

Sec. 30-166. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Parade means any parade, march, ceremony, show, exhibition, pageant or demonstration constituting or being a procession of any kind, or any similar display in or upon any street or municipally operated parking lot in the town.

(Code 1986, § 13-1)

Cross reference(s)--Definitions generally, § 1-2.

Sec. 30-167. Violations.

Unless otherwise specifically provided, a violation of any provision of this article shall constitute a class 3 misdemeanor.

(Code 1986, § 13-2)

Cross reference(s)--Penalty for class 3 misdemeanor, § 1-15.

Sec. 30-168. Interference.

No person shall unreasonably hamper, obstruct, impede or interfere with any parade, parade assembly or any person, vehicle or animal participating or used in a parade.

(Code 1986, § 13-3)

State law reference(s)--Equine activity in parades, Code of Virginia, § 3.1-796.130 et seq.

Secs. 30-169--30-200. Reserved.

***Cross reference(s)**--Streets, sidewalks and certain other public places, ch. 42.
State law reference(s)--Processions, Code of Virginia, § 46.2-828.

DIVISION 2. PERMIT

Sec. 30-201. Required; exceptions.

No person shall engage in, participate in, aid, form or start any parade, unless a parade permit has been obtained from the town manager. This section shall not apply to:

(1) Funeral processions.

(2) Students accompanied by and under the direction and supervision of adult school authorities going to and from school classes or participating in educational activities approved by school authorities; provided, however, that this exception shall not apply to a school band marching in formation.

(3) A governmental agency acting within the scope of its functions.

(Code 1986, § 13-14)

Sec. 30-202. Application.

A person seeking issuance of a parade permit shall file an application with the town manager on forms provided by such officer. The application shall be filed not less than seven days nor more than 60 days before the date on which it is proposed to conduct the parade. The application shall set forth the following information:

(1) The name, address and telephone number of the person seeking to conduct the parade.

(2) If the parade is proposed to be conducted for, on behalf of or by an organization, the name, address and telephone number of the headquarters of the organization and the authorized and responsible heads of such organization.

(3) The name, address and telephone number of the parade marshal who will be responsible for the parade's conduct.

(4) The date on which the parade is proposed to be conducted.

(5) The route to be travelled, the starting point and the termination point.

(6) The location, by streets, of any assembly areas for the parade.

(7) The hours when the parade will start and terminate.

(8) The time at which units of the parade will begin to assemble at any assembly area.

(9) The approximate number of persons, animals and vehicles constituting the parade and the type of animals and a description of the vehicles.

(10) The interval of space to be maintained between units of the parade.

(11) A statement as to whether the parade will occupy all or only a portion of the width of the streets, between the sidewalks, proposed to be traversed.

(12) A statement as to whether the parade will occupy any portion of the width of the sidewalks of the streets proposed to be traversed and, if so, what portion thereof.

(13) If the parade is designed to be held by, on behalf of or for any person other than the applicant, a communication in writing from the person proposing to hold the parade, authorizing the applicant to apply for the permit on his behalf.

(14) Any additional information which the town manager shall find reasonably necessary to a fair determination as to whether a permit should be issued.

(Code 1986, § 13-15)

Sec. 30-203. Town manager to act on application within five days.

The town manager shall act upon the application for a parade permit within five days after the filing.

(Code 1986, § 13-16)

Sec. 30-204. Standards for issuance.

The town manager shall issue a parade permit when, from a consideration of the application and from such other information as may otherwise be obtained, he finds that:

(1) The conduct of the parade will not substantially interrupt the safe and orderly movement of other pedestrians and vehicular traffic contiguous to its route.

(2) The conduct of the parade will not require the diversion of so great a number of police officers of the town, to properly police the line of movement and areas contiguous thereto, as to prevent normal police protection to the remainder of the town.

(3) The conduct of the parade will not require the diversion of so great a number of emergency medical vehicles as to prevent normal service to other portions of the

town than those to be occupied by the proposed line of march and areas contiguous thereto.

(4) The concentration of persons, animals and vehicles at assembly and termination points of the parade will not unduly interfere with proper fire and police protection of, or emergency medical vehicles service to, areas contiguous to such points.

(5) The conduct of the parade will not interfere with the movement of firefighting equipment en route to a fire.

(6) The conduct of the parade is not likely to cause physical injury to persons at the assembly areas or termination point or on the route to be travelled.

(7) The parade is scheduled to move from its point of origin to its termination point expeditiously and without unreasonable delays en route.

(8) The parade is not designed to be held purely for the private profit of the person holding the parade or for the sole purpose of advertising any product or goods of such person.

(Code 1986, § 13-17)

Sec. 30-205. Contents.

Each parade permit shall state the following information:

(1) Assembly time.

(2) Starting time.

(3) Minimum speed.

(4) Maximum speed.

(5) Maximum interval of space to be maintained between the units.

(6) The portions of the streets to be traversed that may be occupied by the parade.

(7) The maximum length, in miles or fractions thereof, of the parade.

(8) The assembly area.

(9) Termination area.

(10) Such other information as the town manager shall find necessary to the enforcement of this article.
(Code 1986, § 13-18)

Sec. 30-206. Copy sent to certain officials.

Immediately upon the issuance of a parade permit, the town manager shall send a copy thereof to the following:

(1) The mayor.
(2) The chief of police.

(3) The fire chief.

(4) The general manager or responsible head of each public transportation utility, the regular routes of whose vehicles will be affected by the route of the proposed parade.
(Code 1986, § 13-19)

Sec. 30-207. Duties of permittee; permit to be carried by marshal.

A person under this article shall comply with all permit directions and conditions and with all applicable laws and ordinances. The parade marshal or other person heading or leading the parade shall carry the parade permit upon his person during the conduct of the parade.
(Code 1986, § 13-20)

Sec. 30-208. Transfer.

No permit issued pursuant to this article shall be assigned or transferred to another person by the designated permittee.
(Code 1986, § 13-21)

Sec. 30-209. Notice of denial.

If the town manager disapproves an application for a parade permit, he shall mail to the applicant, within three days after the date upon which the application was filed, a notice of his action, stating the reasons for his denial of the permit.
(Code 1986, § 13-22)

Sec. 30-210. Appeal from denial.

If the town manager denies a parade permit, the applicant shall have the right, within ten days after the notice of denial given pursuant to section 30-209, to appeal the decision of the town manager to the town council. Such appeal shall be considered by the council at its next regular meeting to be held after notice of appeal is given, in writing, by the applicant. Any person desiring to appeal from the decision rendered by the council on the

appeal from the decision of the town manager shall have the right to appeal the same to the circuit court of the county, provided notice of appeal is given within ten days after the decision of the council, in writing, is given to such person.
(Code 1986, § 13-23)

Sec. 30-211. Issuance of alternative.

The town manager, in denying an application for a parade permit, shall be empowered to authorize the conduct of the parade on a date, at a time or over a route different from that named by the applicant. An applicant desiring to accept such alternatives shall, within one day after notice of the action of the town manager, file a written notice of acceptance with the town manager. Such parade permit shall conform to the requirements of and shall have the effect of the parade permit issued under this article.
(Code 1986, § 13-24)

Sec. 30-212. Revocation.

The town manager shall have the authority to revoke a parade permit issued pursuant to this article upon violation of the standards for issuance set forth in section 30-204.
(Code 1986, § 13-25)

Secs. 30-213--30-245. Reserved.

ARTICLE VI. RAILROADS*

Sec. 30-246. Sounding of locomotive whistles or horns.

(a) The sounding or blowing of locomotive whistles or horns in the town is hereby prohibited; provided, however, that this provision shall not be construed to apply when the sounding or blowing of locomotive whistles or horns is necessary for the transmission of signals or in emergencies to prevent accidents.

(b) A violation of this section shall constitute a class 3 misdemeanor punishable as provided in section 1-15.
(Code 1986, § 15-1)

Cross reference(s)--Noise regulations, § 22-106.

State law reference(s)--Bell and whistle or horn to be sounded at certain times, Code of Virginia, § 56-414.

Sec. 30-247. Trains obstructing crossings.

(a) It shall be unlawful for any railroad company, or any receiver or trustee operating a railroad, to obstruct, for a longer period than five minutes, the free passage on any street in the town, by standing cars or trains across the street, except a passenger train while receiving or discharging passengers, but a passway shall be kept open to allow normal flow of traffic; provided that, when a train has been uncoupled so as to make a passway,

the time necessarily required, not exceeding three minutes, to pump up the air after the train has been recoupled shall not be included in considering the time the cars or trains were standing across the street.

(b) Any railroad company, receiver or trustee violating any of the provisions of this section shall be fined not less than $100.00 nor more than $500.00; provided that the fine may be $100.00 for each minute beyond the permitted time, but the total fine shall not exceed $500.00.

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***State law reference(s)--**Railroad corporations, Code of Virginia, § 56-345 et seq.

(c) This section shall not apply when a train is stopped due to breakdown, mechanical failure or emergency.

(Code 1986, § 15-2)

Cross reference(s)--Street obstructions, § 42-3.

State law reference(s)--Similar provisions, Code of Virginia, § 56-412.1.

Sec. 30-248. Standing vehicles on tracks.

It shall be unlawful and a class 1 misdemeanor for any person to stand any wagon or other vehicle on the track of any railroad, so as to hinder or endanger a moving train.

(Code 1986, § 15-3)

Cross reference(s)--Penalty for class 1 misdemeanor, § 1-15.

State law reference(s)--Similar provisions, Code of Virginia, § 56-412.1.

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RESERVED

Chapter 34

OFFENSES*

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*State law reference(s)--Crimes and offenses, Code of Virginia, § 18.2-1 et seq.

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ARTICLE I. IN GENERAL

Sec. 34-1. Attempt to commit misdemeanor.

Every person who attempts to commit an offense which is a misdemeanor shall be punishable by the same punishment prescribed for the offense the commission of which was the object of the attempt.
(Code 1986, § 12-1)

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-27.

Sec. 34-2. Concealing or compounding offenses.

If any person, knowing of the commission of an offense, shall take any money or reward, or an engagement therefor, upon an agreement or understanding, expressed or implied, to compound or conceal such offense, or not to prosecute therefor, or not to give evidence thereof, he shall, if such offense is a felony, be guilty of a class 2 misdemeanor, and if such offense is not a felony, unless it is punishable merely by forfeiture to him, he shall be guilty of a class 4 misdemeanor.
(Code 1986, § 12-2)

Cross reference(s)--Penalty for class 2 and class 4 misdemeanors, § 1-15.

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-462.

Sec. 34-3. Curfew for minors.

(a) It shall be unlawful for any minor who is not attended by his parents or guardian, or who does not have the valid permission of his parent or guardian, to frequent, loiter or be in any public place, whether on public or private property, between the hours of 12:00 midnight and 5:00 a.m.

(b) Each violation of this section shall constitute a class 4 misdemeanor.

(c) Any officer taking a minor into custody for violating this section shall comply with the provisions of Code of Virginia, § 16.1-247.
(Code 1986, § 12-3)

Cross reference(s)--Penalty for class 4 misdemeanor, § 1-15; minors prohibited in pool or billiard rooms and amusement centers, § 6-32; minors prohibited in public dancehalls where alcoholic beverages are consumed, sold or dispensed, § 6-74.

State law reference(s)--Authority to prohibit minors, Code of Virginia, § 15.2-926.

Secs. 34-4--34-35. Reserved.

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*State law reference(s)--Crimes against administration of justice, Code of Virginia, § 18.2-434 et seq.

ARTICLE II. OFFENSES AGAINST ADMINISTRATION OF JUSTICE*

Sec. 34-36. 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, firefighter or any town officer or employee in the performance of his 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, firefighter or any town officer or employee, he shall be guilty of a class 2 misdemeanor.

(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 duties as such, or to obstruct or impede the administration of justice in any court, he shall be deemed to be guilty of a class 1 misdemeanor.
(Code 1986, §§ 12-4, 12-7)

Cross reference(s)--Penalty for class 1 misdemeanor, § 1-15.

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-460.

Sec. 34-37. 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 guilty of a class 1 misdemeanor.
(Code 1986, § 12-5)

Cross reference(s)--Penalty for class 1 misdemeanor, § 1-15.

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-409.

Sec. 34-38. Officer receiving bribe to omit or delay service of process.

If any officer authorized to serve legal process receives any money or other thing of value, for omitting or delaying to perform any duty pertaining to his office, he shall be guilty of a class 2 misdemeanor.
(Code 1986, § 12-6)

Cross reference(s)--Penalty for class 2 misdemeanor, § 1-15.

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-440.

Sec. 34-39. Refusal to aid police officer.

(a) No person, on being requested by any police officer of the town, shall neglect or refuse to assist such officer:

(1) In the execution of his office in a criminal case.

(2) In the preservation of the peace.

(3) In the apprehending or securing of any person for a breach of the peace.

(4) In any case of escape or rescue.

(b) Any person violating this section shall be guilty of a class 2 misdemeanor.
(Code 1986, § 12-8)

Cross reference(s)--Penalty for class 2 misdemeanor, § 1-15.

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-463.

Sec. 34-40. Calling ambulance or fire apparatus without cause; malicious activation of fire alarm in public building.

(a) Any person who, without just cause therefor, calls or summons, by telephone or otherwise, any ambulance or fire apparatus, shall be deemed guilty of a class 1 misdemeanor.

(b) 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 deemed guilty of a class 1 misdemeanor.
(Code 1986, § 12-9)

Cross reference(s)--Penalty for class 1 misdemeanor, § 1-15; fire prevention and protection, ch. 26.

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-212A.

Secs. 34-41--34-70. Reserved.

ARTICLE III. OFFENSES AGAINST THE PERSON*

Sec. 34-71. Assault and battery.

Any person who shall commit a simple assault or assault and battery upon another person within the town shall be guilty of a class 1 misdemeanor. However, if a person intentionally selects the person against whom the offense is committed because of his 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.
(Code 1986, § 12-10)

Cross reference(s)--Penalty for class 1 misdemeanor, § 1-15.

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-57.

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*State law reference(s)--Crimes against the person, Code of Virginia, § 18.2-30 et seq.

Sec. 34-72. Abusive language.

It shall be unlawful for any person, in the presence or hearing of another, to curse or abuse such other person, or use any violent abusive language to such person concerning himself or any of his relations, or otherwise use such language, under circumstances reasonably calculated to provoke a breach of the peace. Any person violating this section shall be guilty of a class 3 misdemeanor.
(Code 1986, § 12-11)

Cross reference(s)--Penalty for class 3 misdemeanor, § 1-15.

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-416.

Sec. 34-73. Slander and libel.

(a) If any person shall falsely utter and speak, or falsely write and publish, of and concerning any female of chaste character, any words derogatory of such female's character for virtue and chastity, or imputing to such female acts not virtuous and chaste, or shall falsely utter and speak, or falsely write and publish, of and concerning another person, any words which, from their usual construction and common acceptation, are construed as insults and tend to cause acts of violence and a breach of the peace, or shall use grossly insulting language to any female of good character or reputation, he shall be guilty of a class 3 misdemeanor.

(b) A defendant charged with a violation of this section shall be entitled to prove, upon trial and in mitigation of the punishment, the provocation which induced the libelous or slanderous words or any other fact or circumstance tending to disprove malice or lessen the criminality of the offense.
(Code 1986, § 12-12)

Cross reference(s)--Penalty for class 3 misdemeanor, § 1-15.

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-417.

Sec. 34-74. Disorderly conduct in public places.

(a) A person is guilty of disorderly conduct and a class 1 misdemeanor if, with the intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he:

(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 at whom, individually, such conduct is directed; provided, however, such conduct shall not be deemed to include the utterance or display of any words or to include conduct otherwise made punishable under other provisions of this Code.

(2) Willfully or, being intoxicated, whether willfully or not, disrupts any meeting of the town council or a division or agency thereof, or of any school, literary society or place of religious worship, if such disruption prevents or interferes with the orderly conduct of such meeting or has a direct tendency to cause acts of violence by the person

at whom, individually, such disruption is directed; provided, however, such conduct shall not be deemed to include the utterance or display of any words or to include conduct otherwise made punishable under other provisions of this Code.

(b) The person in charge of any such building, place, conveyance or meeting may eject therefrom 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.
(Code 1986, § 12-13)

Cross reference(s)--Penalty for class 1 misdemeanor, § 1-15; disorderly persons prohibited in dancehalls, § 6-73.

State law reference(s)--Similar provisions and authority of town to adopt section on disorderly conduct, Code of Virginia, § 18.2-415.

Secs. 34-75--34-105. Reserved.

ARTICLE IV. OFFENSES AGAINST PEACE AND ORDER*

Sec. 34-106. Profane swearing and intoxication in public; penalty; transportation of public inebriates to detoxification center.

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, he shall be deemed guilty of a class 4 misdemeanor. In any area in which there is located a court-approved detoxification center a law enforcement officer may authorize the transportation, by police or otherwise, of public inebriates to such detoxification center in lieu of arrest; however, no person shall be involuntarily detained in such center.
(Code 1986, § 12-14)

Cross reference(s)--Penalty for class 4 misdemeanor, § 1-15.

State law reference(s)--Profane swearing, Code of Virginia, § 18.2-388; authority for transporting public inebriates to detoxification center in lieu of arrest, Code of Virginia, § 18.2-388.

Sec. 34-107. 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 guilty of a class 1 misdemeanor. Nothing in this section shall be construed to prohibit lawful picketing.
(Code 1986, § 12-17)

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-404.

***State law reference(s)**--Crimes against peace and order, Code of Virginia, § 18.2-404 et seq.

Sec. 34-108. Riots and unlawful assemblies.

(a) For the purposes of this section and sections 34-109 and 34-110 any unlawful use, by three or more persons acting together, of force or violence which seriously jeopardizes the public safety, peace or order is a riot.

(b) For the purposes of this section and sections 34-109 and 34-110, whenever three or more persons assembled share the common intent to advance some lawful or unlawful purpose by the commission of an act or acts 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, such assembly is an unlawful assembly.

(c) It shall be unlawful and a class 1 misdemeanor for any person to participate in any riot or unlawful assembly within the town.
(Code 1986, §§ 12-18, 12-19)

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-404.

Sec. 34-109. Remaining at scene of riot or unlawful assembly after warning to disperse.

Every person, except the owner or lessee of the premises, his family and nonrioting 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 guilty of a class 3 misdemeanor.
(Code 1986, § 12-20)

Cross reference(s)--Penalty for class 3 misdemeanor, § 1-15.

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-407.

Sec. 34-110. Dispersal of unlawful or riotous assemblies.

(a) When any number of persons, whether armed or not, are unlawfully or riotously assembled, the police officials of the town 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. If, upon such command, the persons unlawfully assembled do not disperse immediately, the police officials may use such force as is necessary to disperse them and to arrest those who fail or refuse to disperse. To this end, the police officials of the town may request and use the assistance and services of private citizens.

(b) Every endeavor must be used, both by the police officers and by the officer commanding any other force, 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 such persons 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 which 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.
(Code 1986, § 12-21)

State law reference(s)--Similar provisions, Code of Virginia, §§ 18.2-411, 18.2-412.

Secs. 34-111--34-140. Reserved.

ARTICLE V. OFFENSES INVOLVING MORALS AND DECENCY*

Sec. 34-141. Prostitution.

(a) Any person who, for money or its equivalent, commits adultery, fornication or any act in violation of Code of Virginia, § 18.2-361, as amended, or offers to commit adultery, fornication or any act in violation of Code of Virginia, § 18.2-361, as amended, and thereafter does any substantial act in furtherance thereof, shall be guilty of being a prostitute, or prostitution, which shall be punishable as a class 1 misdemeanor.

(b) Any person who offers money or its equivalent to another for the purpose of engaging in sexual acts as enumerated above and thereafter does any substantial act in furtherance thereof shall be guilty of solicitation of prostitution and shall be guilty of a class 1 misdemeanor.
(Code 1986, § 12-22)

Cross reference(s)--Penalty for class 1 misdemeanor, § 1-15.

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-346.

Sec. 34-142. Bawdy places.

(a) It shall be unlawful and a class 1 misdemeanor for any person to keep any bawdy place, or to frequent, reside in or at or visit, for immoral purposes, any bawdy place.

(b) For the purpose of this section, "bawdy place" shall mean any place, within or without any building or structure, within this town which is used or is to be used for lewdness, assignation or prostitution.

(c) In a prosecution for a violation of this section, the general reputation of the place may be proved.
(Code 1986, § 12-23)

Cross reference(s)--Penalty for class 1 misdemeanor, § 1-15.

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-347.

***State law reference(s)--**Crimes involving morals and decency, Code of Virginia, § 18.2-325 et seq.

Sec. 34-143. Aiding prostitution or illicit sexual intercourse.

It shall be unlawful and a class 1 misdemeanor for any person, with knowledge of or good reason to believe the immoral purpose of such visit, to take or transport or assist in taking or transporting, or offer to take or transport, on foot or in any way, any person to a place, whether within or without any building or structure, used or to be used for the purpose of lewdness, assignation or prostitution within the town; or to procure or assist in procuring for the purposes of illicit sexual intercourse, or to give any information or direction to any person with intent to enable such person to commit an act of prostitution.
(Code 1986, § 12-24)

Cross reference(s)--Penalty for class 1 misdemeanor, § 1-15.

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-348.

Sec. 34-144. Using vehicle to promote prostitution or unlawful sexual intercourse.

It shall be unlawful and a class 1 misdemeanor for any owner or chauffeur of any vehicle, with knowledge or reason to believe the vehicle is to be used for such purpose, to use the vehicle or to allow the vehicle to be used for the purpose of prostitution or unlawful sexual intercourse, or to aid or promote such prostitution or unlawful sexual intercourse by the use of any such vehicle.
(Code 1986, § 12-25)

Cross reference(s)--Penalty for class 1 misdemeanor, § 1-15.

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-349.

Secs. 34-145--34-175. Reserved.

ARTICLE VI. OFFENSES AGAINST PROPERTY*

Sec. 34-176. Petit larceny.

Any person who:

(1) Commits larceny from the person of another of money or other thing of value of less than $5.00; or

(2) Commits simple larceny not from the person of another of goods and chattels of the value of less than $200.00, except as provided in Code of Virginia, § 18.2-95(iii), shall be deemed guilty of petit larceny, which shall be punishable as a class 1 misdemeanor.
(Code 1986, § 12-26)

Cross reference(s)--Penalty for class 1 misdemeanor, § 1-15.

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-96.

Sec. 34-177. Receiving or concealing stolen goods.

If any person shall buy or receive from another person, or aid in concealing, any stolen goods or other thing, the subject of petit larceny under section 34-176, knowing it to have been stolen, he shall be deemed guilty of larceny thereof and a class 1 misdemeanor, and may be proceeded against, although the principal offender is not convicted.
(Code 1986, § 12-27)

Cross reference(s)--Penalty for class 1 misdemeanor, § 1-15.

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-108.

Sec. 34-178. Fraudulent use of pay phones, vending machines, other coin-operated machines or devices.

(a) No person 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.

(b) No person shall obtain or receive telephone or telegraph service, parking privileges, merchandise or any other service or property from any coin box telephone, parking meter, vending machine or other machine, 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 therefor by the owner, lessee or licensee of such coin box telephone, parking meter, vending machine or other machine.

(c) A violation of any provision of this section shall constitute a class 3 misdemeanor.
(Code 1986, § 12-28)

Cross reference(s)--Penalty for class 3 misdemeanor, § 1-15; license tax on coin machine operators, § 50-274.

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-179.

Sec. 34-179. Shoplifting.

(a) Whoever, without authority, with the intention of converting goods or merchandise to his own or another's use without having paid the full purchase price thereof, or of defrauding the owner of the value of the goods or merchandise:

***State law reference(s)--**Crimes against property, Code of Virginia, § 18.2-77 et seq.; crimes involving fraud, Code of Virginia, § 18.2-168 et seq.

(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, assist, 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 $200.00, be deemed guilty of petit larceny. The willful concealment of goods or merchandise of any store or other mercantile establishment, while still on the premises thereof, shall be prima facie evidence of an intent to convert and defraud the owner thereof out of the value of the goods or merchandise.

(b) Any person convicted for the first time of an offense under this section shall be punished as for a class 1 misdemeanor.

(c) Any person convicted of an offense of larceny or any offense deemed to be or punished as larceny under any provision of the Code, and it is alleged in the warrant, indictment or information on which he is convicted, and admitted, or found by the jury or judge before whom he is tried, that he 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 thereof, he shall be confined in jail not less than 30 days nor more than 12 months; and for a third, or any subsequent offense, he shall be punished as provided in Code of Virginia, § 18.2-104, as amended.

(d) Any person who has been convicted of violating the provisions of this section shall be civilly liable to the owner for the retail value of any goods and merchandise illegally converted and not recovered by the owner, and for all costs incurred in prosecuting such person under the provisions of this section. Such costs shall be limited to actual expenses, including the base wage of one employee acting as a witness for the state and suit costs. The total amount of allowable costs granted under this section shall not exceed $250.00 excluding the retail value of the goods and merchandise.

(e) A merchant, agent or employee of the merchant, who has probable cause to believe that a person has shoplifted in violation of this section or section 34-176 on the premises of the merchant, may detain such person for a period not to exceed one hour pending arrival of a law enforcement officer.

(f) A merchant, agent or employee of the merchant, who causes the arrest or detention of any person pursuant to the provisions of this section or section 34-176, 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 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. The activation of an electronic article surveillance device as a result of a person exiting the premises or an area within the premises of a merchant where an electronic article surveillance device is located shall constitute probable cause for the detention of such person by such merchant, his agent or employee, provided such person is detained only in a reasonable manner and for only such time as is necessary for an inquiry into the circumstances surrounding the activation of the device, and provided that clear and visible notice is posted at each exit and location within the premises where such a device is located indicating the presence of an antishoplifting or inventory control device. For purposes of this subsection, "electronic article surveillance device" means an electronic device designed and operated for the purpose of detecting the removal from the premises, or a protected area within such premises, of specially marked or tagged merchandise.

(g) As used in this section, "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.

(Code 1986, § 12-29)

Cross reference(s)--Penalty for class 1 misdemeanor, § 1-15.

State law reference(s)--Shoplifting, Code of Virginia, §§ 18.2-103--18.2-106; conditions under which the offense is a felony, Code of Virginia, § 18.2-104.

Sec. 34-180. Manufacture, sale of devices to shield against electronic detection of shoplifting.

It shall be unlawful for any person to manufacture, sell, offer for sale, distribute or possess any specially coated or laminated bag or other device primarily designed and intended to shield shoplifted merchandise from detection by an antitheft electronic alarm sensor, with the intention that it be used to aid in the shoplifting of merchandise. A violation of this section shall be punishable as a class 3 misdemeanor.

(Code 1986, § 12-30)

Cross reference(s)--Penalty for class 3 misdemeanor, § 1-15.

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-105.2.

Sec. 34-181. Injuring, destroying property, monument.

If any person unlawfully destroys, defaces, damages or removes without the intent to steal any property, real or personal, not his 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 shall be guilty of a class 1 misdemeanor if the value of or damage to the property or monument is less than $1,000.00 or if the value of or damage to the property or monument is $1,000.00 or more he shall be punished as provided in Code of Virginia, § 18.2-137. 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.
(Code 1986, § 12-31)

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-137.

Sec. 34-182. Injuring, tampering with vehicles, boats, aircraft.

(a) 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 such 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 guilty of a class 1 misdemeanor.

(b) Any person who shall, without the consent of the owner or person in charge of a vehicle, aircraft, boat, vessel or locomotive or other rolling stock of a railroad, climb into or upon such vehicle, aircraft, boat, vessel or locomotive or other rolling stock of a railroad, climb into or upon such vehicle, aircraft, boat, vessel or 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 or 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 thereof or to set such vehicle, aircraft, boat, vessel or locomotive or other rolling stock of a railroad in motion, with the intent to commit any crime, malicious mischief or injury thereto, shall be guilty of a class 1 misdemeanor. This subsection 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.

(c) The provisions of this section 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 agents or employees of such lienholder.
(Code 1986, § 12-32)

Cross reference(s)--Penalty for class 1 misdemeanor, § 1-15.

State law reference(s)--Damaging property, Code of Virginia, § 18.2-137 et seq.; authority to prohibit damaging or defacing public property, Code of Virginia, § 18.2-138.1; damaging or breaking other property, Code of Virginia, §§ 18.2-146--18.2-148.

Sec. 34-183. Trespass after warning.

If any person shall, without authority of law, go upon or remain upon the lands, buildings or premises of another, or any part, portion or area thereof, after having been forbidden to do so, either orally or in writing, by the owner, lessee, custodian or other person lawfully in or after having been forbidden to do so by a sign or signs 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 thereof at a place or places where it or they may be reasonably seen, or if any person, whether he 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 Code of Virginia, §§ 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 Code of Virginia, § 20-103, and after having been served with such order, he shall be guilty of a class 1 misdemeanor. This section shall not be construed to affect in any way the provisions of Code of Virginia, §§ 18.2-132 through 18.2-136.
(Code 1986, § 12-33)

Cross reference(s)--Penalty for class 1 misdemeanor, § 1-15.

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-119.

Sec. 34-184. Instigating, urging 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 or area thereof, 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 thereof, or knowing such other person to have been forbidden to do so by a sign posted on such lands, buildings or premises, or part, portion or area thereof, at a place where it may reasonably be seen; or if any person shall, on such lands, buildings or premises, or part, portion or area thereof, prevent or seek to prevent the owner, lessee, custodian, person in charge or any of his employees from rendering service to any person not so forbidden, he shall be deemed guilty of a class 1 misdemeanor.
(Code 1986, § 12-34)

Cross reference(s)--Penalty for class 1 misdemeanor, § 1-15.

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-120.

Sec. 34-185. Peeping Toms.

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 guilty of a class 1 misdemeanor.
(Code 1986, § 12-35)

Cross reference(s)--Penalty for class 1 misdemeanor, § 1-15.

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-130.

Sec. 34-186. Trespass upon church or school property.

(a) It shall be unlawful for any person, without the consent of some person authorized to give such consent, to go or enter upon, in the nighttime, the premises or property of any church or upon any school property for any purpose other than to attend a meeting or service held or conducted in such church or school property.

(b) It shall be unlawful for any person, whether or not a student, to enter upon or remain upon any school property in violation of any direction to vacate the property by a person authorized to give such direction or any posted notice which contains such information, posted at a place where it reasonably may be seen. Each time such person enters upon or remains on the posted premises or after such direction that person refuses to vacate school property, it shall constitute a separate offense.

(c) Any person violating the provisions of subsection (a) shall be guilty of a class 3 misdemeanor and subsection (b) shall be guilty of a class 1 misdemeanor, except that any person, other than a parent, who violates subsection (b) with the intent to abduct a student shall be punished as provided in Code of Virginia, § 18.2-128.

(d) For purposes of this section, "school property" includes a school bus as defined in Code of Virginia, § 46.2-100.
(Code 1986, § 12-36)

Cross reference(s)--Penalty for misdemeanors, § 1-15.

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-128.

Sec. 34-187. Injuries to certain church property, cemeteries, burial grounds.

Any person who willfully or maliciously commits any of the following acts is guilty of a class 1 misdemeanor:

(1) Destroys, removes, cuts, breaks, or injures any tree, shrub, or plant on any church property or within any cemetery or lot of any memorial or monumental association.

(2) Destroys, mutilates, injures, or removes and carries away any flowers, wreaths, vases or other ornaments placed within any church or on church property, or placed upon or around any grave, tomb, monument, or lot in any cemetery, graveyard, or other place of burial.

(3) Obstructs proper ingress to and egress from any church or any cemetery or lot belonging to any memorial or monumental association.

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-127A.

Sec. 34-188. Entering property of another for purpose of damaging it.

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 the contents thereof or in any manner to interfere with the rights of the owner, user or the occupant thereof to use such property free from interference. Any person violating the provisions of this section shall be guilty of a class 1 misdemeanor. However, if a person intentionally selects the property entered because of the race, religious conviction, color or national origin of the owner, user or occupant of the property, 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.
(Code 1986, § 12-37)

Cross reference(s)--Penalty for class 1 misdemeanor, § 1-15.

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-121.

Secs. 34-189--34-220. Reserved.

ARTICLE VII. OFFENSES AGAINST HEALTH AND SAFETY*

Sec. 34-221. Abandoned or discarded refrigerators, 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, which is airtight, without first removing the door or hinges from such icebox, refrigerator, container, device or equipment.

(b) This section shall not apply to any icebox, refrigerator, container, device or equipment which 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 thereof.

***State law reference(s)--**Crimes involving health and safety, Code of Virginia, § 18.2-247 et seq.

(c) A violation of this section shall constitute a class 3 misdemeanor.
(Code 1986, § 12-38)

Cross reference(s)--Penalty for class 3 misdemeanor, § 1-15.

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-319.

Secs. 34-222--34-250. Reserved.

ARTICLE VIII. OBSCENITY*

Sec. 34-247. Adult Uses.

Intent. Within the city, it is recognized that there are some uses that, because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when several of them are concentrated under certain circumstances or located in direct proximity to residential neighborhoods, thereby having a deleterious effect upon the adjacent areas. Special regulation of these uses is necessary to ensure that these adverse effects will not contribute to the blighting of downgrading of the surrounding neighborhood. These special regulations are itemized in this section. The primary control of regulation if for the purpose of preventing the concentration of location of these uses in a manner that would create such adverse effects. Uses subject to these controls are as follows:

(1) Adult bookstore or adult video store.
(2) Adult drive-in theater
(3) Adult entertainment establishment
(4) Adult mini-motion picture theater
(5) Adult model studio
(6) Adult motion picture arcade
(7) Adult motion picture theater
(8) Adult use

Sec. 34-248. Requirements

Each of the above stated uses shall require a Special Exception Permit. Such permit shall be subject to the requirements of Sec._____, Special Exception Permit, Sec._____ and Sec._____. These uses may only be considered in an M-1 or M-2 zoning district.

Sec. 34-249. Requirements and Standards

(a) No adult use may be established within 1,000 feet of any other such adult use in any zoning district.
(b) No adult use may be established within 750 feet of a residentially zoned district (R-1A, R-1, R-2, R-3, R-4, RT, PUD, GCR or RMH), nor within 750 feet of any property occupied by a church or other place of worship, public library, public or private school,

educational institution public park, playground, playfield, lodging house, tourist home, child day care center, hotel, or motel.
(c) The establishment of an adult use as referred to herein shall include the opening of such business as a new business, the relocation of such business, the enlargement of such business in either scope or area, or the conversion, in whole or in part, of an existing business to any adult use.

Sec. 34-250. Measurement of distance.

All distances specified in this division shall be measured from the property line of one use to another. The distance between an adult use and a residentially zoned district shall be measured from the property line of the use to the nearest point of the boundary line of the residentially zoned district.

DIVISION 1. GENERALLY

Sec. 34-251. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Obscene means that which, considered as a whole, has as its dominant theme or purpose an appeal to prurient interest in sex, that is, a shameful or morbid interest in nudity, sexual conduct, sexual excitement, excretory functions or products thereof, 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, lacks serious literary, artistic, political or scientific value.
(Code 1986, § 11-2)
Cross reference(s)--Definitions generally, § 1-2.
State law reference(s)--Similar provisions, Code of Virginia, § 18.2-372.

Adult bookstore or *adult video store* means an establishment which has as a substantial or significant portion of its stock in trade, books, magazines, periodicals, films, videos or similar printed materials and which, with respect to the entire premises or a portion or a section of the premises, limits its customers to persons over 18 years of age, or as one of its principal business purposes offers for sale, rental or viewing for any form of consideration any one or more of the following:

(a) Books, magazines, periodicals or other printed matter, or photographs, Films, motion pictures, video cassettes, slides, tapes, records or other forms of visual or audio representations which are characterized by an emphasis upon the depiction or description of “specified sexual activities” or “specified anatomical areas”; or
(b) Instruments, devices or paraphernalia which are designed for use in connection with “specified sexual activities.”

Adult drive-in theater means an open lot or part thereof, with appurtenant facilities, devoted primarily to the presentation of motion pictures, films, theatrical productions and other forms of visual productions, for any form of consideration, to persons in motor vehicles or on outdoor seats, and 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.

Adult entertainment establishment means a restaurant, nightclub, private club or similar establishment which features, on a regular basis, live performances involving persons who are nude or seminude. For the purposes of this provision, "seminude" shall mean:

(a) Less than completely and opaquely covered public region, buttocks, or female breasts below a point immediately above the top of the areolae, excepting any portion of the cleavage of the female breast exhibited by a dress, shirt, leotard, bathing suit or other wearing apparel, provided the areolae are not exposed, but under no circumstances less than completely covered genitals, anus, or areolae of the female breast;

(b) Male genitals in a state of arousal even if completely and opaquely covered. Any establishment that features such performance more than one day in a 30 days' period shall be deemed to be an adult entertainment establishment. The above restrictions shall not apply to a legitimate theatrical performance where nudity or semi nudity is only incidental to the primary purpose of the performance.

Adult minimotion Picture Theater means an establishment, with a capacity of more than five, but less than 50 persons, where for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material which is distinguished or characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas" for observation by patrons.

Adult model studio means any establishment open to the public where, for any form of consideration or gratuity , figure models who display "specified anatomical areas" are provided to be observed, sketched, drawn, painted, sculpted, photographed, or similarly depicted by persons, other than the proprietor, paying such consideration or gratuity. This provision shall not apply to any school of art which is operated by an individual, firm, association, partnership, corporation or institution which meets the requirements established in Code of Virginia (1950), as amended, for the issuance of conferring of, and is in fact authorized thereunder to issue and confer, a diploma.

Adult motion picture arcade means any place to which the public is permitted or invited wherein coin-or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, or other image producing devices are maintained to show images to five or fewer persons per machine at any one time, and

where the images so displayed are distinguished or characterized by an emphasis on depicting or describing "specified sexual activities" or "specified anatomical areas."

Adult motion picture Theater means an establishment, with a capacity of 50 or more persons, where, for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are shown; and in which a substantial portion of the total presentation time is devoted to the showing of material which is distinguished or characterized by an emphasis upon the depiction or description of "specified sexual activities" or "specified anatomical areas" for observation by patrons. A finding by the zoning administrator that sexually oriented films predominate or that a predominant number of films are restricted to adults shall be presumed to be correct unless the subject owner or operator rebuts the presumption by clear and convincing evidence.

Adult use means any adult bookstore, adult video store, adult entertainment establishment, adult motion picture theater, adult minimotion picture theater, adult motion picture arcade model studio, or adult drive-in theater, as defined herein. Also included are establishments that sell instruments, devices or paraphernalia that are designed for use in connection with specified sexual activities.

Body piercer means any person who for remuneration penetrates the skin of a person to make a hole, mark or scar, generally permanent by nature.

Body piercing means the act of penetrating the skin of a person to make a hole, mark or scar, generally permanent in nature.

Body piercing salon means any place in which a fee is charged for the act of penetrating the skin of a person to make a hole, mark or scar, generally permanent in nature.

Body piercing school means a place or establishment licensed by the board to accept and train students in body piercing.

Specified anatomical areas.

(a) Less than completely and opaquely covered:
    (1) Human genitals, public regions;
    (2) Buttocks; and
    (3) Female breasts below a point immediately above the top of the areola.

(b) Human male genitals in a discernibly turgid state, even if completely covered and opaquely covered.

Specified sexual activities.

(a) Human genitals in a state of stimulation or arousal;
(b) Acts of human masturbation, sexual intercourse or sodomy; and
(c) Fondling or other erotic touching of human genitals, public regions, buttock or female breasts.

Tattoo parlor means any place in which tattooing is offered or practiced.

Tattoo school means a place or establishment licensed by the board to accept and train students in tattooing.

Tattooer means any person who for remuneration practices tattooing.

Tattooing means the placing of designs, letters, scrolls, figures, symbols or any other marks upon or under the skin of any person with ink or any other substance, resulting in the permanent coloration of the skin, including permanent make-up or permanent jewelry, by the aid of needles or any other instrument designed to touch or puncture the skin.

Sec. 34-252. Violations.

Unless otherwise specifically provided, a violation of any provision of this article shall constitute a class 1 misdemeanor.
(Code 1986, § 11-1)

Cross reference(s)--Penalty for class 1 misdemeanor, § 1-15.

Sec. 34-253. Obscene items enumerated.

For the purposes of this article, 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.

_____

***State law reference(s)--**Authority of council to adopt ordinance similar to the provisions of this chapter, Code of Virginia, § 18.2-389.

(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.

(Code 1986, § 11-3)

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-373.

Sec. 34-254. Production, publication, sale, possession of obscene items.

(a) It shall be unlawful for any person knowingly to:

(1) Prepare an obscene item for the purpose 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.

(4) Have in his 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 section.

(b) For the purposes of this section, "distribute" shall mean delivery in person or by mail or messenger or by any other means by which obscene items may pass from one person to another.

(Code 1986, § 11-4)

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-374.

Sec. 34-255. Obscene exhibitions and performances generally.

It shall be unlawful for any person knowingly to:

(1) Produce, promote, prepare, present, manage, direct, carry on or participate in any obscene exhibition or performance, including the exhibition or performance of any obscene motion picture, play, drama, show, entertainment, exposition, tableau or scene; provided, that no employee of any person or legal entity operating a theater, garden, building, structure, room or place which presents such obscene exhibition or performance shall be subject to prosecution under this section if the employee is not the manager of the theater or an officer of such entity, and has no financial interest in such theater, other than receiving salary and wages.

(2) Own, lease or manage any theater, garden, building, structure, room or place and lease, let, lend or permit such theater, garden, building, structure, room or place to be used for the purpose of presenting such obscene exhibition or performance or to fail to post prominently therein the name and address of a person resident in the town who is the manager of the establishment or place.

(Code 1986, § 11-5)

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-375.

Sec. 34-256. Advertising obscene items, exhibitions or performances generally.

It shall be unlawful for any person knowingly to prepare, print, publish or circulate, or cause to be prepared, printed, published or circulated, any notice or advertisement of any obscene item referred to in section 34-253, or of any obscene performance or exhibition referred to in section 34-255, stating or indicating where such obscene item, exhibition or performance may be purchased, obtained, seen or heard.

(Code 1986, § 11-6)

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-376.

Sec. 34-257. Obscene placards, posters, bills.

It shall be unlawful for any person knowingly to expose, place, display, post, 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 which is obscene, or which advertises or promotes any obscene item referred to in section 34-253, or any obscene exhibition or performance referred to in section 34-255, or knowingly to permit it to be displayed on property belonging to or controlled by him.
(Code 1986, § 11-7)

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-377.

Sec. 34-258. Coercing acceptance of obscene articles or publications.

No person shall, as a condition to any sale, allocation, consignment or delivery for resale of any paper, magazine, book, periodical or publication, require that the purchaser or consignee receive for resale any other article, book or other publication which is obscene; nor shall any person deny or threaten to deny any franchise or impose or threaten to impose any penalty, financial or otherwise, by reason of the failure or refusal of any person to accept such articles, books or publications, or by reason of the return thereof.
(Code 1986, § 11-8)

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-378.

Sec. 34-259. Obscene photographs, slides and motion pictures.

Every person who knowingly:

(1) Photographs himself or any other person, for purposes of preparing an obscene film, photograph, negative, slide or motion picture for purposes of sale or distribution; or

(2) Models, poses, acts or otherwise assists in the preparation of any obscene film, photograph, negative, slide or motion picture for purposes of sale or distribution, shall be guilty of a class 3 misdemeanor.

(Code 1986, § 11-9)

Cross reference(s)--Penalty for class 3 misdemeanor, § 1-15.

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-382.

Sec. 34-260. Indecent exposure.

It shall be unlawful for any person intentionally to make an obscene display or exposure of his person, or the private parts thereof, in any public place, or in any place where others are present, or to procure another to so expose himself. No person shall be deemed in violation of this section for breastfeeding a child.
(Code 1986, § 11-10)

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-387.

Sec. 34-261. Employing or permitting minor to assist in violation of article.

It shall be unlawful for any person intentionally to, in any manner, hire, employ, use or permit any person under the age of 18 years to do or assist in doing any act or thing constituting an offense under this article.
(Code 1986, § 11-11)

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-379.

Sec. 34-262. Exceptions.

Nothing contained in this article shall be construed to apply to:

(1) The purchase, distribution, exhibition or loan of any book, magazine or other printed or manuscript material by any library, school or institution of higher learning supported by public appropriation.

(2) The purchase, distribution, exhibition or loan of any work of art by any museum of fine arts, school or institution of higher learning supported by public appropriation.

(3) The exhibition or performance of any play, drama, tableau or motion picture by any theatre, museum of fine arts, school or institution of higher learning supported by public appropriation.

(Code 1986, § 11-12)

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-383.

Secs. 34-263--34-290. Reserved.

DIVISION 2. JUVENILES*

Sec. 34-291. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Harmful to juveniles means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement or sadomasochistic abuse, when it:

(1) Predominantly appeals to the prurient, shameful or morbid interest of juveniles;

(2) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for juveniles; and

(3) Taken as a whole, lacks serious literary, artistic, political or scientific value for juveniles.

Juvenile means any person under the age of 18 years.

Knowingly means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both the character and content of any material described in this division, which is reasonably susceptible of examination by the defendant, and the age of the juvenile; provided, however, that an honest mistake shall constitute an excuse from liability if the defendant made a reasonable bona fide attempt to ascertain the true age of the juvenile.

Nudity means a state of undress so as to expose the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered or uncovered male genitals in a discernibly turgid state.

_____

***State law reference---**Prohibited sales and loans to minors, Code of Virginia, § 18.2-390 et seq.

_____

Sadomasochistic abuse means actual or explicitly simulated flagellation or torture by or upon a person who is nude or clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

Sexual conduct means actual or explicitly simulated acts of masturbation, homosexuality, sexual intercourse or physical contact, in an act of apparent sexual stimulation or gratification, with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person is a female, breast.
Sexual excitement means the condition of human male or female genitals when in a state of sexual stimulation or arousal.
(Code 1986, § 11-23)

Cross reference(s)--Definitions generally, § 1-2.

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-390.

Sec. 34-292. Unlawful sales or loans to juveniles generally.

It shall be unlawful for any person knowingly to sell or loan to a juvenile, or knowingly to display for commercial purpose in a manner whereby juveniles may examine and peruse:

(1) Any picture, photograph, drawing, sculpture, motion picture film or similar visual representation or image of a person or portion of the human body which depicts sexually explicit nudity, sexual conduct or sadomasochistic abuse and which is harmful to juveniles.

(2) Any book, pamphlet, magazine, printed matter, however reproduced, or sound recording which contains any matter enumerated in subsection (1) of this section, or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct or sadomasochistic abuse and which, taken as a whole, is harmful to juveniles.

(Code 1986, § 11-24)

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-391(a).

Sec. 34-293. Admitting juveniles to premises exhibiting obscene films or other presentations.

It shall be unlawful for any person knowingly to sell to a juvenile an admission ticket or pass, or knowingly to admit a juvenile to premises whereon there is exhibited a motion picture, show or other presentation which, in whole or in part, depicts sexually explicit nudity, sexual conduct or sadomasochistic abuse and which is harmful to juveniles, or to exhibit any such motion picture at any premises which are not designed to prevent viewing, from any public way, of such motion picture by juveniles not admitted to the premises.

(Code 1986, § 11-25)

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-391(b).

Sec. 34-294. Misrepresentation as to juvenile's age.

(a) It shall be unlawful for any juvenile falsely to represent to any person mentioned in section 34-292 or 34-293, or to his agent, that such juvenile is 18 years of age or older, with the intent to procure any material set forth in section 34-292, or with the intent to procure such juvenile's admission to any motion picture, show or other presentation set forth in section 34-293.

(b) It shall be unlawful for any person knowingly to make a false representation to any person mentioned in section 34-292 or 34-293, or to his agent, that he is the parent or guardian of any juvenile, or that any juvenile is 18 years of age, with the intent to procure any material set forth in section 34-292, or with the intent to procure such juvenile's admission to any motion picture, show or other presentation set forth in section 34-293.

(Code 1986, § 11-26)

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-391(c), (d).

Sec. 34-295. Exceptions.

Nothing contained in this article shall be construed to apply to:

(1) The purchase, distribution, exhibition or loan of any work of art, book, magazine or other printed or manuscript material by any accredited museum, library, school or institution of higher learning.

(2) The exhibition or performance of any play, drama, tableau or motion picture by any theater, museum, school or institution of higher learning, either supported by public appropriation or which is an accredited institution supported by private funds.

(Code 1986, § 11-27)

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-391.1.

Secs. 34-296--34-325. Reserved.

ARTICLE IX. OFFENSES REGARDING WEAPONS

Sec. 34-326. Carrying concealed weapon.

(a) If any person carries about his person, hidden from common observation:

(1) Any pistol, revolver or other weapon designed or intended to propel a missile of any kind;

(2) Any dirk, Bowie knife, switchblade knife, razor, slingshot, metal knucks, blackjack;

(3) Any flailing instrument consisting of two or more rigid parts connected in such a manner as to allow them to swing freely, which may be known as a nun chahka, nunchuck, nunchakee, shuriken or fighting chain;

(4) Any disc, of whatever configuration, having at least two points or pointed blades which is designed to be thrown or propelled and which may be known as a throwing star or oriental dart; or

(5) Any weapon of like kind as those enumerated above,

he shall be guilty of a class 1 misdemeanor, and such weapon shall be forfeited to the town and may be seized by an officer as forfeited, and such as may be needed for police officers or conservators of the peace shall be devoted to that purpose, and the remainder shall be destroyed by the officer having them in charge.

(b) For the purposes of this section, a weapon shall be deemed to be hidden from common observation when it is observable but is of such deceptive appearance as to disguise the weapon's true nature.

(c) This section shall not apply to:

(1) Any person while in his own place of abode or the curtilage thereof.

(2) Any police officers, sergeants, sheriffs, deputy sheriffs or regular game wardens appointed pursuant to Code of Virginia, § 29.1-200 et seq.

(3) Any regularly enrolled member of a target shooting organization who is at, or going to or from, an established shooting range, provided the weapons are unloaded and securely wrapped while being transported.

(4) Any regularly enrolled member of a weapons collecting organization who is at, or going to or from, a bona fide weapons exhibition, provided the weapons are unloaded and securely wrapped while being transported.

(5) Any person carrying such weapons between his place of abode and a place of purchase or repair, provided the weapons are unloaded and securely wrapped while being transported.

(d) This section shall not apply to any of the following individuals while in the discharge of their official duties, or while in transit to or from such duties:

(1) Carriers of the United States mail in rural districts.

(2) Officers or guards of any state correctional institution.

(3) Campus police officers appointed pursuant to Code of Virginia, § 23-232 et seq.

(4) Conservators of the peace, except that the following conservators of the peace shall not be permitted to carry a concealed weapon without obtaining a permit as provided in Code of Virginia, § 18.2-308: notaries public; registrars; drivers, operators or other persons in charge of any motor vehicle carrier of passengers for hire; commissioners in chancery.

(5) Noncustodial employees of the state department of corrections designated to carry weapons by the director of such department pursuant to Code of Virginia, § 53.1-29.

(e) This section shall not apply to any person who has been granted permission to carry a concealed weapon in accordance with state law.

(Code 1986, § 21-1)

Cross reference(s)--Penalty for class 1 misdemeanor, § 1-15.

State law reference(s)--Authority of circuit court to grant permission to carry concealed weapons, Code of Virginia, § 18.2-308; concealed weapons, Code of Virginia, § 18.2-308 et seq.

Sec. 34-327. Carrying dangerous weapon to place of religious worship.

If any person shall carry any gun, pistol, Bowie knife, dagger or other dangerous weapon, without good and sufficient reason, to a place of worship while a meeting for religious purposes is being held at such place, he shall be guilty of a class 4 misdemeanor.
(Code 1986, § 21-2)

Cross reference(s)--Penalty for class 4 misdemeanor, § 1-15.

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-283.

Sec. 34-328. Reserved.

Sec. 34-329. Pointing or brandishing firearm or object similar in appearance.

(a) It shall be unlawful for any person to point or brandish any firearm or any object similar in appearance to a firearm, whether capable of being fired or not, in such manner as to reasonably induce fear in the mind of another. Persons violating the provisions of this section shall be guilty of a class 1 misdemeanor.

(b) Any police officer, in the performance of his duty in making an arrest under the provisions of this section shall not be civilly liable in damages for injuries or death resulting to the person being arrested, if he had reason to believe that the person being arrested was pointing or brandishing the firearm or object which was similar in appearance to a firearm, with intent to induce fear in the mind of another.

(c) For purposes of this section, the word "firearm" shall mean any weapon in which ammunition may be used or discharged, by explosion or pneumatic pressure. The word "ammunition" shall mean cartridge, pellet, ball, missile or projectile adapted for use in a firearm.
(Code 1986, § 21-4)

Cross reference(s)--Penalty for class 1 misdemeanor, § 1-15.

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-282.

Sec. 34-330. Discharging firearm in public place.

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 in the town, he shall be guilty of a class 1 misdemeanor; provided, that this section shall not apply to any law enforcement officer in the performance of his official duties nor to any other person whose willful act is otherwise justifiable or excusable at law in the protection of his life or property, or is otherwise specifically authorized by law.
(Code 1986, § 21-5)

Cross reference(s)--Penalty for class 1 misdemeanor, § 1-15.

State law reference(s)--Discharge of firearms, Code of Virginia, § 18.2-280; authority to regulate discharge of firearms, Code of Virginia, § 15.2-1113.

Sec. 34-331. Discharge of slingshot, airgun, bow and arrow.

(a) It shall be unlawful for any person to shoot or discharge a slingshot, gravel shooter, airgun, air rifle, air pistol or bow and arrow upon the streets or alleys of the town, or any other place in the town when the missile from same is likely to cross any street or alley or any lot adjacent to the lot where the shooting or discharge takes place.

(b) A violation of this section shall constitute a class 4 misdemeanor. Upon conviction of a person for a second violation of this section, the weapon used shall be confiscated and become the property of the town.
(Code 1986, § 21-6)

Sec. 34-332. Sale, delivery, furnishing of blackjacks, metal knucks, switchblade knives, similar weapons.

If any person sells or barters, or exhibits for sale or for barter, or gives or furnishes, or causes to be sold, bartered, given or furnished, or has in his possession or under his control, with the intent of selling, bartering, giving or furnishing, any blackjack, brass or metal knucks, any disc of whatever configuration having at least two points or pointed blades which is designed to be thrown or propelled and which may be known as a throwing star or oriental dart, ballistic knife, switchblade knife or like weapon, such person shall be guilty of a class 4 misdemeanor. The having in one's possession of any such weapon shall be prima facie evidence, except in the case of a conservator of the peace, of his intent to sell, barter, give or furnish it.
(Code 1986, § 21-7)

Cross reference(s)--Penalty for class 4 misdemeanor, § 1-15.

State law reference(s)--Sale, delivery, etc., of weapons, Code of Virginia, § 18.2-311.

Sec. 34-333. Sale, delivery, furnishing of toy firearms discharging blank or ball charges.

(a) No person shall sell, barter, exchange, furnish or dispose of, by purchase, gift or in any other manner, any toy gun, pistol, rifle or other toy firearm, if the same shall, by means of powder or other explosive, discharge blank or ball charges. Any person violating the provisions of this section shall be guilty of a class 4 misdemeanor. Each sale of any of the articles specified to any person shall constitute a separate offense.

(b) Nothing in this section shall be construed as preventing the sale of what are commonly known as cap pistols.
(Code 1986, § 21-8)

Cross reference(s)--Penalty for class 4 misdemeanor, § 1-15.

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-284.

Sec. 34-334. Sale or delivery of weapons to minors.

If any person shall sell, barter, give or furnish, or cause to be sold, bartered, given or furnished, to any person under 18 years of age, a pistol, dirk or Bowie knife, having good cause to believe him to be under 18 years of age, such person shall be guilty of a class 1 misdemeanor.

(Code 1986, § 21-9)

Cross reference(s)--Penalty for class 1 misdemeanor, § 1-15.

State law reference(s)--Similar provisions, Code of Virginia, § 18.2-309A.

Chapter 35

PROCUREMENT

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Article I. In General

Sec. 35-1. Purpose.

The purpose of this chapter is to enunciate the public policies of this town pertaining to governmental procurement from nongovernmental sources.

Sec. 35-2. Application of chapter.

The provisions of this chapter shall not apply to those contracts entered into by the town prior to January 1, 1990, which shall continue to be governed by the laws in effect at the time those contracts were executed.

Sec. 35-3. Internet of chapter.

To the end that this town obtain high quality goods and services at reasonable cost, that all procurement procedures be conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to public business and that no offeror be that competition be sought to the maximum feasible degree, that this town enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of this town rather than

being drawn to favor a particular vendor, and that purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered.

Sec. 35-4. Implementation.

This chapter may be implemented by ordinances, resolutions or regulations consistent with this chapter and with the provisions of other applicable law promulgated by this town. This town may act by and through its duly designated or authorized officers or employees.

Sec. 35-5. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning: *Competitive negotiation* is a method of contractor selection which includes the following elements:

(1) Issuance of a written request for proposal indicating in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the contractor.

(2) Public notice of the request for proposal at least ten days prior to the date set for receipt of proposals by posting in a public area normally used for posting of public notices and by publication in a newspaper or general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. In addition, proposals may be solicited directly from the potential contractors.

(3) Procurement of professional services. This town shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial response and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. The request for proposal shall not, however, request that offerors furnish estimates of man hours or cost for services. At the discussion stage, this town may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and, where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion outlined in this subsection on the basis of evaluation factors published in the request for proposal and all information developed in the selection process to this point, this town shall in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious.

Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to this town can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should this town determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

(4) Procurement of other than professional services. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the request for proposal, including price if so stated in the request for proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, this town shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. Should this town determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.

Competitive sealed bidding is a method of contractor selection which includes the following elements:

(1) Issuance of a written invitation to bid containing as incorporation by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the town has provided for prequalification of bidders, the invitation to bid shall include a statement of any requisite qualifications of potential contractors. When it is impractical to prepare initially a purchase description to support an award based on prices, an invitation to bid may be issued requesting the submission of unpriced offers to be followed by an invitation to bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation.

(2) Public notice of the invitation to bid at least ten days prior to the date set for receipt of bids by posting in a designated public area, or publication in a newspaper of general circulation, or both. In addition, bids may be solicited directly from potential contractors. Any additional solicitations shall include businesses selected from a list made available by the department of minority business enterprise.

(3) Public opening and announcement of all bids received.

(4) Evaluation of bids based upon the requirements set forth in the invitation, which may include special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria, such as inspection, testing, quality, workmanship,

delivery and suitable for a particular purpose, which are helpful in determining acceptability.

(5) Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple bids are so provided in the invitation to bid, awards may be made to more than one bidder.

(6) Competitive sealed bidding shall not be required for the procurement of professional services.

Construction means building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property.

Construction management contract means a contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services of the owner.

Design-build contract means a contract between this town and another party in which the party contracting with this town agrees to both design and build the structure, roadway or other item specified in the contract.

Goods means all material, equipment, supplies, printing and automated data processing hardware and software.

Informality means a minor defect or variation of a bid or proposal from the exact requirements of the invitation to bid, or the request for proposal, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.

Multipurpose professional services contract means a contract for the providing of professional services where the total scope of work of the second or subsequent phase of the contract cannot be specified without the results of the first or prior phase of the contract.

Nonprofessional services means any services not specifically identified as professional services in the definition of professional services.

Potential bidder or offeror, for the purposes of sections 35-79 and 35-83 means a person who, at the time this town negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under such contract, and who at such time is eligible and qualified in all respect to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.

Professional services means work performed by an independent contractor within the scope of the practices of accounting, actuarial services, architecture, land surveying, landscape architecture, law, medicine, optometry, pharmacy or professional engineering. Professional services shall also include the services of economist procured by the state corporation commission.

Public body means any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty and empowered by law to undertake the activities described in this chapter.

Responsible bidder or offeror means a person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will assure a good faith performance and who has been prequalified, if required.

Responsive bidder means a person who has submitted a bid which conforms in all material respects to the invitation to bid.

Services means any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

Sheltered workshop means a work-oriented rehabilitative facility with a controlled environment working environment and individual goals which utilize work experience and related services for assisting the handicapped person to progress toward normal living and a productive vocational status.

Cross reference – Definitions and rules of construction generally, Sec. 1-2.

Sec. 35-6. Compliance with conditions with federal grants or contracts.

Where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the provisions of this chapter, this town may comply with such federal requirements, notwithstanding the provisions of this chapter, only upon the written determination of the town council that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provision of this chapter in conflict with the conditions of the grant or contract.

Sec. 35-7. Cooperative procurement.

This town may participate in, sponsor, conduct or administer a cooperative procurement agreement with one or more other public bodies, or agencies of the United States, for the purpose of combing requirements to increase the efficiency or reduce administrative expenses.

Sec. 35-8. Prompt payment of bills by localities.

(a) Whenever this town acquires goods or services, or conducts any other type of contractual business with a nongovernmental, privately owned enterprise, this town shall promptly pay for the completed delivered goods or services by the required payment date. The required payment date shall be either:

(1) The date on which payment is due under the terms of the contract for the provision of such goods or services; or

(2) If such date is not established by contract, not more than 45 days after goods or services are received or not more than 45 days after the invoice is rendered, whichever is later.

(b) Separate payment dates may be specified for contracts under which goods or services are provided in a series of partial executions or deliveries to the extent that the contract provides for separate payment for partial execution or delivery.

(c) Within 20 days after the receipt of the invoice or goods or services, this town shall notify the business concern of any defect or impropriety which would prevent payment by the payment date.

(d) Unless otherwise provided under the terms of the contract for the provision of goods or services, if this town fails to pay by the payments date, it shall pay any finance charges assessed by the business concern which do not exceed one percent per month.

(e) The provisions of this section shall not apply to the late payment provisions in any public utility tariffs in public utility registered contracts.

Sec. 35-9. Small purchases.

(a) Small purchases are considered to be any procurement of supplies, equipment or services with an aggregate purchase value of $15,000.00 or less. Depending on the aggregate value, the purchasing agent, the town manager, may request verbal or written quotes.

(b) The town will allow verbal quotes for any purchase under $1,500.00 aggregate cost and require written quotes for purchases of $1,500.00 and over. A record of the verbal quote will be retained for audit purposes at the town hall.

(c) The town considers aggregate value to refer to the collective cost of a single item, even though that cost may be less than the defined limits. For example, if an items costs $500.00 per unit and the locality is purchasing six units, the aggregate cost is $3,000.00.

Sec. 35-10—35-30. Reserved.

ARTICLE II. CONTRACT FORMULATION AND ADMINISTRATION

Sec. 35-31. Methods of procurement.

(a) All public contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance or construction shall be awarded after competitive sealed bidding, or competitive negotiation as provided in this section, unless otherwise authorized by law.

(b) Professional services shall be procured by competitive negotiation.

(c) Upon a determination made in advance by this town and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, goods, services or insurance may be procured by competitive negotiation. The writing shall document the basis for this determination.

(1) Upon a written determination made in advance by this town that competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured through a licensed agent or broker selected in the manner provided for the procurement of things other than professional services in subsection (3)b. of the definition of competitive negotiation in section 35-5. The basis for this determination shall be documentation in writing.

(2) Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by this town and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:

a. By this town for the alteration, repair, renovation of demolition of buildings when the contract is not expected to cost more than $500,000; or

b. By this town for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property.

c. By this town for the construction of any public building.

(d) Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. This town shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area or published in a newspaper of general circulation on the day this town awards or announces its decision to award the contract, whichever occurs first.

(e) In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. This town shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area or published in a newspaper of general circulation on the day this town awards or announces it decision to award the contract, whichever occurs first, or as soon thereafter as is practicable.

(f) This town may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts not expected to exceed $30,000.00; however, such small purchase procedures shall provide for competition wherever practicable.

(g) Upon a determination made in advance by the town council and set forth in writing that the purchase of goods, products or commodities from a public auction sale is in the best interests of the public, such items may be purchased at the auction. The writing shall document the basis for this determination.

Sec. 35-32 Competitive bidding on state-aid projects.

(a) No contract for the construction of any building or for an addition to or an improvement to an existing building for which state funds of $15,000.00 or more, either by appropriation, grant in aid or loan, are used or are to be used for all or part of the cost construction shall be let except after competitive sealed bidding or after competitive negotiation as provided under section35-31.

(b) The procedure for the advertising for bids of for proposals and for letting of the contract shall conform, mutatis mutandis, to this chapter. A person who has been engaged as an architect or engineer for the same project under a separate contract shall not be eligible to bid on or submit a proposal for any such contract or to have the contract awarded to him.

Sec. 35-33. Cancellation, rejection of bids; waiver of informalities.

(a) An invitation to bid, a request for proposal, any other solicitation, or any and all bids or proposals, may be cancelled or rejected. The reasons for cancellation or rejection shall be made part of the contract file.

(b) This town may waive informalities in bids.

Sec. 35-34. Contract pricing arrangements.

(a) Except as prohibited in this article, public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other basis that is not prohibited.

(b) Except in case of emergency affecting public health, safety or welfare, no public contract shall be awarded on the basis of cost plus a percentage of cost. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or part as a percentage of such claims, shall not be prohibited by this section.

Sec. 35-35. Discrimination prohibited.

In the solicitation of awarding of contracts, this town shall not discriminate because of the race, religion, color, sex or national origin of the bidder or offeror. Whenever solicitations are made, this town shall include businesses selected from a list made available by the department of minority business enterprise.

Sec. 35-36. Exceptions to requirement for competitive procurement.

(a) This town may enter into contracts without competition for the purchase of goods or services:

(1) Which are produced or performed by persons, or in schools or workshops, under the supervision of the state department for the visually handicapped; or

(2) Which are performed or produced by nonprofit sheltered workshops or other nonprofit organizations which offer transitional or supported employment services serving the handicapped.

(b) This town may enter into contracts without competition for:

(1) Legal services, provided that the pertinent provisions of Code of Virginia, Section 2.1-117 et seq., remain applicable; or

(2) Expert witnesses and other services associated with litigation or regulatory proceedings.

(c) This town may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.

(d) An industrial development authority may enter into contracts without competition with respect to any item of cost of authority facilities for facilities as defined in Code of Virginia, Section 15.1-1374 (d) and (e).

(e) This town may enter into contracts without competitive sealed bidding or competitive negotiation for insurance if purchased through an association of which it is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance by use of competitive principles and provide that the public body has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.

Sec. 35-37. Prequalification.

Prospective contractors may be prequalified for particular types of supplies, services, insurance or construction, and consideration of bids or proposals limited to prequalified contractors. Any prequalification procedure shall be established in writing and sufficiently in advance of its implementation to allow potential contractors a fair opportunity to complete the process.

Sec. 35-38. Debarment

Prospective contractors may be debarred from contracting for particular types of supplies, services, insurance or construction for specified periods of time. Any debarment procedure shall be established in writing by this town. Any debarment procedure may provide for debarment on the basis of a contractor's unsatisfactory performance for this town.

Sec. 35-39. Performance for state products and firms.

(a) In the case of a tie bid, preference shall be given to goods, services and construction produced in this state or provided by this state and local persons, if such a choice is available; otherwise the tie shall be decided by lot.

(b) Whenever any bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a preference, a like preference may be allowed to the lowest responsible bidder who is a resident of this state.

Sec. 35-40. Participation of small businesses and businesses owned by women and minorities.

This town shall establish programs consistent with all provisions of this chapter to facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions. Such programs shall be in writing and shall include cooperation with the department of minority business enterprise, the United States Small Business Administration, and other public or private agencies.

Sec. 35-41. Use of brand names.

Unless otherwise provided in the invitation to bid, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named; it conveys the general style, type, character and quality of the article desired, and any article which this town in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation and suitability for the purpose intended, shall be accepted.

Sec. 35-42. Comments concerning specifications.

This town, when awarding public contracts, shall establish procedures whereby comments concerning specifications or other provisions in invitations to bid or requests for proposal can be received and considered prior to the time set for receipt of bids as proposals or award of the contract.

Sec. 35-43 Employment discrimination by contractor prohibited.

There shall be included in every contract of over $10,000.00 the provisions in subsections (1) and (2) of this section:

(1) During the performance of this contract, the contractor agrees as follows:

a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state such contractor is an equal opportunity employer.

c. Notice, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

(2) The contractor will include the provisions of the foregoing subsections (1)a., b. and c. of this section in every subcontract or purchase order if over $10,000.00 so that the provisions will be binding upon each subcontractor or vendor.

Sec. 35-44. Public inspection of certain records.

(a) Except as provided in this section, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person in accordance with the Virginia Freedom of Information Act, Code of Virginia, Section 2.1-340 et seq.

(b) Cost estimates relating to a proposed procurement transaction prepared by or by or for this town shall not be open to public inspection.

(c) Any competitive sealed bidding bidder, on request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to the award, except in the event that this town decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract.

(d) Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award, except in the event that this town decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only after award of the contract. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

(e) Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the bidder, offeror or contractor must invoke the protections of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reason why protection is necessary.

Sec. 35-45. Negotiation with lowest responsible bidder.

Unless cancelled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, this town may negotiate with the apparent low bidder to obtain a contract price within the available funds; however, such negotiation may be undertaken only under conditions and procedures described in writing and approved by this town prior to issuance of the invitation to bid and summarized therein.

Sec. 35-46. Withdrawal of bid due to error.

(a) A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity or work, labor or material made directly in the compliance of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. One of the following procedures for withdrawal of a bid shall be selected by this town an stated in the advertisement for bids:

(1) The bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure; or

(2) The bidder shall submit to the town council or designated official his original work papers, documents and materials used in the preparation of the bid within one day after the date fixed for submission of bids. The work papers shall be delivered by the bidder in person or by registered mail at or prior to the time fixed for the opening of bids. The bids shall be opened one day following the time fixed by this town for the submission of bids. Therefore the bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by this town until the two-hour period has elapsed. Such mistake shall be proved only from the original work papers, documents and materials delivered as required in this section.

(b) This town may establish procedures for the withdrawal of bids for other than construction contracts.

(c) No bid may be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.

(d) If a bid is withdrawn under the authority of this section, the lowest remaining bid shall be deemed to be the low bid.

(e) No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor or perform any subcontract or other work agreement for the

person to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

(f) If this town denies the withdrawal of a bid under the provisions of this section, it shall notify the bidder in writing stating the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder.

Sec. 35-47. Modification of the contract.

(a) A public contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than 25 percent of the amount of the contract or $10,000.00, whichever is greater, without the advance written approval of the town council. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid of offer.

(b) Nothing in this section shall prevent this town from placing greater restrictions on contract modifications.

Sec. 35-48. Retainage of construction contracts.

(a) In any public contract for construction which provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least 95 percent of the earned sum when payment is due, with not more than five percent being retained to assure faithful performance of the contract. All amounts withheld may be included in the final payment.

(b) Any subcontract for a public project which provides for similar progress payments shall be subject to the same limitations.

Sec. 35-49. Deposit of certain retained funds on certain contracts with local government; penalty for failure to timely complete.

(a) This town, when contracting directly with contractors for public contracts of $200,000.00 or more for construction of highways, roads, streets, bridges, parking lots, demolition, clearing, grading, excavating, paving, pile driving, miscellaneous drainage structures, and the installation of water, gas, sewer lines and pumping stations where portions of the contract price are to be retained, shall include in the bid proposal an option for the contractor to use an escrow account procedure for utilization of this town's retainage funds by so indicating in the space provided in the proposal documents. In the event the contractor elects to use the escrow account procedure, the escrow agreement form included in the bid proposal and contract shall be executed and submitted to this

town within 15 calendar days after notification. If the escrow agreement form is not submitted within the 15 day period, the contractor shall forfeit his rights to the use of the escrow account procedure.

(b) In order to have retained funds paid to an escrow agent, the contractor, the escrow agent and the surety shall execute an escrow agreement form. The contractor's escrow agent shall be a trust company, bank or savings institution with its principal office located in the commonwealth. The escrow agreement and all regulations promulgated by this town shall be substantially the same as that used by the state department of transportation.

(c) This section shall not apply to public contracts for construction for railroads, public transit systems, runways, dams, foundations, installation or maintenance or power systems for the generation and primary and secondary distribution of electric current ahead of the customer's meter, the installation or maintenance of telephone, telegraph or signal systems for public utilities and the construction or maintenance of solid waste or recycling facilities and treatment plants.

(d) Any such public contract for construction with this town, which includes payment of interest on retained funds, may require a provision whereby the contractor, exclusive of reasonable circumstances beyond the control of the contractor stated in the contract, shall pay a specified penalty for each day exceeding the completion date stated in the contract.

(e) Any subcontract for such public project which provides for similar progress payment shall be subject to the provisions of this section.

Sec. 35-50. Bid bonds.

(a) Except in cases of emergency, all bids or proposals for construction contracts in excess of $100,000.00 shall be accompanied by a bid bond from a surety company selected by the bidder which is legally authorized to do business in this state, as a guarantee that if the contract is awarded to such bidder, that bidder will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent of the amount bid.

(b) No forfeiture under a bid bond shall exceed the lesser of:

(1) The difference between the bid for which the bond was written and the next low bid, or

(2) The face amount of the bid bond.

(c) Nothing in this section shall prelude this town from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than $100,000.00.

Sec. 35-51. Performance and payment bonds.

(a) Upon the award or any public construction contract exceeding $100,000.00 award to any prime contractor, such contractor shall furnish to the town the following bonds:

(1) A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract.

(2) A payment bond in the sum of the contract amount. Such bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in the prosecution of the work provided for in such contract, and shall be conditioned upon the prompt payment for all such material furnished or labor supplied or performed in the prosecution of the work. The term or materials shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

(b) Each of such bonds shall be executed by one or more surety companies selected by the contractor which are legally authorized to do business in this state.

(c) Bonds required for contracts shall be payable to this town.

(d) Each of the bonds shall be filed with this town or a designed office or official thereof.

(e) Nothing in this section shall preclude this town from requiring payment or performance bonds for construction contracts below $100,000.00.

(f) Nothing in this section shall preclude such contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts which are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work as provided for in the subcontract.

Sec. 35-52. Action on performance bond.

No action against the surety on a performance bond shall be brought unless within one year after:

(1) Completion of contract, including the expiration of all warranties and guarantees; or

(2) Discovery of the defect or breach of warranty, if the action be for such, in all other cases.

Sec. 35-53. Actions on payments bonds.

(a) Subject to the provisions of subsection (b) of this section, any claimant who has performed labor or furnished materials in accordance with the contract documents in the prosecution of the work provided for in any contract for which a payment bond has been given, and who has not been paid in full therefore before the expiration of 90 days after the day on which such claimant performed the last of such labor or furnished the last of such materials for which he claims payment, may bring an action on such payment bond to recover any amount due him for such labor or material, and may prosecute such action to final judgment and have execution on the judgment. The obligee named in the bond need not be named a party to such action.

(b) Any claimant who has a direct contractual relationship with any subcontractor from whom the contractor has not required a subcontractor payment bond under section 35-55, but who has no contractual relationship, express or implied, with such contractor, may bring an action on the contractor's payment bond only if he has given written notice to such contractor within 180 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Any claimant who has direct contractual relationship with a subcontractor from whom the contractor has required a subcontractor payment bond under section 35-55, but who has no contractual relationship, express or implied, with such contractor, may bring an action on the subcontractor's payment bond. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished shall not be subject to the time limitations stated in this subsection.

(c) Any action on a payment bond must be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.

Sec. 35-54. Alternative forms of security.

(a) In lieu of a bid, payment or performance bond, a bidder may furnish a certified check or cash escrow in the face amount required for the bond.

(b) If approved by the town attorney, a bidder may furnish a personal bond, property bond or bank or savings and loan association's letter or credit on certain designed funds in the face amount required for the bid, payment or performance bond. Approval shall be granted only upon a determination that the alternative form or security proffered affords protection to this town equivalent to a corporate surety's bond.

Sec. 35-55. Bonds on other than construction contracts.

This town may require bid, payment or performance bonds for contracts for goods or services if provided for in the invitation to bid or request for proposal.

Chapters 35--37

RESERVED

Chapter 38

SOLID WASTE*

Article I. In General

Sec. 38-1. Violations
Sec. 38-2. Storage on, removal from business premises.
Secs. 38-3-----38-35. Reserved.

Article II. Collection

Sec. 38-36. Collection times and routes.
Sec. 38-37. Certain waste not collected.
Sec. 38-38. Charges for, frequency of, residential collections.
Sec. 38-39. Receptacles required; specifications.
Sec. 38-40. Limitations on contents of receptacles.
Sec. 38-41. Placement of receptacles on collection days.
Sec. 38-42. Collectors shall not enter buildings.
Sec. 38-43. Refusal of service for failure to comply with article.

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*Cross reference(s)--Environment, ch. 22; utilities, ch. 54.

State law reference(s)--Authority of town to require property owners to remove garbage and refuse and town's right to operate a garbage and refuse collection and disposal service, Code of Virginia, §§ 15.2-901, 15.2-927, 15.2-1227.

ARTICLE I. IN GENERAL

Sec. 38-1. Violations.

Unless otherwise specifically provided, a violation of any provision of this chapter shall constitute a class 3 misdemeanor punishable as provided in section 1-15.
(Code 1986, § 17-1)

Sec. 38-2. Storage on, removal from business premises.

Every person operating a business within the town, in connection with which solid waste is produced or accumulated, shall keep the solid waste collected and stored in good, substantial containers until its removal, and shall cause its removal from the premises as provided by this chapter or by other means as frequently as is required for sanitary reasons or to prohibit a fire hazard.
(Code 1986, § 17-2)

Cross reference(s)--Businesses, ch. 18.

Secs. 38-3--38-35. Reserved.

ARTICLE II. COLLECTION

Sec. 38-36. Collection times and routes.

The town manager shall establish and specify the days and hours each week when the town employees will collect lawn and garden trash and debris in the town and the routes to be served at the times specified.
(Code 1986, § 17-14)

Sec. 38-37. Certain waste not collected.

No old tin, rejected building materials, factory cuttings or trade waste shall be set out for removal by the town. Such materials shall be disposed of by the occupants of the premises on which they are collected.
(Code 1986, § 17-20)

Sec. 38-38. Charges for, frequency of, residential collections.

For the collection and removal of garbage and refuse, the occupant of each dwelling unit shall pay the rate of $5.75 to $7.00 per month within the corporate limits and the rate of $7.85 to $9.00 per month outside the corporate limits. This service charge shall be billed to each user each month, with the billing for water service or other utility service, if any, and payable on receipt. The occupant of each dwelling unit shall be entitled to one pickup of garbage and refuse each week.
(Code 1986, § 17-15; Ord. of 6-29-95)

Sec. 38-39. Receptacles required; specifications.

All occupants of premises in the town whose garbage and refuse is to be removed shall provide a sufficient number of receptacles in which to store such matter between collections. Receptacles for garbage shall be of sturdy construction, shall be watertight and have a capacity of not more than 30 gallons and shall be equipped with tight-fitting covers. Receptacles for refuse shall not weigh, when filled, more than 75 pounds, and shall be suitable for and strong enough to withstand handling and emptying, and provided with covers or other means to prevent scattering of the contents.
(Code 1986, § 17-16)

Sec. 38-40. Limitations on contents of receptacles.

All garbage containing animal or vegetable matter subject to decay or fermentation shall be drained of moisture and wrapped before placing in the receptacles provided therefor, and only garbage shall be placed in such receptacles. Only refuse shall be placed in the receptacles provided therefor. No receptacle shall be filled more than level full.
(Code 1986, § 17-17)

State law reference(s)--Separation of certain items not to be placed in landfill, Code of Virginia, § 15.2-935 et seq.

Sec. 38-41. Placement of receptacles on collection days.

All receptacles containing garbage or refuse for collection shall be set out not later than 8:00 a.m. on collection days, and shall be placed in such location as may be specified by the town manager so that they can be reached easily and conveniently by the collector.
(Code 1986, § 17-18)

Sec. 38-42. Collectors shall not enter buildings.

No collector shall enter any building for the removal of garbage or refuse.
(Code 1986, § 17-19)

Sec. 38-43. Refusal of service for failure to comply with article.

If any person fails to comply with the provisions of this article relating to the removal of garbage and refuse, the collector shall refuse to collect or remove any garbage or refuse from the premises occupied by such person.
(Code 1986, § 17-21)

Chapters 39--41

RESERVED

Chapter 42

STREETS, SIDEWALKS AND CERTAIN OTHER PUBLIC PLACES*

Article I. In General

Sec. 42-1. Violations.
Sec. 42-2. Prerequisites to acceptance of street for maintenance by town.
Sec. 42-3. Obstructions generally.
Sec. 42-4. Placing building materials on street or sidewalk.
Sec. 42-5. Use of sidewalks by contractors or builders.
Sec. 42-6. Damaging, destroying street trees.
Sec. 42-7. Cellar doors, gratings in sidewalks.
Sec. 42-8. Open cellarways, areaways in sidewalks to be guarded.
Sec. 42-9. Duty of owners or occupants of abutting property to keep sidewalks clean.
Sec. 42-10. Duty of owners or occupants of abutting property to remove snow from sidewalks.
Sec. 42-11. Moving snow onto sidewalk or street.
Sec. 42-12. Washing vehicles in street.
Secs. 42-13-----42-45. Reserved.

Article II. Street Numbers for Lots and Buildings

Sec. 42-46. Plan established.
Sec. 42-47. Maintenance of plans.
Sec. 42-48. Issuance of numerals by town.
Sec. 42-49. Display of numerals.
Sec. 42-50. Appeal from assignment of number.
Secs. 42-51-----42-80. Reserved.

Article III. Excavations

Sec. 42-81. Article not applicable to work done by town.
Sec. 42-82. Permit.
Sec. 42-83. Work to be prosecuted without delay; notice of completion.
Sec. 42-84. Barriers and warning lights; responsibility for damages.
Sec. 42-85. Replacing surface.

***Cross reference(s)--**Motor vehicles and traffic, ch. 30; parades and processions, § 30-166 et seq.; design standards for streets and alleys in the subdivision regulations, § 46-217.

State law reference(s)--General authority of town relative to streets and sidewalks, Code of Virginia, §§ 15.2-967, 15.2-2001 et seq., 15.2-2013.

ARTICLE I. IN GENERAL

Sec. 42-1. Violations.

Unless otherwise specifically provided, a violation of any provision of this chapter shall constitute a class 4 misdemeanor.
(Code 1986, § 18-1)

Cross reference(s)--Penalty for class 4 misdemeanor, § 1-15.

Sec. 42-2. Prerequisites to acceptance of street for maintenance by town.

No street shall be accepted for care and maintenance by the town unless such street has been graded and surfaced in accord with the requirements of the state department of transportation and dedicated by the recording of a plat, drawn to scale showing such street, in the office of the clerk of the circuit court of the county, at the expense of the owner of the property. No such acceptance shall take place until the plat of the street has been accepted and approved by the town council.
(Code 1986, § 18-3)

Sec. 42-3. Obstructions generally.

It shall be unlawful for any person to place upon any street, alley or sidewalk, any box, crate, lumber, wood, stone or other obstruction of any kind or character. This section shall not be construed to apply to building material placed on a street, sidewalk or alley pursuant to section 42-4.
(Code 1986, § 18-5)

Cross reference(s)--Railroad trains obstructing streets, § 30-247.

State law reference(s)--Authority of town to prevent obstruction of public ways, Code of Virginia, § 15.2-2009.

Sec. 42-4. Placing building materials on street or sidewalk.

No person shall place building materials upon a street, sidewalk or alley for use in connection with construction work, unless he shall have first obtained a permit from the town manager to do so and unless he shall place such materials in the space assigned and in the manner directed by the town manager.
(Code 1986, § 18-6)

Cross reference(s)--Buildings and building regulations, ch. 14; environment, ch. 22.

Sec. 42-5. Use of sidewalks by contractors or builders.

When any building or wall is being erected, repaired or demolished, the sidewalks in front thereof may, subject to section 42-4, be occupied and used by the contractor or builder in connection with such work for such period of time as may be reasonable, provided reasonable means are taken for the protection and safe passage of pedestrians and vehicular traffic.
(Code 1986, § 18-7)

Cross reference(s)--Buildings and building regulations, ch. 14.

Sec. 42-6. Damaging, destroying street trees.

It shall be unlawful and a class 1 misdemeanor for any person to tamper with, damage, injure or destroy any of the trees along the streets of the town planted and maintained by the town.
(Code 1986, § 18-9)

State law reference(s)--Damaging public property, Code of Virginia, § 18.2-138; authority to adopt ordinance prohibiting damaging public property, Code of Virginia, § 18.2-138.1.

Sec. 42-7. Cellar doors, gratings in sidewalks.

It shall be unlawful for any person to place or construct or cause to be constructed any cellar door or grating in or upon any paved sidewalk within the town, unless such door or grating is constructed on a level with the pavement. The owner of the door or grating shall be required to keep the same in a safe condition for pedestrians walking over it.
(Code 1986, § 18-11)

Cross reference(s)--Environment, ch. 22.

Sec. 42-8. Open cellarways, areaways in sidewalks to be guarded.

It shall be unlawful for any person to allow any cellarway, areaway or other place of like character opening on or in a public sidewalk in the town to remain open, unless properly guarded by bars or otherwise.
(Code 1986, § 18-12)

Sec. 42-9. Duty of owners or occupants of abutting property to keep sidewalks clean.

(a) It shall be the duty of the occupant and owner of any lot, land or premises abutting upon any paved sidewalk in the town to have and keep such sidewalk swept or otherwise kept clean of all debris, dirt and refuse. Such duty shall be primarily upon the owner where property is vacant, or upon his agent if such owner is a nonresident, and primarily upon the occupant where the property is occupied.

(b) The town manager is hereby authorized to give to an owner or occupant who fails to comply with this section such notice as he may deem advisable and to see that the provisions are enforced. Each day that a sidewalk remains unclean, after notice from the town manager to clean the sidewalk, shall constitute a separate violation of this section.
(Code 1986, § 18-13)

Cross reference(s)--Environment, ch. 22.

State law reference(s)--Authority to adopt requirement to keep sidewalk clean, Code of Virginia, § 15.2-1115.

Sec. 42-10. Duty of owners or occupants of abutting property to remove snow from sidewalks.

The occupant, and in case there is no occupant, the owner or any person having the care of any building or lot of land abutting on any paved sidewalk shall, during the hours of daylight following the time when snow or ice ceases to fall or form, cause it to be removed from the sidewalk.
(Code 1986, § 18-14)

State law reference(s)--Authority to require removal of snow from sidewalks, Code of Virginia, § 15.2-1115.

Sec. 42-11. Moving snow onto sidewalk or street.

It shall be unlawful for any person to remove snow from any building or lot by removing the snow to any sidewalk or street.
(Code 1986, § 18-15)

State law reference(s)--Authority to require keeping sidewalk and street clear of snow, Code of Virginia, § 15.2-1115.

Sec. 42-12. Washing vehicles in street.

It shall be unlawful for any person to wash a vehicle on any street of the town, or to wash a vehicle at any other place in such manner that the water runs into a street of the town.
(Code 1986, § 18-16)

Cross reference(s)--Environment, ch. 22.

Secs. 42-13--42-45. Reserved.

ARTICLE II. STREET NUMBERS FOR LOTS AND BUILDINGS*

Sec. 42-46. Plan established.

All lots, buildings and structures in the town shall be numbered in accordance with the following plan:

(1) The town shall be divided into four quadrants, identified variously as northeast, southeast, southwest and northwest. The grid lines separating the east-west quadrants shall run along a generally north-south line, from the town's northern boundary to its southern boundary, along State Route 107. The grid lines dividing the north-south quadrants shall run along a generally east-west line, from the town's eastern boundary to its western boundary, along Lee Highway (U.S. Route 11).

***Cross reference(s)--**Buildings and building regulations, ch. 14; subdivisions, ch. 46; zoning, app. A.

State law reference(s)--Authority to require numbers to be displayed on buildings, Code of Virginia, § 15.2-2024.

(2) There shall be one number to every 25 feet of frontage in residential and industrial districts established by the zoning ordinance and one number to every ten feet of frontage in commercial districts so established.

(3) Odd numbers shall be on the north and east sides of the streets. Even numbers shall be on the south and west sides of the streets.

(Code 1986, § 18-27)

Sec. 42-47. Maintenance of plans.

The town clerk shall keep a plan identified as the Property Numbering System Plan upon which shall be kept the proper street and avenue name or number, together with the proper number for each lot, building and structure, conforming to the provisions of this article. The plan so identified and dated January 11, 1979, and signed by the chairman of the planning commission is hereby approved and adopted for use as the initial plan and shall be kept by the town clerk.

(Code 1986, § 18-28)

Sec. 42-48. Issuance of numerals by town.

The town manager may issue to any property owner in the town, for such fee as is prescribed by the manager and approved by the town council, a set of numerals for a building or structure for display in accord with this article. Numerals other than those provided by the town may be substituted, if they are deemed by the town manager to be of sufficient size and visibility.

(Code 1986, § 18-29)

Sec. 42-49. Display of numerals.

(a) It shall be the duty of the owner of every building or structure within the town to have placed thereon, in a place visible from the street, figures at least three inches high, showing the number of the building or structure. Every person failing to so number a building or structure occupied by him, or after receiving notice to do so from the town clerk, continuing in his failure to so number such building or structure, shall be guilty of a violation of this section for each day during or on which the failure continues.

(b) Numbering under this section shall be required only for the front entrance of a building or structure. In the event of a dispute as to the front entrance, the town manager may vary the requirements of this section when strict compliance would work an undue hardship on the owner or occupant.

(Code 1986, § 18-30)

Sec. 42-50. Appeal from assignment of number.

If the owner of a lot, building or structure is aggrieved by the number assigned to the property under this article, he may apply to the planning commission for a change of the

number assigned, which number may be changed, if the provisions of this article are not contravened. If any such relief would result in the contravention of this article, application for change shall be made to the town council, with the recommendation of the planning commission.
(Code 1986, § 18-31)

Secs. 42-51--42-80. Reserved.

ARTICLE III. EXCAVATIONS*

Sec. 42-81. Article not applicable to work done by town.

The provisions of this article shall not apply to work done by town forces under the supervision of the town manager.
(Code 1986, § 18-42)

Sec. 42-82. Permit.

(a) No person, unless specially authorized by the town council, shall take up or remove any portion of the surface of any sidewalk or street, or excavate in any street or sidewalk of the town, without a written permit from the town manager, who shall not refuse such permit to any applicant, except for cause. In case of refusal, the applicant may appeal to the council.

(b) Before a permit required by this section is granted, the town manager may require a deposit sufficient to pay for resurfacing the street or sidewalk to be disturbed, the amount of such deposit to be determined by the town manager.

(c) Every person who shall make application for a permit under this section shall be deemed to have assented thereby to all the provisions and terms of this article and to the right of the town to collect, from the deposit made pursuant to subsection (b), the actual cost of replacing the pavement, sidewalk or street surface.
(Code 1986, § 18-43)

Sec. 42-83. Work to be prosecuted without delay; notice of completion.

It shall be the duty of every person to whom a permit required by this article is granted to institute at once, and prosecute without delay, the work for which the permit was obtained, and promptly, on its completion, give written notice to the town manager.
(Code 1986, § 18-44)

***Cross reference(s)**--Buildings and building regulations, ch. 14; utilities, ch. 54.

Sec. 42-84. Barriers and warning lights; responsibility for damages.

Any person to whom a permit required by this article is granted shall place guards or barriers around the excavation in question and shall protect it by warning lights at night as required in Code of Virginia, §§ 33.1-193 and 46.2-830. Such person shall be responsible for damages to persons or property caused by such excavation until it is taken in charge by the town manager.
(Code 1986, § 18-45)

Sec. 42-85. Replacing surface.

No pavement, sidewalk or street surface shall be replaced, after being taken up pursuant to a permit required by this article, by any person except under the direction of the town manager. If the permit holder fails to resurface the street or sidewalk disturbed promptly and in a manner approved by the town manager, the town manager is authorized to cause such work to be done at the expense of the permit holder.
(Code 1986, § 18-46)

Chapters 43--45

RESERVED

Chapter 46

SUBDIVISIONS*

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Sec. 46-111. Changes after approval.
Sec. 46-112. Required improvements.

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*Cross reference(s)--Street numbers for lots and buildings, § 42-46 et seq.
State law reference(s)--Authority to adopt subdivision regulation, Code of Virginia, § 15.2-2240 et seq.

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Sec. 46-230. Inspection of required improvements.

ARTICLE I. IN GENERAL

Sec. 46-1. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Administrator or agent means the official designated by the town council to administer and enforce all provisions of this chapter.

Alley means a public or private right-of-way primarily designed to serve as secondary access to the side or rear of those properties whose principal frontage and access is on a street.

Block means a tract of land bounded by streets, or by a combination of streets and public parks, cemeteries, railroad right-of-way, shorelines of waterways, or boundary lines of the town.

Building means any structure built for the support, shelter or enclosure of person, animal, chattel or movable property of any kind, and which is permanently affixed to the land.

Building setback line means a line in front of which the erection of any portion of a building is prohibited.

Comprehensive land use plan means the comprehensive plan of the town.

Cul-de-sac means a local public street having only one outlet, with an appropriate turnaround for the safe and convenient reversal of traffic.

Developer means an owner of property being subdivided, whether or not represented by an agent.

Easement means a grant by the property owner of the use of land for a specific purpose or purposes.

Engineer means an engineer licensed by the state.

Frontage means the length of the property line of any lot, lots, or tract of land measured along a public street, road, or highway against which land abuts.

Grade means the slope of a road, street or other public way, specified in percent and shown on street profile plans as required in this chapter.

Grade, landing means the grade required on streets entering major thoroughfares, at points of intersection, as specified in this chapter.

Health officer means the health director or sanitarian of the county.

Highway department means the state department of transportation.

Highway engineer means the resident engineer employed by the state department of transportation serving the county.

Improvements means public utilities, circulation and drainage facilities, including but not limited to: streets; storm and sanitary sewer systems; curbs and gutters; culverts, catch basins and other drainage structures; water lines and fire hydrants; sidewalks; and street signs.

Jurisdiction means the area or territory subject to the legislative control of the town council.

Lot means a numbered and recorded portion of a subdivision intended for transfer or for building development for a single building and its accessory building.

Lot, butt means a lot at the end of a block and located between two corner lots.

Lot, corner means a lot abutting two or more streets at their intersections; 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 means the mean (average) horizontal distance between the front and the rear lot lines.

Lot, interior means a lot other than a corner lot.

Lot, through means a lot which has a pair of opposite lot lines along two substantially parallel streets, and which is not a corner lot. On a through lot, both street lines shall be deemed front lot lines.

Lot, width of means the horizontal distance between the side lines of a lot measured along the front at the setback line.

Owner means any person, group of persons, firm, corporation or any other legal entity having legal title to the land sought to be subdivided under this chapter.

Pedestrian way or crosswalk means 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, and which may include utilities.

Performance bond means the bond from a surety company authorized to conduct business in the state, in an amount sufficient for and conditioned upon the construction of all improvements stipulated by the town.

Planned unit development means a tract of land which contains or will contain two or more principal buildings, developed under single ownership or control, the development of which is unique and of a substantially different character than that of surrounding areas. Types of development which may be reviewed and approved as planned units include, but not limited to the following: residential communities, and mobile home residential complexes.

Planning commission means the planning commission of the town.

Planning department means the planning department of the town.

Property means any piece, tract, lot, parcel of land or several of them collected together for the purpose of subdividing.

Public works department means the department of the town which is charged with the responsibility of maintaining and operating town utilities, streets and other services.

Resubdivision means an authorized change in property lines of a recorded subdivision.

Right-of-way means a piece or strip of land set aside for use as a street, crosswalk, railroad, electric transmission line, oil or gas pipeline, water main, sanitary or storm sewer main, or for another public use.

Roadway means that portion of a street used by vehicular traffic.

Street means a public right-of-way which offers a primary means of vehicular access to properties, or provides for through traffic, whether designated as a highway, parkway, turnpike, street, avenue, road, boulevard, throughway, lane, place, or any other thoroughfare. A street shall be deemed the total length and width of the strip of land dedicated or designed for public travel, including such improvements as may be required.

Streets, arterial mean those streets used primarily for heavy or fast traffic and from which direct access to abutting property may be restricted or prohibited.

Streets, collector mean those streets which carry traffic from local streets to the major system of arterial streets, including the principal entrance streets of a residential development and certain streets for circulation within such development.

Streets, local mean those streets which are used primarily for access to abutting properties.

Streets, marginal access mean minor streets which are parallel to and adjacent to arterial streets and which provide access to abutting properties and protection from through traffic.

Subdivider means an individual, corporation or registered partnership 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, who have given their power of attorney to one of their group or to another individual to act on their behalf in planning, negotiating for, in representing or executing the legal requirements of the subdivision.

Subdivision means the division of a parcel of land into two or more lots or parcels for the purpose of transfer of ownership or of building development, including all changes in street or lot lines and the creation of any new street or easement; provided, however, that if the subject land lies within an agricultural or residential use district, the parcels created shall conform to the zoning ordinance. This term includes resubdivision. The following shall not be deemed a subdivision:

(1) The sale or exchange of adjacent property between adjoining lot owners, where such sale or exchange does not create additional building sites.

(2) The division of land into parcels of five acres or more not involving any new street or easement.

(3) A division of agricultural land for agricultural purposes or for a building site for members of the immediate family owning such agricultural land, which does not involve any new street or easement.

(4) Inherited parcels.

Town engineer means the person designated as such by the town.

Zoning ordinance means the zoning ordinance of the town printed in appendix A. (Ord. of 10-14-93, § 5.3)

Cross reference(s)--Definitions generally, § 1-2.

Sec. 46-2. Rules of construction.

In the interpretation of this chapter, the following rules shall be observed and applied:

(1) The term "lot" includes the terms "plot" and "parcel."

(2) The term "approve" shall be considered to be followed by the term "or disapprove."

(3) Any reference to this chapter includes all ordinances amending or supplementing it.

(4) All distances and areas refer to measurement in a horizontal plane.
(Ord. of 10-14-93, § 5.1)

Sec. 46-3. Interpretation.

(a) In their interpretation and application, the provisions of this chapter shall be held to be the minimum requirements for the promotion of public health, safety and general welfare.

(b) Where the conditions imposed by any provisions of this chapter upon the subdivision of land are either more restrictive or less restrictive than comparable conditions imposed by any other provision of this chapter or of any other applicable law, ordinance, resolution, rule or regulation of any kind, the regulations which are more restrictive and impose higher standards or requirements shall govern.

(c) This chapter is not intended to annul any easement, covenant or other private agreement, provided that where the regulations of this chapter are more restrictive or impose higher standards or regulations than such easement, covenant, or other private agreement, the requirements of this chapter shall govern.
(Ord. of 10-14-93, § 5.2)

Sec. 46-4. Jurisdiction.

The provisions of this chapter shall apply to all land within the incorporated Town of Chilhowie.
(Ord. of 10-14-93, § 3.1)

Sec. 46-5. Purpose.

This chapter is adopted for the following purposes:

(1) To promote the public health, safety, convenience, comfort, prosperity and general welfare.

(2) To further the orderly layout and use of land.

(3) To provide a guide for the change that occurs when land and acreages become urban in character as a result of development for residential, business or industrial purposes.

(4) To avoid unplanned concentrations of population.

(5) To bring about the coordination of streets within subdivisions with other existing and planned streets.

(6) To provide for the safe and efficient circulation of traffic.

(7) To avoid hazardous intersections and other dangerous conditions.

(8) To establish construction standards for streets and other improvements.

(9) To provide for adequate drainage.

(10) To provide for adequate light and air.

(11) To facilitate adequate provision for transportation, water, sewerage, schools, parks, playgrounds, and other public requirements in a safe, adequate and efficient manner.

(12) To ensure proper legal description and proper monumenting of subdivided land and ensure that the purchasers of lots are buying a commodity that is suitable for development and use.

(13) To facilitate the further resubdivision of tracts or parcels of land.

(Ord. of 10-14-93, § 4.1)

Sec. 46-6. Penalty.

Any person violating the provisions of this chapter shall be subject to a fine of not more than $500.00 for each lot or parcel of land so subdivided or transferred or sold.

(Ord. of 10-14-93, § 6.6)

Sec. 46-7. Fees.

There shall be a charge for the examination and approval or disapproval of every plat reviewed by the administrator. The fees for processing subdivision plats shall be established by the town council at its discretion. The fees are payable to the treasurer of the town upon submission of the preliminary plat to the administrator.

(Ord. of 10-14-93, § 6.7)

Secs. 46-8--46-35. Reserved.

ARTICLE II. ADMINISTRATION*

DIVISION 1. GENERALLY

Secs. 46-36--46-65. Reserved.

DIVISION 2. ADMINISTRATOR†

Sec. 46-66. Appointment; duties, authority.

(a) *Appointed.* An administrator, as appointed by the town council, is hereby delegated to administer this chapter. The administrator shall be considered the agent of the town council and approval or disapproval by the agent shall constitute approval or disapproval as though it were given by the town council.

(b) *Duties.* The administrator shall perform all duties regarding subdivision and subdividing in accordance with this chapter and applicable state authority.

(c) *Consultation*. In the performance of these duties the administrator shall consult with the planning commission and may call for opinions or decisions, either verbal or written, from town officials and the town council in considering details of any submitted plat.

(d) *Establishment of procedures*. In addition to the regulations contained in this chapter for the platting of the subdivision, the administrator may, from time to time, establish any reasonable administrative procedures deemed necessary for the proper administration of this chapter.
(Ord. of 10-14-93, §§ 6.1--6.1-3)

Sec. 46-67. Enforcement.

(a) No owner, or agent of the owner, of any parcel of land located in a proposed subdivision shall transfer or sell such parcel before a plat of the subdivision has been approved by the administrator in accordance with the provisions of this chapter and duly recorded in the circuit court clerk's office located in the county courthouse.

(b) No building permit shall be issued for the construction of any building or structure to be located on a lot created or established in violation of the regulations of this chapter.

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*Cross reference(s)--Administration, ch. 2.

†Cross reference(s)--Officers and employees, § 2-96 et seq.

(c) No plat of a subdivision shall be approved which does not comply with all the provisions of this chapter.
(Ord. of 10-14-93, § 6.2)

Sec. 46-68. Appeals.

Any person aggrieved by the administrator's objection to a plat or a failure to approve a final plat may appeal to the town council. All such appeals shall be brought before the council and a decision announced by the council within 21 days following the objection or rejection of the plat by the administrator. If this 21-day appeal period does not contain or include a scheduled meeting of the council, a special session shall be required. The town council may direct that the final plat be approved if it finds that the action of the administrator was arbitrary, unreasonable or discriminatory. Appeals from the decision of the council shall be taken to the circuit court having jurisdiction.
(Ord. of 10-14-93, § 6.4)

Sec. 46-69. Amendments.

This chapter may be amended in whole or in part by the town council. The planning commission may on its own initiative or at the request of the council shall prepare and recommend amendments to this chapter. No such amendment shall be adopted by the town council without a reference of the proposed amendment to the planning commission for recommendation. No such amendment shall be adopted without a public hearing having been held by the town council. Notice of the time and place of the hearing shall have been given at least once a week for two successive weeks, and the last notice at least six days but not more than 21 days prior to the hearing.
(Ord. of 10-14-93, § 6.5)

Secs. 46-70--46-100. Reserved.

ARTICLE III. PLATS

DIVISION 1. GENERALLY

Sec. 46-101. Physical features.

In all subdivisions due regard shall be given to the preservation of natural features such as large trees, watercourses, historical and similar features.
(Ord. of 10-14-93, § 8.1)

Sec. 46-102. Unsuitable land.

No land shall be subdivided, which is held by the administrator, after determination by the town engineer and county health department in accordance with applicable town and state health standards, to be unsuitable for such use by reason of adverse earth or rock

formation or topography, or any other reason likely to be harmful to the health, safety or welfare of the future residents in the proposed subdivision of the community.
(Ord. of 10-14-93, § 8.2)

Sec. 46-103. Dedication of land for public use.

(a) *Acceptance of dedication*. When a final plat of a subdivision has been approved and all other required approvals are obtained and the plat is recorded, such recordation shall constitute acceptance for the purpose designated on the plat of all lands shown on the plat as dedicated to the public use, including street dedications.

(b) *Rejection of dedication*. Whenever a preliminary plat includes a proposed dedication of land for public use and the administrator finds that such land is not required or not suitable for public use, the administrator may either refuse to approve such dedication or require the rearrangement of lots in the proposed subdivision to exclude such land.
(Ord. of 10-14-93, § 8.3)

Sec. 46-104. Preservation for public spaces.

(a) *Preliminary plat to accommodate planned public spaces*. The administrator shall require that a subdivider set aside land for a proposed street, highway or parkway, or proposed site for a park, playground or other public use as may be indicated in the town comprehensive land use plan. Such space shall be suitably incorporated by the developer into his subdivision plat after proper determination of its necessity by the administrator and the appropriate town officer or other public agency involved in the acquisition and/or use of each such site.

(b) *Acquisition of land for public use*. The administrator shall consider all preliminary plats and plans or studies related thereto, to determine the need for acquisition for public use of any of the land included in the preliminary plat. If such studies or plans do relate thereto, the administrator may refer the plat to the public body concerned with acquisition for its consideration and reply. The administrator may propose alternate areas for such acquisition and shall allow the public body or agency 30 days for reply. The agency's reply, if affirmative, shall include a map showing the boundaries and area of the parcel to be acquired and the estimate of the time required to complete the acquisition. Upon receipt of an affirmative reply, the administrator shall designate on the preliminary plat that area proposed to be acquired by the public body.
(Ord. of 10-14-93, § 8.4)

Sec. 46-105. Large tracts.

Where land is subdivided into larger parcels than normal building lots, whenever possible such parcels shall be arranged in a way that future resubdivision is feasible.
(Ord. of 10-14-93, § 8.5)

Sec. 46-106. Vacation of recorded subdivision.

No subdivision or any lot lines in a subdivision may be changed, altered or vacated except as provided in Code of Virginia, §§ 15.2-2271 through 15.2-2276.
(Ord. of 10-14-93, § 8.6)

Sec. 46-107. Resubdivision.

A resubdivision of all or any part of a recorded subdivision may not be made or recorded until submitted and approved by the administrator.
(Ord. of 10-14-93, § 8.7)

Sec. 46-108. Reserved areas prohibited.

Unless as described in section 46-104(b), no area within a proposed subdivision or resubdivision shall be set aside for future use or otherwise carry the designation "reserved."
(Ord. of 10-14-93, § 8.8)

Sec. 46-109. Advertising standards.

A subdivider, when advertising a subdivided tract of land for sale, shall be specific as to the following items:

(1) Whether officially approved water and sewage facilities are available or not.

(2) The amount of officially approved water available to each lot purchaser in terms of gallons per day.

(Ord. of 10-14-93, § 8.9)

Sec. 46-110. Allowable error of closure.

The maximum allowable error of closure shall be as stipulated by the Virginia Association of Surveyors.
(Ord. of 10-14-93, § 8.10)

Sec. 46-111. Changes after approval.

No changes, erasures or revisions shall be made on any preliminary or final plat, nor on accompanying data sheets after approval of the report has been endorsed in writing, unless authorization for such changes has been granted in writing by the administrator.
(Ord. of 10-14-93, § 7.3)

Sec. 46-112. Required improvements.

The subdivider shall at his expense install street and utility improvements, and other improvements indicated on the plat, as provided in this chapter. The cost of engineering design, checking, drafting and field inspection is to be borne by the subdivider. Furthermore, the subdivider's bond, if required, shall not be released until all construction has been inspected and approved by the appropriate official.
(Ord. of 10-14-93, § 7.4)

Sec. 46-113. Surveyor's or engineer's certificate; certificate of approval.

(a) The following certificate shall be affixed to a plat:

I hereby certify that to the best of my knowledge and belief, all of the requirements of the town council and ordinances of the town, regarding the platting of subdivisions within the town have been complied with.
Given under my hand this _____ day of _____, _____.

_____
State Certified Engineer (or Land Surveyor)

(b) The following certification shall be affixed to an approved plat:

This subdivision known as _____ Subdivision is approved by the undersigned in accordance with existing subdivision regulations and may be committed to record.
TABLE INSET:

_____	_____
Date	Administrator
_____	_____
Date	Town Manager

The foregoing plat is not approved until all signatures have been obtained, and affixed thereon.
(Ord. of 10-14-93, arts. 12, 13)

Secs. 46-114--46-145. Reserved.

DIVISION 2. PRELIMINARY PLAT

Sec. 46-146. Submittal generally; approval, review.

(a) The subdivider shall prepare a proposed preliminary plat, including a proposal for the installation of improvements and intended dedication or reservation of public lands, and shall file a letter of transmittance of the plat with the administrator.

(b) The administrator shall obtain the required recommendations from the planning commission and other public agencies. After applying the provisions of this chapter, he shall tentatively approve or disapprove the plat, or approve it with modifications. Written findings shall be reported to the subdivider. The administrator shall reserve the right to review the preliminary plat at any time within six months of the date of approval. (Ord. of 10-14-93, § 7.1-1)

Sec. 46-147. Application for approval.

Written application for approval of a preliminary plat shall be submitted by the owner. All such applications shall accompany the preliminary plat and shall contain the following information:

(1) *Name for file identification:*

a. Name of the subdivision if property is within an existing subdivision.

b. Proposed name of the subdivision if property is not within a previously platted subdivision. Any such proposed name shall not duplicate the name of any existing or proposed subdivision in the town.

(2) *Location and description of property.* Location of property by parcel number or numbers as designated on town tax maps.

(3) *Basic facts and proposals pertaining to the property:*

a. Size in acres of the entire tract to be subdivided.
b. Size of existing lots, if any, in square feet.
c. Number of proposed lots in the subdivision.
d. Area of lots proposed: minimum, average and maximum.
e. Proposed type of water and sewer facilities.
f. Any other proposals, such as parcels of land intended to be dedicated, conveyed, or reserved for public use, and the conditions proposed for each such disposal and use.

(4) *Right-of-way and easement information:*

a. Citation of an existing legal right-of-way or easement affecting the property.
b. Existing covenants on the property, if any.

(Ord. of 10-14-93, § 9.1)

Sec. 46-148. Drawing specifications.

The administrator may request that all preliminary plats for subdivisions featuring apartments, townhouses or condominium construction be drawn at a scale of one inch equaling 50 feet. All other subdivisions shall be drawn at a scale of one inch equaling 100 feet. Scale variations may be made upon request, at the discretion of the planning commission. The preliminary plat shall accurately show on its face the following information:

(1) Proposed subdivision name or identifying title and location.

(2) Name, address and telephone number of the owner, the subdivider, and the surveyor or engineer preparing the plat.

(3) Date of drawing, true north point or magnetic north point with magnetic declination of the appropriate year, graphic scale and number of sheets.

(4) Location and names of all adjoining subdivisions and the names of the owners of any adjacent unsubdivided property.

(5) Boundaries of the land being subdivided shown in heavy outline, with the approximate dimensions of the property and the approximate acreage contained therein; all existing property lines within the tract with all names of such owners.

(6) Location, names and widths of all existing and/or platted streets, alleys, easements, railroad and utility rights-of-way, parks, cemeteries, parking spaces, watercourses, permanent buildings, bridges, other public ways and open spaces, and any additional feature deemed as pertinent data by the planning commission.

(7) Location, names and widths of all proposed streets and rights-of-way including alleys, easements for water and sewer mains and other public utilities.

(8) Reference to accompanying profiles of all proposed streets and alleys, showing the proposed grade lines thereon and typical cross sections if such profiles and cross sections are required by the planning commission.

(9) Location and area of all property proposed to be dedicated for public use and the conditions, if any, of such dedication.

(10) Layout, numbering and approximate dimensions of all proposed lots or parcels.

(11) Location of and proposed connections with existing sanitary sewers and water supply, or alternate means of sewage disposal and water supply, location of existing culverts and other underground structures within or adjacent to the tract.

(12) Location of proposed sanitary sewers, culverts, other storm drains and water mains.

(13) Proposed building setback lines along all streets including the minimum amount of setback required.

(14) Contours at intervals of not more than five feet or at more frequent intervals if required by the agent for land with unusual topography.

(15) Approximate radii of curves and central angles on all streets.

(16) Delineation of the 100-year floodplain as established by the Tennessee Valley Authority.

(17) Reference to accompany statements concerning any proposed covenants to be imposed by the owner.

(18) Location of necessary bench marks and source of topography.

(Ord. of 10-14-93, § 9.2)

Sec. 46-149. Disposition.

The administrator shall, within 60 days of the receipt of an application for the approval of a preliminary plat, tentatively approve or disapprove the plat, or approve it with modifications.

(Ord. of 10-14-93, § 7.2)

Secs. 46-150--46-180. Reserved.

DIVISION 3. FINAL PLAT

Sec. 46-181. Submittal generally; review, approval or rejection.

(a) Within six months of the date of approval of the preliminary plat, the subdivider shall prepare and submit to the administrator the final plat incorporating all required modifications to the preliminary plat. The subdivider shall file three reproductions thereof. Failure to do so shall make the preliminary plat approval null and void. The administrator may, on written request by the subdivider, grant an extension of this time limit.

(b) The administrator shall review the plat to determine if all requirements of the preliminary approval have been met. A final review shall be conducted by the administrator in coordination with the planning commission, town engineer, county health officer and other appropriate public agencies for recommendations as to whether or not their requirements for public utilities, highway plans, easements, drainage facilities, etc., have been addressed.

(c) The administrator shall approve or reject the final plat within 30 days of the subdivider's submission of the final plat to the administrator unless the subdivider is notified of objections to the plat or the time is extended by agreement of the administrator with the subdivider.
(Ord. of 10-14-93, § 7.1-2)

Sec. 46-182. Recordation of approved plat.

Within 60 days of the date of the approval of the final plat, the subdivider shall submit to the administrator one reproductive print and two copies of the approved final plat. Failure to do so shall make final approval void and shall cause such approval to be withdrawn. The administrator shall, within 15 days of this submission, certify that these plats are identical to the final plat as approved by him and shall forward them to the town manager. The town manager shall within the same 15-day time period accept and sign the final plat on behalf of the town and shall cause one reproducible print to be filed with the circuit court of the county, one copy with the building inspector's office of the county and one copy with the public works superintendent. If, when submitted, the administrator determines that the plats are not identical to the approved final plat, he shall notify the subdivider and the plats shall be corrected to the extent of their difference. If required, the subdivider shall be granted an additional 15 days in which such corrections are to be made and all required plats recorded. After proper recordation the subdivider may proceed to develop and sell the lots of his subdivision.
(Ord. of 10-14-93, § 7.1-3)

Sec. 46-183. Final plat may constitute all or part of approved preliminary plat.

A final plat may include all or any part of the area contained in the approved preliminary plat, provided that the public improvements to be constructed in the area covered by the final plat are sufficient by and of themselves to accomplish a proper development and to provide adequately for the health, safety, convenience and general welfare of the area's anticipated inhabitants and for adequate access to contiguous areas.
(Ord. of 10-14-93, § 10.1)

Sec. 46-184. Drawing specifications.

The final plat sheets shall be 17 inches by 21 inches in size and shall be drawn to the same scale as the approved preliminary plat. Such scale shall in no case be more than 100 feet to the inch. The final plat shall conform to the requirements of the approved preliminary plat and shall show on its face the following information:

(1) Subdivision name and location.

(2) Name, address and telephone number of the owner and the subdivider; name of the licensed professional engineer or surveyor responsible for the plat's preparation.

(3) Source of title. Certificates signed by the engineer or surveyor setting forth the source of title of the owner of the land subdivided and the place of record of the last instrument in the chain of title.

(4) Certificate of owner's consent and dedication. A statement to the effect that the subdivision as it appears on this plat is with the free consent and in accordance with the desires of the owner, to be signed by the owner, and duly acknowledged before some officer authorized to take acknowledgements of deeds.

(5) Surveyor's certificate. A statement certifying that to the best of the surveyor's (or engineer's) knowledge and belief all of the requirements of the town council and ordinances of the town regarding the platting of subdivisions within the town, have been complied with.

(6) Date, scale and true north point or magnetic north point with magnetic declination of the appropriate year.

(7) Boundaries of the land being subdivided with accurate dimensions and bearings and the exact acreage contained therein; also the boundaries and acreages of any parcels within the subdivision which are separately owned. In all measurements on the plat, linear dimensions shall be expressed in feet and hundredths of a foot while all bearings shall be expressed in degrees, minutes and seconds.

(8) Accurate location and dimensions of all existing and proposed street rights-of-way, alleys, lot lines, easements, and other public ways by widths, bearings and lengths.

(9) Data for all curves in existing and proposed street rights-of-way, alleys, lot lines, easements, and other public ways to be shown in detail at the curve or in a curve data table containing the following: delta, radius, arc, tangent, chord and chord bearings.

(10) All street names.

(11) Generally recognized description of adjoining unsubdivided land and names of any adjacent subdivision.

(12) Accurate location and dimensions of all existing and proposed parks and other public areas, watercourses, and any areas reserved for public acquisition within the proposed subdivision.

(13) Sufficient data acceptable to the planning commission to readily determine on the ground the location, bearing, and length of all other lines of demarcation.

(14) Accurate locations and descriptions of all reference monuments.

(15) Building setback lines with minimum required setback.

(16) Total number of lots included on the plat.

(17) All lots in each block consecutively numbered.

(18) Delineation of all established floodplains.

(19) Location of the property to be subdivided by section and parcel numbers as designated on the town tax maps.

(20) All notes pertinent to the owner's and/or developer's intentions for planned land use, water and sewer systems, curbs, gutters, easements, areas of lots, etc.

(21) Reference to accompanying statement concerning any proposed covenants to be imposed by the owner.

(22) A blank oblong space three inches by five inches reserved for the use of the approving authority.

(Ord. of 10-14-93, § 10.2)

Secs. 46-185--46-215. Reserved.

ARTICLE IV. DESIGN STANDARDS

Sec. 46-216. Conformance to applicable rules and regulations.

In addition to the design standards established in this article, all subdivisions plats shall comply with the following plans, laws, rules and regulations:

(1) The comprehensive land use plan of the town and amendments thereto.

(2) Rules and regulations and construction specifications and standards of the public works department.

(3) The rules and regulations of the state health department relating to sewage disposal if the subdivision is not served by a public sewer.

(4) The applicable provisions of the state building code.

(Ord. of 10-14-93, § 11.1)

Sec. 46-217. Streets and alleys.

(a) *General considerations.* Streets shall be designed and located in relation to existing, planned or platted streets or adjoining plats, to existing topographical conditions and natural terrain features such as streams and vegetation, to public safety and convenience, and in appropriate relation to the proposed uses of land to be served by such streets.

(b) *Arrangement.*

(1) All streets shall be properly integrated with the existing and proposed system of streets and dedicated rights-of-way.

(2) Proposed streets in the subdivision shall be extended to the tract's boundary lines with adjacent tracts, unless such extension is prevented by topography or other physical conditions, or unless such extension is found by the administrator to be unnecessary or undesirable for the coordination of the layout of the subdivision with the existing layout or the most advantageous future development of adjacent tracts. Where such extensions provide access to adjacent tracts not yet subdivided, temporary turnarounds shall be provided at the end of such streets.

(3) Local streets shall be laid out so as to conform to the existing topography and shall be designed to discourage through traffic, to permit efficient drainage and utility systems, to require the minimum number of streets necessary for the provision of safe and convenient access to property, and to create desirable building sites.

(4) Where such use will result in a more desirable layout, the rigid rectangular gridiron street pattern need not necessarily be adhered to, and the use of curvilinear streets, U-shaped streets and cul-de-sacs shall be encouraged.

(5) All arterial streets shall be properly related to population densities, the pattern of existing and proposed land uses, and special traffic generators such as industries, business districts, schools, churches and shopping centers.

(6) Streets and other accessways in business and industrial developments shall be planned with relation to the grouping of buildings, truck loading and maneuvering areas, location of rail facilities, and the provision of alleys, walks and parking areas so as to minimize conflict of movement between the various types of traffic, including pedestrian.

(c) *Railroads and highways*. Subdivision of land adjacent to railroad right-of-way and limited access highways shall be dealt with as follows:

(1) In areas of business, commercial or industrial use, the nearest street extending parallel or approximately parallel to a railroad or limited access highway shall, wherever practicable, be at a sufficient distance therefrom to insure adequate lot depth for commercial or industrial sites.

(2) Streets parallel to a railroad or limited access highway and intersecting with a street which crosses same railroad or limited access highway at a grade shall, whenever practicable, be at a distance no less than 150 feet from the railroad or limited access highway right-of-way. Such distance shall be determined for future separation of grades by means of appropriate approach gradients.

(d) *Access to arterial streets*. Where a subdivision borders on or contains an existing or proposed arterial street, the administrator may require that certain measures be taken so as to reduce the impact of heavy traffic in residential areas and to afford separation of through and local traffic, through one or more of the following means:

(1) In the subdivision of lots so as to back onto the major street and front onto a parallel local street (reverse frontage), access from the major street shall be prohibited.

(2) Where appropriate, a series of cul-de-sacs, U-shaped streets or short loops entered from and designed generally at right angles to such a parallel street (see subsection (1) above) with the rear lines of their terminal lots backing onto the arterial street, shall be utilized.

(3) Marginal access areas or service drives shall be separated from the arterial street by a planting or grass strip, and connecting therewith at infrequent intervals.

(4) The number of residential streets entering a major street shall be kept to a minimum by providing one direct connection to such an artery for each 50 dwelling units in the subdivision.

(e) *Street right-of-way width*. The right-of-way width of all streets shall be determined by the administrator upon recommendation by the highway engineer, except that:

(1) No street shall have a right-of-way width less than 50 feet.

(2) Right-of-way widths for collector streets and for local streets in nonresidential (commercial or industrial) subdivisions shall not be less than 60 feet.

(3) In no case shall the right-of-way width of an arterial street be less than 80 feet.

(f) *Cul-de-sacs or dead-end streets*. All cul-de-sacs or dead-end streets shall terminate in a turnaround having a minimum right-of-way diameter of 100 feet. Such streets should not be longer than 500 feet, exclusive of the turnaround. Where the curvature or slope of a cul-de-sac street does not make obvious the dead-end characteristics, an appropriate street sign shall be placed at the street entrance.

(g) *Half-streets.* Street systems in new subdivisions shall be laid out so as to eliminate or avoid half-streets. Where a half-street is adjacent to a new subdivision, the other half of the street will be dedicated by the subdivider. Where a new subdivision abuts on an existing street of inadequate right-of-way, additional right-of-way width may be required to be dedicated by the subdivider in order to meet the requirements of this section.

(h) *Construction requirements*. Unless otherwise specified, all street construction requirements shall be those of the state department of transportation for acceptance into the state secondary system and those requirements of the town for accepting new streets for town maintenance.

(i) *Street intersections.*

(1) Streets shall be laid out so as to intersect as nearly as possible at right angles (90 degrees) as topography and good design permit. A proposed intersection of two new streets at an angle of less than 60 degrees shall be prohibited. Not more than two streets shall intersect at any one point.

(2) Proposed new intersections along one side of an existing street shall coincide with any existing intersection on the opposite side of such street. Intersects of local streets with centerline offsets of less than 150 feet shall be prohibited. Where streets intersect with arterial or collector streets their centerlines shall be continuous or shall be separated by a minimum distance of 300 feet.

(3) Intersections shall be designed with a flat grade wherever practicable. In no case shall the grade within the intersection exceed ten percent.

(4) A leveling area shall be provided at the approach of an intersection with an arterial or major collector street having no more than five percent grade for a distance of 50 feet, measured from the nearest right-of-way line of the intersecting street.

(5) Where any street intersection will involve earth banks and vegetation that would create a traffic hazard by limiting visibility, the developer shall cut such ground and/or vegetation in connection with the grading of the public right-of-way to the extent deemed necessary to provide a minimum sight distance of 200 feet along each approach leg, measured from the nearest right-of-way line of the intersecting street.

(6) The minimum corner pavement width at all street intersections shall not be less than 35 feet. Furthermore, the right-of-way line at corner lots shall be flared and shall be defined by a chord line connecting the two points on the intersecting right-of-way lines which are located a distance of not less than 20 feet from the right-of-way intersection point.

(7) The administrator, upon the advice of the highway engineer, may request that a vision easement be established at those corner lots which present a hindrance to the safe traffic movement due to obstruction of vision present on such lot. The easement shall regulate the construction, planting or maintenance of signs, fences, walls, telephone booths, bus shelters, hedges and other natural growth, or any other obstruction to vision.

(8) Alley intersection with streets and abrupt changes in street or alley alignment shall have the corners rounded off in accordance with standard engineering practice, to permit safe vehicular movement.

(j) *Private streets and reserve strips*. There shall be no private streets platted in any subdivision. All subdivided property shall be served by a publicly dedicated and accepted street. Reserved strips restricting access to streets, alleys, public ways and easements shall not be permitted.

(k) *Alleys.*

(1) Alleys shall be provided in the side or rear of lots to be used for business and industrial purposes, except that the administrator may waive this requirement where other definite and suitable provision is made for service access, such as off-street parking and loading, consistent with and adequate for the uses proposed.

(2) The width of alleys shall not be less than 20 feet.

(3) Dead-end alleys will be permitted only at the discretion of the administrator, and crooked and tee alleys shall be discouraged. Where dead-end alleys are unavoidable, they shall be provided with adequate turnaround facilities at their terminus.

(4) Alleys shall not be permitted in residential areas.

(l) *Street names*. Proposed streets which are already in alignment with other existing and named streets shall bear the name of the existing street. In no case shall the name of proposed streets duplicate existing street names, irrespective of the use of the suffix street, avenue, boulevard, drive, way, place, lane, court, etc.

(m) *Identification signs*. Street identification signs of a uniform design approved by the administrator shall be installed at all intersections. The town shall collect from the subdivider, prior to recordation, sufficient funds for the purchase and erection of signs required.
(Ord. of 10-14-93, § 11.2)

Cross reference(s)--Streets, sidewalks and certain other public places, ch. 42.

Sec. 46-218. Easements.

(a) Utility easements. Easements of not less than ten feet in width shall be provided for water, sewer, power lines, and other public utilities in the subdivision. Such easements shall be designed and laid out so as to ensure continuity for utilities from block to block and to adjacent property. All such utility easements shall be kept free of permanent structures and shall, wherever the terrain permits, be centered on rear or side lot lines.

(b) Drainage easements. Utility easements may be on the street right-of-way following approval by the town, state and the utility provider. Where a subdivision is traversed by a watercourse, drainageway, channel or stream, there shall be provided a stormwater right-of-way or drainage easement conforming substantially to the lines of such watercourse. Drainage easements for primary runoff shall be a minimum of ten feet in width. When a channel is provided, the width of the easement shall be the width of the channel. Additional easement width may be required along either side of a channel when the town engineer deems such necessary for adequate surface drainage and stormwater flow.
(Ord. of 10-14-93, § 11.3)

Sec. 46-219. Flood control regulations.

The subdivider shall prepare a contour map of the proposed area with such contour intervals as the administrator shall determine to be necessary, and shall prepare drainage plans or flood control devices satisfactory to the administrator. No plat shall be approved until the administrator shall certify that the proper plans for drainages and flood control have been made.
(Ord. of 10-14-93, § 11.4)

Sec. 46-220. Blocks.

(a) *Residential blocks.*

(1) Blocks in residential areas shall be of sufficient width to provide for two tiers of lots of minimum depth. Exceptions to this prescribed block width shall be permitted where topographical conditions or size of property prevent such a

design or in blocks adjacent to schools, parks, arterial or collector streets, railroads, shopping centers or waterways. In such cases the administrator may approve a single tier of lots of minimum depth.

(2) Blocks, in general, shall not be longer than 1,600 feet nor less than 400 feet in length.

(3) Blocks along arterial or collector streets shall not be less than 1,000 feet in length.

(4) In any residential block more than 800 feet in length, a pedestrian way or crosswalk of not less than ten feet in width may be required by the administrator where deemed essential to provide circulation or convenient access to schools, playgrounds, shopping centers, transportation or other community facilities. All crosswalks, if required, shall be located as near as possible to the center of such blocks.

(b) *Nonresidential blocks*. Blocks designed for business, commercial or industrial uses shall not be longer than 1,600 feet nor less than 500 feet in length.
(Ord. of 10-14-93, § 11.5)

Sec. 46-221. Water facilities.

Where public water is adequate and sufficient, the service shall be extended by the subdivider to all lots within a subdivision, including fire hydrants. All design standards and specifications for water, construction, and improvements shall be in accordance with the criteria of the public works department and the state waterworks regulations. Water lines may be located on the street right-of-way following approval by the town.
(Ord. of 10-14-93, § 11.6)

Sec. 46-222. Sewerage facilities.

Where public sewerage facilities are available, the service shall be extended to all lots within a subdivision and septic tanks will not be permitted. Every such subdivision shall be provided by the subdivider with a satisfactory and sanitary means of sewage collection and disposal in accordance with the design standards and specifications of the public works department.
(Ord. of 10-14-93, § 11.7)

Sec. 46-223. Privately owned water or sewerage facilities.

Sewer lines may be located on the street right-of-way following approval by the town. Where public water and/or public sewerage facilities are not available, privately owned water and/or sewerage facilities shall be required. All installations shall meet all the requirements of the public works department, the state water control board, the state health department, and any other state or local regulation having authority over such installation.
(Ord. of 10-14-93, § 11.8)

Sec. 46-224. Septic tanks.

The administrator shall not approve any subdivision where sanitary sewers are not provided unless the agent shall receive in writing from the county health department a statement to the effect that the area contained in the subdivision is satisfactory for the installation of septic tanks and that they will not, so far as can be determined, create hazards to public health.
(Ord. of 10-14-93, § 11.9)

Sec. 46-225. Lots.

(a) *Size and area*. If any provision of this chapter conflicts with lot area requirements or setbacks of a particular zone listed in the zoning ordinance, then this chapter shall have primacy. The minimum lot size and lot area in any subdivision shall be in accordance with the following provisions:

(1) *Lot size, public water and sewer*. Lots in proposed subdivisions served by both public water and public sewer systems shall conform to the lot size requirements of the zone in which the subdivision is located.

(2) *Lot size, public sewer*. Residential lots served by a public sewer but not a public water system shall be 90 feet or more in width and shall contain an area of not less than 15,000 square feet.

(3) *Lot size, public water*. Residential lots served by a public water system but not a public sewer system shall contain an area of not less than 15,000 square feet.

(4) *Lot size, neither public water nor sewer*. Residential lots served by neither public water nor public sewer systems shall be 100 feet or more in width and shall contain an area of not less than 20,000 square feet.

(5) *Septic tanks and wells*. Greater lot areas may be necessary where individual septic tanks or individual wells are used if the health official determines that there are factors of drainage, soil condition, or other conditions to cause potential health problems. The administrator shall require that data from soil studies, and when requested by the health official, percolation tests, be submitted as a basis for passing upon subdivisions dependent upon septic tanks as a means of sewage disposal. These tests and soils studies shall be performed by or under the supervision of the health official.

(6) *Lot dimensions to include roads and easements*. Satisfaction of lot dimension shall be achieved by including land covered by roads, water or flowage easements.

(7) *Lots abutting U-shaped terms*. Where lots abut a cul-de-sac or U-shape turn, frontage shall be measured at the building setback line.

(b) *Shape.* The lot arrangement, design and shape shall be such that all lots will provide satisfactory and desirable building sites and be properly related to topography and the character of surrounding development while conforming to the regulations of this chapter. Lots shall not contain peculiar shaped elongations solely to provide necessary square footage of area which would be unusable for normal purposes.

(c) *Location and orientation.*

(1) Each lot shall front on or abut a publicly dedicated street with a right-of-way not less than 50 feet wide.

(2) If the existing right-of-way is not 50 feet in width, the subdivider shall make provisions in the deed to the lots for all buildings to be so constructed as to permit the widening by dedication of such right-of-way to a width of 50 feet.

(3) Lots shall be laid out so as to provide positive drainage away from all buildings, and individual lot drainage shall be coordinated with the general storm drainage pattern for the area.

(4) Double frontage (through lots) and reverse frontage lots shall be avoided, except where necessary to provide separation of residential development from arterial streets or to overcome specific disadvantages of topography and orientation.

(d) *Corner lots.*

(1) Corner lots shall have extra width to permit appropriate building setback from and orientation to both streets as determined by the agent.

(2) No corner lot or lots shall be resubdivided to face another street unless all established building setbacks are observed on both streets.

(3) Minimum setbacks shall be 35 feet.

(e) *Side lot lines.* Side lot lines shall be approximately at right angles to street lines or radial to curved street lines.

(f) *Remnants.* All remnants of lots below minimum size left over after subdividing of a tract must be added to adjacent lots or otherwise disposed of rather than allowed to remain as unusable parcels.

(g) *Building setbacks.* Building setback lines shall be established along all streets and shall be shown on the preliminary and final plats and shall be 35 feet minimum. If this is in conflict with the provisions of a particular zone listed in the zoning ordinance, the subdivision chapter shall have primacy.

(h) *Separate ownership*. Where the land covered by a subdivision includes two or more parcels in separate ownership, and lot arrangement is such that a property ownership line divides one or more lots, the land in each lot so divided shall be transferred by deed to single ownership.

(i) *Off-street parking and delivery facilities*. Properties laid out for business, commercial or industrial purposes shall be designed specifically for such purposes with adequate space set aside to provide for off-street parking and/or delivery facilities required by the type of use and development contemplated.
(Ord. of 10-14-93, § 11.10)

Sec. 46-226. Monuments.

Permanent reference monuments must be installed by the subdivider and shall meet these minimum specifications. Upon completion of subdivision streets, sewers and other improvements, the subdivider shall make certain that all monuments required by the administrator are clearly visible for inspection and use.

(1) Location, concrete. Concrete monuments four inches in diameter or square, at least 24 inches long, with a flat top, shall be set at all street corners, at all points where the street line intersects the exterior boundaries of the subdivision, and at angle points, and points of curve in each street. The top of the monument shall have an indented cross to identify properly the location and shall be set flush with the finished grade.

(2) Location, iron pipe. All other lot corners shall be marked with an iron pipe not less than three-fourths-inch diameter and 24 inches long and driven so as to be flush with the finished grade. When rock is encountered, a hole shall be drilled four inches deep in the rock, into which shall be cemented a steel rod one-half inch in diameter, the top of which shall be flush with the finished grade.
(Ord. of 10-14-93, § 11.11)

Sec. 46-227. Sidewalks.

Where, in the opinion of the administrator, sidewalks are necessary to safeguard the safety of pedestrians, sidewalks at least five feet in width shall be provided on one or both sides of all arterial streets and on all other streets within or adjacent to a subdivision for such distances as individual conditions dictate.
(Ord. of 10-14-93, § 11.12)

Sec. 46-228. Fire hydrants.

The installation of adequate fire hydrants in a subdivision shall be required by the administrator. All water system installations shall be in accordance with all rules, regulations and construction standards of the public works department and any other state or location regulation having authority over such installation.
(Ord. of 10-14-93, § 11.13)

Sec. 46-229. Bond.

All physical improvements (see section 46-112) required by the provisions of this chapter for a subdivision shall be installed by the subdivider at his expense. Prior to final approval of the plat by the administrator the subdivider may be required, in lieu of construction, to furnish a performance bond in an amount calculated by the administrator to secure the required improvements in a workmanlike manner and in accordance with specification and construction schedules established or approved by the appropriate engineer. Such bond, if required, shall be payable to and held by the town council until all construction has been inspected and accepted by the appropriate official.
(Ord. of 10-14-93, § 11.14)

Sec. 46-230. Inspection of required improvements.

All construction work on physical improvements shall be subject to periodic inspection by a duly authorized public official so as to ensure conformity with the approved plans and specifications. Upon completion of such improvements, a final inspection shall be conducted and the appropriate public official shall issue certificates of approval thereof to the subdivider and any bond or part thereof which may have been furnished for guarantee shall be released to the subdivider.
(Ord. of 10-14-93, § 11.15)

Chapters 47--49

RESERVED

Chapter 50

Taxation*

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***Cross reference(s)--**Financial matters, § 2-286 et seq.; motor vehicle license, § 30-81 et seq.
State law reference(s)--Local taxes, Code of Virginia, § 58.1-3000 et seq.

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ARTICLE I. IN GENERAL

Secs. 50-1--50-30. Reserved.

ARTICLE II. REAL ESTATE

DIVISION 1. GENERALLY

Secs. 50-31--50-60. Reserved.

DIVISION 2. SPECIAL ASSESSMENT FOR LAND PRESERVATION*

Sec. 50-61. Assessment for agricultural and forestal production land use real estate.

(a) The town finds that the preservation of real estate devoted to agricultural, horticultural, forest and open space uses within its boundaries is in the public interest and, having heretofore adopted a land use plan, hereby ordains that such real estate shall be taxed in accordance with the provisions of Code of Virginia, § 58.1-3231, and any amendments thereto, and of this section.

(b) The owner of any real estate in the town meeting the criteria set forth in Code of Virginia, § 58.1-3230 and other relevant provisions of the Code of Virginia with respect to taxation of agricultural and forestal production real estate shall be eligible for the use value assessment and taxation in the town upon the determination of the county that such land is taxed for such purposes for the county and the real estate tax for the town shall be calculated according to the county land use value assessment.
(Code 1986, § 19-1)

State law reference(s)--Special classification of real estate, Code of Virginia, § 58.1-3230; authority to adopt use value assessments on certain property, Code of Virginia, § 58.1-3231.

Secs. 50-62--50-90. Reserved.

ARTICLE III. BANK FRANCHISE TAX†

Sec. 50-91. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Bank and bank holding company shall be as defined in Code of Virginia, § 58.1-1201.

***State law reference(s)--**Special assessment for land preservation, Code of Virginia, § 58.1-3230 et seq.

†**Cross reference(s)--**Businesses, ch. 18.

State law reference(s)--Bank franchise tax, Code of Virginia, § 58.1-1201 et seq.

Net capital means a bank's net capital computed as provided in Code of Virginia, § 58.1-1205, as amended.
(Code 1986, § 19-16)
Cross reference(s)--Definitions generally, § 1-2.

Sec. 50-92. Imposed; amount.

(a) A franchise tax equal to 80 percent of the state rate of franchise tax on each $100.00 of net capital of any bank whose principal office is located within the corporate limits of the town is hereby imposed. If any such bank has any branch located outside the corporate limits of the town, the franchise tax imposed in this article shall be upon only such proportion of the taxable value of the net capital of such bank as the total deposits of the bank, minus deposits through any branch or branches located outside the corporate limits of the town, bear to the total deposits of the bank as of the end of the preceding year.

(b) A franchise tax equal to 80 percent of the state rate of franchise tax is imposed on each $100.00 of the taxable value of the net capital of any branch of any bank located in the town and whose principal office is located outside the corporate limits of the town. The rate of taxation under this subsection shall be on such proportion of the net capital of such bank as the deposits through the branch so located in the corporate limits of the town bear to the total deposits of the bank as of the end of the preceding year.
(Code 1986, § 19-17)
State law reference(s)--Authority for tax, Code of Virginia, § 58.1-1209; similar provisions as to apportionment for branch banks, Code of Virginia, § 58.1-1211.

Sec. 50-93. Returns, schedules.

(a) On or after January 1 of each year, but not later than March 1 of any year, all banks whose principal offices are located within the town shall prepare and file with the town clerk a return, as provided by Code of Virginia, § 58.1-1207, in duplicate, which shall set forth the tax on net capital computed pursuant to Code of Virginia, § 58.1-1200 et seq. The town clerk shall certify a copy of such filing of the bank's return and schedule and shall forthwith transmit the certified copy to the state department of taxation.

(b) If the principal office of a bank is located outside the corporate boundaries of the town and such bank has branch offices located within the town, in addition to the filing requirements set forth in subsection (a) of this section, any bank conducting such branch business shall file with the town clerk a copy of the real estate deduction schedule, apportionment and other items which are required by Code of Virginia, §§ 58.1-1207, 58.1-1211 and 58.1-1212.
(Code 1986, § 19-18)
State law reference(s)--Filing of returns, payment of tax, Code of Virginia, § 58.1-1207.

Sec. 50-94. Payment.

Each bank, on or before June 1 of each year, shall pay to the town clerk all taxes imposed pursuant to this article.
(Code 1986, § 19-19)

State law reference(s)--Similar provisions, Code of Virginia, § 58.1-1207.

Sec. 50-95. Penalty for failure to comply.

Any bank which fails to file a return or pay the tax required by this article or fails to comply with any other provision of this article shall be subject to a penalty of five percent of the tax due. If the town clerk is satisfied that such failure is due to providential or other good cause, such return and payment of tax shall be accepted exclusive of such penalty, but with interest determined in accordance with Code of Virginia, § 58.1-15.
(Code 1986, § 19-20)

State law reference(s)--Similar provisions, Code of Virginia, § 58.1-1216.

Secs. 50-96--50-125. Reserved.

ARTICLE IV. CIGARETTE TAX*

Sec. 50-126. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Agent means every local dealer and other person who shall be authorized by the treasurer to purchase and affix stamps to packages of cigarettes under the provisions of this article.

Cigarette means tobacco rolled within a small piece of paper or a paper-wrapped roll of tobacco.

Dealer means every manufacturer, jobber, wholesale dealer or other person who supplies a seller with cigarettes.

***Cross reference(s)--**Businesses, ch. 18.

State law reference(s)--State cigarette tax, Code of Virginia, § 5.1-1000 et seq.; authority of town to levy cigarette tax and permitted provisions of ordinance providing for administration and enforcement of such tax, Code of Virginia, §§ 58.1-3830, 58.1-3832.

Package means every package, box, can or other container of any cigarettes to which the Internal Revenue stamp of the United States government is required to be affixed by and under federal statutes and regulations and in which retail sales of such cigarettes are normally made or intended to be made.

Sale means every act or transaction, irrespective of the method or means employed, including the use of vending machines and other mechanical devices, whereby title to any cigarettes is transferred from the seller to any other person within the town.

Seller means every person engaged in the business of selling cigarettes who transfers title or in whose place of business title to any cigarettes is transferred within the town for any purpose other than resale.

Stamp means the small gummed piece of paper or decalcomania to be sold by the treasurer and to be affixed by the agent to every package of cigarettes; it shall also denote any insignia or symbol printed by a meter machine upon any such package under authorization of the treasurer.

Treasurer means the treasurer of the town and every person duly authorized by the treasurer to serve as the treasurer's representative.
(Code 1986, § 19-31)
Cross reference(s)--Definitions generally, § 1-2.

Sec. 50-127. Violations.

Unless otherwise specifically provided, a violation of any provision of this article shall constitute a class 1 misdemeanor.
(Code 1986, § 19-32)

Sec. 50-128. Levied; amount.

There is hereby levied and imposed by the town, in addition to any and all other taxes which may be or have been imposed, a tax to be paid and collected as provided in this article on each and every sale of cigarettes in the town. The amount of such tax shall be at the rate of $0.08 per pack or fractional part thereof.
(Code 1986, § 19-33) **Revised June 2003**.

Sec. 50-129. Method of payment.

(a) The tax imposed by this article shall be paid by the seller, local dealer or other agent by affixing a stamp, or causing a stamp to be affixed, to every package of cigarettes, in the kind and manner required by this article.

(b) The treasurer is authorized and empowered to prescribe the method to be employed, the conditions to be observed and any other necessary requirements not contrary to this article in the use of meter machines for printing upon packages of cigarettes insignia, in lieu of stamps, to represent the payment of the tax imposed by this article.
(Code 1986, § 19-34)

Sec. 50-130. Acquisition, sale of stamps generally.

(a) The treasurer shall acquire, keep and sell necessary stamps to local dealers and other agents, the stamps to be of such denomination and quantities as may be necessary for the payment of the tax imposed by this article. In the sale of such stamps to a local dealer or other agent, the treasurer shall allow a discount of .003 cents per stamp to cover the cost which will be incurred by the dealer or agent in affixing the stamps to packages of cigarettes.

(b) The treasurer is empowered to make and carry into effect such reasonable rules and regulations relating to the preparation, furnishing, sale and redemption of stamps as he may deem necessary. In redeeming stamps or making refund for destroyed stamps, he shall not in any case refund more than 100 percent of the face value of the redeemed or destroyed stamps.
(Code 1986, § 19-35) Code of Virginia: 58.1-3832(2) July 1, 2017

Sec. 50-131. General duties of dealers and sellers with respect to stamps.

(a) Every local dealer in cigarettes and every agent appointed under this section shall purchase necessary stamps from the treasurer of the town to pay the tax imposed under this article and shall affix or cause to be affixed a stamp of the monetary value provided by this article to each package of cigarettes prior to delivering or furnishing such cigarettes to any seller who is not also an agent.

(b) Nothing contained in this section shall be deemed to preclude any dealer from authorizing and employing any agent to purchase and affix such stamps in his behalf or to have a stamp meter machine used in lieu of stamps to effectuate the provisions of this article.

(c) It shall be the responsibility of every seller to determine that each package of cigarettes offered for sale has a proper stamp affixed thereto in compliance with the provisions of this article.

(d) If inspection by the agents of the town discloses unstamped or improperly stamped packages of cigarettes, the seller, when such cigarettes were obtained from a local dealer, shall immediately notify the dealer, and upon such notification, the dealer shall forthwith either affix to the unstamped or improperly stamped package or container or item the proper amount of stamps or shall replace the same with others to which stamps have been properly affixed. If a seller who is not also an agent acquires or has in

his possession unstamped or improperly stamped cigarettes, the seller shall forthwith notify the treasurer of such fact. The treasurer shall thereupon affix or cause to be affixed the proper stamps to such cigarettes. The cost of such stamps, at face value, shall be advanced by such seller. The treasurer or his agent shall thereupon affix the appropriate stamp at such agent's place of business.

(e) If any package of cigarettes is found in the possession of a seller without proper stamps or authorized printed markings thereon, and the seller is unable to submit evidence establishing that he received the package within the immediately preceding 48 hours, and that he has not offered it for sale, then it shall be presumed that such package is being kept in violation of the provisions of this article and the seller shall be subject to the penalties provided for the violation, even though such seller is also an agent.

(f) The treasurer, by proper rules and regulations, may require every local dealer, agent or seller to cancel stamps upon all packages of cigarettes in his possession.
(Code 1986, § 19-36)

Sec. 50-132. Visibility of stamps or meter markings.

Stamps or printed markings of a meter machine shall be placed upon each package of cigarettes in such manner as to be readily visible to the purchaser.
(Code 1986, § 19-37)

Sec. 50-133. Altering design of stamps.

The treasurer may, from time to time and as often as he deems advisable, provide for the issuance and exclusive use of stamps of a new design and forbid the use of stamps of any other design.
(Code 1986, § 19-38)

Sec. 50-134. Forging, counterfeiting stamps or meter markings.

It shall be unlawful for any person falsely or fraudulently to make, forge, alter or counterfeit any stamp or the printed markings of a meter machine, or knowingly and willfully to alter, publish, pass or tender as true any false, altered, forged or counterfeited stamp or printed markings of a meter machine.
(Code 1986, § 19-39)

Sec. 50-135. Dealers' and sellers' records generally.

Every local dealer and seller shall maintain and keep, for a period of at least two years, such records of cigarettes received and sold by him as may be required by the treasurer. There records shall be made available for examination, in the town, by the treasurer, upon demand, and the dealer or seller shall make available the means, facilities and opportunities for making such examination at all reasonable times.
(Code 1986, § 19-40)

Sec. 50-136. Administration and enforcement generally; examination of books, records.

(a) The treasurer may prescribe, adopt, promulgate and enforce rules and regulations relating to the method and means to be used in the cancellation of stamps and to all other matters pertaining to the administration and enforcement of the provisions of this article.

(b) The treasurer or his duly authorized agents are empowered to examine books, records, invoices and papers related to purchases, sales, etc., of cigarettes, and to examine all cigarettes in and upon any premises where they are placed, sold, stored, offered for sale or displayed for sale by a seller.
(Code 1986, § 19-41)

Sec. 50-137. Delegation of treasurer's powers.

The treasurer may delegate his powers under this article to agents or others, including the police officers of the town.
(Code 1986, § 19-42)

Sec. 50-138. Sale of unstamped cigarettes through vending machine.

It shall be unlawful for any person to sell and dispense through a vending machine or other mechanical device any cigarettes upon which the tax imposed by this article has not been paid and upon which evidence of the payment is not shown on each package of such cigarettes.
(Code 1986, § 19-43)

Sec. 50-139. Seizure, sale of unstamped cigarettes.

If the treasurer or his agent discovers any cigarettes subject to the tax imposed under this article, but upon which such tax has not been paid and upon which stamps have not been affixed or evidence of payment shown thereon by printed markings of a meter machine in compliance with the provisions of this article, the treasurer or duly authorized agents or officers, or any of them, are hereby authorized and empowered to seize and take possession forthwith of such cigarettes, which shall thereupon be deemed to be forfeited to the town. Such cigarettes may, within a reasonable time thereafter, and after written notice is posted at the front door of the municipal building at least five days before the date given therein for sale, be sold at the place designated in such notice. From the proceeds of such sale, the treasurer shall collect the tax due thereon, together with a penalty in the amount of 50 percent thereof, and the cost incurred in such proceedings, and shall pay the balance, if any, of such proceeds to the seller in whose possession such forfeited cigarettes were found. The seizure and sale of any cigarettes shall not be deemed to relieve any person from any penalty provided for the violation of the provisions of this article.
(Code 1986, § 19-44)

Sec. 50-140. Disposition of revenue derived from tax.

Revenue derived from the tax imposed by this article shall be deposited by the treasurer to the credit of the general fund of the town for utilization for such legal purposes as the town council may, from time to time, determine.
(Code 1986, § 19-45)

Secs. 50-141--50-170. Reserved.

ARTICLE V. CONSUMER UTILITY SERVICES TAX*

Sec. 50-171. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Commercial user means the owner or tenant of property who uses the utility services primarily in renting, leasing, exchanging, distributing or selling any products of agriculture, mining or industry; supplying services to others; engaging in research and/or development of services or products; the transportation of goods or people and all other activities of a commercial nature.

Industrial user means the owner or tenant of property who uses utility services primarily in manufacturing, processing, assembling or fabricating products for sale.

Purchaser means every person who purchases a utility service.

Residential user means the owner or tenant of private residential property or the tenant of an apartment who pays for utility service in or for said property and residential service shall mean utility service to such user.

Seller means every person, organization, firm, corporation, cooperative, public service corporation or municipality or subdivision thereof that sells, provides or furnishes utility service.

Utility service means local telephone exchange service, gas service and electricity furnished within the boundaries of the town.
(Code 1986, § 19-61)

Cross reference(s)--Definitions generally, § 1-2.

***Cross reference(s)--**Businesses, ch. 18.

State law reference(s)--Consumer utility tax, Code of Virginia, § 58.1-3812 et seq.

Sec. 50-172. Applicable rate.

The residential, commercial or industrial rate specified in this article shall apply to purchasers of electric, gas and telephone utility service in accordance with the purchaser's classification as residential, commercial or industrial under the designations of section 50-171 of this article.
(Code 1986, § 19-62)

Sec. 50-173. Utility taxes levied on users of telephone services.

(a) There is hereby imposed and levied a tax upon each and every purchaser of utility service provided by any telephone company in the town pursuant to Code of Virginia, § 58.1-3812.

(b) The rate of this tax for a residential user is in the amount of 20 percent of the charge (exclusive of any federal tax thereon) made by the seller against the purchaser with respect to telephone utility service. There shall be no tax computed or imposed on so much of the bill as shall exceed $5.00. The maximum tax for residential customers shall be no more than $1.00 per month.

(c) The rate of this tax for commercial and industrial users is in the amount of 20 percent of the charge (exclusive of any federal tax thereon) made by the seller against the purchasers with respect to telephone utility service.

(d) In case any monthly bill submitted by any seller for commercial telephone service shall exceed $200.00 for a commercial user, there shall be no tax computed or imposed on so much of the bill as shall exceed $200.00. The maximum tax for commercial customers shall be no more than $40.00 per month.

(e) In case any monthly bill submitted by any seller for industrial telephone service shall exceed $1,000.00 for an industrial user, there shall be no tax computed or imposed on so much of the bill as shall exceed $1,000.00. The maximum tax for industrial customers shall be no more than $200.00 per month.

(f) The tax imposed by this section shall in every case be collected by the purchaser and shall be paid by the purchaser unto the seller, for the use of the town, at the time the purchase price or such charge shall become due and payable under the agreement by the purchaser and the seller.
(Code 1986, § 19-63)

State law reference(s)--Authority to levy tax, Code of Virginia, § 58.1-3812.

Sec. 50-174. Tax on users of electrical heat, light or power services.

(a) There is hereby imposed and levied a tax upon each and every purchaser of utility service provided by any electrical heat, light or power utility company or organization in the town, pursuant to Code of Virginia, § 58.1-3814, as amended.

(b) The rate of this tax for a residential user is in the amount of 20 percent of the charge (exclusive of any federal tax thereon) made by the seller against the purchaser with respect to such electrical, heat, light or power utility service. There shall be no tax computed or imposed on so much of the bill as shall exceed $5.00. The maximum tax for residential customers shall be no more than $1.00 per month.

(c) The rate of this tax for commercial and industrial users is in the amount of 20 percent of the charge (exclusive of any federal tax thereon) made by the seller against the purchaser with respect to electrical heat, light or power utility services.

(d) In case any monthly bill submitted by any seller for commercial electricity service shall exceed $200.00 for a commercial user, there shall be no tax computed or imposed on so much of the bill as shall exceed $200.00. The maximum for commercial customers shall be no more than $40.00 per month.

(e) In case any monthly bill submitted by any seller for electric service to an industrial user shall exceed $1,000.00, there shall be no tax computed or imposed on so much of the bill as shall exceed $1,000.00. The maximum tax for industrial customers shall be no more than $200.00 per month.

(f) This tax shall in every case 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 the purchase price or such charge shall become due and payable under the agreement between the purchaser and seller.
(Code 1986, § 19-64)

State law reference(s)--Authority to levy tax, Code of Virginia, § 58.1-3814.

Sec. 50-175. Tax on user of gas heat, light or power services.

(a) There is hereby imposed and levied a tax upon each and every purchaser of utility service or services provided for heat, power of light by any gas utility company in the town.

(b) The rate of this tax for a residential user is in the amount of 20 percent of the charge (exclusive of any federal tax thereon) made by the seller against the purchaser with respect to such gas utility services. There shall be no tax computed or imposed on so much of the bill as shall exceed $5.00. The maximum tax for residential customers shall be no more than $1.00 per month.

(c) The rate of this tax for commercial and industrial users is in the amount of 20 percent of the charge (exclusive of any federal tax thereon) made by the seller against the purchaser with respect to such gas utility services.

(d) In case any monthly bill submitted by any seller for commercial service shall exceed $200.00 for a commercial user, there shall be no tax computed or imposed on so much of the bill as shall exceed $200.00. The maximum tax for commercial customers shall be no more than $40.00 per month.

(e) In case any monthly bill submitted by any seller for industrial service shall exceed $1,000.00 for an industrial user, there shall be no tax computed or imposed on so much of the bill as shall exceed $1,000.00. The maximum tax for industrial customers shall be no more than $200.00 per month.

(f) This tax shall in every case 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 the purchase price or such charge shall become due and payable under the agreement between the purchaser and seller.
(Code 1986, § 19-65)

State law reference(s)--Authority to levy tax, Code of Virginia, § 58.1-3814.

Sec. 50-176. Duties of sellers of utility services.

(a) It shall be the duty of every seller, in acting as the tax collecting medium or agency for the town, to collect from the purchaser for the benefit of the town the tax imposed and levied by this article at the time of collecting the purchase price charged therefor. The taxes collected each month shall be reported on a monthly return by each seller to the town treasurer, and each seller shall remit the amount of tax shown by the report to have been collected to the town treasurer on or before the last day of the second calendar month thereafter, together with the name and address of any purchaser who has refused to pay his tax. The required report shall be in the form prescribed by the town treasurer.

(b) If bills shall be rendered for utility services stated on a basis other than monthly, the tax imposed by this article shall be computed as if such bill was rendered on a monthly basis with the rates and maximums herein applied.

(c) Each purchaser of the specified utility service shall pay the tax imposed and levied by this article at the time the purchase price is paid to the seller of the utility service. If a purchaser makes a partial payment, the tax must be paid at the time the final portion of the purchase price is paid.
(Code 1986, § 19-66)

Sec. 50-177. Extension of time for filing return.

The town treasurer may extend, for good cause shown, the time of filing any report required by the provisions of this article; provided, however, no such extension shall exceed a period of 60 days.
(Code 1986, § 19-67)

Sec. 50-178. Records kept by seller.

Each and every seller shall keep complete records showing all purchases in the town, which records shall show the price charged against each purchase, the date of payment thereof, and the amount of tax imposed hereunder, 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 such transcripts and copies thereof during such times as they may desire.
(Code 1986, § 19-68)

Sec. 50-179. Exemptions.

(a) The United States of America, the state, and the political subdivisions, boards, commissions and authorities thereof are hereby exempt from the payment of the tax imposed and levied by this article with respect to the purchase of utility services used by such governmental agencies.

(b) There shall be no tax computed on bills submitted for electric service for water heating where a separate meter is used solely for the water heating service or on bills submitted for unmetered electric service.
(Code 1986, § 19-69)

Sec. 50-180. Tax for more than one location.

Where one single commercial user is serviced at more than one location, the maximum amount of charge subject to the tax imposed under this article shall be computed as to each location, and each such location shall be classified as a separate commercial user for the purpose of determining the maximum amount of charge subject to tax.
(Code 1986, § 19-70)

Sec. 50-181. Penalty for violations.

(a) There is hereby imposed on any purchaser failing, refusing or neglecting to pay the tax hereby imposed or levied by this article, a penalty of ten percent of the tax due or the sum of $10.00, whichever is greater; provided, however, that such penalty shall not exceed the tax imposed. There is also imposed interest of ten percent per annum on the delinquent tax beginning the first day following the day such taxes are due.

(b) Any seller of utility services who violates the provisions of this article, fails to file the proper return required or makes any false statement on any return shall be subject to prosecution and upon conviction shall be punished as provided by general law for a class 3 misdemeanor if the amount of the tax lawfully assessed in connection with the return is $1,000.00 or less; or a class 1 misdemeanor if the amount of the tax lawfully assessed in connection with the return is more than $1,000.00.
(Code 1986, § 19-71)

Sec. 50-182. Taxes deposited to general fund.

All monies collected from the consumer utility taxes levied and imposed by this article shall be deposited in the general fund of the town by the treasurer and may be used for general governmental purposes.
(Code 1986, § 19-72)

Sec. 50-183. Collection of tax.

The town treasurer is charged with the power and duty of collecting the taxes imposed and levied under this article from the sellers of the utility services.
(Code 1986, § 19-73)

CONSUMER UTILITY SERVICES ORDINANCE

Notwithstanding any other ordinance or other enactment adopted and currently in force in this jurisdiction, the following is hereby enacted and ordained to be effective as set forth herein below:

Sec. 50-184. Public Utilities

Any person, firm or corporation who shall engage in the business of furnishing heat, light and power in town, whether by electricity or gas, shall pay a license tax equal to one-half (1/2) of one (1) percent of the gross annual receipts accruing to that person, firm or corporation from such business in town.

Sec. 50-185-50-215. Reserved.

Adopted December 14, 2000

ARTICLE VI. FOOD AND BEVERAGE TAX*

Sec. 50-216. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Caterer means a person who furnishes meals on the premises of another, for compensation.

Meal means any prepared food and drink, excluding alcoholic beverages, offered or held out for sale by a restaurant or caterer for the purpose of being consumed by an individual or group of individuals at one time to satisfy the appetite. All such food and drink shall be included, whether intended to be consumed on the seller's premises or elsewhere, whether designated as breakfast, lunch, dinner, supper or by some other name, and without regard to the manner, time or place of service.

Purchaser means any person who purchases a meal.

Restaurant means any place or thing in the town from which or in which meals are sold, including but not limited to places of business known as bars, cafes, cafeterias, grills, lunch counters, restaurants, snack bars, grocery stores and convenience stores. "Restaurant" also means push carts or other mobile facilities from which meals are sold or furnished.

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***Cross reference(s)--**Businesses, ch. 18.

State law reference(s)--Authority to levy food and beverage tax, Code of Virginia, § 58.1-3840.

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Seller means any person who sells a meal and any caterer.

Treasurer means the treasurer of the town and any of his duly authorized agents. (Ord. of 10-1-92, § 9-88)

Cross reference(s)--Definitions generally, § 1-2.

Sec. 50-217. Levy of tax.

In addition to all other taxes and fees of any kind now or hereafter imposed by law, a tax is hereby levied and imposed on the purchaser of every meal served, sold or delivered in the town by a restaurant or caterer. The rate of this tax shall be seven (7) percent of the amount paid for the meal. A fractional cent of tax due shall be rounded to the next higher cent. The taxable amount shall be in accordance with the state sales tax.
(Ord. of 10-1-92, § 9-89) **Adopted in June 2024**.

Sec. 50-218. Exemptions.

The following classes of transactions involving meals shall not be subject to tax under this article:

(1) Meals furnished by restaurants to employees as part of their compensation when no charge is made to the employee.

(2) Meals sold by public or private elementary or secondary schools to their students or employees.

(3) Meals purchased by agencies of federal, state or local government or by officers or employees thereof while on official business.

(4) Meals furnished by a hospital, medical clinic, convalescent home, nursing home, home for the aged, infirm or handicapped or other extended care facility to patients or residents thereof.

(5) Meals furnished by a college fraternity or sorority to its members.

(6) Meals furnished by a nonprofit charitable organization to elderly, infirm, handicapped or needy persons in their home or at central locations.

(7) Meals sold by a nonprofit educational, religious, charitable or benevolent organization on an occasional basis as a fund-raising activity.

(8) Any other sale of a meal which is exempt from taxation under the state retail sales and use tax act, or administrative rules and regulations issued pursuant thereto.

(Ord. of 10-1-92, § 9-100)

Sec. 50-219. Enforcement.

(a) It shall be the duty of the treasurer to ascertain the name of every seller in the town, liable for the collection of the tax imposed by this article, who fails, refuses or neglects to collect such tax or to make the reports and remittances required by this article. 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 the law and the treasurer may seek a conviction or other civil remedy including injunction, against such person.

(b) If the purchaser of any meal refuses to pay the tax imposed by this article, 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.

(Ord. of 10-1-92, § 9-101)

Sec. 50-220. Violations.

Any person violating or failing to comply with any of the provisions of this article shall, upon conviction thereof, be guilty of a class 4 misdemeanor punishable as provided in section 1-15 of this Code. Conviction shall not relieve any person from the payment, collection or remittance of the tax as provided in this article. Each violation or failure shall be a separate offense.

(Ord. of 10-1-92, § 9-102)

Sec. 50-221. Regulations.

The treasurer may issue regulations for the administration and enforcement of this article.
(Ord. of 10-1-92, § 9-103)

Sec. 50-222. Payment and collection of tax.

In every case the tax shall be collected by the seller and paid by the purchaser at the time the charge for the meal becomes due and payable, whether payment is to be made in cash or on credit by means of a credit card or otherwise. The seller shall add the tax to the amount charged for the meal, and shall pay the taxes collected to the town as provided in this article.
(Ord. of 10-1-92, § 9-90)

Sec. 50-223. Collections in trust for town.

All amounts collected as taxes under this article shall be deemed to be held in trust by the seller collecting them, until remitted to the town as provided by this article.
(Ord. of 10-1-92, § 9-91)

Sec. 50-224. Reports and remittances.

The treasurer may require all prospective sellers of meals licensed to do business in the town to register for collection of the tax imposed by this article. Every seller shall make a report to the town for each calendar month, showing the amount of charges collected for meals and the amount of tax required to be collected. The monthly reports shall be made on forms prescribed by the treasurer and shall be signed by the seller. They shall be delivered to the treasurer on or before the 20th 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.
(Ord. of 10-1-92, § 9-92)

Sec. 50-225. Discount.

For the purpose of compensating sellers for the collection of the tax imposed by this article, every seller shall be allowed three percent of the amount of the tax due and accounted for in the form of a deduction of his monthly return; provided the amount due is not delinquent at the time of payment.
(Ord. of 10-1-92, § 9-93)

Sec. 50-226. Penalty and interest.

If any person whose duty it is to do so shall fail or refuse to make the report or remit the tax required by this article within the time and in the amount required, there shall be added to the tax by the treasurer a penalty on the amount of ten percent of the tax, and interest thereon at the rate of ten percent per annum, which shall be computed upon the tax and penalty from the date such were due and payable.
(Ord. of 10-1-92, § 9-94)

Sec. 50-227. 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 article and make a timely report and remittance thereof, the treasurer shall proceed in such manner as is practicable to obtain facts and information on which to base an estimate of the tax due. As soon as the treasurer has procured whatever facts and information may be obtainable, upon which to base the assessment of any tax payable by any person who has failed to collect, report or remit such tax, the treasurer shall proceed to determine and assess against such person the tax, penalty and interest provided in this article, and shall notify the person by registered mail sent to his last known address, of the amount of such tax, penalty and interest. The total amount shall be payable ten days after the date such notice is sent.
(Ord. of 10-1-92, § 9-95)

Sec. 50-228. Preservation of records.

It shall be the duty of every person liable for collection and remittance of the taxes imposed by this article to preserve for a period of two years records showing all purchases taxable under this article, 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 article. 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 article and to make transcripts of all or any parts thereof.
(Ord. of 10-1-92, § 9-96)

Sec. 50-229. Duty of person going out of business.

Whenever any person required to collect and remit to the town any tax imposed by this article shall cease to operate or otherwise dispose of his business, the tax shall immediately become due and payable, and the person shall immediately make to the treasurer a report and remittance.
(Ord. of 10-1-92, § 9-97)

Sec. 50-230. 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 article 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.
(Ord. of 10-1-92, § 9-98)

Sec. 50-231. Tips and service charges.

Where a purchaser provides a tip for an employee of a seller, and the amount of the tip is wholly in the discretion of the purchaser, the tip is not subject to the tax imposed by this article, 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 tip is turned over to the employee by the seller. An amount or percentage, whether designated as a tip or a service charge, that is added to the price of a meal by the seller, and required to be paid by the purchaser, is part of the selling price of the meal and is subject to the tax imposed by this article.
(Ord. of 10-1-92, § 9-99)

Secs. 50-232--50-265. Reserved.

ARTICLE VII. LICENSE TAX*

Sec. 50-266. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Affiliated group means:

(1) One or more chains of includable corporations connected through stock ownership with a common parent corporation which is an includable corporation if:

a. Stock possessing at least 80 percent of the voting power of all classes of stock and at least 80 percent of each class of the nonvoting stock of each of the includable corporations, except the common parent corporation, is owned directly by one or more of the other includable corporations; and

b. The common parent corporation directly owns stock possessing at least 80 percent of the voting power of all classes of stock and at least 80 percent of each class of the nonvoting stock of at least one of the other includable

corporations. As used in this section, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends. The term "includable corporation" 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 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of the stock of each corporation; and

b. More than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent 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.

***Cross reference(s)**--Businesses, ch. 18.

State law reference(s)--License taxes authorized, Code of Virginia, § 58.1-3700; general authority of town as to license taxes, Code of Virginia, § 58.1-3703; limitation on amount, Code of Virginia, § 58.1-3706.

When one of more of the includable corporations, including the common parent corporation, is a nonstock corporation, the term "stock" as used in this section shall refer to the nonstock corporation membership or membership voting rights, as is appropriate to the context.

Assessment means 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 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 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 the filing or payment thereof 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 means the treasurer of this town.

Base year means the calendar year preceding the license year, except for contractors subject to the provisions of Code of Virginia, § 58.1-3715.

Business means a course of dealing which 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.

Contractor shall have the meaning prescribed in Code of Virginia, § 58.1-3714.B, whether such work is done or offered to be done by day labor, general contract or subcontract.

Definite place of business means 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 licensable as a peddler or itinerant merchant.

Financial services means 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 article.

Broker means an agent of a buyer or a seller who buys or sells stocks, bonds, commodities or services, usually on a commission basis.

Commodity means staples such as wool, cotton, etc., which are traded on a commodity exchange and on which there is trading in futures.

Dealer means any person engaged in the business of buying and selling securities for his own account, but does not include a bank, or any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as part of a regular business.

Security shall have the same meaning as in the Securities Act (Code of Virginia, § 13.1-501 et seq.) or in similar laws of the United States regulating the sale of securities.

Those engaged in rendering financial services include, but without limitation, the following:

(1) Buying installment receivables.
(2) Chattel mortgage financing.
(3) Consumer financing.
(4) Credit card services.
(5) Credit unions.
(6) Factors.
(7) Financing accounts receivable.
(8) Industrial loan companies.
(9) Installment financing.
(10) Inventory financing.
(11) Loan or mortgage brokers.
(12) Loan or mortgage companies.
(13) Safety deposit box companies.
(14) Security and commodity brokers and services.
(15) Stockbroker.
(16) Working capital financing.

Gross receipts means the whole, entire, total receipts attributable to the licensed privilege, without deduction, except as may be limited by the provisions of Code of Virginia, § 58.1-3700 et seq.

License year means the calendar year for which a license is issued for the privilege of engaging in business.

Personal services means rendering for compensation anyrepair, personal, business or other services not specifically classified as "financial, real estate or professional service" under this article, or rendered in any other business or occupation not specifically classified in this ordinance unless exempted from local license tax by Code of Virginia, tit. 58.1.

Professional services means 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 Code of Virginia, § 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 by 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 means 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 wholesaler or

wholesale merchant and sold or offered for sale. Such merchant may elect to report the gross receipts from the sale of manufactured goods, wares and merchandise if it cannot determine or chooses not to disclose the cost of manufacture.

Real estate services means rendering a service for compensation as lessor, buyer, seller, agent or broker and providing a real estate service, unless the service is otherwise specifically provided for in this article, and such services include, but are not limited to, the following:

(1) Appraisers of real estate.
(2) Escrow agents, real estate.
(3) Fiduciaries, real estate.
(4) Lessors of real property.
(5) Real estate agents, brokers and managers.
(6) Real estate selling agents.
(7) Rental agents for real estate.

Retailer or retail merchant means any person or merchant 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.

Services means things purchased by a customer which do not have physical characteristics, or which are not goods, wares or merchandise.

Wholesaler or wholesale merchant means any person or merchant 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 which because of the quantity, price or other terms indicated that they are consistent with sales at wholesale.
(Ord. of 12-12-96, § B)

Cross reference(s)--Definitions generally, § 1-2.

Sec. 50-267. Overriding conflicting ordinances.

Except as may be otherwise provided by the laws of the state, and notwithstanding any other current ordinances or resolutions enacted by the town council, whether or not compiled in the Code of this town, to the extent of any conflict, the provisions set forth in this article 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 therein within this town.
(Ord. of 12-12-96, § A)

Sec. 50-268. Required.

(a) Every person engaging in this town in any business, trade, profession, occupation or calling (collectively hereinafter "a business") as defined in this article, unless otherwise exempted by law, shall apply for a license for each such business if:

(1) Such person maintains a definite place of business in this town;

(2) Such person does not maintain a definite office anywhere but does maintain an abode in this town, which abode for the purpose of this article shall be deemed a definite place of business; or

(3) There is no definite place of business but such person operates amusement machines, is engaged as a peddler or itinerant merchant, carnival or circus as specified in Code of Virginia, § 58.1-3717, 58.1-3718 or 58.1-3728, or is a contractor subject to Code of Virginia, § 58.1-3715 or is a public service corporation subject to Code of Virginia, § 58.1-3731.

(b) A separate license shall be required for each definite place of 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 licensable at the location and has satisfied any requirements imposed by state law or other provisions of the ordinances of this 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.

(c) Each person subject to a license tax shall apply for a license prior to beginning business if he was not subject to licensing in this town on or before January 1 of the license year, or no later than March 1 of the current license year if he had been issued a license for the preceding license year. The application shall be on forms prescribed by the assessing official.

(d) 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 the gross receipts of the business, the tax shall be paid on or before March 1.

(e) The assessing official 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, a penalty of ten percent of the portion paid after the due date.

(f) A penalty of ten percent 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 assessing official determines that the taxpayer has a history of noncompliance. In the case of an assessment of additional tax made by the assessing official, 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 assessing official is not paid within 30 days, the treasurer may impose a ten percent late payment penalty. The penalties shall not be imposed, or if imposed, shall be abated by the official who assessed them, 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 acted responsibly and that the failure was due to events beyond his control.

(1) *Acted responsibly* means that:

a. 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

b. The taxpayer under took 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.

(2) Events beyond the taxpayer's control include, but are 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 provided the erroneous information.

(g) 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 penalty 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 tax paid under this article 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 Code of Virginia, § 58.1-3916.

(h) 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, in event of such adjustment, 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.
(Ord. of 12-12-96, § C)

State law reference(s)--Authority to levy tax, Code of Virginia, § 58.1-3700.

Sec. 50-269. Situs of gross receipts.

(a) *General rule*. Whenever the tax imposed by this article 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 this 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 place 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 services are performed, or if his services are not performed at any definite place of business, then the definite place of business from which his services are directed or controlled, unless the contractor is subject to the provisions of Code of Virginia, § 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 a license tax in two or more localities and who is subject to multiple taxation because the localities use different measures may apply to the 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 Code of Virginia, § 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 this 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 difference has, or is likely to, result in taxes of more than 100 percent 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.
(Ord. of 12-12-96, § D)

Sec. 50-270. Limitations and extensions.

(a) Where, before the expiration of the time prescribed for the assessment of any license tax imposed pursuant to this article, 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 Code of Virginia, § 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 years.

(c) The period for collecting any local license tax shall not expire prior to the period specified in Code of Virginia, § 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 subsection 50-271(b) or (d), or two years after the final decision in a court application pursuant to Code of Virginia, § 58.1-3984 or similar law for which collection has been stayed, whichever is later.
(Ord. of 12-12-96, § E)

Sec. 50-271. Appeals and rulings.

(a) Any person assessed with a licensing tax under this article 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, further audit or other evidence deemed necessary for a proper and equitable determination of the applications. 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 an 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 subsection 50-268(g), 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:

(1) Depart quickly from the locality;

(2) Remove his property therefrom;

(3) Conceal himself or his property therein; or

(4) 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 article as a result of an audit

may apply within 90 days of the determination by the assessing official on an application pursuant to subsection (a) of this section to the 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 Code of Virginia, § 58.1-1821, and the tax commissioner may issue an order correcting such assessment pursuant to Code of Virginia, § 58.1-1822. Following such an order, either the taxpayer or the assessing official may apply to the appropriate circuit court pursuant to Code of Virginia, § 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 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 subsection (c) of this section, 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 subsection 50-268(g), 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 subsection (b) of this section.

(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 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 which later becomes invalid shall be deemed to have acted in good faith during the period in which such ruling was in effect. (Ord. of 12-12-96, § F)

Sec. 50-272. Recordkeeping 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 what is the correct amount of tax that was assessable for each of those years. All such records, books or 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 this 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 this town, copies of the appropriate books and records shall be sent to the assessor's office upon demand.

(Ord. of 12-12-96, § G)

Sec. 50-273. Exclusions and deductions from gross receipts.

(a) 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) 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, 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 which 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 which 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 based 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.

(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) 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 which 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.

(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.

(Ord. of 12-12-96, § H)

Sec. 50-274. Fee and tax.

Every person or business subject to licensure under this article shall be assessed and required to pay annually:

(1) In addition to the license fee specified in subsection (1) of this section, and except as may be otherwise provided in Code of Virginia, §§ 58.1-3712, 58.1-3712.1 and 58.1-3713, every such person or business with annual gross receipts of more than $0.00 shall be assessed and required to pay annually a license tax on all the gross receipts of such persons includable as provided in this article at a rate set forth below for the class of enterprise listed.

Automobile repairing, cleaning, welding, etc. On every person keeping or maintaining a place for automobile overhauling, washing, painting, upholstering, welding, tire repairing or battery charging for compensation, the annual license tax shall be($0.155/$100). This section shall not apply where a merchant's license is secured and all income from the operation of the business is reported under the merchant's license.

Barbershops. On every barbershop, the annual license tax shall be ($0.155/$100) per barber therein.

Beauty parlors. On every beauty parlor, the annual license tax shall be ($0.155/$100) per operator therein.

Beer retailers. On every retail seller of beer, the annual license tax shall be ($0.155/$100).
State law reference(s)--Authority for above tax, Code of Virginia, §§ 4.1-205, 4.1-233.

Bill posters. On every bill poster or firm of bill posters, the annual license tax shall be ($0.155/$100). All persons who post or distribute notices, bills, labels and the like for compensation shall be construed as bill posters. Any merchant or other person doing business in the town and paying a license tax for such business shall be construed as a bill poster when advertising goods or wares sold by him.

Billiard rooms or pool halls. On every billiard room or pool hall, the annual license tax shall be ($0.155/$100) for each table therein, whether used or not.

Boardinghouse, tourist house, lodginghouse and roominghouse. On every tourist house, lodginghouse, roominghouse and boardinghouse, the annual license tax shall be ($0.155/$100) of gross receipts in the preceding calendar year.

Circuses, carnivals, etc.

(1) On every circus, menagerie, wild west or other tent show, whether combined or separate, the license tax shall be ($0.155/$100) per day, plus $5.00 for each show connected therewith; provided that for any such tent show without menagerie, whose price of admission does not exceed $0.50, or for any show similar thereto, the license tax shall be $5.00 for the first performance and $3.00 for each additional performance.

(2) On every carnival or like show by whatever name called, the license tax shall be $100.00 per day or $600.00 per week; provided that if only amusement rides are offered, the license tax shall be $100.00 per week or $20.00 per day.

(3) Before the license provided for by this section is issued, a certificate shall be furnished from the state health department showing that all necessary sanitary facilities have been provided.

(4) Every person who operates, exhibits or gives a performance, exhibition or show without the license required by this section shall be punished by a fine of not less than $50.00 nor more than $500.00.
State law reference(s)--Authority for license tax and regulations, Code of Virginia, § 58.1-3728.

Coal dealers. For selling or offering to sell coal in the town, other than a licensed merchant having a regularly established place of business, the annual license tax shall be ($0.155/$100) for each truck or other vehicle used in the delivery of coal. Each truck or

other vehicle so licensed shall have plainly exhibited on its body the name of the licensee and his address. Where more than one vehicle is used, each shall be consecutively numbered.

Coin machine operators.

(1) For the purpose of this section, the term "operator" shall mean any person selling, leasing, renting or otherwise furnishing or providing a coin-operated amusement machine, which machine is located within the town, whether or not such operator has a fixed place of business within the town; provided, however, that the term "operator" shall not include a person owning less than three such machines and operating such machines on property owned or leased by such person.

(2) Every operator shall pay an annual license tax of ($0.155/$100).

(3) The tax imposed by this section shall not be applicable to operators of weighing machines, automatic baggage or parcel checking machines or receptacles, nor to operators of vending machines which are so constructed as to do nothing but vend goods, wares and merchandise or postage stamps or provide service only, nor to operators of viewing machines or photomat machines, nor to operators of devices or machines affording rides to children or for the delivery of newspapers.

Cross reference(s)--Fraudulent use of coin-operated machines, § 34-178.

State law reference(s)--Authority to levy tax and limitations on the tax, Code of Virginia, §§ 58.1-3720, 58.1-3721.

Collection, claim or reporting agencies. For acting as a collection, claim or reporting agency, the annual license tax shall be $20.00.

State law reference(s)--Tax on collection agencies, Code of Virginia, § 58.1-3725.

Contractors.

(1) A general contractor, including painting, masonry, plastering, steel work, carpentry, excavating, paving and the like, shall pay an annual license tax of ($0.155/$100).

(2) Contractors engaged in plumbing and heating, electrical wiring, sheet metal work or tinning shall pay an annual tax of ($0.155/$100).

State law reference(s)--Contractors, Code of Virginia, § 54.1-1100 et seq.; authority to levy tax, limitations, Code of Virginia, § 58.1-3714.

Dancehalls. On every public place operating as a dancehall, whether regularly used or not, the annual license tax shall be ($0.155/$100).

Cross reference(s)--Buildings and building regulations, ch. 14.

State law reference(s)--Authority for tax, Code of Virginia, § 18.2-433.

Electric companies. For owning or operating an electric company within the town, the annual license tax shall be ($0.155/$100) of the gross receipts accruing from business in the town.
State law reference(s)--Authority for tax, Code of Virginia, § 58.1-3731.

Fishing ponds. For allowing persons to fish for a fee, the annual license tax shall be($0.155/$100).

Florists' agents. For acting as a florists' agent in the town, the annual license tax shall be ($0.155/$100) of gross receipts.

Food locker rental. For renting food lockers, the annual license tax shall be ($0.155/$100) for each locker, plus the amount of tax due as a merchant where frozen food or food for freezing is sold as a part of the business.

Funeral homes. On every funeral home, the annual license tax shall be ($0.155/$100), plus the applicable merchant's license tax on goods, wares or merchandise sold as part of the business.

Gasoline and oil dealers. For using the public streets for the sale, delivery or distribution of gasoline, motor oil or fuel oil for consumption, but not for resale, where no merchant's license has been obtained, the annual license tax shall be ($0.155/$100) of gross receipts.

Junk dealers. On every junk dealer or person engaging in the business of buying junk or other matter for junk dealers, the annual license tax shall be ($0.155/$100).

Laundries and linen supply businesses. For operating a laundry or linen supply business with an office and plat in the town, the annual license tax shall be ($0.155/$100) dollars. For soliciting laundry or linen supply business with no place of business in the town, the annual license tax shall be ($0.155/$100). This section shall not apply to individuals doing washing in their homes for others and using household equipment only.

Laundries, self-service. On every self-service laundry, where washing and drying machines are used or located therein, the annual license tax shall be ($0.155/$100), of gross receipts for the preceding calendar year.

Lime, fertilizer or guano sales or storage.

(1) On every lime, fertilizer or guano company doing business in the town, either in person or through agents, the annual license tax shall be as a retail merchant for all sales at retail and as a wholesale merchant for all sales at wholesale.

(2) For storing fertilizer, lime or guano in the town, where no merchant's license has been obtained, the annual license tax shall be ($0.155/$100).

Merchants, retail and wholesale.

(1) Each person engaged in the business of a retail merchant shall pay an annual license tax of ($0.155/$100) of gross sales during the preceding calendar year.

(2) Every wholesale merchant shall pay an annual license tax of $0.05 on each $100.00 of gross purchases during the preceding calendar year. All goods, wares and merchandise manufactured by any wholesale merchant in the town and sold or offered for sale in the state shall be considered as purchased within the meaning of this subsection; provided, however, that this section shall not be construed as applying to manufacturers' taxes on capital by the state and who offer for sale, at the place of manufacture, goods, wares and merchandise manufactured by them.

(3) Every person engaged in the business of a wholesale and retail merchant at the same location shall pay an annual license tax, in the amount provided in this article for wholesale merchants, upon the combined wholesale and retail sales thereof.

(4) The amount of "sales" and "purchases" as provided for in this section shall be determined by an affidavit made by the merchant or his authorized representative to the town clerk of the merchant's estimated sales or purchases for the calendar year in question; provided, however, that each year each merchant shall make an affidavit to the town clerk both as to his estimated sales or purchases for that year and his actual sales or purchases for the preceding year, if any, and there shall be added to or deducted from the amount of the merchant's license tax any difference between the amount of his estimated sales or purchases upon which a license was paid and the amount of his actual sales or purchases for the preceding year. The making of any such affidavit in bad faith or when the merchant or his agent knows the information contained therein to be false shall be unlawful.

State law reference(s)--Limitation on license taxes on retail and wholesale merchants, Code of Virginia, §§ 58.1-3706, 58.1-3716.

Motion picture theaters and theatrical performances.

(1) On every motion picture house or theater where admission is charged, the annual license tax shall be ($0.155/$100) of the gross receipts, to be determined in the same manner as the sales or purchases of a merchant are determined for purposes of this chapter.

(2) On every theatrical lecture, exhibition or other public attraction where there is charged an admission, the license tax shall be ($0.155/$100) for longer periods of time of one year or less. This shall not apply to programs given under the auspices of bona fide educational, charitable, civic or religious organizations where the net proceeds are not used for personal gain.

Patent or quack medicine sales. For engaging in the sale, in public places of patent or quack medicine, by auction or otherwise, or exhibiting the same, the license tax shall be ($0.155/$100).

Pawnbrokers. On every pawnbroker, the annual license tax shall be ($0.155/$100), in addition to the applicable merchant's license tax.

Photographers. On every photographic studio in the town, the annual license tax shall be ($0.155/$100). On every nonresident photographer who makes portraits in the town, but does not maintain a studio in the town, the license tax shall be ($0.155/$100) per day. For conducting a business of enlarging photographs, the license tax shall be ($0.155/$100) per year.

State law reference(s)--Authority to levy tax on photographers, Code of Virginia, § 58.1-3727.

Phrenologists, palmists, etc. On every phrenologist, palmist, fortuneteller and the like, doing business for compensation, the annual license tax shall be ($0.155/$100).

Printing shops. On every job printing shop, the annual license tax shall be ($0.155/$100) , plus the applicable merchant's license tax on goods, wares or merchandise sold as a part of the business.

Produce dealers. For buying fruits, vegetables or other produce in carload lots or less and selling the same in the town, where no merchant's license has been obtained, the annual license tax shall be ($0.155/$100).

State law reference(s)--General authority of town as to license taxes, Code of Virginia, § 58.1-3703; limitation on amount, Code of Virginia, § 58.1-3706; limitation on tax, Code of Virginia, § 58.1-3717.

Professional services.

(1) On every attorney-at-law, dentist, physician, osteopath and optometrist, the annual license tax shall be ($0.155/$100).

(2) On every veterinary surgeon, the annual license tax shall be ($0.155/$100).

(3) On every certified public accountant, private investigator and civil, mechanical, electrical or other professional engineer, the annual license tax shall be ($0.155/$100).

(4) On every public accountant or preparer of tax returns for a fee, the annual license tax shall be ($0.155/$100).

State law reference(s)--Limitation on license tax on professional services, Code of Virginia, § 58.1-3706.

Real estate agents. On every real estate agency located in the town or for acting as agent for the selling or leasing of real property located in the town, the license tax shall be ($0.155/$100).
State law reference(s)--Limitation on license tax, Code of Virginia, § 58.1-3732.2.

Repair shops generally. On every repair shop, such as shoe, radio, television, furniture, upholstery, watch and the like, the annual license tax shall be ($0.155/$100).
State law reference(s)--Limitation on license tax on repair services, Code of Virginia, § 58.1-3706.

Restaurants and other eating places. On every restaurant, eating house or dairy kitchen using tables, booths, counters or stools, the retail merchant's license tax shall apply. This license shall not be issued unless a current permit from the state health department is presented with the application for the license.
State law reference(s)--Excise tax permitted, Code of Virginia, § 58.1-3840.

Shooting galleries and other indoor games. For keeping a shooting gallery, indoor baseball game, baby rack or similar indoor game, the license tax shall be ($0.155/$100) per year.

Skating rinks. On every roller skating rink, the license tax shall be ($0.155/$100).

Stockbrokers. For conducting a stockbrokerage business, the annual license tax shall be ($0.155/$100).

Storage or distribution houses or lots. On every house or lot maintained for the purpose of storage or distribution, the annual license tax shall be ($0.155/$100).

Street vendors. For selling, on the streets or other public places, lunches, fruits, soft drinks, sandwiches and the like or novelties or similar devices, the annual license tax shall be ($0.155/$100).
State law reference(s)--Tax authorized on peddlers, Code of Virginia, § 58.1-3717.

Telegraph companies. On every telegraph company whose messages are forwarded between points wholly within the state, the annual license tax shall be ($0.155/$100) of the gross receipts accruing from business within the town.
State law reference(s)--Authority for tax, Code of Virginia, § 58.1-3731.

Telephone companies. For owning or operating a telephone line or service within the town, the annual license tax shall be ($0.155/$100) of the gross receipts accruing from business in the town. Charges for long distance telephone calls shall not be included in gross receipts for the purposes of this section.
State law reference(s)--Authority for tax, Code of Virginia, § 58.1-3731.

Trailer or mobile home parks. On every trailer or mobile home park of two or more parking spaces or units, the annual license tax shall be ($0.155/$100).

Trailer or mobile home sales. On every person engaged in the business of selling trailers or mobile homes, the annual license tax shall be ($0.155/$100) of gross sales in the preceding calendar year.

Vendors and peddlers. There shall be an annual fee of ($0.155/$100) imposed on all vendors and peddlers in the town.
Cross reference(s)--Peddlers and solicitors, § 18-121 et seq.
State law reference(s)--License taxes on peddlers, Code of Virginia, § 58.1-3717 et seq.
(Code 1986, §§ 8-18--8-62; Ord. of 11-12-87; Ord. of 8-12-93(1); Ord. of 12-12-96, § I)

ARTICLE VIII. LODGING TAX

Sec. 50-280. Definitions.

The following words, terms and phrases, when used n this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Guest accommodation means lodging at any hotel, motel, tourist home, boarding house, travel campground, or similar place or facility that offers or rents out guest rooms or other space for continuous occupancy for fewer than thirty consecutive days.

Transient means any person, who at his own expense or at the expense of another, lodges or obtains lodging for himself and/or others at any guest accommodation.

Lodging business means any person, firm, corporation, company, or other business entity that provides guest accommodations.

Cross reference: Definitions generally, § 1-2.
State law references: Taxes and assessments, Code of Virginia § 15.2-1104; certain excise taxes permitted, Code of Virginia § 58.1-3840.

Sec. 50-281. Amount of Levy.

There is hereby imposed and levied by the town on each transient obtaining any guest accommodation(s) a lodging tax equal to five (5) percent of the total amount paid for such guest accommodation(s). The lodging business shall collect such tax at the time of payment for said accommodation(s) and in accordance with this article.

Sec. 50-282. Collection

Every lodging business receiving any payment for lodging, with respect to which a tax shall be levied under this article, 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. To defray the expenses incurred by the lodging

business for collecting this tax, it may deduct a collection fee equal to five (5) percent of the amount of tax collected. The tax required to be collected under this section shall be deemed to be held in trust by the lodging business required to collect such taxes as provided in this article.

Sec. 50-283. Reports and remittance required.

Every lodging business that collects any tax as provided in this article shall prepare a report, on such forms and setting forth such information as the town treasurer may prescribe and require, showing the amounts of the lodging charges collected, the taxes required to be collected, and the collection fee. Such lodging business shall have such report signed by its appropriate bookkeeping or accounting person and delivered to the town treasurer with remittance of the taxes collected, less five (5) percent collection fee deduction from the total amount collected, provided the amount is not delinquent at the time of payment. Such report and remittance minus deduction shall be made to the town treasurer on or before the twentieth day of the month following the month in which any such taxes are collected.

Sec. 50-284. Penalties for late payment.

If any person shall fail or refuse to remit to the town treasurer the tax required to be collected and paid under this article, within the time and in the amount specified, there shall be added to such tax by the town treasurer a penalty in the amount of ten (10) percent thereof and interest thereon at the rate of ten (10) percent per annum, which shall be computed upon the taxes and penalty from the first day of the month next following the month in which such taxes are due and payable.

Sec. 50-285. Failure to collect taxes or make reports.

If any lodging business required under this article to do so, shall fail or refuse to collect the lodging tax imposed or refuse to make timely report and remittance thereof, the town treasurer shall proceed in such manner as is practicable to obtain facts and information on which to base an estimate of the tax due. As soon as whatever such facts and information are obtained, the town treasurer shall proceed to determine and assess against said lodging business such tax, penalty, and interest provided under this article. The town treasurer shall then notify the lodging business, by registered mail sent to the lodging business's last known address, of the amount of such tax, penalty, and interest due. The total amount thereof shall be payable within ten (10) days after the date such notice is sent.

In the event no information on which to base an estimate of the tax due is obtained, the town treasurer may issue a summons to the lodging business, which may be served by any town officer in the manner provided by law, and the treasurer may seek in the General District Court of Smyth County a conviction or other remedy, including injunction, against any such lodging business.

Sec. 50-286. Records required.

Every lodging business, which is liable for the collection and payment to the town of any tax imposed by this article, shall keep and preserve for a period of four (4) years all suitable records as may be necessary to determine the amount of tax due to have been collected and paid to the town. The town treasurer, or a designated representative for the town, may inspect such records at all reasonable times.

Secs. 50-287-300. Reserved.

Adopted January 9, 2003.

Effective March 1, 2003

Chapters 51--53

RESERVED

Chapter 54

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State law reference(s)--Authority of town to establish, maintain and operate sewage disposal system, Code of Virginia, § 15.2-2122; authority to regulate sewage disposal, Code of Virginia, § 15.2-2157.

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ARTICLE I. IN GENERAL

Sec. 54-1. Utility extension and hookup.

(a) For individual property owners the town shall bear the cost of extending water and/or sewer service from an existing line to a point at or near the border of the property to be served, provided such extension shall not exceed 50 feet.

(b) The customer requesting such extension shall bear the cost of extending such service beyond the provisions of subsection (a) above. Road crossing costs are to be passed on to the customer.

(c) Subdivisions constructed in the county after the adoption of this section automatically comply with the sections of the county subdivision ordinance that requires the developer place sanitary sewer and water lines on the site. At the town council's discretion, the developer shall submit plans, specifications, and design calculations (including design capacities, peak and average flows, pressures, loadings and any other pertinent data requested), stamped and signed by an engineer registered in the state. The developer shall obtain the approval of the state health department and state water control board when required. The town shall accept the subdivision system at the point of the main and thus into the town's system provided that such connection shall not adversely affect water pressure and volume on the pertinent lines or shall not produce a sewage load as to place the daily capacity of the plant in jeopardy. The town manager and the town engineer shall make this certification, based on the information submitted by the developer, and it must be approved by the town council. A subdeveloper must obtain the necessary permits from the state department of health and any state agencies as required by state statutes and state regulations. The town will not install water and/or sewer lines on private property, unless within the parameters of subsection (a) above.

(d) A subdeveloper paying for an extension of a water or sewer line on either private property or on a public right-of-way shall not be reimbursed by the town on any pro rata basis in regard to other customers who subsequently tap directly onto such extended lines. Any lines put in by a subdeveloper must be of a material and design that are acceptable to the public works superintendent. Any water line placed by a subdeveloper becomes the town's property on the town's side of the meters. Any sewer line placed by a subdeveloper becomes the town's property when it crosses on the public right-of-way or at the point of the main.

(e) Any water or sewer connections or extensions laid at the town's expense to an existing subdivision or community shall be approved on a case basis by the town council, provided the extension is solely on a public right-of-way. No extension will be made to areas unless there are 20, or the potential of 20, hookups per mile of line.

(f) Any state or federal regulation involving a limitation or moratorium on hookups shall take primacy over any portion of this section.

(g) Nothing contained in this section shall be construed to prevent the town from extending water or sewer service lines at its own expense for the purpose of encouraging and/or servicing commercial or industrial development within or without the town, or for protecting the health and safety of the citizens of the town, or for any other reasonable governmental purpose, the town hereby expressly reserving unto itself the right to do so.
(Code 1986, § 16-1)

Sec. 54-2. Water billing, penalty and cutoff policy.

(a) *General*. All charges applicable to a service are charges against the owner or customer of record, although the applicant for such services may have been another person. Except to the extent prohibited by law, where there are delinquent charges due the town, the owner of record shall be liable for payment of such outstanding accounts.

(b) *Billing.* Bills will be issued on the last working day of the month.

(c) *Due date*. Bills shall be due and payable in full by the 15th day of the following month. Payments shall be mailed to or made at the office of the treasurer of the town, or at such other places as may be officially designated.

(d) *Penalty*. If payment such as will pay the amount in full is not received by close of business on the established date about 15 days following the date the bill is mailed, the account shall incur a penalty of ten percent of the unpaid balance. A delinquency state, or second notice, shall be mailed on the following day.

(e) *Disconnect notice*. With the indicated exception in subsection (f) of this section, if payment such as will pay all billed amounts and penalties in full is not received by close of business on the tenth day following the date a delinquency notice is mailed, service will be disconnected.

(f) *Disconnection for nonpayment*. Except as indicated in subsection (e) of this section, if payment such as will pay all billed amounts and penalties, in full, is not received by close of business on the day following the date the delinquency notice is mailed, water service will be discontinued on the following day without further notice or contact, subject to the right to appeal.

(g) *Reinstatement fee*. If service is discontinued for nonpayment, a $25.00 disconnect/reconnect fee will be charged, as well as all previously billed amounts and penalties shall be paid before service can be restored.
(Min. of 10-9-97)

Secs. 54-3--54-35. Reserved.

ARTICLE II. SEWERS AND SEWAGE DISPOSAL*

DIVISION 1. GENERALLY

Sec. 54-36. Purpose and policy.

This article sets forth uniform requirements for users of the publicly owned treatment works (POTW) for the town and enables the town to comply with all applicable state and federal laws including the Clean Water Act (33 United States Code Section 1251 et seq.), the General Pretreatment Regulations (40 CFR Part 403), and the Virginia Permit Regulation (VR680-14-01 Part 7). The objectives of this article are to:

(1) Prevent the introduction of pollutants into the POTW that will interfere with the operation of the POTW.

(2) Prevent the introduction of pollutants into the POTW which will pass through the POTW, inadequately treated, into receiving waters or otherwise be incompatible with the POTW.

(3) Ensure that the quality of the wastewater treatment plant sludge is maintained at a level which allows its use and disposal in compliance with applicable statutes and regulations.

(4) Protect both POTW personnel who may be affected by wastewater and sludge in the course of their employment and to protect the general public.

(5) Promote reuse and recycling of industrial wastewater and sludge from the POTW.

(6) Provide for fees for the equitable distribution of the cost of operation, maintenance, and improvement of the POTW.

(7) Enable the town to comply with its VPDES permit conditions, sludge use and disposal requirements, and any other federal or state laws to which the POTW is subject.

This article shall apply to all users of the POTW. The article authorizes the issuance of wastewater discharge permits; provides for monitoring, compliance and enforcement activities; establishes administrative review procedures; requires industrial user reporting; and provides for the setting of fees for the equitable distribution of costs resulting from the program established in this article.
(Code 1986, § 16-22; Ord. of 10-13-94, § 1.1)

***Cross reference(s)**--Environment, ch. 22.

Sec. 54-37. Administration.

Except as otherwise provided in this article, the town manager shall administer, implement and enforce the provisions of this article. Any powers granted to or duties imposed upon the town manager may be delegated by the town manager to other town personnel.
(Ord. of 10-13-94, § 1.2)

Sec. 54-38. Abbreviations.

The following abbreviations, when used in this article, shall have the designated meanings:

BOD means biochemical oxygen demand.

CFR means Code of Federal Regulations.

COD means chemical oxygen demand.

EPA means U.S. Environmental Protection Agency.

gpd means gallons per day.

mg/l means milligrams per liter.

O&M means operation and maintenance.

POTW means publicly owned treatment works.

RCRA means Resource Conservation and Recovery Act.

SIC means Standard Industrial Classifications.

SWDA means Solid Waste Disposal Act (42 U.S.C. Section 6901 et seq.).

TSS means total suspended solids.

USC means United States Code.

VPDES means Virginia Pollutant Discharge Elimination System.
(Ord. of 10-13-94, § 1.3)

Sec. 54-39. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Act or the Act means the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251 et seq.

Approval authority means the state department of environmental quality.

Authorized representative of the user means:

(1) If the user is a corporation:

a. The president, secretary, treasurer, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation.

b. The manager of one or more manufacturing, production or operation facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000.00 (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(2) If the user is a partnership, or sole proprietorship, a general partner or proprietor, respectively.

(3) If the user is a federal, state or local governmental facility, a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.

(4) The individuals described in subsections (1) through (3) above, may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization is submitted to the town.

Biochemical oxygen demand (BOD) means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure, five days at 20 degrees Celsius, usually expressed as a concentration (mg/l).

Categorical pretreatment standard or categorical standard means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Sections 307(b) and (c) of the Act (33 U.S.C. Section 1317) which apply to a specific category of industrial users and which appear in 40 CFR Chapter I, Subchapter N, Parts 405-471.

Control authority means the town council.

Color means the optical density at the visual wavelength of maximum absorption, relative to distilled water. One hundred percent transmittance is equivalent to zero optical density.

Composite sample means the sample resulting from the combination of individual wastewater samples taken at selected intervals based on an increment of either flow or time.

Environmental Protection Agency or EPA means the U.S. Environmental Protection Agency or, where appropriate, the regional water management division director or other duly authorized official of the agency.

Existing source means any source of discharge, the construction or operation of which commenced prior to the publication by the EPA of proposed categorical pretreatment standards, which will be applicable to such source if the standard is thereafter promulgated in accordance with Section 307 of the Act.

Grab sample means a sample which is taken from a wastestream without regard to the flow in the wastestream and over a period of time, not to exceed 15 minutes.

Indirect discharge or discharge means the introduction of pollutants into the POTW from any nondomestic source regulated under Section 307(b), (c) or (d) of the Act.

Industrial user or *user* means a source of indirect discharge.
Instantaneous maximum allowable discharge limit means the maximum concentration (or loading) of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composited sample collected, independent of the industrial flow rate and the duration of the sampling event.

Interference means a discharge which alone or in conjunction with a discharge or discharges from other sources inhibits or disrupts the POTW, its treatment processes or operations or its sludge processes, use or disposal; and, therefore, is a cause of a violation of the POTW's VPDES permit or of the prevention of sewage sludge use or disposal in compliance with any of the following statutory/regulatory provisions or permits issued thereunder, or any more stringent state or local regulations: Section 405 of the Act; the Solid Waste Disposal Act, including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA); any state regulations contained in any state sludge management plan prepared pursuant to subtitle D of the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research, and Sanctuaries Act.

Medical waste means isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

New source means:

(1) Any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under Section 307(c) of the Act which will be applicable to such source if such standards are thereafter promulgated in accordance with that section, provided that:

a. The building, structure, facility or installation is constructed at a site at which no other source is located.

b. The building, structure, facility or installation totally replaces the process or production equipment that causes the discharge of pollutants at an existing source.

c. The production or wastewater generating processes of the building, structure, facility or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity as the existing source, should be considered.

(2) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of subsection (1)b or (1)c of this section but otherwise alters, replaces, or adds to existing process or production equipment.

(3) Construction of a new source as defined under this subsection has commenced if the owner or operator has:

a. Begun, or caused to begin as part of a continuous onsite construction program:

1. Any placement, assembly or installation of facilities or equipment.
2. Significant site preparation work including clearing, excavation or removal of existing buildings, structures or facilities which is necessary for the placement, assembly or installation of new source facilities or equipment.

b. Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this subsection.

Noncontact cooling water means water used for cooling which does not come into direct contact with any raw material intermediate product, waste product or finished product.

Pass-through means a discharge which exits the POTW into waters of the U.S. in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the town's VPDES permit, including an increase in the magnitude or duration of a violation.

Person means any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity; or their legal representatives, agents, or assigns. This definition includes all federal, state and local governmental entities.

pH means a measure of the acidity or alkalinity of a solution, expressed in standard units.

Pollutant means any dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, municipal, agricultural, and industrial wastes, and certain characteristics of wastewater (i.e., pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).

Pretreatment means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to, or in lieu of, introducing such pollutants into the POTW. This reduction or alteration can be obtained by physical, chemical or biological processes; by process changes; or by other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard.

Pretreatment requirements means any substantive or procedural requirement related to pretreatment imposed on a user, other than a pretreatment standard.

Pretreatment standards or standards means prohibitive discharge standards, categorical pretreatment standards and local limits.

Prohibited discharge standards or prohibited discharges means absolute prohibitions against the discharge of certain substances; these prohibitions appear in section 54-126.

Publicly owned treatment works or POTW means a "treatment works" as defined by Section 212 of the Act (33 U.S.C. Section 1292), which is owned by the state or municipality. This definition includes any devices or systems used in the collection, storage, treatment, recycling, and reclamation of sewage or industrial wastes of a liquid nature, and any conveyances which convey wastewater to a treatment plant. The term also means the municipal entity having jurisdiction over the users and responsibility for the operation and maintenance of the treatment works.

Septic tank waste means any sewage from holding tanks such as vessels, chemical toilets, campers, trailers and septic tanks.

Sewage means human excrement and gray water (household showers, dishwashing operations, etc.).

Significant industrial user means:

(1) A user subject to categorical pretreatment standards.

(2) A user that:

a. Discharges an average of 25,000 gpd or more of process wastewater to the POTW (excluding sanitary, noncontact cooling, and boiler blowdown wastewater).

b. Contributes a process wastestream which makes up five percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant.

c. Is designated as such by the town on the basis that it has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement.

(3) Upon a finding that a user meeting the criteria in subsection (2) has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the town may at any time, on its own initiative or in response to a petition received from a user, and in accordance with procedures in 40 CFR 403.8(f)(6), determine that such user should not be considered a significant industrial user.

Slug load means any discharge at a flow rate or concentration which could cause a violation of the prohibited discharge standards in section 54-126, or any discharge of a nonroutine, episodic nature, including but not limited to, an accidental spill or a noncustomary batch discharge.

Standard Industrial Classification (SIC) Code means a classification pursuant to the Standard Industrial Classification Manual issued by the U.S. Office of Management and Budget, 1987.

Stormwater means any flow occurring during or following any form of natural precipitation, and resulting therefrom, including snowmelt.

Suspended solids means the total suspended matter that floats on the surface of, or is suspended in, water, wastewater or other liquid, and which is removable by laboratory filtering.

Town means the town or the town council.

Town manager means the person designated by the town to administer, implement and enforce the provisions of this article.

Toxic pollutant means one of the 126 pollutants, or combination of those pollutants, listed as toxic in regulations promulgated by the EPA under the provision of Section 307 (33 U.S.C. Section 1317) of the Act.

Treatment plant effluent means any discharge of pollutants from the POTW into waters of the state.

Wastewater means liquid and water-carried industrial wastes, and sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which are contributed to the POTW.

Wastewater treatment plant or treatment plant means that portion of the POTW designed to provide treatment of sewage and industrial waste.
(Code 1986, § 16-21; Ord. of 10-13-94, § 1.4)

Cross reference(s)--Definitions generally, § 1-2.

Sec. 54-40. Application outside town limits.

The provisions of this article shall be applied as the rules and regulations for sewer service by the town to persons receiving the service outside the corporate boundaries of the town, and the town reserves unto itself the right to discontinue service to any person outside the town found to be not in compliance with the provisions of this article, or in the alternative, to assess an extra charge or penalty for a noncompliance.
(Code 1986, § 16-23)

Sec. 54-41. Unlawful disposal of sewage generally.

It shall be unlawful for any person to place or deposit, in any unsanitary manner upon public or private property within any area serviced by the sewer system of the town or under the jurisdiction of the town, any human or animal excrement, garbage or other objectionable waste.
(Code 1986, § 16-26)

Sec. 54-42. Discharge of sewage, industrial waste, other polluted waters to natural outlets.

It shall be unlawful for any person to discharge, to any natural outlet in any area serviced by the sewer system of the town or under the jurisdiction of the town, any sanitary sewage, industrial waste or other polluted waters, except where suitable treatment has been provided in accordance with the provisions of this article.
(Code 1986, § 16-27)

Sec. 54-43. Mandatory sewer connections.

The owner of every house, building or other property used for human occupancy, employment, recreation or other purposes and situated with the town in an area in which is now located or may in the future be located a sewer system of the town is hereby required, at his expense, to install toilet facilities therein and to connect such facilities directly with the proper public sewer, within 90 days after the date of official notice to do so, provided a public sewer is within 200 feet of the property and provided the residence is not served by an approved septic tank system. This section shall be inapplicable if the town is unable to provide sewer service to any such owner.
(Code 1986, § 16-28)

Sec. 54-44. Construction, maintenance of private sewage disposal facilities.

It shall be unlawful for any person to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of sewage in any area served by a sewer, as set forth in section 54-43; provided, however, that any privy, privy vault, septic tank, cesspool or other such facility existing or under construction prior to September 11, 1980, shall be exempt from this section as long as such facility conforms with state and local health department regulations and requirements. This exemption shall not apply to any facility constructed or reconstructed after September 11, 1980. For the purposes of this section, the term "reconstructed" shall mean the substantial rebuilding of a facility which becomes nonfunctioning, or the relocation of any facility, subsequent to September 11, 1980.
(Code 1986, § 16-29)

Secs. 54-45--54-75. Reserved.

DIVISION 2. ADMINISTRATION*

Sec. 54-76. Notification of violation.

When the town manager finds that a user has violated, or continues to violate, any provision of this article, a wastewater discharge permit or order issued under this article, or any other pretreatment standard or requirement, the town manager may serve upon the user a written notice of violation. Within 30 days of the receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted by the user to the town manager. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of the notice of violation. Nothing in this section shall limit the authority of the town to take any action, including emergency actions or any other enforcement action, without first issuing a notice of violation.
(Code 1986, § 16-25; Ord. of 10-13-94, § 10.1)

***Cross reference(s)**--Administration, ch. 2.

Sec. 54-77. Consent orders.

The town manager may enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with any user responsible for noncompliance. Such documents will include specific action to be taken by the user to correct the noncompliance within a time period also specified by the document. Such documents shall have the same force and effect as the administrative orders issued pursuant to sections 54-79 and 54-80 and shall be judicially enforceable.
(Ord. of 10-13-94, § 10.2)

Sec. 54-78. Show cause hearing.

The town manager may order a user which has violated, or continues to violate, any provision of this article, a wastewater discharge permit or order issued under this article, or any other pretreatment standard or requirement, to appear before the town manager and show cause why the proposed enforcement action should not be taken. Notice shall be served on the user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user show cause why the proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail, return receipt requested, at least 30 days prior to the hearing. Such notice may be served on any authorized representative of the user. A show cause hearing shall not be a bar against, or prerequisite for, taking any other action against the user.
(Ord. of 10-13-94, § 10.3)

Sec. 54-79. Compliance orders.

When the town manager finds that a user has violated, or continues to violate any provision of this article, a wastewater discharge permit or order issued under this article, or any other pretreatment standard or requirement, the town manager may issue an order to the user responsible for the discharge directing that the user come into compliance within a specified time. If the user does not come into compliance within the time provided, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders may also contain other requirements to address the noncompliance, including additional self-monitoring, and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order may not extend the deadline for compliance established for a pretreatment standard or requirement, nor does a compliance order relieve the user of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the user.
(Ord. of 10-13-94, § 10.4)

Sec. 54-80. Cease and desist orders.

When the town manager finds that a user has violated, or continues to violate any provision of this article, a wastewater discharge permit or order issued under this article, or any other pretreatment standard or requirement, or that the user's past violations are likely to recur, the town manager may issue an order to the user directing it to cease and desist all such violations and directing the user to:

(1) Immediately comply with all requirements; and

(2) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

Issuance of a cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the user.
(Ord. of 10-13-94, § 10.5)

Sec. 54-81. Administrative fines.

(a) When the town manager finds that a user has violated, or continues to violate, any provision of this article, a wastewater discharge permit or order issued under this article, or any other pretreatment standard or requirement, the town manager may fine such user in an amount not to exceed $250.00 per day per violation. Such fines shall be assessed on a per violation, per day basis. In the case of monthly or other long term average discharge limits, fines shall be assessed for each day during the period of violation.

(b) Unpaid charges, fines and penalties shall, after 30 calendar days, be assessed an additional penalty of ten percent of the unpaid balance, and interest shall accrue thereafter at a rate of ten percent per month. A lien against the user's property will be sought for unpaid charges, fines and penalties.

(c) Users desiring to dispute such fines must file a written request for the town manager to reconsider the fine along with full payment of the fine amount within 30 days of being notified of the fine. Where a request has merit, the town manager shall convene a hearing on the matter. If the user's appeal is successful, the payment together with any interest accruing thereto, shall be returned to the user. The town manager may add the costs of preparing administrative enforcement actions, such as notices and orders, to the fine.

(d) Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the user.
(Ord. of 10-13-94, § 10.6)

Sec. 54-82. Emergency suspensions.

(a) The town manager may immediately suspend a user's discharge after informal notice to the user, whenever such suspension is necessary to stop an actual or threatened discharge which reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of persons. The town manager may also immediately suspend a user's discharge, after notice and opportunity to respond, that threatens to interfere with the operation of the POTW, or which presents, or may present, an endangerment to the environment.

(b) Any user notified of a suspension of its discharge shall immediately stop or eliminate its contribution. In the event of a user's failure to immediately comply voluntarily with the suspension order, the town manager may take such steps as deemed necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The town manager may allow the user to recommence its discharge when the user has demonstrated to the satisfaction of the town manager that the period of endangerment has passed, unless the termination proceedings in section 54-83 are initiated against the user.

(c) A user that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful contribution and the measures taken to prevent any future occurrence, to the town manager, prior to the date of any show cause or termination hearing under section 54-78 or 54-83.

(d) Nothing in this section shall be interpreted as requiring a hearing prior to any emergency suspension under this section.
(Ord. of 10-13-94, § 10.7)

Sec. 54-83. Termination of discharge.

In addition to the provisions in section 54-219, any user who violates the following conditions is subject to discharge termination:

(1) Violation of wastewater discharge permit conditions.

(2) Failure to accurately report the wastewater constituents and characteristics of its discharge.

(3) Failure to report significant changes in operations or wastewater volume, constituents and characteristics prior to discharge.

(4) Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring or sampling.

(5) Violation of the pretreatment standards in section 54-166 et seq.

Such user will be notified of the proposed termination of its discharge and be offered an opportunity to show cause under section 54-78 why the proposed action should not be taken. Exercise of this option by the town manager shall not be a bar to, or a prerequisite for, taking any other action against the user.
(Ord. of 10-13-94, § 10.8)

Sec. 54-84. Injunctive relief.

When the town manager finds that a user has violated, or continues to violate, any provision of this article, a wastewater discharge permit, or order issued under this article, or any other pretreatment standard or requirement, the town manager may petition the county general district court through the town's attorney for the issuance of a temporary or permanent injunction, as appropriate, which restrains or compels the specific performance of the wastewater discharge permit, order or other requirement imposed by this article on activities of the user. The town manager may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for, taking any other action against a user.
(Ord. of 10-13-94, § 11.1)

Sec. 54-85. Civil penalties.

(a) A user who has violated, or continues to violate, any provision of this article, a wastewater discharge permit, or order issued under this article, or any other pretreatment standard or requirement shall be liable to the town for a maximum civil penalty of $1,000.00 per violation per day. In the case of a monthly or other long term average discharge limit, penalties shall accrue for each day during the period of the violation.

(b) The town manager may recover reasonable attorney's fees, court costs and other expenses associated with enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the town.

(c) In determining the amount of civil liability, the court shall take into account all relevant circumstances, including, but not limited to, the extent of harm caused by the violation, the magnitude and duration of the violation, any economic benefit gained through the user's violation, corrective actions by the user, the compliance history of the user, and any other factor as justice requires.

(d) Filing a suit for civil penalties shall not be a bar against, or a prerequisite for, taking any other action against a user.
(Ord. of 10-13-94, § 11.2)

Sec. 54-86. Criminal prosecution.

(a) A user who willfully violates any provision of this article, a wastewater discharge permit, or order issued under this article, or any other pretreatment standard or

requirement shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than $2,500.00, or incarceration in jail for not more than 12 months, or both.

(b) A user who willfully introduces any substance into the POTW which causes personal injury or property damage shall, upon conviction, be guilty of a misdemeanor and be subject to a penalty of not more than $2,500.00, or be subject to incarceration in jail for not more than 12 months or both. This penalty shall be in addition to any other cause of action for personal injury or property damage available under state law.

(c) A user who knowingly makes any false statements, representations or certifications in any application, record, report, plan or other documentation filed, or required to be maintained, pursuant to this article, wastewater discharge permit or order issued under this article, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under this article shall, upon conviction, be punished by a fine of not more than $2,500.00 or incarceration for not more than 12 months, or both.
(Ord. of 10-13-94, § 11.3)

Sec. 54-87. Remedies nonexclusive.

The remedies provided for in this article are not exclusive. The town manager may take any, all, or any combination of these actions against a noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the town's enforcement response plan. However, the town manager may take other action against any user when the circumstances warrant. Further, the town manager is empowered to take more than one enforcement action against any noncompliant user.
(Ord. of 10-13-94, § 11.4)

Sec. 54-88. Performance bonds.

The town manager may decline to reissue a wastewater discharge permit to any user which has failed to comply with the provisions of this article, a previous wastewater discharge permit, or order issued under this article, or any other pretreatment standard or requirement, unless such user first files a satisfactory bond, payable to the town, in a sum not to exceed a value determined by the town manager to be necessary to achieve consistent compliance.
(Ord. of 10-13-94, § 12.1)

Sec. 54-89. Liability insurance.

The town manager may decline to reissue a wastewater discharge permit to any user who has failed to comply with any provision of this article, a previous wastewater discharge permit, or order issued under this article, or any other pretreatment standard or requirement, unless the user first submits proof that it has obtained financial assurances sufficient to restore or repair damage to the POTW caused by its discharge.
(Ord. of 10-13-94, § 12.2)

Sec. 54-90. Water supply severance.

Whenever a user has violated or continues to violate any provision of this article, a wastewater discharge permit, or order issued under this article, or any other pretreatment standard or requirement, water service to the user may be severed. Service will only recommence, at the user's expense, after it has satisfactorily demonstrated its ability to comply.
(Ord. of 10-13-94, § 12.3)

Sec. 54-91. Public nuisances.

A violation of any provision of this article, a wastewater discharge permit, or order issued under this article, or any other pretreatment standard or requirement, is hereby declared a public nuisance and shall be corrected or abated as directed by the town manager. Any person creating a public nuisance shall be subject to the provisions of chapter 22, governing such nuisances, including reimbursing the town for any costs incurred in removing, abating or remedying the nuisance.
(Ord. of 10-13-94, § 12.4)

Sec. 54-92. Informant rewards.

The town manager is authorized to pay up to $100.00 for information leading to the discovery of noncompliance by a user. If the information provided results in a civil penalty (or an administrative fine) levied against the user, the town manager may disperse up to five percent of the collected fine or penalty to the informant. However, a single reward payment may not exceed $100.00.
(Ord. of 10-13-94, § 12.5)

Sec. 54-93. Contractor listing affected by noncompliance.

Users which have not achieved consistent compliance with applicable pretreatment standards and requirements are not eligible to receive a contractual award for the sale of goods or services to the town. Existing contracts for the sale of goods or services to the town held by a user found to be in significant noncompliance with pretreatment standards may be terminated at the discretion of the town manager.
(Ord. of 10-13-94, § 12.6)

Sec. 54-94. Affirmative defenses to discharge violations.

(a) *Upset*.

(1) For the purposes of this section, "upset" means an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(2) An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical pretreatment standards if the requirements of subsection (a)(3) are met.

(3) A user who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and the user can identify the cause of the upset.

b. The facility was at the time being operated in a prudent and workmanlike manner and in compliance with applicable operation and maintenance procedures.

c. The user has submitted the following information to the town manager within 24 hours of becoming aware of the upset (if this information is provided orally, a written submission must be provided within five days):

1. A description of the indirect discharge and cause of noncompliance.

2. The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue.

3. Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

(4) In any enforcement proceeding, the user seeking to establish the occurrence of an upset shall have the burden of proof.

(5) Users will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical pretreatment standards.

(6) Users shall control production or all discharges to the extent necessary to maintain compliance with categorical pretreatment standards upon reduction, loss or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost or fails.

(b) *Prohibited discharge standards*. A user shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibitions in section 54-126 or the specific prohibitions in subsections 54-127(1) through 54-127(19)

if it can prove that it did not know, or have reason to know, that its discharge, alone or in conjunction with discharges from other sources, would cause pass-through or interference and that either:

(1) A local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to, and during, the pass-through or interference; or

(2) No local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the town was regularly in compliance with its VPDES permit, and in the case of interference, was in compliance with applicable sludge use or disposal requirements.

(c) Bypass.

(1) Definitions.

a. Bypass means the intentional diversion of wastestreams from any portion of a user's treatment facility.

b. Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(2) A user may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provision of subsections (c)(3) and (4) of this section.

(3) Notice.

a. If a user knows in advance of the need for a bypass, it shall submit prior notice to the town manager, at least ten days before the date of the bypass, if possible.

b. A user shall submit oral notice to the town manager of an unanticipated bypass that exceeds applicable pretreatment standards within 24 hours from the time it becomes aware of the bypass. A written submission shall also be provided within five days of the time the user becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate and prevent reoccurrence of the bypass.

(4) Conditions for permitting bypass.

a. Bypass is prohibited, and the town manager may take enforcement action against a user for a bypass, unless:

1. Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage.

2. There was no feasible alternative to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance.

3. The user submitted notices as required under subsection (c)(3) of this section.

b. The town manager may approve an anticipated bypass, after considering its adverse effects, if the superintendent determines that it will meet the three conditions listed in subsection (c)(4)a of this section.

(Ord. of 10-13-94, § 13.3)

Sec. 54-95. Pretreatment charges and fees.

The town may adopt reasonable fees for reimbursement of costs of setting up and operating the town's pretreatment program which may include:

(1) Fees for wastewater discharge permit applications including the cost of processing such applications.

(2) Fees for monitoring, inspection and surveillance procedures including the cost of collection and analyzing a user's discharge, and reviewing monitoring reports submitted by users.

(3) Fees for reviewing and responding to accidental discharge procedures and construction.

(4) Fees for filing appeals.

(5) Other fees as the town may deem necessary to carry out the requirements contained in this article. These fees relate solely to the matters covered by this article and are separate from all other fees, fines and penalties chargeable by the town.

(Ord. of 10-13-94, § 15.1)

Secs. 54-96--54-125. Reserved.

DIVISION 3. SEWER USE REGULATIONS

Sec. 54-126. General discharge prohibitions.

No industrial user shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes pass-through or interference. These general prohibitions apply to all users of the POTW whether or not they are subject to categorical pretreatment standards or any other national, state or local pretreatment standards or requirements.
(Code 1986, § 16-30; Ord. of 10-13-94, § 2.1)

Sec. 54-127. Specific discharge prohibitions.

No user shall introduce or cause to be introduced into the POTW the following pollutants, substances or wastewater:

(1) Pollutants which create a fire or explosive hazard in the municipal wastewater collection and POTW, including, but not limited to, wastestreams with a closed-cup flashpoint of less than 140 degrees Fahrenheit (60 degrees Celsius) using the test methods specified in 40 CFR 261.21.

(2) Wastewater having a pH less than 5.0 or more than 10.0, or otherwise causing corrosive structural damage to the POTW or equipment.

(3) Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in interference, but in no case solids greater than one-half of one inch or 1.3 centimeters in any dimension.

(4) Pollutants, including oxygen-demanding pollutants (BOD, etc.), released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference with either the POTW; or any wastewater treatment or sludge process, or which will constitute a hazard to humans or animals.

(5) Wastewater having a temperature greater than 190 degrees Fahrenheit (88 degrees Celsius), or which will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104 degrees Fahrenheit (40 degrees Celsius).

(6) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass-through.

(7) Pollutants which result in the presence of toxic gases, vapors or fumes within the POTW in a quantity that may cause acute worker health and safety problems.

(8) Trucked or hauled pollutants, except at discharge points designated by the town in accordance with section 54-169.

(9) Noxious or malodorous liquids, gases, solids, or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance, a hazard to life, or to prevent entry into the sewers for maintenance and repair;

(10) Wastewater which imparts color which cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plant's effluent thereby violating the town's VPDES permit.

(11) Wastewater containing any radioactive wastes or isotopes except in compliance with applicable state or federal regulations.

(12) Stormwater, surface water, groundwater, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate, deionized water, noncontact cooling water, and unpolluted industrial wastewater, unless specifically authorized by the town manager.

(13) Sludges, screenings or other residues from the pretreatment of industrial wastes.

(14) Medical wastes, except as specifically authorized by the town manager in a wastewater discharge permit.

(15) Wastewater causing, alone or in conjunction with other sources, the treatment plant's effluent to fail a toxicity test.

(16) Detergents, surface active agents, or other substances which may cause excessive foaming in the POTW.

(17) Fats, oils or greases of animal or vegetable origin in concentrations greater than 100 mg/l.

(18) Wastewater causing two readings on an explosion hazard meter at the point of discharge into the POTW, or any point in the POTW, of more than five percent or any single reading over ten percent of the lower explosive limit of the meter.

(19) Any substance which will cause the POTW to violate its NPDES and/or state disposal system permit or the receiving water quality standards.

Pollutants, substances or wastewater prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the POTW.

All floor drains located in process or materials storage areas must discharge to the user's pretreatment facility before connecting with the POTW.
(Code 1986, § 16-30; Ord. of 10-13-94, § 2.1)

Sec. 54-128. National categorical pretreatment standards.

(a) The categorical pretreatment standards found at 40 CFR Chapter I, Subchapter N, Parts 405 through 471 are hereby incorporated.

(b) Where a categorical pretreatment standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the town manager may impose equivalent concentration or mass limits in accordance with 40 CFR 403.6(c).

(c) When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the town manager shall impose an alternate limit using the combined wastestream formula in 40 CFR 403.6(e).

(d) A user may obtain a variance from a categorical pretreatment standard if the user can prove, pursuant to the procedural and substantive provisions in 40 CFR 403.13, that factors relating to its discharge are fundamentally different from the factors considered by the EPA when developing the categorical pretreatment standard.

(e) A user may obtain a net gross adjustment to a categorical standard in accordance with 40 CFR 403.15.
(Code 1986, § 16-33; Ord. of 10-13-94, § 2.2)

Sec. 54-129. State pretreatment standards.

State pretreatment standards located at state permit regulation, VR 680-14-01 Part 7 are hereby incorporated.
(Ord. of 10-13-94, § 2.3)

Sec. 54-130. Local limits.

The town may apply local limits through issuance of industrial user permits as provided in section 54-210 et seq. The town may apply local limits based on EPA categorical pretreatment standards, state water quality standards or criteria, treatment plant process inhibitions, or sludge disposal standards as necessary to comply with the general prohibitions against pass-through, interference, and sludge contamination of 40 CFR Part 403 and VR 680-14-01, Part 7.
(Ord. of 10-13-94, § 2.4)

Sec. 54-131. Town's right of revision.

The town reserves the right to establish, by ordinance or in wastewater discharge permits, more stringent standards or requirements on discharges to the POTW.
(Ord. of 10-13-94, § 2.5)

Sec. 54-132. Dilution.

No industrial user shall ever increase the use of process water, or in any way attempt to dilute a discharge, as a partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable pretreatment standard or requirement. The town manager may impose mass limitations on industrial users which are using dilution to meet applicable pretreatment standards or requirements, or in other cases when the imposition of mass limitations is appropriate.
(Code 1986, § 16-34; Ord. of 10-13-94, § 2.6)

Secs. 54-133--54-165. Reserved.

DIVISION 4. PRETREATMENT REQUIREMENTS

Sec. 54-166. Pretreatment facilities.

Industrial users shall provide wastewater treatment as necessary to comply with this article and shall achieve compliance with all categorical pretreatment standards, local limits, and the prohibitions set out in section 54-126 within the time limitations specified by the EPA, the state or the town manager, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated and maintained at the user's expense. Detailed plans describing the pretreatment facilities and operating procedures shall be submitted to the town manager for review, and shall be acceptable to the town manager before construction of the facilities. The review of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facilities as necessary to produce a discharge acceptable to the town under the provisions of this article.
(Code 1986, § 16-31; Ord. of 10-13-94, § 3.1)

Sec. 54-167. Additional pretreatment measures.

(a) Whenever deemed necessary, the town manager may require industrial users to restrict their discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate sewage wastestreams from industrial wastestreams, and such other conditions as may be necessary to protect the POTW and determine the industrial user's compliance with the requirements of this article.

(b) The town manager may require any person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. A wastewater discharge permit may be issued solely for flow equalization.

(c) Grease, oil and sand interceptors shall be provided when, in the opinion of the town manager, they are necessary for the proper handling of wastewater containing excessive amounts of grease and oil, or sand; except that such interceptors shall not be required for residential users. All interception units shall be of type and capacity approved by the town manager and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned and repaired regularly, as needed, by the user at his expense.

(d) Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.
(Ord. of 10-13-94, § 3.2)

Sec. 54-168. Accidental discharge/slug control plans.

At least once every two years, the town manager shall evaluate whether each user needs an accidental discharge/slug control plan. The town manager may require any user to develop, submit for approval, and implement such a plan. Alternatively, the town manager may develop such a plan for any user. An accidental discharge/slug control plan shall address, at a minimum, the following:

(1) Description of discharge practices, including nonroutine batch discharges;

(2) Description of stored chemicals;

(3) Procedures for immediately notifying the POTW of any accidental or slug discharge. As required by section 54-256, such notification must also be given for any discharge which would violate any of the prohibited discharges in section 54-126; and

(4) Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

(Code 1986, § 16-35; Ord. of 10-13-94, § 3.3)

Sec. 54-169. Hauled wastewater.

(a) Septic tank waste may be introduced into the POTW only at locations designated by the town manager and at such times as are established by the town manager. Such waste shall not violate sections 54-126 through 54-132 or any other requirements established by the town. The town manager may require septic tank waste haulers to obtain wastewater discharge permits.

(b) The town manager shall require haulers of industrial waste to obtain wastewater discharge permits. The town manager may require generators of hauled industrial waste to obtain wastewater discharge permits. The town manager also may prohibit the disposal of hauled industrial waste. The discharge of hauled industrial waste is subject to all other requirements of this article.

(c) Industrial waste haulers may discharge loads only at locations designated by the town manager. No load may be discharged without prior consent of the town manager. The town manager may collect samples of each hauled load to ensure compliance with applicable standards. The town manager may require the industrial waste hauler to provide a waste analysis of any load prior to discharge.

(d) Industrial waste haulers must provide a waste-tracking form for every load. This form shall include, at a minimum, the name and address of the industrial waste hauler, permit number, truck identification, names and addresses of sources of waste, and volume and characteristics of waste. The form shall identify the type of industry, known or suspected waste constituents, and whether any wastes are RCRA hazardous wastes.
(Ord. of 10-13-94, § 3.4)

Sec. 54-170. Vandalism.

No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface, tamper with or prevent access to any structure, appurtenance or equipment, or other part of the POTW. Any person found in violation of this requirement shall be subject to the sanctions set out in sections 54-76 through 54-93.
(Ord. of 10-13-94, § 3.5)

Secs. 54-171--54-205. Reserved.

DIVISION 5. DISCHARGE PERMIT

Sec. 54-206. Wastewater analysis.

When required by the town manager a user must submit information on the nature and characteristics of its wastewater by completing a wastewater survey within 30 days of the request. The town manager is authorized to prepare a form for this purpose and may periodically require industrial users to update this information. Failure to complete this

survey shall be reasonable grounds for terminating service to the user and shall be considered a violation of this article.
(Ord. of 10-13-94, § 4.1)

Sec. 54-207. Requirements.

(a) No user shall discharge wastewater into the POTW without first obtaining a wastewater discharge permit from the town manager, except that a user that has filed a timely application pursuant to section 54-208 may continue to discharge for the time period specified therein.

(b) The town manager may require other users to obtain wastewater discharge permits as necessary to carry out the purposes of this article.

(c) Any violation of the terms and conditions of a wastewater discharge permit shall be deemed a violation of this article and subjects the wastewater discharge permittee to the sanctions set out in sections 54-76 through 54-93. Obtaining a wastewater discharge permit does not relieve a permittee of its obligation to comply with all federal and state pretreatment standards or requirements or with any other requirements of federal, state and local law.
(Code 1986, § 16-36; Ord. of 10-13-94, § 4.2)

Sec. 54-208. Existing connections.

Any user required to obtain a wastewater discharge permit who was discharging wastewater into the POTW prior to the effective date of the ordinance from which this article was derived and who wishes to continue such discharges in the future shall, within 30 days after the date, apply to the town manager for a wastewater discharge permit in accordance with section 54-211, and shall not cause or allow discharges to the POTW to continue after 30 days of the effective date of this ordinance from which this article was derived except in accordance with a wastewater discharge permit issued by the town manager.
(Ord. of 10-13-94, § 4.3)

Sec. 54-209. New connections.

Any user required to obtain a wastewater discharge permit who proposes to begin or recommence discharging industrial wastes into the POTW must obtain a wastewater discharge permit prior to the beginning or recommencing of such discharge. An application for this wastewater discharge permit, in accordance with section 54-211, must be filed at least 60 days prior to the date upon which any discharge will begin or recommence.
(Ord. of 10-13-94, § 4.4)

Sec. 54-210. Extrajurisdictional industrial users.

(a) Any existing significant industrial user located beyond the town corporate limits shall submit a wastewater discharge permit application, in accordance with section 54-211, within 30 days of the effective date of the ordinance from which this article was derived. New significant industrial users located beyond the town corporate limits shall submit such applications to the town manager 30 days prior to any proposed discharge into the POTW.

(b) Alternately, the town manager may enter into an agreement with the neighboring jurisdiction in which the significant industrial user is located to provide for the implementation and enforcement of pretreatment program requirements against the industrial user.
(Ord. of 10-13-94, § 4.5)

Sec. 54-211. Application; contents.

All users required to obtain a wastewater discharge permit must submit a permit application. The town manager may require all users to submit as part of an application the following information:

(1) All information required by section 54-251(b).

(2) Description of activities, facilities and plant processes on the premises, including a list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW.

(3) Number and type of employees, hours of operation, and proposed or actual hours of operation of the POTW.

(4) Each product produced by type, amount, process or processes, and rate of production.

(5) Type and amount of raw materials processed (average and maximum per day).

(6) The site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains, and appurtenances by size, location and elevation, and all points of discharge.

(7) Time and duration of discharges.

(8) Any other information as may be deemed necessary by the town manager to evaluate the wastewater discharge permit application.

Incomplete or inaccurate applications will not be processed and will be returned to the user for revision.
(Code 1986, § 16-37; Ord. of 10-13-94, § 4.6)

Sec. 54-212. Application signatories and certification.

All wastewater discharge permit applications and user reports must contain the following certification statement and be signed by an authorized representative of the user.

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."
(Ord. of 10-13-94, § 4.7)

Sec. 54-213. Evaluation; decision to grant or deny.

The town manager will evaluate the data furnished by the user and may require additional information. Within 30 days of receipt of a complete wastewater discharge permit application, the town manager will determine whether or not to issue a wastewater discharge permit. The town manager may deny any application for a wastewater discharge permit.
(Ord. of 10-13-94, § 4.8)

Sec. 54-214. Duration.

A wastewater discharge permit shall be issued for a specified time period, not to exceed five years from the effective date of the permit. A wastewater discharge permit may be issued for a period less than five years, at the discretion of the town manager. Each wastewater discharge permit will indicate a specific date upon which it will expire.
(Ord. of 10-13-94, § 5.1)

Sec. 54-215. Contents.

(a) A wastewater discharge permit shall include such conditions as are deemed reasonably necessary by the town manager to prevent pass-through or interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal, and protect against damage to the POTW.

(b) Wastewater discharge permits must contain:

(1) A statement that indicates wastewater discharge permit duration, which in no event shall exceed five years.

(2) A statement that the wastewater discharge permit is nontransferable without prior notification to and approval from the town, in accordance with section 54-218, and provisions for furnishing the new owner or operator with a copy of the existing wastewater discharge permit.

(3) Effluent limits based on applicable pretreatment standards.

(4) Self-monitoring, sampling, reporting, notification and recordkeeping requirements. These requirements shall include an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on federal, state and local law.

(5) Statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by applicable federal, state or local law.

(c) Wastewater discharge permits may contain, but need not be limited to, the following conditions:

(1) Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization.

(2) Requirements for the installation of pretreatment technology, pollution control, or construction of appropriate containment devices, designed to reduce, eliminate or prevent the introduction of pollutants into the treatment works.

(3) Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated or nonroutine discharges.

(4) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW.

(5) The unit charge or schedule of user charges and fees for the management of the wastewater discharged to the POTW.

(6) Requirements for installation and maintenance of inspection and sampling facilities and equipment.

(7) A statement that compliance with the wastewater discharge permit does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards, including those which become effective during the term of the wastewater discharge permit.

(8) Other conditions as deemed appropriate by the town manager to ensure compliance with this article, and state and federal laws, rules and regulations.

(Ord. of 10-13-94, § 5.2)

Sec. 54-216. Appeals.

The town manager shall provide public notice of the issuance of a wastewater discharge permit. Any person, including the user, may petition the town manager to reconsider the terms of a wastewater discharge permit within 15 days of its issuance, in accordance with the following:

(1) Failure to submit a timely petition for review shall be deemed to be a waiver of the administrative appeal.

(2) In its petition, the appealing party must indicate the wastewater discharge permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to place in the wastewater discharge permit.

(3) The effectiveness of the wastewater discharge permit shall not be stayed pending the appeal.

(4) If the town manager fails to act within 30 days, a request for reconsideration shall be deemed to be denied. Decisions not to reconsider a wastewater discharge permit, not to issue a wastewater discharge permit or not to modify a wastewater discharge permit shall be considered final administrative action for purposes of judicial review.

(5) Aggrieved parties seeking judicial review of the final administrative wastewater discharge permit decision must do so by filing a complaint with the circuit court of the county within 30 days.

(Ord. of 10-13-94, § 5.3)

Sec. 54-217. Modification.

(a) The town manager may modify a wastewater discharge permit for good cause including, but not limited to, the following reasons:

(1) To incorporate any new or revised federal, state or local pretreatment standards or requirements.

(2) To address significant alterations or additions to the user's operation, processes, or wastewater volume or character since the time of wastewater discharge permit issuance.

(3) A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge.

(4) Information indicating that the permitted discharge poses a threat to the town's POTW, town personnel, or the receiving waters.

(5) Violation of any terms or conditions of the wastewater discharge permit.

(6) Misrepresentations or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required reporting.

(7) Revision of or a grant of variance from categorical pretreatment standards pursuant to 40 CFR 403.13.

(8) To correct typographical or other errors in the wastewater discharge permit.

(9) To reflect a transfer of the facility ownership or operation to a new owner or operator. Modification for this purpose may not be allowed unless the permit is transferable as provided in section 54-218.

(b) The filing of a request by the permittee for a wastewater discharge permit modification does not stay any wastewater discharge permit condition.
(Ord. of 10-13-94, § 5.4)

Sec. 54-218. Transfer.

(a) Wastewater discharge permits may be transferred to a new owner or operator only if the permittee gives at least 60 days' advance notice to the town manager and the town manager approves the wastewater discharge permit transfer. The notice to the town manager must include a written certification by the new owner or operator which:

(1) States that the new owner or operator has no immediate intent to change the facility's operations and processes.

(2) Identifies the specific date on which the transfer is to occur.

(3) Acknowledges full responsibility for complying with the existing wastewater discharge permit.

(b) Failure to provide advance notice of a transfer renders the wastewater discharge permit void as of the date of facility transfer.
(Ord. of 10-13-94, § 5.5)

Sec. 54-219. Revocation.

(a) The town manager may revoke a wastewater discharge permit for good cause, including, but not limited to, the following reasons:

(1) Failure to notify the town manager of significant changes to the wastewater prior to the changed discharge.

(2) Failure to provide prior notification to the town manager of changed condition pursuant to section 54-255.

(3) Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application.

(4) Falsifying self-monitoring reports.

(5) Tampering with monitoring equipment.

(6) Refusing to allow the town manager and/or town personnel timely access to the facility premises and records.

(7) Failure to meet effluent limitations.

(8) Failure to pay fines.

(9) Failure to pay sewer charges.

(10) Failure to meet compliance schedules.

(11) Failure to complete a wastewater survey or the wastewater discharge permit application.

(12) Failure to provide advance notice of the transfer of a permitted facility.

(13) Violation of any pretreatment standard or requirement, or any terms of the wastewater discharge permit or this article.

(b) Wastewater discharge permits shall be voidable upon cessation of operations or transfer of business ownership. All wastewater discharge permits issued to a particular user are void upon the issuance of a new wastewater discharge permit to that user. (Ord. of 10-13-94, § 5.6)

Sec. 54-220. Reissuance.

A user with an expiring wastewater discharge permit shall apply for wastewater discharge permit reissuance by submitting a complete permit application, in accordance with section 54-211, a minimum of 180 days prior to the expiration of the user's existing wastewater discharge permit.
(Ord. of 10-13-94, § 5.7)

Sec. 54-221. Waste received from other jurisdictions.

(a) If another municipality, or a user located within another municipality, contributes wastewater to the POTW, the town manager shall enter into an intermunicipal agreement with the contributing municipality.

(b) Prior to entering into an agreement required by subsection (a) of this section, the town manager shall request the following information from the contributing municipality:

(1) A description of the quality and volume of wastewater discharged to the POTW by the contributing municipality.

(2) An inventory of all users located within the contributing municipality that are discharging to the POTW.

(3) Such other information as the town manager may deem necessary.

(c) An intermunicipal agreement, as required by subsection (a) of this section, shall contain the following conditions:

(1) A requirement for the contributing municipality to adopt a sewer use ordinance which is at least as stringent as this article and local limits which are at least as stringent as those set out in section 54-130. The requirements shall specify that such ordinance and limits must be revised as necessary to reflect changes made to the town's ordinance or local limits.

(2) A requirement for the contributing municipality to submit a revised user inventory on at least an annual basis.

(3) A provision specifying which pretreatment implementation activities, including wastewater discharge permit issuance, inspection and sampling, and enforcement, will be conducted by the contributing municipality; which of these activities will be conducted by the town manager; and which of these activities will be conducted jointly by the contributing municipality and the town manager.

(4) A requirement for the contributing municipality to provide the town manager with access to all information that the contributing municipality obtains as part of its pretreatment activities.

(5) Limits on the nature, quality and volume of the contributing municipality's wastewater at the point where it discharges to the POTW.

(6) Requirements for monitoring the contributing municipality's discharge.

(7) A provision ensuring the town manager and/or authorized town personnel access to the facilities of users located within the contributing municipality's jurisdictional boundaries for the purpose of inspection, sampling, and any other duties deemed necessary by the town manager.

(8) A provision specifying remedies available for breach of the terms of the intermunicipal agreement.

(Ord. of 10-13-94, § 5.8)

Secs. 54-222--54-250. Reserved.

DIVISION 6. MONITORING AND REPORTS

Sec. 54-251. Baseline monitoring reports.

(a) Within either 180 days after the effective date of a categorical pretreatment standard, or the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing categorical users currently discharging to or scheduled to discharge to the POTW shall submit to the town manager a report which contains the information listed in subsection (b) below. At least 90 days prior to commencement of their discharge, new sources, and sources that become categorical users subsequent to the promulgation of an applicable categorical standard, shall submit to the town manager a report which contains the information listed in subsection (b) below. A new source shall also be required to report the method of pretreatment it intends to use to meet applicable categorical standards. A new source shall also give estimates of its anticipated flow and quantity of pollutants to be discharged.

(b) Users described in subsection (a) shall submit the information set forth below:

(1) Identifying information. The name and address of the facility including the name of the operator and owner.

(2) Environmental permits. A list of any environmental control permits held by or for the facility.

(3) Description of operations. A brief description of the nature, average rate of production, and standard industrial classifications of the operations carried out by such user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes.

(4) Flow measurement. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams, as necessary, to allow use of the combined wastestream formula set out in 40 CFR 403.6(e).

(5) Measurement of pollutants.

a. The categorical pretreatment standards applicable to each regulated process.

b. The results of sampling and analysis identifying the nature and concentration and/or mass, where required by the standard or by the town manager of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum and long term average concentrations, or mass, where required, shall be reported. The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in section 54-260.

c. Sampling must be performed in accordance with procedures set out in section 54-261.

(6) Certification. A statement reviewed by the user's authorized representative and certified by a qualified professional, indicating whether pretreatment standards are being met on a consistent basis and, if not, whether additional operation and maintenance (O & M) and/or additional pretreatment is required to meet the pretreatment standards and requirements.

(7) Compliance schedule. If additional pretreatment and/or O & M will be required to meet the pretreatment standards, the shortest schedule by which the user will provide such additional pretreatment and/or O & M. The completion date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in section 54-252.

(8) Signature and certification. All baseline monitoring reports must be signed and certified in accordance with section 54-212.

(Ord. of 10-13-94, § 6.1)

Sec. 54-252. Compliance schedule progress report.

The following conditions shall apply to the schedule required by section 54-251(b)(7):

(1) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment required for the user to meet the applicable pretreatment standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major

components, commencing and completing construction, and beginning and conducting routine operation).

(2) No increment referred to above shall exceed nine months.

(3) The user shall submit a progress report to the town manager no later than 14 days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule.

(4) In no event shall more than nine months elapse between such progress reports to the town manager.

(Ord. of 10-13-94, § 6.2)

Sec. 54-253. Report on compliance with categorical pretreatment standard deadline.

Within 90 days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source following commencement of the introduction of wastewater into the POTW, any user subject to such pretreatment standards and requirements shall submit to the town manager a report containing the information described in section 54-251(b)(4)--(6). For users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the user's long term production rate. For all other users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with section 54-212.

(Ord. of 10-13-94, § 6.3)

Sec. 54-254. Periodic compliance reports.

(a) All significant industrial users shall, at a frequency determined by the town manager but in no case less than twice per year (in June and December), submit a report indicating the nature and concentration of pollutants in the discharge which are limited by pretreatment standards and the measured or estimated average and maximum daily flows for the reporting period. All periodic compliance reports must be signed and certified in accordance with section 54-212.

(b) All wastewater samples must be representative of the user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean and maintained in good working order at all times. The failure of a user to keep its monitoring facility in good working order shall not be grounds for the user to claim that sample results are unrepresentative of its discharge.

(c) If a user subject to the reporting requirement in this section monitors any pollutant more frequently than required by the town manager, using the procedures prescribed in section 54-261, the results of this monitoring shall be included in the report.
(Ord. of 10-13-94, § 6.4)

Sec. 54-255. Report of changed conditions.

(a) Each user must notify the town manager of any planned significant changes to the user's operations or system which might alter the nature, quality or volume of its wastewater at least 30 days before the change.

(b) The town manager may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater discharge permit application under section 54-211.

(c) The town manager may issue a wastewater discharge permit under section 54-213 or modify an existing wastewater discharge permit under section 54-217 in response to changed conditions or anticipated changed conditions.

(d) For purposes of this requirement, significant changes include, but are not limited to, flow increases of 20 percent or greater, and the discharge of any previously unreported pollutants.
(Ord. of 10-13-94, § 6.5)

Sec. 54-256. Reports of potential problems.

(a) In the case of any discharge including, but not limited to, accidental discharges, discharges of a nonroutine, episodic nature, a noncustomary batch discharge, or a slug load, that may cause potential problems for the POTW, the user shall immediately telephone and notify the town manager of the incident. This notification shall include the location of discharge, type of waste, concentration and volume, if known, and corrective actions taken by the industrial user.

(b) Within five days following such discharge, the user shall, unless waived by the town manager, submit a detailed written report describing the cause of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage or other liability which may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, penalties or other liability which may be imposed pursuant to this article.

(c) A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees whom to call in the event of a discharge described in subsection (a) of this section. Employers shall ensure that all employees, who may cause such a discharge to occur, are advised of the emergency notification procedure.
(Ord. of 10-13-94, § 6.6)

Sec. 54-257. Reports from unpermitted users.

All users not required to obtain a wastewater discharge permit shall provide appropriate reports to the POTW as the town manager may require.
(Ord. of 10-13-94, § 6.7)

Sec. 54-258. Notice of violation; repeat sampling and reporting.

If sampling performed by a user indicates a violation, the user must notify the town manager within 24 hours of becoming aware of the violation. The user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the town manager within 30 days after becoming aware of the violation. The user is not required to resample if the POTW monitoring at the user's facility at least once a month, or if the POTW samples between the user's initial sampling and when the user receives the results of this sampling.
(Ord. of 10-13-94, § 6.8)

Sec. 54-259. Notification of discharge of hazardous waste.

(a) Any user who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division Director, and state hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the user discharges more than 100 kilograms of such waste per calendar month to the POTW, the notification shall also contain the following information to the extent such information is known and readily available to the industrial user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following 12 months. All notifications must take place no later than 180 days after the discharge commences. Any notification under this subsection need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under section 54-255. The notification requirement in this section does not apply to pollutants already reported by users subject to categorical pretreatment standards under the self-monitoring requirements of sections 54-251, 54-253 and 54-254.

(b) Dischargers are exempt from the requirements of subsection (a) of this section, during a calendar month in which they discharge no more than 15 kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 40 CFR 261.33(e). Discharge of more than 15 kilograms of nonacute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 40 CFR 261.33(e), requires a one-time notification. Subsequent

months during which the user discharges more than such quantities of any hazardous waste do not require additional notification.

(c) In the case of any new regulations under Section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the user must notify the POTW, the EPA Regional Waste Management Waste Division Director, and state hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.

(d) In the case of any notification made under this section, the user shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

(e) This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this article, a permit issued under this article, or any applicable federal or state law.
(Ord. of 10-13-94, § 6.9)

Sec. 54-260. Analytical requirements.

All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR Part 136, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses must be performed in accordance with procedures approved by the EPA.
(Ord. of 10-13-94, § 6.10)

Sec. 54-261. Sample collection.

(a) Except as indicated in subsection (b) of this section, the user must collect wastewater samples using flow proportional composite collection techniques. If flow proportional sampling is infeasible, the town manager may authorize the use of time proportional sampling or a minimum of four grab samples where the user demonstrates that this will provide a representative sample of the effluent being discharged. In addition, grab samples may be required to show compliance with instantaneous discharge limits.

(b) Samples for oil and grease, temperature, pH, cyanide, phenols, sulfides, and volatile organic chemicals must be obtained using grab sample collection techniques.
(Ord. of 10-13-94, § 6.11)

Sec. 54-262. Timing for submittal of reports.

Written reports will be deemed to have been submitted on the date postmarked. For reports which are not mailed, postage prepaid, into a mail facility serviced by the U.S. Postal Service, the date of receipt of the report shall govern.
(Ord. of 10-13-94, § 6.12)

Sec. 54-263. Recordkeeping.

Users subject to the reporting requirements of this article shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this article and any additional records of information obtained pursuant to monitoring activities undertaken by the user independent of such requirements. Records shall include the date, exact place, method and time of sampling, and the name of the person taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three years. This period shall be automatically extended for the duration of any litigation concerning the user or the town, or where the user has been specifically notified of a longer retention period by the town manager.
(Ord. of 10-13-94, § 6.13)

Sec. 54-264. New or increased discharges.

All industrial users shall promptly notify the POTW in advance of any new or increased discharge. The town may deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the POTW by industrial users where such contributions do not meet applicable pretreatment standards and requirements or where such contributions would cause the POTW to violate its VPDES permit.
(Ord. of 10-13-94, § 6.14)

Sec. 54-265. Right of entry; inspection and sampling.

(a) The town manager and/or authorized town personnel shall have the right to enter the premises of any user to determine whether the user is complying with all requirements of this article and any wastewater discharge permit or order issued under this article. Users shall allow the town manager and/or authorized town personnel ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

(b) Where a user has security measures in force which require proper identification and clearance before entry into its premises, the user shall make necessary arrangements with its security guards so that, upon presentation of suitable identification, personnel from the town, state, and EPA will be permitted to enter without delay for the purposes of performing specific responsibilities.

(c) The town, state and EPA shall have the right to set up on the user's property, or require installation of, such devices as are necessary to conduct sampling and/or metering of the user's operations.

(d) The town manager may require the user to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the user at its own expense. All devices used to measure wastewater flow and quality shall be calibrated at a minimum, annually, to ensure their accuracy.

(e) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the user at the written or verbal request of the town manager and shall not be replaced. The costs of clearing such access shall be born by the user.

(f) Unreasonable delays in allowing the town manager access to the user's premises shall be a violation of this article.

(g) The town may sample, analyze or have analyzed at user's expense any discharger suspect of discharging any substance that may violate this article.
(Code 1986, §§ 16-24, 16-32; Ord. of 10-13-94, § 7.1)

Sec. 54-266. Search warrants.

If the town manager or authorized town personnel has been refused access to a building, structure or property, or any part thereof, and is able to demonstrate probable cause to believe that there may be a violation of this article or that there is a need to inspect and/or sample the town designed to verify compliance with this article or any permit or order issued under this article, or to protect the overall public health, safety and welfare of the community, then the town manager may seek issuance of a search warrant from the circuit court of the county.
(Ord. of 10-13-94, § 7.2)

Sec. 54-267. Confidential information.

Information and data on a user obtained from reports, surveys, wastewater discharge permit applications, wastewater discharge permits, and monitoring programs, and from the town manager's inspection and sampling activities, shall be available to the public without restriction, unless the user specifically requests, and is able to demonstrate to the satisfaction of the town manager, that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets under applicable state law. Any such request must be asserted at the time of submission of the information or data. When requested and demonstrated by the user furnishing a report that such information should be held confidential, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available immediately upon request to governmental

agencies for uses related to the VPDES program or pretreatment program, and in enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics and other "effluent data" as defined by 40 CFR 2.302 will not be recognized as confidential information and will be available to the public without restriction.
(Ord. of 10-13-94, § 8)

Sec. 54-268. Publication of industrial users in significant noncompliance.

The town manager shall publish annually, in the largest daily newspaper published in the municipality where the POTW is located, a list of the users which, during the previous 12 months, were in significant noncompliance with applicable pretreatment standards and requirements. The term "significant noncompliance" shall mean:

(1) Chronic violations of wastewater discharge limits, defined here as those in which 66 percent or more of wastewater measurements taken during a six-month period exceed the daily maximum limit or average limit for the same pollutant parameter by any amount.

(2) Technical review criteria (TRC) violations, defined here as those in which 33 percent or more of wastewater measurements taken for each pollutant parameter during a six-month period equals or exceeds the product of the daily maximum limit or the average limit multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH).

(3) Any other discharge violation that the town believes has caused, alone or in combination with other discharges, interference or pass-through, including endangering the health of POTW personnel or the general public.

(4) Any discharge of pollutants that has caused imminent endangerment to the public or to the environment, or has resulted in the town manager's exercise of its emergency authority to halt or prevent such a discharge.

(5) Failure to provide within 90 days of the scheduled date, a compliance schedule milestone contained in a wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance.

(6) Failure to provide within 30 days after the due date any required reports, including baseline monitoring reports, reports on compliance with categorical pretreatment standards and deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules.

(7) Failure to accurately report noncompliance.

(8) Any other violation which the town determines will adversely affect the operation or implementation of the local pretreatment program.

(Ord. of 10-13-94, § 9)

Secs. 54-269--54-300. Reserved.

ARTICLE III. CROSS CONNECTION CONTROL*

Sec. 54-301. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Air gap separation means the unobstructed vertical distance through the free atmosphere between the lowest point of the potable water outlet and the rim of the receiving vessel.

Auxiliary water system means any water system on or available to the premises other than the waterworks. These auxiliary waters may include water from a source such as wells, lakes or streams; or process fluids; or used water. They may be polluted or contaminated or objectionable, or constitute an unapproved water source or system over which the water purveyor does not have control.

Backflow means the flow of water or other liquids, mixtures or substances into the distribution piping of a waterworks from any source other than its intended source.

Backflow prevention device means any approved device intended to prevent backflow into a waterworks.

Backflow prevention method means any approved method or type of construction intended to prevent backflow into a waterworks.

Backpressure backflow means backflow caused by pressure in the downstream piping which is superior to the supply pressure at the point of consideration.

Backsiphonage backflow means backflow caused by a reduction in pressure which causes a partial vacuum creating a siphon effect.

Consumer means a person who drinks water from a waterworks.

***Cross reference(s)--**Buildings and building regulations, ch. 14.

Consumer's water supply system means the water service pipe, water distributing pipes and necessary connecting pipes, fittings, control valves and all appurtenances in or adjacent to the building or premises.

Containment means the prevention of backflow into a waterworks from a consumer's water supply system by installing an appropriate backflow prevention device or method at the service connection.

Contaminant means any objectionable or hazardous physical, chemical, biological or radiological substance or matter in water.

Cross connection means any connection or structural arrangement, direct or indirect, to the waterworks whereby backflow can occur.

Degree of hazard means the level of health hazard, as derived from an evaluation of the potential risk to health and the adverse effect upon the waterworks.

Distribution main means a water main whose primary purpose is to provide treated water to service connections.

Division means the state department of health, office of water programs, divisions of water supply engineering.

Domestic use or usage means normal family or household use, including drinking, laundering, bathing, cooking, heating, cleaning and flushing toilets (see Code of Virginia, tit. 32.1, art. 2).

Double gate-double check valve assembly means any approved assembly designed to prevent backsiphonage or backpressure backflow and used for moderate or low hazard situations, composed of two independently operating, spring-loaded check valves, tightly closing shutoff valves located at each end of the assembly and fitted with properly located test cocks.

Entry point means the place where water from the source is delivered to the distribution system.

Health hazard means any condition, device or practice in a waterworks or its operation that creates, or may create, a danger to the health and well-being of the water consumer.

Isolation means the prevention of backflow into a waterworks from a consumer's water supply system by installing appropriate backflow prevention devices at the sources of potential contamination in the consumer's water supply system. This is also called point of isolation. Isolation of an area or zone within a consumer's water supply system confines the potential source of contamination to a specific area or zone. This is called area or zone isolation.

Maximum contaminant level means the maximum permissible level of a contaminant in water which is delivered to the free-flowing outlet of the ultimate user of a waterworks, except in the cases of turbidity and VOCs, where the maximum permissible level is measured at each entry point to the distribution system. Contaminants added to the water under circumstances controlled by the user, except those resulting from corrosion of piping and plumbing caused by water quality, are excluded from this definition. Maximum contaminant levels may be either "primary" (PMCL), meaning based on health considerations or "secondary" (SMCL), meaning based on aesthetic considerations.

Physical separation means the removal or absence of pipes, fittings or fixtures that connect a waterworks directly or indirectly to a nonpotable system or one of questionable quality.

Plumbing fixture means a receptacle or device which is either permanently or temporarily connected to the water distribution system of the premises, and demands a supply of water therefrom; or discharges used water, waste materials or sewage either directly or indirectly to the drainage system of the premises; or requires both a water supply connection and a discharge to the drainage system of the premises.

Pollution means the presence of any foreign substance (chemical, physical, radiological or biological) in water that tends to degrade its quality so as to constitute an unnecessary risk or impair the usefulness of the water.

Pollution hazard means a condition through which an aesthetically objectionable or degrading material may enter the waterworks or a consumer's water system.

Premises means a piece of real estate; house or building and its land.

Pressure vacuum breaker means an approved assembly designed to prevent backsiphonage backflow and used for high, moderate or low hazard situations, composed of one or two independently operating, spring-loaded check valves; an independently operating, spring-loaded air-inlet valve; tightly closing shutoff valves located at each end of the assembly; and fitted with properly located test cocks.

Process fluids means any kind of fluid or solution which may be chemically, biologically or otherwise contaminated or polluted which would constitute a health, pollutional or system hazard if introduced into the waterworks. This includes, but is not limited to:

(1) Polluted or contaminated water;

(2) Process waters;

(3) Used water, originating from the waterworks which may have deteriorated in sanitary quality.

(4) Cooling waters;

(5) Contaminated natural waters taken from wells, lakes, streams or irrigation systems;

(6) Chemicals in solution or suspension; and

(7) Oils, gases, acids alkalis and other liquid and gaseous fluid used in industrial or other processes, or for firefighting purposes.

Pure water or potable water means water fit for human consumption and domestic use which is sanitary and normally free of minerals, organic substances, and toxic agents in excess of reasonable amounts for domestic usage in the area served and normally adequate in quantity and quality for the minimum health requirements of the persons served (see Code of Virginia, tit. 32.1, art. 2).

Reduced pressure principle backflow prevention device (RPZ device) means an approved assembly designed to prevent backsiphonage or backpressure backflow used for high, moderate or low hazard situations, composed of a minimum of two independently operating, spring-loaded check valves together with an independent, hydraulically operating pressure differential relief valve located between the two check valves. During normal flow and at the cessation of normal flow, the pressure between these two checks shall be less than the supply pressure. The unit must include tightly closing shutoff valves located at each end of the assembly and be fitted with properly located test cocks.

Service connection means the point of delivery of water to a customer's building service line as follows:

(1) If a meter is installed, the service connection is the downstream side of the meter.

(2) If a meter is not installed, the service connection is the point of connection to the waterworks.

(3) When the water purveyor is also the building owner, the service connection is the entry point to the building.

System hazard means a condition posing an actual, or threat of, damage to the physical properties of the waterworks or a consumer's water supply system.

Used water means any water supplied by a water purveyor from the waterworks to a consumer's water supply system after it has passed through the service connection.

Water supply means the water that shall have been taken into a waterworks from all wells, streams, springs, lakes and other bodies of surface water (natural or impounded), and the tributaries thereto, and all impounded groundwater, but the term "water supply"

shall not include any water above the point of intake of such waterworks (see Code of Virginia, tit. 32.1, art. 2).

Waterworks means a system that serves piped water for drinking or domestic use to:

(1) The public;

(2) At least 15 connections; or

(3) An average of 25 individuals for at least 60 days out of the year.

The term "waterworks" shall include all structures, equipment and appurtenances used in the storage, collection, purification, treatment and distribution of pure water except the piping and fixtures inside the building where such water is delivered (see Code of Virginia, tit. 32.1, art. 2).

Waterworks owner or water purveyor means an individual, group of individuals, partnership, firm, association, institution, corporation, government entity or the federal government which supplies or proposes to supply water to any person within this state from or by means of any waterworks (see Code of Virginia, tit. 32.1, art. 2).
(Ord. of 2-13-97, § V)

Cross reference(s)--Definitions generally, § 1-2.

Sec. 54-302. Purpose of article.

The purpose of this article is to eliminate cross connections and protect the public health. This article provides for establishment and enforcement of a program of cross connection control and backflow prevention in accordance with the state board of health, waterworks regulations 1993, or as amended. This article is directed at service line protection (containment).
(Ord. of 2-13-97, § I)

Sec. 54-303. Authority for article.

This article is adopted pursuant to the provisions of state department of health waterworks regulations, part II, article 3, cross connection control and backflow prevention in waterworks.
(Ord. of 2-13-97, § II)

Sec. 54-304. Administration of article.

(a) The superintendent shall administer and enforce the provisions of this article under the direction of the town manager.

(b) It shall be the duty of the superintendent to cause inspections to be made of properties served by the waterworks where cross connection with the waterworks is deemed possible. The method of determining potential cross connection with the waterworks and the administrative procedures shall be established by the town manager in a cross connection control program approved by the state department of health, division of water supply engineering.

(c) The responsibility to carry out the program lies with the superintendent.
(Ord. of 2-13-97, § III)

Sec. 54-305. Enforcement of article.

(a) *Right of entry*. The superintendent or town inspector shall have the right to enter, at any reasonable time, premises served by a connection to the waterworks for the purpose of inspecting, observing, sampling and testing the water supply systems for a cross connection. Upon request, the water supply system owner or occupants of property served shall furnish to the superintendent pertinent information regarding the water supply system or systems on such property. The refusal of such information or refusal of access, when requested, shall be deemed evidence of the presence of a cross connection.

(b) *Discontinuation of service*. The superintendent shall take positive action to ensure that the waterworks is adequately protected at all times. If a cross connection exists or backflow occurs into a water supply system or if the pressure into the waterworks is lowered below ten psi gauge, water service to the water supply system shall be denied or discontinued upon continuation of any violation beyond the time provided in the notice of violation given pursuant to subsection (c) of this section. Water service shall not be restored until the deficiencies have been corrected or eliminated to the satisfaction of the town manager and superintendent.

(c) *Notice of violation*. Any water supply system owner found to be in violation of any provision of this article shall be served a written notice of violation sent by certified mail to the water supply system owner's last known address, stating the nature of the violation, corrective action required and providing a reasonable time limit, not to exceed 30 days, from the date of receipt of the notice of the notice of violation, to bring the water supply system into compliance with this article.

(d) *Penalties.* Any owner of properties served by a connection to the waterworks found guilty of violating any of the provisions of this article, or any written order of the town in pursuance thereof, shall be punished by a misdemeanor and upon conviction thereof shall be punished by a fine not more than $2,500.00 for each violation. Each day upon which a violation of the provisions of this article shall occur shall be deemed a separate and additional violation for the purposes of this article.
(Ord. of 2-13-97, § IV)

Sec. 54-306. Responsibilities of the town, town manager and superintendent.

(a) Effective cross connection control requires the cooperation of the town, town manager, superintendent, the owner of the property served, the building official and backflow prevention device tester.

(b) The program shall be carried out in accordance with the state board of health, waterworks regulations and shall as a minimum provide containment of potential contaminants at the consumer's service connection.

(c) The town has full responsibility for water quality and for the construction, maintenance and operation of the waterworks beginning at the water source and ending at the service connection.

(d) The owner of the property served and the town have shared responsibility for water quality and for the construction, maintenance and operation of the consumer's water supply system from the service connection to the free-flowing outlet.

(e) The superintendent shall have thorough inspections and operational tests made at least annually of backflow prevention devices or backflow prevention methods which are installed at the service connection or installed under the special conditions set forth in subsection 54-307(b).

(f) The town shall, to the extent of their jurisdiction, provide continuing identification and evaluation of all cross connection hazards having potential for impairing the quality of the water as delivered. This may include annual assessment of each consumer's water supply system and appropriate preventive and control measures required and installed.

(g) In the event of the backflow of pollution or contamination into the waterworks, the superintendent shall promptly take or cause corrective action to confine and eliminate the pollution or contamination. The superintendent shall report to the appropriate field office in the most expeditious manner (usually by telephone) when backflow occurs and shall submit a written report by the tenth day of the month following the month during which backflow occurred addressing the incident, its causes, effects and preventative or control measures required or taken.

(h) The superintendent shall take positive action to ensure that the waterworks is adequately protected at all times. If a cross connection exists or backflow occurs into a consumer's water supply system or if the consumer's water supply system causes the pressure in the waterworks to be lowered below ten psi gauge, the town may discontinue the water service to the consumer, and water service shall not be restored until the deficiencies have been corrected or eliminated to the satisfaction of the superintendent.

(i) In order to protect the occupants of a premises, any cross connection beyond the service connection should be eliminated by application of appropriate backflow prevention devices or methods. Appropriate backflow prevention devices or methods should be applied at each point of use and/or applied to the consumer's water supply system isolating an area which may be a health, pollutional or consumer's water supply system or waterworks hazard.

(j) Records of backflow prevention device or method inspections, assessments of consumer's water supply systems, records of backflow incidence and tests of backflow prevention devices shall be maintained by the town for ten years.
(Ord. of 2-13-97, § VI)

Sec. 54-307. Preventative and control measures for containment.

(a) Backflow prevention devices shall be installed at the service connection to a consumer's water supply system where, in the judgement of the town manager and superintendent, a health, pollutional or system hazard to the waterworks exists.

(b) Special conditions.

(1) When, as a matter of practicality, the backflow prevention device cannot be installed at the service connection or a backflow prevention method can be applied downstream of the service connection, the device or method may be located downstream of the service connection but prior to any unprotected takeoffs.

(2) Where all actual or potential cross connections can be easily correctable at each point of use and where the consumer's water supply system is not intricate or complex, point of use isolation protection by application of appropriate backflow prevention devices or methods may be used in lieu of installing a containment device at the service connection.

(c) A backflow prevention device or method shall be installed at each service connection to a consumer's water supply system serving premises where the following conditions exists:

(1) Premises on which any substance is handled in such a manner as to create an actual or potential hazard to a waterworks. This shall include premises having sources or systems containing process fluids or water originating from a waterworks which are no longer under the control of the waterworks owner.

(2) Premises having internal cross connections that, in the judgment of the superintendent, may not be easily correctable or intricate plumbing arrangements which make it impracticable to determine whether or not cross connections exist.

(3) Premises where, because of security requirements or other prohibitions or restrictions, it is impossible or impractical to make an evaluation of all cross connection hazards having potential for impairing the quality of the water as delivered.

(4) Premises having a repeated history of cross connections being established or reestablished.

(5) Other premises specified by the superintendent where cause can be shown that a potential cross connection hazard not enumerated above exists.

(d) Premises having booster pumps or fire pumps connected to the waterworks shall have the pumps equipped with a pressure sensing device to shut off or regulate the flow from the booster pump when the pressure in the waterworks drops to a minimum of ten psi gauge at the service connection.

(e) An approved backflow prevention device or method shall be installed at each service connection to a consumer's water supply system or installed under the special conditions in subsection (b) of this section serving, but not necessarily limited to the following types of facilities:

(1) Hospitals, mortuaries, clinics, veterinary establishments, nursing homes and medical buildings.
(2) Laboratories.
(3) Piers, docks, waterfront facilities.
(4) Sewage treatment plants, sewage pumping stations or stormwater pumping stations.
(5) Food and beverage processing plants.
(6) Chemical plants, dyeing plants and pharmaceutical plants.
(7) Metal plating industries.
(8) Petroleum or natural gas processing or storage plants.
(9) Radioactive materials processing plants or nuclear reactors.
(10) Carwashes and laundries.
(11) Lawn sprinkler systems, irrigation systems.
(12) Fire service systems.
(13) Slaughterhouses and poultry processing plants.
(14) Farms where the water is used for other than household purposes.
(15) Commercial greenhouses and nurseries.
(16) Health clubs with swimming pools, therapeutic baths, hot tubs or saunas.
(17) Paper and paper products plants and printing plants.
(18) Pesticide or exterminating companies and their vehicles with storage or mixing tanks.
(19) Schools or colleges with laboratory facilities.
(20) Highrise buildings (four or more stories).
(21) Multiuse commercial, office or waterhouse facilities.

(22) Other specifics by the superintendent when reasonable cause can be shown for a potential backflow or cross connection hazard.

(f) Where lawn sprinkler systems, irrigation systems or fire service systems are connected directly to the waterworks with a separate service connection or with a separate connection, a backflow prevention device or method shall be installed at the service connection or installed under the special conditions in subsection (b)(1) of this section, or otherwise installed to protect the waterworks.
(Ord. of 2-13-97, § VII)

Sec. 54-308. Type of protection required.

(a) The type of protection required shall depend on the degree of hazard which exists or may exist and on the method of potential backflow. Backflow occurs either by backpressure or by backsiphonage.

(b) The degree of hazard, either high, moderate or low, is based on the nature of the contaminant; the potential of the health hazard; the probability of the backflow occurrence; and the potential effect on waterworks structures, equipment and appurtenances used in the storage, collection, purification, treatment and distribution of pure water.

(c) Table 1 in section 54-311 shall be used as a guide to determine the degree of hazard for any situation.

(d) An air gap or physical separation method gives the highest degree of protection and shall be used whenever practical to do so in high hazard situations subject to backpressure.

(e) An air gap or physical separation method and a reduced pressure principle backflow prevention device will protect against backpressure when operating properly.

(f) Pressure vacuum breakers will not protect against backpressure, but will protect against backsiphonage when operating properly. Pressure vacuum breakers may be used in low, moderate or high hazard situations subject to backsiphonage only.

(g) A double gate-check valve assembly shall not be used in high hazard situations.

(h) Barometric loops are not acceptable.

(i) Interchangeable connections or change-over devices are not acceptable.
(Ord. of 2-13-97, § VIII)

Sec. 54-309. Backflow prevention devices and methods.

(a) Backflow prevention devices include the reduced pressure principle backflow prevention assembly, the double gate-check valve assembly and the pressure vacuum breaker assembly.

(b) A backflow prevention device shall be a containment type as described in subsection (a) of this section. A backflow prevention method shall be an air gap or physical separation. The minimum air gap shall be twice the effective opening of a potable water outlet unless the outlet is a distance less than three times the effective opening away from a wall or similar vertical surface, in which case the minimum air gap shall be three times the effective opening of the outlet. In no case shall the minimum air gap be less than one inch.

(c) Backflow prevention devices shall be of the approved type and shall comply with the most recent American Water Works Association Standards and shall be approved for containment by the University of Southern California, Foundation for Cross-Connection Control and Hydraulic Research.

(d) Backflow prevention devices shall be installed in a manner approved by the superintendent and in accordance with the University of Southern California, Foundation for Cross-Connection Control and Hydraulic Research recommendations and the manufacturer's installation instructions. Vertical or horizontal positioning shall be as approved by the University of Southern California, Foundation for Cross-Connection Control and Hydraulic Research.

(e) Existing backflow prevention devices approved by the town manager prior to the effective date of the ordinance from which this article is derived shall, except for inspection, testing and maintenance requirements be excluded from the requirements of subsections (c) and (d) of this section if the superintendent is assured that the devices will protect the waterworks.

(f) For the purpose of application to the special conditions in subsection 54-307(b)(2), point of use isolation devices or methods shall be as specified by the town manager where reasonable assurance can be shown that the device or method will protect the waterworks. As a minimum, point of use devices should bear an appropriate American Society of Sanitary Engineering Standard Number. See the cross connection control program in section 54-312 for isolation device application.

(g) Backflow prevention devices with openings, outlets or vents that are designed to operate or open during backflow prevention shall not be installed in pits or areas subject to flooding.
(Ord. of 2-13-97, § IX)

Sec. 54-310. Maintenance and inspection requirements.

(a) It shall be the responsibility of the consumer's water supply system owner to maintain all backflow prevention devices or methods installed in accordance with section 54-307 in good working order and to make no piping or other arrangements for the purpose of bypassing or defeating backflow prevention devices or methods.

(b) Testing and inspection schedules shall be established by the superintendent as outlined in the cross connection control program in section 54-312 for all backflow prevention devices and methods. The interval between testing and inspection of each device or method shall be established in accordance with the age and condition of the device and the device manufacturer's recommendations. Inspection and testing intervals shall not exceed one year.

(c) Containment devices shall be overhauled on a schedule in accordance with the age and condition of the device. Overhaul procedures and replacement parts shall be in accordance with the manufacturer's recommendations.

(d) Containment device testing procedures shall be in accordance with the University of Southern California, Foundation for Cross-Connection Control and Hydraulic Research, Backflow Prevention Assembly Field Test Procedure and the manufacturer's instructions.
(Ord. of 2-13-97, § X)

Sec. 54-311. Determination of degree of hazard.

TABLE 1. DETERMINATION OF DEGREE OF HAZARD

Premises with one or more of the following conditions shall be rated at the corresponding degree of hazard:

(1) *High hazard:*

a. The contaminant would be toxic, poisonous, noxious or unhealthy.

b. A heath hazard would exist.

c. A high probability exists of a backflow occurrence either by backpressure or by backsiphonage.

d. The contaminant would disrupt the service of piped water for drinking or domestic use.

e. Examples: Sewage, used water, nonpotable water, auxiliary water systems, toxic or hazardous chemicals, etc.

(2) **Moderate hazard:**

a. The contaminant would only degrade the quality of the water aesthetically or impair the usefulness of the water.
b. A health hazard would not exist.
c. A moderate probability exists of a backflow occurrence either by backpressure or by backsiphonage.
d. The contaminant would not seriously disrupt service of piped water for drinking or domestic use.
e. Examples: Foodstuff, nontoxic chemicals, nonhazardous chemicals, etc.

(3) *Low hazard*:

a. The contaminant would only degrade the quality of the water aesthetically.

b. A health hazard would not exist.

c. A low probability exists of the occurrence of backflow.

d. A health hazard would not exist.

e. A low probability exists of the occurrence of backflow primarily by backsiphonage.

f. The contaminant would not disrupt service of piped water.

g. Examples: Foodstuff, nontoxic chemicals, nonhazardous chemicals, etc.

(Ord. of 2-13-97, § XI)

Sec. 54-312. Cross connection control program.

The following is the program adopted by the town for cross connection control:

(1) *Administration*. The superintendent shall administer and enforce this program under the supervision of the town manager.

(2) *Procedures.*

a. *General.*

1. The superintendent will arrange to have a questionnaire sent to each water supply system owner except those identified in section 54-307.
2. The superintendent will arrange to have trained personnel conduct a survey of each consumer's water supply system identified in section 54-307.

3. The superintendent will route all new plans for fire service connections and lawn or irrigation systems served by the waterworks through the local building official for cross connection control program approval.
4. The superintendent will coordinate cross connection control requirements at new premises with the local building official.
5. The superintendent will organize a cross connection control device operational verification program at existing premises with devices installed.

b. *Surveys of consumer's water supply systems.*

1. The superintendent will have trained personnel conduct a cross connection control survey of each consumer's water supply system identified in section 54-307 with a prepared questionnaire.

2. Available information about the premises to be surveyed will be gathered by the inspectors prior to the survey.

3. Two inspectors will be sent on complex surveys.

4. The inspectors will explain the reasons for cross connection control to the water supply owner (representative).

5. The inspectors will ask how water is used after it enters the premises.

6. The inspectors will ask if there are any plans for future expansion and discuss the possibility of additional protection requirements.

7. The inspectors will ask if an inspection of the premises may be made to determine if cross connection control isolation devices or cross connection control methods should be considered for the protection of the consumer's water supply system users.

8. The inspectors will record all information on the questionnaire. This would include water uses, assessment of degrees of hazard and diagrams.

9. The type and cost of required or recommended devices or methods will not be discussed during the survey.

10. The results of the survey with recommendations for containment devices or methods will be submitted to the superintendent for approval. Recommendations for isolation devices or methods will be submitted to the local building official for approval.

11. The town will notify the consumer's water supply system owner in writing as to the required location of any device or method; type of device or method, including ASSE and applicable AWWA standards; installation requirements; testing, inspection and overhauling requirements; and the deadline for completing the installation, usually 15 days.

12. If the consumer's water supply system owner fails to install any required device or method within the deadline, a second notice shall be prepared with notification of termination of water service unless compliance is obtained within five days.

13. Cross connection control surveys of other premises not identified in section 54-307 will be scheduled by the superintendent based on the response to the annual questionnaire.

14. A file or chart will be established as a reminder of reinspection dates.

c. *New premises.*

1. All building permit applications shall be reviewed and approved by the town manager for cross connection control requirements.

2. Required devices or methods shall be operational prior to issuance of a certificate to occupy. The initial testing of devices will be performed by a licensed tester of backflow devices.

3. Changes in the use of a building shall be reviewed as a new building for the purposes of this program.

4. A followup inspection will be performed after occupancy if the use of the premises is unknown prior to occupancy.

5. Plans for fire service connections, booster pump stations and lawn sprinkler or irrigation systems served by the waterworks shall be reviewed by superintendent and approval recommendations made to the town manager prior to issuance of a building permit.

6. All new residential service connections shall be fitted with a residential dual check (ASSE #1024).

d. *Existing premises with devices installed.*

1. Premises identified as having a device installed in accordance with section 54-307, excluding premises with residential containment devices, will be inspected by the licensed tester annually to

reaffirm the degree of hazard and survey the facility for new hazards. During this inspection, each installed device or method will be inspected for appropriateness, proper installation and general appearance. A report will be filed with the superintendent with violations noted and/or installation of additional devices.

2. Testing of required devices will be the responsibility of the consumer's water supply system owners.

3. Test results, maintenance records and overhaul records shall be reported to the superintendent within 30 days of completion of testing or work.

e. *Existing premises with residential containment devices.*

1. Residential containment devices, such as those devices consisting of dual, independent check valves (ASSE #1024), shall be serviced or replaced as recommended by the manufacturer.

2. Annual questionnaires shall be mailed and results reviewed as noted in subsections (2)f.1 and f.2 of this section.

f. *Questionnaires.*

1. Annual questionnaires shall be mailed to each consumer's water supply system owner except those premises identified in section 54-307 that have a device or method installed and are being inspected annually per subsection (2)d.1 of this section.

2. The results of the annual questionnaires shall be reviewed by the superintendent. Based on the response to the questionnaires, cross connection control inspections will be scheduled and appropriate devices or methods required. No response to the questionnaire will prompt an inspection.

3. Questionnaires can be repeated annually at the discretion of the superintendent instead of an annual inspection at premises other than those identified in section 54-307 where devices or methods are installed.

g. *Existing premises with individual water supplies.*

1. Existing premises requesting a new service connection or reconnection to the waterworks must be inspected for cross connections and the appropriate devices or methods installed, tested and operational prior to making the service connection.

2. Existing premises with individual water supplies may, upon approval of the superintendent, maintain the water supply on the premises if a physical separation from the consumer's water supply system is provided and maintained.

3. Annual inspections should be made to verify the maintenance of the physical separation. If access is denied for an inspection, then water service shall be disconnected.

h. *Backflow prevention device testers.*

1. Device testers shall have obtained a certificate of completion of a course recognized by the American Water Works Association, the state department of health or the Virginia Cross Connection Control Association for cross connection device inspection, maintenance and testing.

2. The tester is responsible for making competent inspections and for repairing or overhauling backflow prevention devices and making reports of such repair to the consumer's water supply system owner on forms approved by the superintendent as outlined in the program. The tester shall include the list on materials or replacement parts used and ensure that original manufactured parts are used in the repair of or replacement of parts in a backflow prevention device. The tester shall not change the design or operational characteristics of a device during repair or maintenance without prior written approval of the consumer's water supply system owner, water purveyor and superintendent.

3. The tester shall be equipped with and be competent in the use of all the necessary tools, gauges, manometers and other equipment necessary to properly test, repair and maintain backflow prevention devices.

i. *Point of use isolation protection.*

1. Where all actual or potential cross connections can be easily correctable at each point of use and where the consumer's water supply system is not intricate or complex, point of use isolation protection by application of appropriate backflow prevention devices or methods may be used in lieu of installing a containment device at the service connection.

2. The method of protection provided shall be, in the judgement of the superintendent, the method which best provides protection.

3. The consumer's water supply system owner grants access for inspections, and makes a request in writing for point of use isolation protection.

4. The local building official concurs.

5. Then a backflow prevention device or method may be installed at each potable water opening or outlet to isolate each point of use subject to contamination.

6. Devices installed under this section shall be selected from the isolation device application table, which is on file in the town clerk's office.

(3) *Records.*

a. An up-to-date listing of consumer's water supply system owners who have cross connection control devices or methods installed shall be maintained by the superintendent. The list will contain:
   1. The owner of the premises.
   2. The tenant.
   3. The name of premises service address.
   4. The phone number.
   5. The location of the device or method.
   6. The contact person.
   7. The manufacturer of the device.
   8. The device model number.
   9. The device serial number.
   10. The device size.
   11. The ASSE number.

b. Cross connection control inspection reports shall be maintained by the superintendent for ten years. The report will contain:
   1. Inventory information as noted in subsection (3)a of this section.
   2. An assessment of:
      i. The degree of hazard.
      ii. The appropriateness of the device.
      iii. The installation.
      iv. The general appearance of the device.
      v. Repair/replacement recommendations.
      vi. New/additional device recommendations.
      vii. Any indication of thermal expansion problems.

   See inspection reports.

c. Cross connection control testing reports shall be maintained by the superintendent for ten years.
   1. The report will contain:

i. Inventory information as noted in subsection (3)a of this section.
ii. Line pressure.
iii. Results of testing.
iv. Test method used.
v. The date and signature of the device tester.

2. If repairs were made, the test report will contain:
i. Which parts were replaced.
ii. The probable cause of test failure.
iii. The preventative measures taken.

See testing reports which are on file in the town clerk's office.

d. Questionnaires shall be maintained by the superintendent for ten years. The questionnaire will contain:
1. The owner and address of residence.
2. The occupant if different from owner.
3. The phone number.
4. A brief explanation of the program.
5. A brief explanation of the causes of backflow and control measures.
6. Some likely cross connections:
i. A garden hose with its outlet submerged.
ii. A kitchen sink spray hose with its spray head submerged.
iii. A hand-held shower massager with its head submerged.
iv. A garden hose used as an aspirator to spray soap or garden chemicals.
v. A spring, hot tub, cistern or swimming pool connected to the house plumbing system.
vi. Water softeners improperly connected.
7. Specific questions which will include but not be limited to:
i. Individual wells, springs on cisterns on the property.
ii. Pressure booster pumps.
iii. Water storage tanks.
iv. Water treatment systems.
v. Outside hose bibs used in conjunction with:
- Chemical sprayers.
- Jet spray washers.
- Swimming pools, hot tubs, saunas, etc.
- Lawn irrigation systems.
- Photographic developing.
- Utility sinks with hoses extending below sink rim.
- Animal watering troughs.
8. Existing cross connection control devices:
i. Working properly.
ii. Leaking, noisy.

iii. Any modifications or repairs made.
iv. Date of last test.
v. Any problems with hot water tank relief valve or faucet washers not lasting very long.

Also included with the questionnaire should be educational material, who to contact for further information and who to contact if contamination is ever suspected.

See questionnaire forms.

e. Residential containment device (ASSE #1024) overhaul or replacement reports shall be maintained by the superintendent for ten years. The report will contain:
1. Inventory information as noted in subsection (3)a of this section.
2. Overhaul/replacement action.
3. Date of action.
See residential containment device reports.

(4) *Notification letters.*

a. Inspections.
b. Testing due.
c. Inspection report.
d. Test results.
e. Device required.
f. Violations.
g. Termination of service.

See notification letters.

(5) *Reporting contamination or suspected contamination*. The consumer's water supply system owner, local building official, device tester or any other person should report contamination or the suspicion of contamination to any one or all of the following, providing the title, organization and phone number:

a. The town manager, county administrator, mayor or other chief administrative officer.
b. The local building official.
c. The water plant operator.
d. The state department of health, office of water programs field office.
e. The local sanitarian.

The superintendent will be responsible for investigating reports and will be responsible for notifying the appropriate state department of health, office of water programs Abingdon field office at phone 703-628-5161. A written report will be submitted by the tenth day of the month following the month during which

backflow occurred addressing the incident, its causes, affects and preventative or control measures required or taken.

(6) *Device selection guidelines.*

a. Virginia Cross Connection Control Association - Recommended Best Practice.
b. BOCA National Plumbing Code, volumes I and II.
c. EPA Cross-Connection Control Manual.
d. State waterworks regulations.
e. AWWA M-14 Cross Connection Control Manual.
f. University of Southern California, Foundation for Cross-Connection Control and Hydraulic Research.

(7) *Examples: Types of facilities, degree of hazard and type of containment device required*. In high hazard situations subject to backpressure, an air gap or physical separation should be the method of choice wherever practical.

a. Hospitals, mortuaries, clinics, veterinary establishments, nursing homes and medical buildings: High hazard, reduced pressure principle device (RPZ) ASSE #1013.
b. Laboratories: High hazard, reduced pressure principle device (RPZ) ASSE #1013.
c. Piers, docks, waterfront facilities: High hazard, reduced pressure principle device (RPZ) ASSE #1013.
d. Sewage treatment plants, sewage pumping stations or stormwater pumping stations: High hazard, reduced pressure principle device (RPZ) ASSE #1013.
e. Food and beverage processing plants: Generally, a moderate hazard, double gate-double check valve assembly (DG-DC) ASSE #1013.
f. Chemical plants, dyeing plants and pharmaceutical plants: High hazard, reduced pressure principle device (RPZ) ASSE #1013.
g. Metal plating industries: High hazard, reduced pressure principle device (RPZ) ASSE #1013.
h. Petroleum or natural gas processing or storage plants: High hazard, reduced pressure principle device (RPZ) ASSE #1013.
i. Radioactive materials processing plants or nuclear reactors: High hazard, reduced pressure principle device (RPZ) ASSE #1013.
j. Car washes and laundries: High hazard, reduced pressure principle device (RPZ) ASSE #1013.
k. Lawn sprinkler systems, irrigation systems: High hazard, reduced pressure principle device (RPZ) ASSE #1013, atmospheric vacuum breakers ASSE #1001 or pressure vacuum breaker ASSE #1020.
l. Fire service systems: See subsections 54-307(d) and (f).
m. Slaughterhouses and poultry processing plants: High hazard, reduced pressure principle device (RPZ) ASSE #1013.
n. Farms where the water is used for other than household purposes: High hazard, reduced pressure principle device (RPZ) ASSE #1013.

o. Commercial greenhouses and nurseries: High hazard, reduced pressure principle device (RPZ) ASSE #1013.
p. Health clubs with swimming pools, therapeutic baths, hot tubs or saunas: High hazard, reduced pressure principle device (RPZ) ASSE #1013.
q. Paper and paper products plants and printing plants: High hazard, reduced pressure principle device (RPZ) ASSE #1013.
r. Pesticide or exterminating companies and their vehicles with storage or mixing tanks: High hazard, reduced pressure principle device (RPZ) ASSE #1013 at service connection and on vehicles.
s. Schools or colleges with laboratory facilities: High hazard, reduced pressure principle device (RPZ) ASSE #1013.
t. Highrise buildings (four or more stories): Unless otherwise covered, moderate hazard, double gate-double check valve assembly (DG-DC) ASSE #1015.

(8) *Device selection*. Device selection shall depend on the degree of hazard which exists or may exist and on the method of potential backflow. Air gaps and physical separation give the highest degree of protection and shall be used whenever practical to do so in high hazard situations subject to backpressure. See isolation device application table, which is on file in the town clerk's office.

(9) *Device testability/serviceability.*
a. Containment or isolation devices used within the consumer's water supply system that are capable of being tested and repaired in-line include the reduced pressure principle device (RPZ), double gate-double check valve assembly (DG-DC) and pressure vacuum breaker (PVB).

b. Residential dual checks with or without an intermediate atmospheric vent are testable but must be removed for testing. Some can be overhauled in-line.

c. Generally, a visual inspection is the only means to inspect most hose bibb vacuum breakers (HBVBs) since they cannot be removed. Some manufacturers do provide wall hydrant type HBVB with removable vacuum breakers which can be easily removed for inspection and replacement.

d. Pipe connected atmospheric vacuum breakers (AVBs) can be inspected by removing the top cover.

e. Air gaps and physical separation methods require only a visual inspection.

(10) *Backflow prevention device tester list*. This document is on file in the town clerk's office.

(11) *Consumer education literature*. This document is on file in the town clerk's office.

(12) *Typical installation sketches*. This document is on file in the town clerk's office.

(13) *Thermal expansion.*

a. Normally, as water is heated it would back up in the service line into the main if no usage was occurring. Installation of backflow prevention devices or certain plumbing appurtenances at the service connection or within the water supply system prevent backflow of water from the premises to the distribution system, creating a closed system. When the hot water heater is operating, water is expanding and pressure is increasing, thermal expansion in a closed plumbing system under no flow conditions may cause the emergency temperature and pressure relief valve to open and close frequently and may reduce the life of plumbing fixtures and piping.

b. The temperature and pressure (T&P) relief valve is an emergency relief valve, not an operation control valve. If the T&P relief valve is used frequently, its useful life will be shortened and it could cease to function.

c. Thermal expansion can cause damaging stress and strain to water heaters, solenoid valves, O-rings, float valves, pump seals and plumbing fixtures or fittings.

d. Generally, 80 psi for a short period of time is the maximum pressure under no flow conditions to which most fixtures, appliances or appurtenances should be subjected.

e. Where thermal expansion is a problem, the following devices could be installed:
   1. A bladder or diaphragm type expansion tank.
   2. An auxiliary pressure relief valve.
   3. An anti-siphon ball cock with auxiliary relief valve into the toilet tank set at no more than 80 psi.

   Installation should be in strict accordance with the manufacturer's instructions, the Uniform Statewide Building Code and the National Sanitation Foundation.

f. Lowering the temperature on the water heater thermostats may also reduce thermal expansion.

g. Customers will be advised of the potential for thermal expansion prior to or during installation of a backflow prevention device. Solutions to the thermal expansion will be at the discretion of the water supply system owner and at the expense of the water supply system owner.

TABLE INSET:

Degree of hazard	*Method of backflow*	*Device*	*ASSE#*
High	BP or BS	RPZ	1013
	BS only	AVB	1001
		HBVB	1011
		Hydrant W/AVB	1019
		PVB	1020
Moderate	BP or BS	DG-DC	1015
Low	BS only	Dual Check:	
		w/o vent	1024
		w/vent	1012

NOTES:

(1) Degree of hazard: See table 1, determination of degree of hazard in section 54-311.
(2) BS means backflow by backsiphonage.
(3) BP means backflow by backpressure or superior pressure.
(4) RPZ means a reduced pressure principal backflow prevention device.
(5) AVB means an atmospheric vacuum breaker.
(6) PVB means a pressure vacuum breaker.
(7) HBVB means a hose bib type atmospheric vacuum breaker.
(8) Hydrant means a through-the-wall type hydrant.
(9) DG-DC means a double gate-double check valve assembly.
(10) Dual check without a vent means a device composed or two independently acting check valves ("residential dual check").
(11) Double check with a vent means a device composed of two independently acting check valves with an intermediate atmospheric vent ("boiler dual check").

INFORMATION:

(1) AVB and HBVB should not be pressurized or subjected to continuous flow for more than 12 consecutive hours in normal operation.
(2) Yard hydrants which are frostproof and drain the water in the barrel when not in use will not drain the water in the barrel automatically when fitted with a HBVB.
(3) Yard hydrants which drain through an underground weephole are subject to contamination and should not be used without adequate protection in areas subject to high groundwater, areas subject to flooding or areas where surface water ponds.

(Ord. of 2-13-97)

Chapters 55--57

RESERVED

Chapter 58

VEHICLES FOR HIRE*

Article I. In General

Secs. 58-1------58-30. Reserved

Article II. Taxicabs

Sec. 58-31. Definitions.
Sec. 58-32. Violations.
Sec. 58-33. Driver's license.
Sec. 58-34. Liability insurance.
Sec. 58-35. Maintenance and identification.
Sec. 58-36. Posting of rates.
Sec. 58-37. Accident reports.
Sec. 58-38. Completion of accepted calls.
Sec. 58-39. Taxicab stands.

***Cross reference(s)**--Businesses, ch. 18; motor vehicles and traffic, ch. 30.

ARTICLE I. IN GENERAL

Secs. 58-1--58-30. Reserved.

ARTICLE II. TAXICABS*

Sec. 58-31. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Driver means any person operating a taxicab.

Owner means any person having control of the operation or maintenance of a taxicab or of the collection of revenue derived from its operation.

Taxicab means any motor vehicle used for the transportation, for hire or reward, of passengers upon the streets of the town, other than buses being operated under franchise and over fixed routes between fixed termini.
(Code 1986, § 20-16)

Cross reference(s)--Definitions generally, § 1-2.

Sec. 58-32. Violations.

Unless otherwise specifically provided, a violation of any provision of this article shall constitute a class 2 misdemeanor.
(Code 1986, § 20-17)

Sec. 58-33. Driver's license.

(a) No person shall drive a taxicab within the town unless he has a taxicab driver's license issued by the chief of police.

(b) No owner of a taxicab shall permit the same to be driven by any person who does not have the taxicab driver's license required by this section.

(c) Application for a license under this section shall be filed with the chief of police on forms provided for the purpose. The chief of police shall issue the license, unless he finds that the applicant is disqualified because of a physical condition, including defective hearing or defective eyesight and addiction to intoxicating liquors, narcotics or other drugs, or that the applicant has been convicted of a violation of a criminal law involving moral turpitude.

***State law reference(s)--**Authority of town to regulate taxicabs and similar for-hire vehicles, Code of Virginia, § 46.2-310.

(d) Upon conviction of the holder of a taxicab driver's license of a violation of any criminal law involving moral turpitude, the license shall become void and the licensee shall forthwith surrender it to the chief of police. The judge of the general district court shall have the power to revoke or suspend such a license for repeated violations by the holder of traffic laws and ordinances or conviction of the holder of reckless driving or a violation of any provision of this article.
(Code 1986, § 20-18)

State law reference(s)--Authority of town to require taxicab driver's license, Code of Virginia, § 46.2-310.

Sec. 58-34. Liability insurance.

Each owner shall file with the town clerk and keep effective at all times a policy of insurance in some duly licensed insurance company authorized to do business in the commonwealth, covering liability for damages incurred on account of any injury to persons or damage to property resulting from the operation of the taxicab in the amounts required in Code of Virginia, § 46.2-758, as amended.

Such policy of insurance shall contain a clause whereby the policy may not be cancelled until after 30 days' notice of intention to cancel is given to the town clerk.
(Code 1986, § 20-19)

Sec. 58-35. Maintenance and identification.

Every taxicab shall be kept in good order or repair at all times and shall have on the outside, on both sides, the name of the owner, in letters not less than two inches high.
(Code 1986, § 20-20)

Sec. 58-36. Posting of rates.

The rates in effect for the hiring of a taxicab shall be posted in a conspicuous place inside the vehicle and shall be exhibited by the driver to any person so demanding. It shall be unlawful for the owner or driver of a taxicab to charge or collect a fare in excess of such posted rates.
(Code 1986, § 20-21)

Sec. 58-37. Accident reports.

Every accident in which any taxicab is involved shall be immediately reported to the chief of police by the driver or owner of the taxicab.
(Code 1986, § 20-22)

Sec. 58-38. Completion of accepted calls.

It shall be the duty of every taxicab driver to complete all accepted calls as promptly as possible.
(Code 1986, § 20-23)

Sec. 58-39. Taxicab stands.

The town council may designate and assign stands, on town streets, for taxicabs or may require the owners of taxicabs to furnish their own off-street stands.
(Code 1986, § 20-24)

APPENDIX A

ZONING*

ARTICLE I. LEGAL STATUS PROVISIONS

1.1. Preamble.
1.2. Title.
1.3. Authority.
1.4. Jurisdiction.
1.5. Interpretation.
1.6. Relationship to other laws and private restrictions.
1.7. Provisions are cumulative.
1.8. Separability.
1.9. Ordinance provisions do not constitute permit.
1.10. Scope of regulation.
1.11. Vested rights of noncomforming uses.
1.12. Construction of language.
[1.13. Reserved.]
1.14. Procedure for amendment.
1.15. Violation and penalty.

Article II. Zoning Districts Established And Official Zoning Map

2.1. Establishment of districts.
2.2. Provisions of official zoning map.
2.3. Identification or alteration of the official zoning map.
2.4. Rules for interpretation of district boundries.

Article III. [District Regulations]

3.1. Agriculture-conservation (A-C) [district].
3.2. Residential-general (R-2) [district].
3.3. Business-general (B-2) district.
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***Editor's note--**Printed herein is the zoning ordinance of the town as adopted on November 20, 1986. Amendments to the 1986 ordinance are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original ordinance. Obvious misspellings and punctuation errors have been corrected without notation. For stylistic purposes, a uniform system of headings, catchlines, capitalization, citation to state statutes, and expression of numbers in text has been used to conform to the Code of Ordinances. Additions made for clarity are indicated by brackets.

Cross reference(s)--Buildings and building regulations, ch. 14; businesses, ch. 18; street numbers for lots and buildings, § 42-46 et seq.

State law reference(s)--Zoning, Code of Virginia, § 15.2-2280 et seq.

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4.10. One principal building on any lot.
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4.13. Maintenance of landscaping.
4.14. Height regulations, exceptions and limitations.
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4.16. Nonconforming uses, lots and structures.
4.17. Minimum required space for off-street automobile parking.
4.18. Off-street loading space.
4.19. Solid waste disposal.
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4.21. Uses not specified.
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Article V. Administration of Zoning Ordinance

5.1. Creation and authorization of the office of zoning administrator.
5.2. Duties of zoning administrator on issuance of permits.
5.3. Duties of administrator on zone amendments, zone changes, conditional uses and variances and appeals.
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Article VI. Board of Zoning Appeals and Administration of Variances

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7.9. Building height.
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7.13. Conditional use or special permit.
7.14. Construction sales and service.
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[7.16.1.]Dwelling, manufactured home.
7.17. Dwelling, mobile home (singlewide and doublewide).
7.18. Dwelling, modular home.
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7.21. Dwelling, single-family detached.
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7.24. Family.
7.25. Flood.
7.26. Floodway.
7.27. Floodpalin.
7.28. Floor area.
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7.48. Motel, motor hotel, motor lodge.
7.49. Nonconforming.
[7.49.1.] 100-year flood (base flood).
7.50. Place of worship.
7.51. Principal activity.
7.52. Principal building.
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7.58. Residence.
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7.79. Yard, front.
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1.1. Preamble.

This ordinance for the Town of Chilhowie, Virginia is designed to carefully balance the fundamental property rights and interests of the private citizens with the needs of the community as a whole as set forth in the Town of Chilhowie comprehensive plan.

1.2. Title.

This ordinance shall be known and cited as the zoning ordinance of Chilhowie, Virginia. The map portion may be cited separately as the zoning map of Chilhowie, Virginia.

1.3. Authority.

This ordinance and map are adopted according to the authority of Code of Virginia, §§ 15.1-486--15.1-498 et seq., as amended.

As specified therein, the Town of Chilhowie is authorized to provide for the establishment of districts within the corporate limits in which the town may regulate, restrict, permit, prohibit and determine:

(a) The use of land, buildings, structures, and other premises for agricultural, business, industrial, residential, flood protection and other specific uses;

(b) The size, height, area, bulk, location, erection, construction, reconstruction, alteration, repair, maintenance, razing or removal of structures;

(c) The areas and dimensions of land, water, and air space to be occupied by buildings, structures, and uses, and of courts, yards, and other open spaces to be left unoccupied by uses and structures, including the establishment of minimum lot sizes based on whether a public or community water supply or sewer system is available and used; and

(d) The excavation or mining of soil or other natural resources.

Editor's note--The provisions formerly contained in Code of Virginia, §§ 15.1-486--15.1-498 et seq., are now contained in Code of Virginia, § 15.2-2280 et seq.

1.4. Jurisdiction.

The provisions of this ordinance shall apply to all land within the corporate limits of the Town of Chilhowie, Virginia.

1.5. Interpretation.

In their interpretation and application, the provisions of this ordinance shall be held to be the minimum requirements for the promotion of the public health, safety, morals, and general welfare of the residents of Chilhowie.

1.6. Relationship to other laws and private restrictions.

1.6-1. Other laws. Where the conditions imposed by any provisions of this ordinance upon the use of land or buildings or upon the height or bulk of buildings are either more restrictive or less restrictive than comparable conditions imposed by any other provision of this ordinance or of any other law, resolution, ordinance, rule or regulation of any kind, the regulations which are more restrictive shall apply.

1.6-2. Private restrictions. This ordinance is not intended to override any easement, covenant, or any other private agreement provided that where the regulations of this ordinance are more restrictive (or impose higher standards or requirements) than such easements, covenants, or other private agreements, the requirements of this ordinance shall govern.

1.7. Provisions are cumulative.

The provisions of this ordinance are cumulative with additional limitations imposed by all other laws and ordinances, previously passed or which may be passed after the adoption of this ordinance, governing any subject matter appearing in this ordinance.

1.8. Separability.

It is hereby declared to be the intention of the town council of the Town of Chilhowie, Virginia, that the provisions of this ordinance are separable.

Thus, if any court of competent jurisdiction judges any provision of this ordinance to be invalid, such judgment shall not affect any other provision of this ordinance not specifically included in said judgment; or if any court of competent jurisdiction judges invalid the application of any provision of this ordinance to a particular property, building or other structure, such judgment shall not affect the application of said provisions to any other property, building or structure not specifically included in said judgment.

1.9. Ordinance provisions do not constitute permit.

Nothing contained in this ordinance shall be deemed to be a consent, license or permit to use any property or to locate, construct, or maintain any building, structure, or facility or to carry on any trade, industry, occupation or activity.

1.10. Scope of regulations.

1.10-1. Use, buildings and structures. Upon the effective date of this ordinance no use, building or other structure shall hereafter be erected or altered in such manner as to become nonconforming or more nonconforming as:

(a) To exceed the height or bulk;
(b) To accommodate or house a greater number of families;
(c) To occupy a greater percentage of lot area;
(d) To have more narrow or smaller rear yards, front yards, side yards or other open space; than specified in each district; or
(e) To be used in any manner contrary to the provisions of this ordinance;
(f) To reduce the amount of required parking or other minimum standards set forth in this ordinance.

1.10-2. Yard or lot. No yard or lot existing at the time of passage of this ordinance shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this ordinance shall meet at least the minimum requirements established by this ordinance.

1.11. Vested rights of nonconforming uses.

Nothing in this ordinance shall be constructed to authorized [construed to authorize] the impairment of any vested right. All uses existing upon [November 20, 1986] which do not conform to the zoning prescribed for the district in which they are situated may be continued so long as the use continues and such use is not discontinued for more than one year in situations not involving a structure or two years where a nonconforming building is involved.

1.12. Construction of language.

In the construction of this ordinance, the rules contained in this section shall apply, except when the context clearly indicates otherwise:

(1) The word "shall" is always mandatory and not discretionary; and the word "may" is permissive;
(2) The word "lot" shall include the words "part" or "parcel" and the word "building" or "structure" includes all other structures or parts thereof;
(3) The word "permitted" or words "permitted as of right", means permitted without meeting the requirements for a conditional use by special permit pursuant to article V of this ordinance;
(4) The particular shall control the general, words used in the present tense shall include the future, and words used in the singular include the plural, and the plural the singular, unless the context clearly indicates the contrary;
(5) All public officials, bodies and agencies to which reference is made are those of the Town of Chilhowie, Virginia;

(6) In the case of any difference of meaning or implication between the text of this ordinance and any caption, illustration or table, the text shall control; and
(7) Except where definitions are specifically included in various articles and sections, words in the text or tables of this ordinance shall be interpreted in accordance with the definitions in article VII. Where words have not been defined, the standard dictionary definition shall prevail.

[1.13. Reserved.]

1.14. Procedure for amendment.

1.14-1. Council or commission action. The town council may from time to time, on its own motion, upon motion of the planning commission, or on petition as hereinafter provided, after public hearings as required by law and after report by the planning commission, amend, supplement, change or repeal the district boundaries or regulations herein or subsequently established.

1.14-2. Owner amendment. A petition to amend or change the zoning ordinance or district boundaries herein or subsequently established may be filled [filed] with the zoning administrator by the owner(s) or representative agent of the owner(s) of an area proposed to be rezoned. A fee as provided in article V will be charged for the filing of such petition.

1.14-3. Hearing and notice required. A public hearing shall be held in connection with any proposal or petition to amend the district boundaries or any other part of this ordinance. Notice shall be given of the time and place of such hearing by publication once a week for two successive weeks in a newspaper having general circulation in the County of Symth [Smyth]. The second publication of such notice shall be at least six days prior to the holding of such hearing.

1.14-4. Report of planning commission. No action shall be taken by the town council upon any motion or petition to amend this ordinance until such motion or petition has been referred to the planning commission for a report thereon and until such report has been received from the planning commission, unless a period of 30 days has elapsed after date of referral. If the planning commission does not transmit a report within this 30-day period it may be assumed that the planning commission has approved the motion or petition.

1.14-5. Amendment limited to one time within one year. When any petition for a proposed change in this ordinance has been denied by the town council, no subsequent petition for the same, or substantially the same change, in whole or in part, shall be filed with or accepted by the zoning administrator, or any proceeding therefor commenced or maintained, within one year next succeeding the date of the action of the town council denying said proposed change.

1.15. Violation and penalty.

All departments, officials, and public employees of the Town of Chilhowie which are vested with the duty or authority to issue permits or licenses shall conform to the provisions of this ordinance and shall issue no such permit or licenses for uses, buildings, or purposes where same would be in conflict with the provisions of this ordinance, [and, if issued, the same] shall be null and void. If a permit is issued in error and the person, firm or corporation using the permit in good faith, acts in accordance with the permit, then the person, firm or corporation shall not be held in violation of the provisions of this ordinance. This use will become nonconforming, however.

Any person, firm or corporation violating any of the provisions of this ordinance shall be guilty of a misdemeanor and, upon conviction thereof, may be fined not less than $10.00 nor more than $1,000.00 for each offense. Each day's continuance of such violation shall constitute a separate offense.

ARTICLE II. ZONING DISTRICTS ESTABLISHED AND OFFICIAL ZONING MAP

2.1. Establishment of districts.

For the purpose of this ordinance, the areas of the Town of Chilhowie, Virginia, are hereby divided into the following districts:

TABLE INSET:

Agriculture-conservation	A-C
Residential-general	R-2
Business-general	B-2
Business and industrial	BN-1

(Ord. of 11-10-88)

2.2. Provisions of official zoning map.

The boundaries and locations of each of these districts are hereby established as shown on the map entitled "Official Zoning Map of the Town of Chilhowie, Virginia." The zoning map and all notations, amendments, and other information thereon are hereby made a part of this ordinance, the same as if such information set forth on the map were all fully described and set out herein.

2.3. Identification or alteration of the official zoning map.

The official zoning map shall be identified by the town seal and the signature of the mayor under the following words: "This is to certify that this map is the official zoning map of the Town of Chilhowie," together with the adoption date of this ordinance.

All changes made in district boundaries or other matters shown on the official zoning map must be in accordance with the provisions of this ordinance and the Code of Virginia, 1950, as amended, and shall be entered on the official zoning map promptly after the amendment has been approved by the town council. No amendment to this ordinance which involves a change on the official zoning map shall become effective until such change has been recorded on the map. A brief statement shall be included describing the nature of the change, date of adoption, and signed by the mayor.

No changes of any kind shall be made on the official zoning map or matters shown thereon except in conformity with the procedures set forth in this ordinance. Any unauthorized change shall be considered a violation of this ordinance and punishable as a misdemeanor.

The official zoning map shall be located in the office of the zoning administrator and shall be the final authority as to the current zoning status of areas within the corporate limits, regardless of other purported copies of the official zoning map which may be in existence. An official copy shall also be kept in council chambers.

State law reference(s)--Official map, Code of Virginia, § 15.2-2233 et seq.

2.4. Rules for interpretation of district boundaries.

Where uncertainty exists with respect to the boundaries of districts as shown on the official zoning map, the following rules shall apply.

(1) Boundaries indicated as approximately following the centerlines of railroads, streams, streets, roads, or alleys shall be interpreted as following such centerlines;
(2) Boundaries indicated as approximately following platted lot lines shall be interpreted as following such lot lines and the extension of lot lines in the event that the boundary extends across unplatted tracts;
(3) Boundaries indicated as approximately following corporate limits shall be interpreted as following such corporate limits;
(4) Boundaries indicated as approximately following the centerlines of streams, rivers, lakes, or other bodies of water shall be interpreted as following such centerlines, and in the event of a change in the course of a body of water, shall be interpreted as moving with the actual centerline;
(5) Boundaries indicated as parallel to or extensions of features indicated above shall be so interpreted. Distances not specifically indicated on the official zoning map shall be determined by the scale of the map;
(6) Where natural or manmade features actually existing differ with those shown on the official zoning map, the planning commission shall determine the district boundary; and
(7) Where a district boundary line divides a lot which was in single ownership at the time of passage of this ordinance, the planning commission may permit, as a special exception, the extension of the regulations for either portion of the lot not to exceed 50 feet beyond the district line into the remaining portion of the lot.

ARTICLE III. [DISTRICT REGULATIONS]*

3.1. Agriculture-conservation (A-C) [district].

This district is composed of agriculture or forest land plus low density residential areas where future development appears likely to occur primarily as rural or very low density. Some areas having moderate to steep slopes may be developed to moderate densities and intensity in accordance with the comprehensive plan after careful consideration of the development plans and construction design. Protection of nearby residential zoning takes priority over uses permitted in this district.

3.1-1. Uses permitted. Uses permitted in the agriculture-conservation (A-C) district shall be established in compliance with the standards of this activity [article], article IV, supplementary regulations, and as specified in the [Town of Chilhowie] Code. Uses permitted shall be one or more of the following uses:

(a) Agriculture, general farming, horticulture, and forestry;
(b) Single-family and two-family dwelling;
(c) Home occupation as defined;
(d) Hunting or fishing cabin, fishing docks;
(e) Church or real estate advertising signs erected on the premises; or
(f) Accessory uses as defined.

3.1-2. Conditional uses permitted. Conditional uses in the agriculture-conservation (A-C) district shall be permitted following a public hearing and approval as set forth in article V. Conditional uses shall be one or more of the following uses:

(a) Schools, parks, playgrounds, golf courses;
(b) Tennis courts, swimming pools, lodges, private clubs not considered as an accessory use;
(c) Public utilities except distribution systems;
(d) Fire, police, rescue or similar public services; or
(e) Retirement or nursing homes.

3.1-3. Area of lot. Area regulations for the agriculture-conservation (A-C) district for each permitted use shall be 15,000 square feet.

3.1-4. Setbacks for structures and livestock feeding. The setback line for structures shall be 35 feet from any street right-of-way which is 50 feet or greater in width or 60 feet or more from the centerline of any street less than 50 feet in width.

The setback line for livestock barns, sheds or feeding areas shall be 100 feet from the adjacent property line where the A-C district boundary is adjacent to a residential district boundary.

3.1-5. Lot frontage. The minimum frontage for permitted or conditional uses shall be 100 feet measured at the setback line.

3.1-6. Yards. Yard requirements for each main structure for permitted use shall be as follows:

(a) Side yard shall be a minimum of ten feet and the total width of the two required side yards shall be 25 feet;
(b) The rear yard for each main structure shall be 25 feet;
(c) The side yard and rear yard for an accessory structure shall be ten feet; and
(d) The minimum side yard for corner lots shall be 35 feet for both main and accessory structures.

3.1-7. Maximum height. The maximum height for any structure shall be 45 feet, except a silo shall be excepted from this provision.

3.2. Residential-general (R-2) [district].

This district is composed of medium density recreational areas plus certain open areas where similar development appears likely to occur. The district may be adjacent to commercial areas. The expansion of commercial development may take place on the periphery. A higher population density will be allowed along with additional conditional uses.

3.2-1. Uses permitted. Uses permitted in the residential-general (R-2) [district] shall be established in compliance with the standards of this article, article IV, supplementary regulations, and as specified in the town Code. Uses permitted shall be one or more of the following uses:

(a) Single-family dwelling;
(b) Two-family dwellings;
(c) Home occupation;
(d) Accessory use;
(e) Rooming[houses] and boardinghouses;
(f) Tourist homes; or
(g) Church or real estate signs erected on site;
(h) Modular homes, as defined.

3.2-2. Conditional uses permitted. Conditional uses in the residential-general (R-2) [district] shall be permitted following a public hearing and approval as set forth in articles V and VI. Conditional uses shall be one or more of the following uses:

(a) Schools, parks, playgrounds;
(b) Churches;
(c) Tennis courts, swimming pools not considered an accessory use;
(d) Multifamily [dwelling units]; or
(e) Medical or dental offices.

3.2-3. Area of lots. Area regulations for each use in the residential-general district shall be as follows:

(a) Single-family dwelling - 10,000 square feet, provided public water and sewer are available;

(b) Multifamily dwelling units - 5,000 square feet per unit, provided water and sewer are available;
(c) Multifamily dwelling units of four or more - 20,000 square feet plus 2,500 square feet for each unit over four, provided water and sewer are available;
(d) Medical and dental offices - 20,000 square feet; or
(e) Other permitted and conditional uses shall have to meet area, setback and parking requirements.

3.2-4. Setback for structures. The setback line for structures shall be 25 feet from any street right-of-way which is 50 feet or greater in width or 50 feet from the centerline of any street less than 50 feet in width.

3.2-5. Lot frontage.
(a) The minimum frontage for permitted uses shall be 80 feet measured at the setback line.
(b) The minimum frontage for conditional uses shall be 100 feet as measured at the setback line.

3.2-6. Yards. Yard requirements for each main structure for permitted uses shall be as follows:
(a) Side yard shall be a minimum of ten feet on one side with a minimum of ten feet on the second side for a total minimum of 20 feet;
(b) The rear yard for each main structure shall be 25 feet;
(c) The side yard for an accessory structure shall be a minimum of five feet and the accessory structure may be located within ten feet of the real lot line; and
(d) The minimum side yard for corner lots shall be 25 feet for both main and accessory structures from the nearest street right-of-way.

3.2-7. Maximum height. The maximum height for structures shall be 40 feet.

3.3. Business-general (B-2) district.

This district is designed to provide for a general range of retail, office and service businesses with business uses taking priority over any other type of use. The activities may generate relatively large volumes of traffic and have frequent delivery of goods, services, and increased traffic. The district boundaries may expand in conformance to the comprehensive plan.

3.3-1. Uses permitted. Uses permitted in the business-general (B-2) district shall be established in compliance with the standards of this article, article IV, supplementary regulations, and as provided in the town Code. Uses permitted shall be one or more of the following uses:
(a) Auto sales and services;
(b) Bakeries;
(c) Churches;
(d) Drug stores and supplies;

(e) Dry cleaners and laundries;
(f) Finance, banks, and real estate;
(g) Furniture, home appliance sales and services;
(h) Funeral homes;
(i) Hotels, motels, inns;
(j) Hardware, plumbing, and lumber supply with covered storage;
(k) Offices;
(l) Public or semi-public uses;
(m) Public utilities;
(n) Personal service business (beauty, barber, etc.);
(o) Retail stores;
(p) Theaters, lodges, assembly halls;
(q) Restaurants and fast food;
(r) Recreation; or
(s) Printing signs on premises.
(t) Daycare/School

3.3-2. Conditional uses permitted. Conditional uses in the business-general (B-2) district shall be permitted following a public hearing and approval as set forth in articles V and VI. Conditional uses shall be one or more of the following uses:

(a) Animal hospital or clinic;
(b) Automobile body shop and repair with inside vehicle storage;
(c) Machinery sales and service;
(d) Public amusement restaurant or entertainment involving serving of alcoholic beverages;
(e) Wholesale distribution;
(f) Light manufacturing; or
(g) Warehouse storage.

3.3-3. Area of lots. Area regulations for each use in the business-general (B-2) district shall not be required, however, an existing lot may not be divided or a building erected which would decrease the amount of parking required for uses or buildings established on the property.

3.3-4. Setback for structures. The setback line for structures shall be ten feet from any street right-of-way.

3.3-5. Lot frontage. A minimum frontage shall not be required.

3.3-6. Yard. Yard requirements for each main structure for permitted uses shall be as follows:

(a) A side or rear yard shall not be required;
(b) A side yard abutting a street right-of-way shall be landscaped.

3.3-7. Maximum height. The maximum height for structures shall be 45 feet.

3.3-8. Lot coverage. The maximum lot coverage shall be 70 percent, provided required off-street parking can be met on the owner's property.

3.3-9. Sidewalks required. Sidewalks shall be required to be constructed to equal the existing width along a property frontage and no less than five feet if nonexistent.

3.4. Business and industrial (BN-1) district.

This district is designed to provide areas suitable for industrial development which can be compatible with adjacent commercial and residential areas. Any industrial use which could constitute a nuisance because of odor, fumes, smoke, noise or vibrations, will not be permitted. District boundaries will be established or expanded in conformance with the comprehensive plan.

3.4-1. Uses permitted. Uses permitted in the business and industrial (BN-1) district shall be established in compliance with standards of this article, article IV, supplementary regulations, and as provided in the town Code. Uses permitted shall be one or more of the following uses:

(a) Assembly of electrical appliances, electronic instruments and devices, radios and phonographs. Also the manufacture of small parts, such as coils, condensers, transformers, and crystal holders;

(b) Automobile assembling, painting, upholstering, repairing, rebuilding, reconditioning, body and fender work, truck repairing or overhauling, welding or machine shop;

(c) Laboratories, pharmaceutical or medical;

(d) Manufacture, compounding, processing, packaging or treatment of such products as bakery goods, candy, cosmetics, dairy products, perfumes, perfumed toilet soap, toiletries, food products, clothing, textiles;

(e) Manufacture, compounding, assembling or treatment of articles of merchandise from the following previously prepared materials: bone, cellophane, canvas, cloth, cork, feathers, felt, fiber, fur, glass, hair, horn, leather, paper, plastic, precious or semi-precious metals or stones, rubber, shell, straw, textiles, tobacco, wood, yard [yarn] and paint;

(f) Manufacture of pottery and figurines or other similar ceramic products, using only previously pulverized clay, and kilns fired only by electricity or gas;

(g) Building material sales yards, plumbing supplies storage;

(h) Contractors' equipment storage yards or plants, or rental of equipment commonly used by contractors;

(i) Cabinets, furniture and upholstery shops;

(j) Boatbuilding;

(k) Monumental stoneworks;

(l) Veterinary or dog or cat hospital, kennels;

(m) Wholesale businesses, storage warehouses; or

(n) Truck terminals.

3.4-2. Conditional uses permitted. Conditional uses in the business and industrial (BN-1) district shall be permitted following a public hearing and approved as set forth in articles V and VI. Conditional uses shall be one or more of the following uses:

(a) Quarries, sand, gravel or crushed stone operations;
(b) Sawmills and planning mills or wood preserving operations;
(c) Asphalt mixing;
(d) Public utilities.
(e) Medical Treatment Facility **Adopted August 11, 2005**

3.4-3. Area of lots. Area regulations for each use in the business and industrial (BN-1) district shall not be less than 10,000 square feet and the size shall be sufficient to handle off-street turning and unloading of trucks, parking as required and in compliance with sewer or setback requirements.

3.4-4. Setback for structures. The setback line for structures shall be 20 feet from any street right-of-way and 20 feet from any property line bordering a residential home.

3.4-5. Lot frontage. The minimum lot frontage shall be 100 feet.

3.4-6. Yards. Yard requirements for each main structure shall not be required, however, landscaping in the form of evergreen trees shall be maintained on property lines joining any residential district boundary.

3.4-7. Maximum height. The maximum height for structures shall be 90 feet. **Adopted August 12, 2004.**

3.4-8. Noise. Any use which creates noise shall be conducted wholly within an enclosed building.

ARTICLE IV. SUPPLEMENTARY DISTRICT REGULATIONS AND GENERAL PROVISIONS

This article contains specific standards which apply to all users and districts within the jurisdiction. The standards set forth are the minimum allowed and, from the date of this ordinance, no building, structure or use shall be permitted, altered or changed which would cause to exist conditions which would be less than the standards set forth in this article or article III.

4.1. Zoning affects every building and use.

No building, structure, or land shall hereafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved, or structurally altered except in conformity with all of the regulations herein specified for the district in which it is located.

4.2. Integrity of required open space.

No part of a yard or other open space or off-street parking or loading space required about or in connection with any building for the purpose of complying with this ordinance shall be included as part of a yard, open space, or off-street parking or loading space similarly required for any other building.

No yard or lot existing at the time of passage of this ordinance shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this ordinance shall meet at least the minimum requirements established by this ordinance.

4.3. Existing lots of insufficient size.

4.3-1. Lot of record--Separate ownership. In any district in which single-family dwellings are permitted, a single-family dwelling and customary accessory structure may be erected on any single lot of record at the effective date of adoption or amendment of this ordinance, notwithstanding other provisions of this ordinance. Such lot must be in separate ownership and not of continuous frontage with other lots in the same ownership. This provision shall apply even though such lot fails to meet the requirements for area and/or width that are generally applicable in the district in which the lot is located. Variance of yard requirements shall be obtained only through action of the board of zoning appeals in accordance with the provisions of article VI of this ordinance.

4.3-2. Two or more lots--Single ownership. If two or more lots or combinations of lots and portions of lots with continuous frontage in single ownership are of record at the time of passage or amendment of this ordinance, and if all or part of the lots do not meet the requirements established for lot width and area, the lands involved shall be considered to be an undivided parcel for the purpose of this ordinance, and no portion of said parcel shall be used or sold in a manner which diminishes compliance with lot width and area requirements established by this ordinance, nor shall any division of any parcel be made which creates a lot with width or area below the requirements stated in this ordinance.

4.4. Visibility at intersections.

On a corner lot in any district, nothing shall be erected, placed, planted or allowed to be grown in such a manner as to impede vision between a height of 21/2 and ten feet within 15 feet of the intersecting street right-of-way.
pu diagram mp 1473

4.5. Fences, walls and hedges.

Fences, walls and hedges may be permitted in any required yard or along the edge of any yard except as prohibited in article [section] 4.4. The maximum height of a fence shall be six feet.

4.6. Use of required yard area.

Required yard areas may be occupied by driveways, loading, parking and sidewalks unless otherwise specified in this ordinance. All yards not occupied by such uses shall be devoted to maintained landscaping as defined in the definitions.

4.7. Accessory buildings.

An accessory building cannot be established unless a principal use exists on the property. No accessory building may be erected within ten feet of any side or back yard line.

4.8. Structures to have access.

Every structure shall be on a lot fronting a public street, and all structures shall be located on lots so as to provide safe and convenient access for servicing, fire protection and required off-street parking.

4.9. Parking, storage or use of major recreational equipment.

No major recreational equipment shall be parked or stored in any front yard of any lot in a residential district more than 72 hours.

4.10. One principal building on any lot.

Only one principal building and its accessory buildings shall be erected on any lot except where the lot frontage is in multiples of the amount required, then a second or more principal buildings may be constructed so long as each structure complies with the ordinance yard requirements.

4.11. Parking and storage of inoperable vehicles.

No automotive vehicle which does not display a current license plate may be parked on any public street for more than 24 hours. No more than two inoperable vehicles shall be stored on any open lot in any district except those vehicles being repaired in conjunction with an automobile service and repair business. This provision shall not apply to vehicles enclosed within a private garage.

4.12. Maintenance of property.

No property owner or tenant may cause to be kept on any lot, trash, junk, weeds or litter of any kind. All persons or businesses shall dispose of garbage in an approved container as required by the town Code.

4.13. Maintenance of landscaping.

Landscaping required by this code [ordinance] shall be maintained and any dead vegetation shall be replaced.

4.14. Height regulations, exceptions and limitations.

Church spires, belfries, monuments, water towers, chimneys, flues, flag poles, television antenna and radio aerials are exempt. An accessory structure height shall not exceed the principal structure height except for garages constructed subsequent to a residence.

4.15. Home occupations.

The following limitations shall apply to home occupations:

(1) Family members residing on the premises and one other employee may be engaged in such occupation;
(2) The use of the dwelling unit for the home occupation shall be clearly incidental and subordinate to its use for residential purposes by its occupants, and not more than 25 percent of the floor area of the dwelling unit shall be used in the conduct of the home occupation;
(3) There shall be no change in the outside appearance of the building or premises, or other visible evidence of the conduct of such home occupation other than one sign, not exceeding two square feet in area, nonilluminated, and mounted flat against the wall of the principal building;
(4) No home occupation shall be conducted in any accessory building;
(5) There shall be no retail or wholesale sales occurring on the premises in connection with such home occupation, except as incidental to the home occupation;
(6) No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off the street or in a rear or sideyard.

4.16. Nonconforming uses, lots and structures.

4.16-1. Intent. Within the districts established by this ordinance or amendments that may later be adopted, there may exist structures and uses of land and buildings which would be prohibited, regulated or restricted under terms of this ordinance [and it is the intent of this ordinance] to permit these nonconforming uses and structures to continue until they are removed, but not to encourage their survival. It is further the intent of this ordinance that these nonconforming structures and uses shall not be enlarged upon, expanded or extended.

4.16-2. Nonconforming structures. Where a lawful structure exists upon the effective date of adoption or amendment of this ordinance that could not be built under the terms of this ordinance by reason of restrictions to area, height, yards, its 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) No such nonconforming structure may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity;
(b) Should such nonconforming structure or nonconforming portion of structure be destroyed by any means to an extent of more than 50 percent of its replacement cost at time of destruction, it shall not be reconstructed except in conformity with the provisions of this ordinance; and
(c) Should such structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the district in which it is located after it is moved.

4.16-3. Nonconforming uses of land. Where at the time of passage of this ordinance lawful use of land exists which would not be permitted by the regulations imposed by this ordinance, and where such use involves no individual structure with a replacement cost exceeding $1,000.00, the use may be continued so long as it remains otherwise lawful, provided:

(a) No such nonconforming use shall be enlarged or increased, nor extended to occupy a greater area of land than was occupied at the effective date of adoption or amendment of this ordinance;
(b) No such nonconforming use shall be moved in whole or in part to any portion of the lot or parcel other than that occupied by such use at the effective date of adoption or amendment of this ordinance;
(c) If any such nonconforming use of land ceases for any reason for a period of more than 365 days, any subsequent use of such land shall conform to the regulations specified by this ordinance for the district in which such land is located; and

(d) No additional structure not conforming to the requirements of this ordinance shall be erected in connection with such nonconforming use of land.

4.16-4. Nonconforming uses of structures or of structures and premises in combination. If lawful use involving individual structures with a replacement cost of $1,000.00 or more, or of structure and premises in combination, exists at the effective date of adoption or amendment of this ordinance, that would not be allowed in the district under the terms of this ordinance, the lawful use may be continued so long as it remains otherwise lawful, subject to the following provisions:

(a) No existing structure devoted to a use not permitted by this ordinance in the district in which it is located shall be enlarged, extended, constructed, reconstructed, moved or structurally altered except in changing the use of the structure to a use permitted in the district in which it is located;
(b) Any nonconforming use may be extended throughout any parts of a building which were manifestly arranged or designed for such use at the time of adoption or amendment of this ordinance, but no such use shall be extended to occupy any land outside such building;
(c) Any structure, or structure and land in combination in or on which a nonconforming use is superseded by a permitted use, shall thereafter conform to the regulations for the district, and the nonconforming use may not thereafter be resumed;
(d) When a nonconforming use of a structure, or structure and premises in combination, is discontinued or abandoned for a period of 12 consecutive months (except when government action impedes access to the premises), the structure, or structure and premises in combination, shall not thereafter be used except in conformity with the regulations of the district in which it is located. Vacancy of the premises due to change in lease shall not constitute discontinuance or abandonment so long as the owner is pursuing to advertising the property for lease; and
(e) Where nonconforming use status applies to a structure and premises in combination, removal or destruction of the structure shall eliminate the nonconforming status of the land. Destruction for the purpose of this subsection is defined as damage to an extent of more than 50 percent of the replacement cost at time of destruction.

4.16-5. Repairs and maintenance. Nothing in this ordinance shall prevent the making of ordinary repairs on a nonconforming structure or a structure containing a nonconforming use, provided that the structure is not enlarged in size.

4.16-6. Change of nonconforming use in a nonconforming structure. If no structural alterations are made, any nonconforming use of a structure, or structure and premises, may as a special exception be changed to another nonconforming use, provided that the board of zoning appeals, either by general rule or by making findings in the specific case, shall find that the proposed use is equally appropriate or more appropriate to the district than the existing nonconforming use. In permitting such change, the board of zoning

appeals may require appropriate conditions and safeguards in accord with the provisions of this ordinance (see article VI).

4.16-7. Junkyards. Automobile graveyards and junkyards in existence at the time of the adoption of this ordinance are to be considered as nonconforming uses. They shall be allowed up to three years after adoption of this ordinance in which to completely screen, on any side open to view from a public road, such operation or use by a masonry wall, a uniformly painted solid board fence, or an evergreen hedge six feet in height.

4.17. Minimum required space for off-street automobile parking.

Off-street parking shall be provided at the time of erection of any principal building, or at the time any principal building is enlarged, with adequate provision for access from a public street, as follows:

TABLE INSET:

Use of Building	*Minimum Number of Parking Spaces*
Dwellings, of all types except elderly	Two spaces for each dwelling unit
Elderly housing	One space for every three units
Tourist homes, motels, hotels, and roominghouses	One space for each guest bedroom
Churches, auditoriums, theaters, stadiums and other places of assembly	One space for every four seats
Hospitals	One space for each two beds
Medical and dental clinics	Five spaces for each doctor, plus one per employee
Mortuaries or funeral homes	30 spaces
Retail stores selling directly to the public and personal service establishments	One space for each 250 square feet of retail floor space
Restaurants, cafes and taverns	One space for each four seats provided for customers
Dancehalls	One space for each 100 feet of floor space
Bowling alleys	Four spaces for each alley
Industrial and manufacturing establishments	One space for each two employees computed on the basis of the greatest number of persons to be employed

	on any one shift.
Private clubs and lodges	Adequate space is determined by planning commission after submittal of site plan.
Professional offices	One space for each employee, plus one space for every 500 square feet of floor space.
Riding stables	Ten spaces
Fire stations	Ten spaces
Marinas and boat dock	One space for each berth, with a minimum of ten spaces
Boat launching ramp	Ten spaces, plus spaces for ten boat trailers
Schools (elementary and nursery	Three spaces for each classroom, plus one space for each six seats in an auditorium or gymnasium and spaces for school buses
Schools (high)	Ten spaces for each classroom, plus one space for each five seats in an auditorium or gymnasium.
Sanitariums, nursing homes and convalescent homes	One space for each four patient beds
Skating rinks	One space for each 200 feet of floor area

4.17-1. General requirements for parking lots. A parking space shall be a minimum of nine feet wide by 20 feet in length. Parking space shall be served by a driveway with a minimum width of 20 feet and all spaces over four required shall be provided with turnaround or maneuvering which will not require backing into a public street or right-of-way. All commercial, industrial, or public use parking shall be provided with space for turning or maneuvering which will not require backing into public street right-of-way. The parking space required for any dwelling shall be located on the same lot as the principal building. For uses other than dwellings, spaces may be located within a distance of 200 feet of the lot on which the use or building is located.

4.17-2. Design requirements. When lots with parking space for more than four cars are permitted or required in any district, the following conditions shall apply:

(a) The parking area and access thereto shall be surfaced with crushed rock, gravel, asphalt or concrete. It shall be drained in such a manner that the adjoining property does not receive stormwater therefrom. Adequate space shall be provided for the maneuvering of vehicles. No driveway or curb cut shall exceed 25 feet in width;
(b) Virginia Department of Highways and Transportation design standards for access driveways shall apply;
(c) If the parking area adjoins premises used or zoned for residential purposes it shall be screened from such premises by a solid wall or fence, or closely spaced evergreen trees or a shrub hedge, located on a strip of land not less than five feet in width, guarded with wheel bumpers. Any light used to illuminate such parking area shall be so arranged as to reflect the light away from such adjoining premises; and
(d) Parking space provided for apartments, offices, or retail spaces shall include five feet of landscaping to provide a buffer from the adjacent property and street right-of-way.

4.18. Off-street loading space.

In order to avoid undue interference with the public use of streets, there shall be provided adequate off-street loading space as follows:

(1) At the time building plans for commercial or industrial uses are submitted, the zoning administrator shall require submission of specific information in writing as to the size of delivery vehicles and frequency of delivery;
(2) Construction plans shall not be approved without a site plan drawn to scale which can show that off-street loading can be provided without backing, or maneuvering into a public street right-of-way;
(3) An off-street loading space shall be a minimum of 20 feet wide by 60 feet long;
(4) A minimum of one space shall be required for all retail commercial uses; and
(5) The required spaces for other public, commercial, or industrial use shall be as follows:

TABLE INSET:

Use	*Floor Area In Square Feet*	*Required Spaces*
Public assembly	N/A	1
Health care	N/A	1
Community education	N/A	1
Retail sales	Less than 20,000	1
Retail sales	20,000 and up	2 plus 1 for each 40,000 square feet over 80,000
Wholesale and industrial		2 per 50,000 square feet

4.19. Solid waste disposal.

Each owner of apartments, commercial, industrial, or public use shall provide and maintain solid waste disposal containers to meet the requirements of the occupants.

4.20. Sign regulations.

4.20-1. Purpose. The purpose of this section is to permit such signs that will not, by their reason, size, location, construction, or manner of display, endanger the public safety of individuals, confuse, mislead, or obstruct the vision necessary for traffic safety, or otherwise endanger public health, safety, morals; and to permit and regulate signs in such a way as to support and complement land use objectives set forth in article I of this ordinance.

4.20-2. Exclusion from sign regulations. The following shall not be subject to the provisions of this section:

(a) Signs provided or required by a duly constituted government body, including traffic or similar regulatory devices, legal notices or warning at railroad crossings;

(b) Flags or emblems of political, philanthropic, educational, or religious organizations;

(c) Temporary signs for a period not to exceed three months, announcing a campaign, drive or event listed in [subsection] (b) above;

(d) Memorial plaques or tablets;

(e) Small signs, each not to exceed one square foot of display surface area, displayed for the direction of the public, including signs which identify restrooms, freight entrances or the like;

(f) Vehicular sign, attached to or lettered on a licensed motor vehicle;

(g) Name, identification signs which are architecturally part of the building and are wall-mounted which may identify a company, apartment, public or semipublic use through the use of integral letters, symbols or logos;

(h) Real estate signs not exceeding eight square feet mounted on the building or within a yard advertising a sale or lease of property; and

(i) Any sign which cannot be viewed from a public right-of-way or sidewalk.

4.20-3. Prohibition of obstructive and certain signs. No sign may be arranged so that it interferes with traffic through glare, through blocking of reasonable sight lines for streets, sidewalks or driveways, through confusion with a traffic control device (by reason of its color, location, shape, or other characteristics), or through any other means. Rotating beacons and flashing sidewalk signs are prohibited. No sign shall be allowed to protrude into the space above the right-of-way of a public street or a utility easement for overhead electrical service.

4.20-4. Temporary mobile or trailer signs. Temporary mobile or trailer-mounted portable signs are not permitted. Signs that advertise a product, service or other business not situated on the same premises are prohibited.

4.20-5. Location of signs. That portion of a sign or a pole or standard of such sign which is in contact with the ground shall be within the lot lines of the property and shall not be within the right-of-way of any public street. All signs shall be located on premises of the business or product being advertised.

4.20-6. **Repealed July 10, 2014.**

4.20-7. Overhanging signs. One existing overhanging sign is allowed to protrude over a sidewalk where buildings have been built on the front lot line, provided that any such sign shall not be allowed to protrude more than five feet from the building front, and shall not exceed one square foot for 20 square feet of that business storefront, up to a maximum of 24 square feet. Where buildings are built on the front property line without any setback all new signs shall be flush-mounted. Flush signs shall not protrude more than 15 inches. The minimum clearance over a private driveway shall be 15 feet as measured from the bottom of the grade of the driveway.

4.20-8. Under canopy signs. Under canopy signs are permitted, provided they do not exceed 250 square inches and allow a clearance of eight feet from sidewalk to bottom of sign.

4.20-9. Motion or nonstationary signs. No sign or any portion thereof shall be permitted which moves or assumes any motion constituting a nonstationary or fixed condition except for the rotation of barber poles. **Revised and deleted November 11, 2010.**

4.20-9.1. Billboards.

(1) Definition: A "billboard" is defined to mean any sign or structure, the sole or primary purpose of which is to be used for the display of outdoor advertisements or notices or posters.

4.20-9.2 thru 4.20-9.6 Repealed April 12, 2012

4.20-10. Nonconforming signs and closed businesses. Any advertising structure or sign which was lawfully erected and maintained prior to the adoption of this ordinance shall be allowed to remain as a nonconforming sign. Any sign damaged to the extent that it represents a public hazard as determined by the administrator shall be removed immediately. Signs advertising a business which changes ownership must be removed within 90 days of the date of such change of ownership or business closure.

4.20-11. Sign type area and number of signs. Each business in a commercial or industrial district is permitted to have one identification sign and two product or trade signs, subject to the following provisions:

(a) The area of sign for identification shall be two feet per front foot or a maximum of 100 square feet as measured by the smallest rectangle placed over the sign;

(b) The area of product trade signs shall be 30 square feet for a total of 60 square feet; and

(c) Only one pole-mounted sign shall be allowed for each business.

4.20-12. Sign construction. All signs shall be constructed in conformance with state building and electrical codes.

4.20-13. Sign permit required. No person shall erect, construct, or maintain any sign upon any property without first submitting a drawing to the zoning administrator showing sign lettering dimensions, method of attachment, and the area in which the sign is to be located. Neon signs shall have no exposed electrodes. Upon receiving written approval and permit from the administrator, the proposed sign may be constructed.
(Ord. of 7-14-88; Ord. of 11-10-88)

4.21. Uses not specified.

Uses not specifically named but compatible with other permitted uses and the requirements of this ordinance may be permitted after review by the zoning administrator and approved by the planning commission. The recommendations of the planning

commission shall not be made until a hearing as required by the Code of Virginia 1950, as amended, has been held.

State law reference(s)--Public hearings, Code of Virginia, § 15.2-2204.

4.22. Mobile homes.

Mobile homes must be located in a designated mobile home park. Nonconforming mobile homes may be replaced within 30 days, provided they meet setback and yard regulations.

4.22-1. General requirements.

(a) Mobile home parks shall be located on a well drained site, properly graded to insure rapid drainage and freedom from stagnant pools of water. The slope of the land shall not exceed 15 percent.

(b) All streets within the mobile home park shall be all-weather streets. The owner/developer shall maintain the streets and shall be responsible for the removal of snow and ice.

(c) Each lot shall be provided with the appropriate electrical connections which shall be weatherproof and shall be in compliance with the National Electrical Code.

(d) All mobile homes shall be underpinned, and axles and wheels shall be covered. The trailer hitch shall be removed if it is the removable type or shielded if not removable. All mobile homes shall be installed and anchored in accordance with state requirements.

(e) Each lot shall be provided with a concrete parking pad large enough for one car and a concrete walkway from the parking pad to the main entrance of the mobile home. The parking pad shall be at a minimum of ten feet wide and 20 feet long. The walkway shall be at a minimum of three feet wide.

(f) Each mobile home park with four or more mobile home lots shall set aside an area to be used as a recreational area for the park residents. The area should be centrally located and easily accessible to all residents. The size of the area shall contain no less than ten percent of the total land area of the park.

(g) Travel trailers shall not be parked in mobile home parks. However, special travel trailer parks may be developed. A travel trailer park shall conform to this ordinance except for the provisions in [section] 4.22-2.

(h) Reserved.

(i) Existing mobile home parks shall be exempt from [sections] 4.22-1 and 4.22-2 of this ordinance. Any addition to an existing mobile home park shall conform to the entire ordinance.

(j) Storage building may be allowed only in side or rear yards. The buildings shall be anchored and detached from the mobile home. No flammable material may be stored under a mobile home.

4.22-2. Area requirements.

(a) A mobile home park shall be a minimum of two acres and a maximum of five acres and shall contain a maximum of four mobile homes per acre.

(b) Each mobile home lot or space designed to accommodate one mobile home shall have a minimum area of 4,000 feet, one side of which shall front on an internal street, road or right-of-way.

(c) Each mobile home lot or space shall have a minimum width of 45 feet at the ten-foot setback line from a private drive.

(d) Mobile home stands for mobile homes shall be arranged so as to provide a distance of at least 30 feet or more between individual mobile homes, or 15 feet from the property or mobile home lot line.

(e) Each mobile home shall be placed not less than 25 feet from the right-of-way of any existing public street or highway.

(f) All internal drives shall have a minimum right-of-way width of 40 feet or more. They shall be improved to a minimum width of 20 feet. Cul-de-sac streets shall not be longer than 500 feet, with a minimum of 100 feet for the turnaround, right-of-way and 40 feet improved. No street shall have a grade that exceeds 15 percent.

4.22-3. Sanitary facilities.

(a) An adequate supply for water under pressure from a source and of a quality approved by the state department of health shall be provided. Water shall be piped to each mobile home lot.

(b) Mobile homes shall not be occupied until water and sewer connections have been approved by the health department.

(c) Each mobile home park shall provide a garbage collection box for use by the residents of the park. The collection box shall be at a central location. The park owner shall be responsible for disposal of the garbage.

4.22-4. The mobile home park plan.

(a) Application for mobile home park. The developer of the mobile home park shall submit to the administrator five copies of the mobile home park plan at a scale of one-inch equals 100 feet which shall show thereon:

(1) The proposed mobile home park name and location;

(2) The names and addresses of the owner of record, developer, the person who proposed [prepared] the drawings, and holder of any easements affecting the property;

(3) The name of all owners of record immediately adjacent to property proposed as a mobile home park;

(4) The date of drawing, true north point, and scale;

(5) A survey plat of the property;

(6) The location and names of all existing or platted streets within or adjacent to the proposed mobile home park and the location of existing buildings, easements, rights-of-way, utility lines and drainageways;

(7) Plat showing layout of lots, streets, water lines, sewer lines and septic tanks, and the location of the mobile home on lot;

(8) An application fee for administration and inspection shall be charged as determined by the governing body.

(b) *Supporting information.*

(1) Vicinity map--The mobile home park plan shall include a vicinity map at a scale of one inch equals 2,000 feet (1" = 2,000') showing the surrounding area. This map should identify all subdivision or mobile home parks and any other prominent natural feature or landmark in any area extending one-half mile on each side of the proposed park.

(2) Statement of availability of water and sewer and method of providing each to the park. The developer shall submit a copy of the health department permit for a septic tank system, if the park will not be served by a public sewer system. The developer shall also submit a letter approving the water system.

(3) Private restriction, if any, proposed for the mobile home park.

(4) Sedimentation and erosion control measures proposed for the mobile home park, on the advice of the area conservationist.

(5) Copy of highway access permit.

4.23. Floodplain district.

ORDINANCE NO. 4.23

AN ORDINANCE AMENDING ORDINANCE NO. 4.23, THE ZONING ORDINANCE OF TOWN OF CHILHOWIE, VIRGINIA, BY ESTABLISHING FLOODPLAIN DISTRICTS, BY REQUIRING THE ISSUANCE OF PERMITS FOR DEVELOPMENT, AND BY PROVIDING FACTORS AND CONDITIONS FOR VARIANCES TO THE TERMS OF THE ORDINANCES.

BE IT ENACTED AND ORDAINED BY THE TOWN OF CHILHOWIE, Virginia, as follows:

ARTICLE I - GENERAL PROVISIONS

Section 1.1 – Statutory Authorization and Purpose [44 CFR 59.22(a)(2)]

This ordinance is adopted pursuant to the authority granted to localities by Va. Code § 15.2 - 2280.
The purpose of these provisions 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

A. regulating uses, activities, and development which, alone or in combination with other existing or future uses, activities, and development, will cause unacceptable increases in flood heights, velocities, and frequencies;

B. restricting or prohibiting certain uses, activities, and development from locating within districts subject to flooding;

C. requiring all those uses, activities, and developments that do occur in flood-prone districts to be protected and/or flood-proofed against flooding and flood damage; and,

D. protecting individuals from buying land and structures which are unsuited for intended purposes because of flood hazards.

Section 1.2 - Applicability

These provisions shall apply to all privately and publicly owned lands within the jurisdiction of the Town of Chilhowie and identified as areas of special flood hazard according to the flood insurance rate map (FIRM) that is provided to the Town of Chilhowie by FEMA.

Section 1.3 - Compliance and Liability

A. No land shall hereafter 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 ordinance and any other applicable ordinances and regulations which apply to uses within the jurisdiction of this ordinance.

B. The degree of flood protection sought by the provisions of this ordinance is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study, but does not imply total flood protection. Larger floods may occur on rare occasions. Flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This ordinance does not imply that districts outside the floodplain district or land uses permitted within such district will be free from flooding or flood damages.

C. This ordinance shall not create liability on the part of the Town of Chilhowie or any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

Section 1.4 – Records [44 CFR 59.22(a)(9)(iii)]

Records of actions associated with administering this ordinance shall be kept on file and maintained by the Floodplain Administrator.

Section 1.5 - Abrogation and Greater Restrictions [44 CFR 60.1(b)]

This ordinance supersedes any ordinance currently in effect in flood-prone districts. Any ordinance, however, shall remain in full force and effect to the extent that its provisions are more restrictive.

Section 1.6 - Severability

If any section, subsection, paragraph, sentence, clause, or phrase of this ordinance shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this ordinance. The remaining portions shall remain in full force and effect; and for this purpose, the provisions of this ordinance are hereby declared to be severable.

Section 1.7 - Penalty for Violations [44 CFR 60.2(e)]

Any person who fails to comply with any of the requirements or provisions of this article or directions of the director of planning or any authorized employee of the Town of Chilhowie shall be guilty of the appropriate violation and subject to the penalties therefore.

The VA USBC addresses building code violations and the associated penalties in Section 104 and Section 115. Violations and associated penalties of the Zoning Ordinance of the Town of Chilhowie are addressed in Section 1.15 of the Zoning Ordinance.

In addition to the above penalties, all other actions are hereby reserved, including an action in equity for the proper enforcement of this article. The imposition of a fine or penalty for any violation of, or noncompliance with, this article 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. Any structure constructed, reconstructed, enlarged, altered or relocated in noncompliance with this article may be declared by the Town of Chilhowie to be a public nuisance and abatable as such. Flood insurance may be withheld from structures constructed in violation of this article.

ARTICLE II - ADMINISTRATION

Section 2.1 - Designation of the Floodplain Administrator [44 CFR 59.22(b)]

The Town Manager is hereby appointed to administer and implement these regulations and is referred to herein as the Floodplain Administrator. The Floodplain Administrator may:

(A) Do the work themselves. In the absence of a designated Floodplain Administrator, the duties are conducted by the Town of Chilhowie chief executive officer.

(B) Delegate duties and responsibilities set forth in these regulations to qualified technical personnel, plan examiners, inspectors, and other employees.

(C) 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 the Code of Federal Regulations at 44 C.F.R. Section 59.22.

Section 2.2 - Duties and Responsibilities of the Floodplain Administrator [44 CFR 60.3]

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 (SFHA).

(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 100-year frequency floodplain of free-flowing non-tidal 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.

(G) 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.

(H) 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 non-compliance has occurred or violations have been committed.

(I) Review Elevation Certificates and require incomplete or deficient certificates to be corrected.

(J) 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 of Chilhowie, within six months after such data and information becomes available if the analyses indicate changes in base flood elevations.

(K) 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 Change; 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 floodproofed, other required design certifications, variances, and records of enforcement actions taken to correct violations of these regulations.

(L) Enforce the provisions of these regulations, investigate violations, issue notices of violations or stop work orders, and require permit holders to take corrective action.

(M) Advise the Board of Zoning Appeals regarding the intent of these regulations and, for each application for a variance, prepare a staff report and recommendation.

(N) 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.

(2) Make reasonable efforts to notify owners of substantially damaged structures of the need to obtain a permit to repair, rehabilitate, or reconstruct, and prohibit the non-compliant 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.

(O) 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.

(P) Notify the Federal Emergency Management Agency when the corporate boundaries of the Town of Chilhowie 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.

(Q) 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 variances issued for development in the SFHA.

(R) It is the duty of the Community 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 Community, whether or not those hazards have been specifically delineated geographically (e.g. via mapping or surveying).

Section 2.3 - Use and Interpretation of FIRMs [44 CFR 60.3]

The Floodplain Administrator shall make interpretations, where needed, as to the exact location of special flood hazard areas, floodplain boundaries, and floodway boundaries. The following shall apply to the use and interpretation of FIRMs and data:

(A) Where field surveyed topography indicates that adjacent ground elevations:

(1) 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;

(2) 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.

(B) 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.

(C) 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.

(D) 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.

(E) If a Preliminary Flood Insurance Rate Map and/or a Preliminary Flood Insurance Study has been provided by FEMA:

(1) 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.

(2) 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 Section 1.5(C) and used where no base flood elevations and/or floodway areas are provided on the effective FIRM.

(3) 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.

Section 2.4 - Jurisdictional Boundary Changes [44 CFR 59.22, 65.3]

The County floodplain ordinance in effect on the date of annexation shall remain in effect and shall be enforced by the municipality for all annexed areas until the municipality adopts and enforces an ordinance which meets the requirements for participation in the National Flood Insurance Program. Municipalities with existing floodplain ordinances shall pass a resolution acknowledging and accepting responsibility for enforcing floodplain ordinance standards prior to annexation of any area containing identified flood hazards. 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.

In accordance with the Code of Federal Regulations, Title 44 Subpart (B) Section 59.22 (a) (9) (v) all NFIP participating communities must notify the Federal Insurance Administration and optionally the State Coordinating Office in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed or no longer has authority to adopt and enforce floodplain management regulations for a particular area.

In order that all Flood Insurance Rate Maps accurately represent the community's boundaries, a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished floodplain management regulatory authority must be included with the notification.

Section 2.5 - District Boundary Changes

The delineation of any of the Floodplain Districts may be revised by the Town of Chilhowie where natural or man-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 such change. However, prior to any such change, approval must be obtained from the Federal Emergency Management Agency.

Section 2.6 - Interpretation of District Boundaries

Initial interpretations of the boundaries of the Floodplain Districts shall be made by the Zoning Officer. Should a dispute arise concerning the boundaries of any of the Districts, the Board of Zoning Appeals 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 case to the Board and to submit his own technical evidence if he so desires.

Section 2.7 – Submitting Technical Data [44 CFR 65.3]

A community'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, a community shall notify the Federal Emergency Management Agency of the changes by submitting technical or scientific data. Such a submission is necessary so that upon confirmation of those physical changes affecting flooding conditions, risk premium rates and flood plain management requirements will be based upon current data.

Section 2.8 – Letters of Map Revision

When development in the floodplain 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 or a Letter of Map Revision.

Examples:

1. Any development that causes a rise in the base flood elevations within the floodway**.**
2. Any development occurring in Zones A1-30 and AE without a designated floodway, which will cause a rise of more than one foot in the base flood elevation.
3. Alteration or relocation of a stream (including but not limited to installing culverts and bridges) *44 Code of Federal Regulations §65.3 and §65.6(a)(12)*

ARTICLE III - ESTABLISHMENT OF ZONING DISTRICTS

Section 3.1 - Description of Special Flood Hazard Districts [44 CFR 59.1, 60.3]

A. Basis of Districts

The various special flood hazard districts shall include the SFHAs. The basis for the delineation of these districts shall be the FIS and the FIRM for the Town of Chilhowie prepared by the Federal Emergency Management Agency, Federal Insurance Administration, dated August 2, 2012, and any subsequent revisions or amendments thereto.

The Town of Chilhowie may identify and regulate local flood hazard or ponding areas that are not delineated on the FIRM. These areas may be delineated on a "Local Flood Hazard Map" using best available topographic data and locally derived information such as flood of record, historic high water marks or approximate study methodologies.

The boundaries of the SFHA Districts are established as shown on the FIRM which is declared to be a part of this ordinance and which shall be kept on file at the Town of Chilhowie offices.

1. The **Floodway District** is in an **AE Zone** and is delineated, for purposes of this ordinance, using the criterion that certain areas within the floodplain must be capable of carrying the waters of the one percent annual chance flood without increasing the water surface elevation of that flood more than one (1) foot at any point. The areas included in this District are specifically defined in Table 6 of the above-referenced FIS and shown on the accompanying FIRM.

   The following provisions shall apply within the Floodway District of an AE zone [44 CFR 60.3(d)]:

   a. Within any floodway area, no encroachments, including fill, new construction, substantial improvements, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that the proposed encroachment will not result in any increase in flood levels within the community during the occurrence of the base flood discharge. 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, etc., shall be submitted in sufficient detail to allow a thorough review by the Floodplain Administrator.

   Development activities which increase the water surface elevation of the base flood may be allowed, provided that the applicant first applies – with the

Town of Chilhowie's endorsement – for a Conditional Letter of Map Revision (CLOMR), and receives the approval of the Federal Emergency Management Agency.

If Article III Section 3.1 A 1 a is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Article 4.

b. The placement of manufactured homes (mobile homes) is prohibited, except in an existing manufactured home (mobile 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.

2. The **AE, or AH Zones** on the FIRM accompanying the FIS shall be those areas for which one-percent annual chance flood elevations have been provided and the floodway has **not** been delineated. The following provisions shall apply within an AE or AH zone [44 CFR 60.3(c)]:

   Until a regulatory floodway is designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within the areas of special flood hazard, designated as Zones A1-30 and AE or AH on the FIRM, 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 of Chilhowie.

   Development activities in Zones Al-30 and AE or AH, on the Town of Chilhowie's FIRM which increase the water surface elevation of the base flood by more than one foot may be allowed, provided that the applicant first applies – with the Town of Chilhowie's endorsement – for a Conditional Letter of Map Revision, and receives the approval of the Federal Emergency Management Agency.

3. The **A Zone** on the FIRM accompanying the FIS shall be those areas for which no detailed flood profiles or elevations are provided, but the one percent annual chance floodplain boundary has been approximated. For these areas, the following provisions shall apply [44 CFR 60.3(b)]:

   The Approximated Floodplain District shall be that floodplain area for which no detailed flood profiles or elevations are provided, but where a one hundred (100)-year floodplain boundary has been approximated. Such areas are shown as Zone A on the maps accompanying the FIS. For these areas, the base flood elevations and floodway information from federal, state, and other acceptable sources shall be used, when available. Where the specific one percent annual chance flood elevation 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 Quadrangles, etc., then the applicant for the proposed use, development and/or activity shall determine this base flood elevation. For development proposed in the approximate floodplain the applicant must use technical methods that correctly reflect currently accepted non-detailed technical concepts, such as point on boundary, high water marks, or detailed methodologies hydrologic and hydraulic analyses. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the Floodplain Administrator.

The Floodplain Administrator reserves the right to require a hydrologic and hydraulic analysis for any development. When such base flood elevation data is utilized, the lowest floor shall be elevated at least one foot above the base flood level.

During the permitting process, the Floodplain Administrator shall obtain:

1) The elevation of the lowest floor (including the basement) of all new and substantially improved structures; and,

2) if the structure has been flood-proofed in accordance with the requirements of this article, the elevation (in relation to mean sea level) to which the structure has been flood-proofed.

Base flood elevation data shall be obtained from other sources or developed using detailed methodologies comparable to those contained in a FIS for subdivision proposals and other proposed development proposals (including manufactured home parks and subdivisions) that exceed fifty lots or five acres, whichever is the lesser.

4. The **AO Zone** on the FIRM accompanying the FIS shall be those areas of shallow flooding identified as AO on the FIRM. For these areas, the following provisions shall apply [44 CFR 60.3(c)]:

   a. All new construction and substantial improvements of residential structures shall have the lowest floor, including basement, elevated to or above the flood depth specified on the FIRM, above the highest adjacent grade at least as high as the depth number specified in feet on the FIRM. If no flood depth number is specified, the lowest floor, including basement, shall be elevated no less than two feet above the highest adjacent grade.

   b. All new construction and substantial improvements of non-residential structures shall

      1) have the lowest floor, including basement, elevated to or above the

flood depth specified on the FIRM, above the highest adjacent grade at least as high as the depth number specified in feet on the FIRM. If no flood depth number is specified, the lowest floor, including basement, shall be elevated at least two feet above the highest adjacent grade; or,

2) together with attendant utility and sanitary facilities be completely flood-proofed to the specified flood level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

c. Adequate drainage paths around structures on slopes shall be provided to guide floodwaters around and away from proposed structures.

Section 3.2 - Overlay Concept

The Floodplain Districts described above shall be overlays to the existing underlying districts as shown on the Official Zoning Ordinance Map, and as such, the provisions for the floodplain districts shall serve as a supplement to the underlying district provisions.

If there is any conflict between the provisions or requirements of the Floodplain Districts and those of any underlying district, the more restrictive provisions and/or those pertaining to the floodplain districts shall apply.

In the event any provision concerning a Floodplain District is declared inapplicable as a result of any legislative or administrative actions or judicial decision, the basic underlying provisions shall remain applicable.

ARTICLE IV - DISTRICT PROVISIONS [44 CFR 59.22, 60.2, 60.3]

Section 4.1 – Permit and Application Requirements

A. Permit Requirement

All uses, activities, and development occurring within any floodplain district, including placement of manufactured homes, shall be undertaken only upon the issuance of a zoning permit and subsequent building permit by Smyth County. Such development shall be undertaken only in strict compliance with the provisions of this Ordinance and with all other applicable codes and ordinances, as amended, such as the Virginia Uniform Statewide Building Code (VA USBC) and the Town of Chilhowie Subdivision Regulations. 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 and shall review all sites to assure they are reasonably safe from flooding. Under no

circumstances shall any use, activity, and/or development adversely affect the capacity of the channels or floodways of any watercourse, drainage ditch, or any other drainage facility or system.

B. Site Plans and Permit Applications

All applications for development within any floodplain district and all building permits issued for the floodplain shall incorporate the following information:

1. The elevation of the Base Flood at the site.

2. The elevation of the lowest floor (including basement) or, in V zones, the lowest horizontal structural member.

3. For structures to be flood-proofed (non-residential only), the elevation to which the structure will be flood-proofed.

4. Topographic information showing existing and proposed ground elevations.

Section 4.2 - General Standards

The following provisions shall apply to all permits:

A. New construction and substantial improvements shall be according to the VA USBC, 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 flood waters into the system.

G. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.

H. On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

In addition to provisions A – H above, in all special flood hazard areas, the additional provisions shall apply:

I. Prior to any proposed alteration or relocation of any channels or of any watercourse, stream, etc., within this jurisdiction a permit shall be obtained from the U. S. Corps of Engineers, the Virginia Department of Environmental Quality, and the Virginia Marine Resources Commission (a joint permit application is available from any of these organizations). Furthermore, in riverine areas, notification of the proposal shall be given by the applicant to all affected adjacent jurisdictions, the Department of Conservation and Recreation (Division of Dam Safety and Floodplain Management), other required agencies, and the Federal Emergency Management Agency.

J. The flood carrying capacity within an altered or relocated portion of any watercourse shall be maintained.

Section 4.3 - Elevation and Construction Standards [44 CFR 60.3]

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 Section 3.1 A 3, the following provisions shall apply:

A. Residential Construction

New construction or substantial improvement of any residential structure (including manufactured homes) in Zones A1-30, AE, AH and A with detailed base flood elevations shall have the lowest floor, including basement, elevated at least one foot above the base flood level.

B. Non-Residential Construction

New construction or substantial improvement of any commercial, industrial, or non-residential building (or manufactured home) shall have the lowest floor, including basement, elevated at least one foot above the base flood level. Buildings located in all A1-30, AE, and AH zones 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 one foot are water tight 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 subsection are satisfied. Such certification, including the specific elevation (in relation to mean sea level) to which such structures are floodproofed, shall be maintained by (title of community administrator).

C. Space Below the Lowest Floor

In zones A, AE, AH, AO, and A1-A30, 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 only be used 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).

2. be constructed entirely of flood resistant materials below the regulatory flood protection elevation;

3. 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 (1) 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 (1) 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.

    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. 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 Article 4, section 4.2 and section 4.3.

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 requirements for manufactured homes in Article 4.3(D)(1).

Section 4.4 - Standards for Subdivision Proposals

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 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, and

D. 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 fifty lots or five acres, whichever is the lesser.

ARTICLE V – EXISTING STRUCTURES IN FLOODPLAIN AREAS

A structure or use of a structure or premises which lawfully existed before the enactment of these provisions, but which is not in conformity with these provisions, may be continued subject to the following conditions:

A. Existing structures in the Floodway Area shall not be expanded or enlarged

unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the proposed expansion would not result in any increase in the base flood elevation.

B. Any modification, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use located in any floodplain areas to an extent or amount of less than fifty (50) percent of its market value shall conform to the VA USBC.

C. The modification, alteration, repair, reconstruction, or improvement of any kind to a structure and/or use, regardless of its location in a floodplain area to an extent or amount of fifty (50) percent or more of its market value shall be undertaken only in full compliance with this ordinance and shall require the entire structure to conform to the VA USBC.

ARTICLE VI - VARIANCES: FACTORS TO BE CONSIDERED [44 CFR 60.6]

Variances shall be issued only upon (i) a showing of good and sufficient cause, (ii) after the Board of Zoning Appeals has determined that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) after the Board of Zoning Appeals has determined that the granting of such variance will not result in (a) unacceptable or prohibited increases in flood heights, (b) additional threats to public safety, (c) extraordinary public expense; and will not (d) create nuisances, (e) cause fraud or victimization of the public, or (f) conflict with local laws or ordinances.

While the granting of variances 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 variance increases. Variances may be issued by the Board of Zoning Appeals 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.

Variances 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.

In passing upon applications for variances, the Board of Zoning Appeals shall satisfy all relevant factors and procedures specified in other sections of the zoning ordinance and consider the following additional factors:

A. The danger to life and property due to increased flood heights or velocities caused by encroachments. No variance shall be granted for any proposed use, development, or activity within any Floodway District that will cause any increase

in the one hundred (100)-year flood elevation.

B. The danger that materials may be swept on to other lands or downstream to the injury of others.

C. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.

D. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.

E. The importance of the services provided by the proposed facility to the community.

F. The requirements of the facility for a waterfront location.

G. The availability of alternative locations not subject to flooding for the proposed use.

H. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.

I. The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.

J. The safety of access by ordinary and emergency vehicles to the property in time of flood.

K. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.

L. The historic nature of a structure. Variances 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 variance is the minimum necessary to preserve the historic character and design of the structure.

M. Such other factors which are relevant to the purposes of this ordinance.

The Board of Zoning Appeals may refer any application and accompanying documentation pertaining to any request for a variance to any engineer or other qualified person or agency for technical assistance in evaluating the proposed project in relation to flood heights and velocities, and the adequacy of the plans for flood protection and other related matters.

Variances shall be issued only after the Board of Zoning Appeals has determined that the granting of such will not result in (a) unacceptable or prohibited increases in flood

heights, (b) additional threats to public safety, (c) extraordinary public expense; and will not (d) create nuisances, (e) cause fraud or victimization of the public, or (f) conflict with local laws or ordinances.

Variances shall be issued only after the Board of Zoning Appeals has determined that the variance will be the minimum required to provide relief.

The Board of Zoning Appeals shall notify the applicant for a variance, in writing that the issuance of a variance to construct a structure below the one hundred (100)-year flood elevation (a) increases the risks to life and property and (b) will result in increased premium rates for flood insurance.

A record shall be maintained of the above notification as well as all variance actions, including justification for the issuance of the variances. Any variances that are issued shall be noted in the annual or biennial report submitted to the Federal Insurance Administrator.

4.23-13. Permitted uses in the floodway district. The following uses and activities are permitted provided that they are in compliance with the provisions of the underlying area and are not prohibited by any other ordinance and provided that they do not require structures, fill, or storage of materials and equipment:

A. Agricultural uses, such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, truck farming, forestry, sod farming, and wild crop harvesting.

B. Public and private recreational uses and activities, such as parks, day camps, picnic grounds, golf courses, boat launching and swimming areas, horseback riding and hiking trails, wildlife and nature preserves, game farms, fish hatcheries, trap and skeet game ranges, and hunting and fishing areas.

C. Accessory residential uses, such as yard areas, gardens, play areas, and previous loading areas.

D. Accessory industrial and commercial uses, such as yard areas, previous parking and loading areas, airport landing strips, etc.

GLOSSARY [44 CFR 59.1]

A. Appurtenant or accessory structure - Accessory structures not to exceed 200 sq. ft.

B. Base flood - The flood having a one percent chance of being equaled or exceeded in any given year.

C. Base flood elevation - The Federal Emergency Management Agency designated one percent annual chance water surface elevation and the elevation determined per Section 4.6. The water surface elevation of the base flood in relation to the datum specified on the community's Flood Insurance Rate Map. For the purposes of this ordinance, the base flood is one hundred (100) year flood or 1% annual chance flood.

D. Basement - Any area of the building having its floor sub-grade (below ground level) on all sides.

E. Board of Zoning Appeals - The board appointed to review appeals made by individuals with regard to decisions of the Zoning Administrator in the interpretation of this ordinance.

F. Development - Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

G. Elevated building - A non-basement building built to have the lowest floor elevated above the ground level by means of solid foundation perimeter walls, pilings, or columns (posts and piers).

H. Encroachment - The advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

I. Existing construction - structures for which the "start of construction" commenced before the effective date of the initial FIRM. "Existing construction" may also be referred to as "existing structures."

J. Flood or flooding -
   1. A general or temporary condition of partial or complete inundation of normally dry land areas from
      a. the overflow of inland or tidal waters; or,
      b. the unusual and rapid accumulation or runoff of surface waters from any source.

c. mudflows which are proximately caused by flooding as defined in paragraph (1)(b) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

2. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph 1 (a) of this definition.

K. 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. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

L. Flood Insurance Study (FIS) – a report by FEMA 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.

M. Floodplain or flood-prone area - Any land area susceptible to being inundated by water from any source.

N. Flood proofing - any combination of structural and non-structural 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.

O. 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.

P. Freeboard - A factor of safety usually expressed in feet above a flood level for purposes of floodplain management. "Freeboard" tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization in the watershed.

Q. Highest adjacent grade - the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

R. Historic structure - Any structure that is

1. listed individually in the National Register of Historic Places (a listing maintained by the Department of 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 which have been approved by the Secretary of the Interior; or,

4. individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either

    a. by an approved state program as determined by the Secretary of the Interior; or,

    b. directly by the Secretary of the Interior in states without approved programs.

S. Hydrologic and Hydraulic Engineering Analysis – Analyses performed by a *licensed* professional engineer, in accordance with standard engineering practices that are accepted by the Virginia Department of Conservation and Recreation and FEMA, used to determine the *base flood*, other frequency floods, *flood* elevations, *floodway* information and boundaries, and *flood* profiles.

T. Letters of Map Change (LOMC) - A Letter of Map Change is an official FEMA determination, by letter, that amends or revises an effective *Flood Insurance Rate Map* or *Flood Insurance Study*. Letters of Map Change include:

Letter of Map Amendment (LOMA): An amendment based on technical data showing that a property was incorrectly included in a designated *special flood hazard area*. A LOMA amends the current effective *Flood Insurance Rate Map* and establishes that a Land as defined by meets and bounds or *structure* is not located in a *special flood hazard area*.

Letter of Map Revision (LOMR): A revision based on technical data that may show

changes to *flood zones*, *flood* elevations, *floodplain* and *floodway* delineations, and planimetric features. A Letter of Map Revision Based on Fill (LOMR-F), is a determination that a *structure* or parcel of land has been elevated by fill above the *base flood elevation* and is, therefore, no longer exposed to *flooding* associated with the *base flood*. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the *community*'s floodplain management regulations.

Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed *flood* protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of *special flood hazard areas*. A CLOMR does not revise the effective *Flood Insurance Rate Map* or *Flood Insurance Study*.

U. 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 other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of Federal Code 44CFR §60.3.

V. 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, but does not include a recreational vehicle.

W. Manufactured home park or subdivision - a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

X. New construction - For the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after June 15, 1978, and includes any subsequent improvements to such structures. For floodplain management purposes, *new construction* means structures for which the *start of construction* commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

Y. Post-FIRM structures - A structure for which construction or substantial

improvement occurred after June 15, 1978.

Z. Pre-FIRM structures - A structure for which construction or substantial improvement occurred on or before June 15, 1978.

AA. Recreational vehicle - A vehicle which is

1. built on a single chassis;

2. 400 square feet or less when measured at the largest horizontal projection;

3. designed to be self-propelled or permanently towable by a light duty truck; and,

4. designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use.

BB. Repetitive Loss Structure – A building covered by a contract for flood insurance that has incurred flood-related damages on two occasions during a 10-year period ending on the date of the event for which a second claim is made, in which the cost of repairing the flood damage, on the average, equaled or exceeded 25 percent of the market value of the building at the time of each flood event.

CC. Shallow flooding area – A special flood hazard area with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

DD. Special flood hazard area - The land in the floodplain subject to a one (1%) percent or greater chance of being flooded in any given year as determined in Article 3, Section 3.2 of this ordinance.

EE. Start of construction - For other than new construction and substantial improvement, under the Coastal Barriers Resource Act (P.L. – 97-348), means 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.

FF. Structure - for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home.

GG. 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 percent of the market value of the structure before the damage occurred.

HH. Substantial improvement - Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the *start of construction* of the improvement. This term includes structures which 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 which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or

2. any alteration of a *historic structure*, provided that the alteration will not preclude the structure's continued designation as a *historic structure*.

3. Historic structures undergoing repair or rehabilitation that would constitute a substantial improvement as defined above, must comply with all ordinance requirements that do not preclude the structure's continued designation as a historic structure. Documentation that a specific ordinance requirement will cause removal of the structure from the National Register of Historic Places or the State Inventory of Historic places must be obtained from the Secretary of the Interior or the State Historic Preservation Officer. Any exemption from ordinance requirements will be the minimum necessary to preserve the historic character and design of the structure.

II. Violation - the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Section 3.7 B11, Section 4.3 B, Section 4.4 A, Section 4.5, and section 4.8 is presumed to be in violation until such time as that documentation is provided.

JJ. Watercourse - A lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes

specifically designated areas in which substantial flood damage may occur.

ARTICLE VII - ENACTMENT

ENACTED AND ORDAINED THIS 12th DAY OF JULY, 2012. This ordinance shall become effective upon passage.

Readopted 9th day of August, 2012.

_____
Mayor

_____
Attested

ARTICLE V. ADMINISTRATION OF ZONING ORDINANCE*

5.1. Creation and authorization of the office of zoning administrator.

The office of zoning administrator is hereby established to administer and enforce this ordinance. The zoning administrator shall be designated by the town council and may be provided with the assistance of other persons at the direction of the town council.

5.2. Duties of zoning administrator on issuance of permits.

The zoning administrator shall be responsible for the administration and enforcement of this ordinance and shall have all necessary authority on behalf of the town council to carry out the following duties:

5.2-1. Issuance of permits. The zoning administrator shall be responsible for the issuance of zoning and certificate of zoning compliance permits. The zoning administrator shall review each application for a zoning permit and may require any other information which he may deem necessary for the consideration of the application.

5.2-2. Zoning permits required. No building or other structure shall be erected, moved, added to or structurally altered or any land used, or occupied, without a zoning permit issued by the office of the zoning administrator.

5.2-3. Permits not to be issued. No zoning permit shall be issued for any land use, building, structure, or part thereof which is not in accordance with the provisions of this ordinance. Any permit issued in violation of this ordinance shall be void and of no effect.

5.2-4. Certificate of zoning compliance. A certificate of zoning shall be issued as follows:

(a) *New construction*. A certificate of zoning compliance shall be issued within five working days after construction has been completed. The premises are to be inspected and certified by the office of the zoning administrator to be in conformity with the plans and specifications upon which the zoning permit were [was] based. A certificate of zoning compliance issued in violation of this ordinance shall be void and of no effect. No permit for excavation or construction shall be issued by the zoning administrator before he is satisfied that the plans, specifications and intended use conform to the provisions of this ordinance;

(b) *Existing conforming uses or buildings*. Upon written request from the owner, the zoning administrator shall issue a certificate of zoning compliance for any building or premises existing at the time of the effective date of this ordinance certifying, after inspection, the extent and kind of use made of the building or premises, including the number of employees, and whether such use conforms with the provisions of this ordinance; and

(c) *Existing nonconforming uses or buildings*. A certificate of zoning compliance for all nonconforming industrial and commercial uses shall be applied for by the tenant, owner or agent of the property occupied by such nonconforming use within twelve months from the effective date of this ordinance. It shall be the duty of the zoning administrator to give public notice in a local newspaper to this effect four times within 60 days of the adoption of this ordinance. Upon expiration of the said 12 months, failure to produce a certificate of zoning compliance for any such nonconforming use shall give rise to the rebuttable presumption that such nonconforming use was not lawful on the effective date of this ordinance. From and after the effective date of this ordinance, the provisions of this section shall apply to any lawful use thereafter made to be a nonconforming use by amendment of this ordinance, except that the only public notice required in connection therewith is that required by law prior to such amendment.

5.2-5. Plans required for zoning permits--Procedures for approval or disapproval. Each application for a zoning permit shall be accompanied by three copies of a plan drawn to scale showing the shape and dimensions of the plot to be built upon, the structures, and accessory buildings then existing, and the dimensions and location of all proposed buildings' or structures' alterations or additions, the existing and intended uses of the land and of each building or part of a building, and the number of families or housekeeping units (where applicable) the building is designed to accommodate. Any other information that the administrator may deem necessary for consideration of the application may be required.

(a) If the proposed building or use is found to conform to the provisions of this ordinance, the administrator shall issue a zoning permit to the applicant. One copy of the approved plans shall be issued to the applicant. One copy shall be forwarded or taken to the building inspector for his files. One copy shall be retained in the administrator's files.

(b) If the proposed building or use is not in compliance, the administrator shall disapprove of the permit and advise in writing the applicant as to what measures could be taken to bring about compliance through a change in the plans. An applicant shall also have right of appeal as permitted.

5.2-6. Application forms. The zoning administrator shall provide application forms and instructions for the applicant which clearly facilitate timely review of the application. No permit shall be issued without street address, route number, approximate location, tax parcel number and legal description of the subject property.

(a) Information shall be submitted, showing the following: boundary survey; existing topography with contours at five-foot intervals; existing and proposed structures; significant natural features, including wooded areas and large trees; existing and proposed roads, driveways, walkways and utilities; and landscaping proposed.

(b) The site plan shall be accompanied by plans and/or written description explaining methods proposed for water supply, sewage disposal, storm water drainage, and prevention of erosion.

(c) The administrator may accept owner prepared sketch for plans of single-family construction.

5.3. Duties of administrator on zone amendments, zone changes, conditional uses and variances and appeals.

5.3-1. Applications and fees. The zoning administrator shall be responsible for receiving each application for a zoning amendment, zone change to the zoning map, conditional use, variance or appeal. The application shall not be processed until the required fee has been paid. No application for a zoning amendment, e.g., a change in use, or an application for a zoning change, i.e., district, will be received or accepted with regard to the same request within a one-year period.

The fees for the above shall be based upon reasonable costs to pay for the expenses involved. The fees shall be as follows:
TABLE INSET:

(a)	Zone change or amendment.....	$250.00 plus cost of publication.
(b)	Conditional use.....	$250.00 plus cost of publication.
(c)	Variance.....	$250.00 plus cost of publication.
(d)	Appeal to board of zoning appeals.....	$250.00 plus cost of publication.
(e)	Zoning Application……	$ 30.00 **Adopted June 17, 2008**

The fee may be waived for any governmental agency.
Adopted June 17, 2008.

5.3-2. Procedure. The zoning administrator shall, after consultation with the planning commission chairman or mayor, advertise the application for hearing as required by the Code of Virginia, 1950, as amended. The zoning administrator shall be responsible for mailing notice to affected property owners one week prior to the hearing. Addresses in the commissioner of revenue's office shall constitute valid addresses. Requests for a zone change shall be reviewed in conformance with the town's comprehensive plan.
State law reference(s)--Public hearings, notice, Code of Virginia, § 15.2-2204.

5.4. Duties of administrator regarding enforcement and remedies.

5.4-1. Complaints regarding violations. Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint. The complaint shall state fully the causes and basis of such complaint and shall be filed with the zoning administrator. The zoning administrator shall properly record the complaint, immediately investigate and take such action as provided for in this ordinance. The town attorney shall be immediately advised of all violations of this ordinance. The town attorney shall report

to the council any violations not abated through orders issued by the zoning administrator.

5.4-2. Penalties for violation. Violations of the provisions of this ordinance or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variances or conditional uses) following official notification shall constitute a misdemeanor and may be punished by a fine of not less than $10.00 nor more than $1,000.00. Each day such violation exists may be deemed a separate offense.

The owner or tenant of any building, structure or premises and any architect, builder, contractor, agent or other person who commits, participates in, assists in or maintains such violation may be punished as heretofore provided.

5.4-3. Remedies. Upon finding that any provision of this ordinance is being violated, the zoning administrator shall notify in writing by certified mail the person responsible for such violation and order the discontinuance of illegal buildings, structures, illegal additions, alterations or structural changes; and the discontinuance of any illegal work being done.

Should such notice fail to force compliance within 30 days, the zoning administrator shall request that the town council authorize the town attorney [to] bring legal action to insure compliance with the ordinance, including injunction, abatement or other appropriate action or proceeding.

In case any building or structure is proposed to be erected, constructed, reconstructed, altered, extended or converted, or any building, other structure or land is or is proposed to be used in violation of this ordinance, the zoning administrator or other appropriate authority of the town government or neighboring property owner who would be especially damaged by such violation may, in addition to other remedies, institute an injunction, mandamus or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, extension, conversion or use, to correct or abate such violation, or to prevent the occupancy of such building or other structure or land.

5.4-4. Appeal. An appeal of the zoning administrator decisions may be filed within 15 days by filing a letter with the zoning administrator. Appeals shall go to the board of zoning appeals.

5.5. Conditional use provisions.

Certain uses of land and buildings, designated in article III, district regulations, as conditional uses, may be permitted in one or more of the various districts only after individual consideration and reconsideration by the planning commission, followed by approval by the town council.

Such conditional uses are deemed to be generally appropriate to the district or districts to which they are assigned under this ordinance, and reasonably harmonious with the uses permitted in said districts as a matter of right, provided that the location and design of the site in each case is determined by the planning commission to be in accord with standards herein set forth.

It is the intent of this section that the designation of certain uses as conditional for certain districts, and the procedures set forth for the review and approval or disapproval of such uses, be administered so as to further the purposes of this ordinance and facilitate the creation of a convenient, attractive and harmonious community.

5.5-1. Procedures for review and approval of conditional uses. Any person desiring to use any land or building in a manner classed by this ordinance as a conditional use for the district in which said land is located shall make application to the zoning administrator for a conditional use permit, and shall submit supporting maps and other documents as required by sections 5.5-2 and 5.2-6.

5.5-2. Public hearing and report to council. The zoning administrator shall forward the application to the planning commission, which shall hold a public hearing thereon in accordance with Code of Virginia, § 15.1-431, as amended. After receiving a report and recommendation from [the] zoning administrator, the planning commission shall either approve or disapprove the application for a conditional use permit. The planning commission shall authorize the granting of the permit if it determines the proposed development is in full compliance with the standards set forth in section 5.5-3 and shall record its finding concerning such compliance. Upon approval by the planning commission, a report shall be made to the next town council meeting. The decision of the commission shall be final unless the town council motions to amend or override the commission decision.

Editor's note--The provisions formerly contained in Code of Virginia, § 15.1-431, are now contained in Code of Virginia, § 15.2-2204.

The commission or town council may impose such other conditions and restrictions as may be necessary to reduce or minimize the injurious effect of the conditional use and insure compatibility with surrounding property. The commission or town council may establish expiration dates for the expiration of any conditional use permit as a condition of approval.

5.5-3. General requirements. A conditional use permit may be granted provided the planning commission finds that the proposed conditional use:

(a) Is designed, located and operated so as the public health, safety and welfare will be protected;

(b) Will not adversely affect other property in the area in which it is located;

(c) Is within the provision of conditional uses as set forth in this ordinance;

(d) Conforms to all applicable provisions of this ordinance for the district in which it is to be located and is necessary for public convenience in that location;

(e) The proposed use must have direct access on a public road which can safely and adequately handle the automobile and truck traffic generated;

(f) Satisfactory storm drainage can be provided, and there must be adequate safeguards to prevent soil erosion on the site and erosion and sedimentation on neighboring downhill and downstream properties during and after development;

(g) There is a satisfactory plan and methods for sewage disposal. No effluent shall be discharged into any stream prior to having at least secondary treatment;

(h) There is suitable provision for the protection of privacy on adjoining property which is now in residential use or which may develop in residential use under the provisions of this ordinance. In this section, "protection of privacy" shall mean effective screening against both visual intrusion and noise;

(i) In the case of manufacturing, there shall not be discernible at any property line of the tract on which the use is located any dust, smoke, odor, noise, or glare that results from the operation of the manufacturing use; and

(j) In the case of quarry and mining operations, where permitted as a conditional use, there must be a satisfactory plan for reclamation of the land and restoration of the natural landscape.

5.5-4. Conditions. In authorizing a permit for any conditional use provided for in this ordinance, the planning commission, after report and recommendation by the zoning administrator, may impose specific conditions on the development and use of land as necessary to assure compliance with the standards set forth in section 5.5-3. Such conditions may include, but are not limited to: dimensional requirements for front, side, and rear yards greater than those specified elsewhere in this ordinance; screening by planting or fences or other devices, landscaping for appearance; dedication of land for street purposes; construction of turning lanes on public roads; prohibition and/or regulation of signs; requirement of additional parking spaces and limiting hours of operation.

ARTICLE VI. BOARD OF ZONING APPEALS AND ADMINISTRATION OF VARIANCES

6.1. Creation, membership and appointment of the board.

The board of zoning appeals is hereby established which may be referred to in this ordinance as the "board" or "board of zoning appeals." The board shall have jurisdiction within the corporate limits of the Town of Chilhowie, and it shall consist of five residents

of the town, appointed by the circuit court of the county. Members may be reappointed to succeed themselves. Members of the board shall hold no other public office in the town except that one may be a member of the planning commission.

6.1-1. Terms of office of board members, vacancies, removals. The members of the board shall serve for a five-year terms, except that original appointments shall be made for such terms that the term of one member shall expire each year. The secretary of the board shall notify the court at least 30 days in advance of the expiration of any term of office, and shall also notify the court promptly if any vacancy occurs. Appointments to fill vacancies shall be only for the expired portion of the term. A member whose term expires shall continue to serve until his successor is appointed and qualifies. Any board member may be removed for malfeasance, misfeasance or nonfeasance in office, or for other just cause, by the court which appointed him, after a hearing held after at least 15 days' notice.

6.1-2. Staff of board and compensation of board members. Within the limits of funds appropriated by the town council, the board may employ or contact for secretaries, clerks, legal counsel, consultants and other technical and clerical services. Members of the board may receive such compensation as may be authorized by the town council.

6.1-3. Powers of the board. The board is hereby vested with the powers to:

(a) Hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in carrying out the administration or enforcement of the ordinance;

(b) Hear and act upon application for variances in accordance with this article to alleviate hardships by virtue of the inability of the landowner to comply strictly with the provisions of this ordinance by reason of unique shape, topography or physical features of the lot;

(c) Hear and decide appeals from the decision of the zoning administrator;

(d) Hear and decide applications for interpretation of the district map where there is any uncertainty as to the location of a district boundary;

(e) Hear and decide appeals from the decision of the planning commission or town council concerning conditional use permits and special exceptions;

(f) Hear and decide all other matters referred to it on which it is required to act under this ordinance; and

(g) Within its budget appropriation and other funds at its disposal, enter into contracts for such services as it may require.

6.1-4. Election of officers. The board shall elect from its members its own chairman, vice-chairman and secretary who shall serve for one year and may, upon election, serve succeeding terms.

6.1-5. Stay of proceedings. An appeal shall stay all proceedings related to the action appealed from, unless the zoning administrator certifies to the board, after such notice of appeal shall have been filed, that by reason of facts stated in the certificate such stay would cause imminent threat to life or property. In such instance the proceedings shall not be stayed otherwise than by a restraining order, which may be granted by the board or by a court of record on application and on notice to the zoning administrator and for good cause shown.

6.1-6. Rules and proceedings of the board. The board shall also adopt rules for the conduct of its meetings. Such rules shall, at the minimum, require that:

(a) The presence of a majority of all members of the board shall constitute a quorum;

(b) No action shall be taken by the board on any case until after a public hearing and notice thereof shall be published and mailed in accordance with Code of Virginia, § 15.1-431, as amended;

Editor's note--The provisions formerly contained in Code of Virginia, § 15.1-431, are now contained in Code of Virginia, § 15.2-2204.

(c) Appeals to the board shall be taken within 15 days after the decision appealed from by filing with the zoning administrator and with the board, a notice of appeal specifying the grounds of the appeal. The zoning administrator shall then transmit to the board all the papers constituting the record upon which the action was taken;

(d) The board shall fix a reasonable time for hearing the application or appeal, give public notice thereof as well as notify interested parties and decide the same within 60 days;

(e) The board may reverse or affirm, wholly or partly, or may modify an order, requirement, decision or determination appealed from. The concurring vote of three members shall be necessary to reverse any order, requirement, decision or determination of any administrative officer or to decide in favor of the applicant on any matter upon which it is required to pass under the ordinance or to effect any variance form [from] the ordinance;

(f) The board shall keep minutes of its proceedings and other official actions which shall be filed in the office of the town clerk and shall be public records. The chairman of the board, or in his absence, the vice-chairman, may administer oaths and compel the attendance of witnesses;

(g) The board may call upon any other office or agency of the Town of Chilhowie for information in the performance of its duties, and it shall be the duty of such other agencies to render the information to the board as may be reasonably required;

(h) Any office, agency or department of the Town of Chilhowie or other aggrieved party may appeal any decision of the board to the circuit court of Grayson County as provided for in Code of Virginia, § 15.1-497, as amended;

Editor's note--The provisions formerly contained in Code of Virginia, § 15.1-497, are now contained in Code of Virginia, § 15.2-2314.

(i) In decisions or variance, the board shall indicate the specific section of this ordinance under which the variance is being considered, and shall state its findings beyond such generalities as "in the interest of public health, safety and general welfare." The board shall state clearly the specific conditions imposed in granting the variance. For variance cases pertaining to hardship, the board shall specifically identify the hardship warranting such action by the board;

(j) At the public hearing of the case before the board, the appellant shall appear in his own behalf or be represented by counsel or agent. The appellant's side of the case shall be heard first and those in objection shall follow. To maintain orderly procedure, each side shall proceed without interruption from the other; and

(k) The Chilhowie planning commission shall be permitted to submit an advisory opinion on any matter before the board, and such opinion shall be made part of the record of the public hearing.

State law reference(s)--Board of zoning appeals, Code of Virginia, § 15.2-2308.

6.2. Variance.

6.2-1. Application for zoning variance. The application for a zoning variance may be made by any property owner, agent, or legal counsel of the owner, government official, department, board or bureau. The application shall be made to the zoning administrator in accordance with rules adopted by the board. The application and accompanying maps, plans, or other information shall be transmitted promptly to the board.

6.2-2. Notice to affected property owners. Notice to affected property owners and public agencies including the Chilhowie planning commission and town council shall be given in accordance with notice and hearing procedures of Code of Virginia, § 15.1-431, as amended.

Editor's note--The provisions formerly contained in Code of Virginia, § 15.1-431, are now contained in Code of Virginia, § 15.2-2204.

6.2-3. Standards for variances. The board shall not grant a variance unless it finds:

(a) That the property owner acquired the property in good faith, and that by reason of exceptional narrowness, shallowness, size or shape, or exceptional topographic conditions of the property, or of the use or development of property immediately

adjacent to it, the strict application of the terms of this ordinance would effectively prohibit or unreasonably restrict the use of the property;

(b) That the strict application of the ordinance would product [produce] undue hardship;

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

(d) That the board is satisfied, upon the evidence heard by it, that the granting of such variance will alleviate a demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant;

(e) That 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;

(f) That the condition or situation of the property concerned or the intended use of the property 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 the ordinance;

(g) That the variance shall be in harmony with the intended spirit and purpose of this ordinance;

(h) That financial concerns shall not be sole consideration as a basis for granting a variance; and

(i) That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures or buildings in the same district.

6.2-4. Nonconforming does not constitute grounds for granting a variance. No permitted or nonconforming use of neighboring lands, structures or buildings in the same district or in other districts shall be considered grounds for the issuance of a variance.

6.2-5. Prohibition of use variances. Under no circumstances shall the board of zoning appeals grant a variance to allow a use not permitted under the terms of this ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this ordinance in said district.

6.2-6. Conditions and restrictions by the board. The board may impose such conditions and restrictions upon the premises benefitted by a variance as may be necessary to comply with the provisions set out in section 6.2-3 to reduce or minimize the injurious effect of such variance upon surrounding property and to better carry out the general intent of this ordinance. The board may establish expiration dates as a condition or as a

part of the variance. The board may require a guarantee or bond to insure that the conditions imposed are being and will continue to be complied with.

6.3. Variance appeals.

Any person, including any agency of the town government, aggrieved by a decision of the board on a variance may appeal any decision of the board to the circuit court of the county as provided for in Code of Virginia, § 15.1-497, as amended.

Editor's note--The provisions formerly contained in Code of Virginia, § 15.1-497, are now contained in Code of Virginia, § 15.2-2314.

ARTICLE VII. DEFINITIONS

7.1. General provisions.

The following definitions shall apply for the interpretation of this ordinance. The dictionary definition will apply to all words not defined in this article.

7.2. Accessory.

An activity or structure that is customarily associated with and is appropriately incidental and subordinate to an existing established principal activity and/or structure and located on the same lot, except as provided for under the provisions of accessory off-street parking. Accessory uses are limited to side and back yards only.

7.3. Alley.

A public way intended to provide only secondary vehicular access to abutting properties.

7.4. Automobile graveyard.

Any lot or place which is exposed to the weather upon which more than five unlicensed motor vehicles of any kind, incapable of being operated, are placed.

7.5. Automotive service.

Establishments with the primary purpose of cleaning or repairing motor vehicles.

7.6. Basement or cellar.

The bottom floor of a building which is more than 12 inches, but not more than one-half of its height below average level of the adjoining ground (as distinguished from a "cellar" which is more than one-half below such level).

7.7. Boardinghouse.

A house where lodging is provided for compensation on either a weekly or monthly basis which may or may not include sleeping rooms, meals, and bath facilities.

7.8. Building.

A structure, either temporary or permanent, having a roof or other covering, and designed or used for the shelter or enclosure of any person, animal or property of any kind, including tents, awnings or vehicles situated on private property and used for purposes of a building.

7.9. Building height.

The vertical distance from the highest point on a structure excepting any chimney or antenna on a building, to the average ground level of the grade where the walls or other structural elements intersect the ground.

7.10. Bulk.

Describes the size of buildings or other structures, and their relationship to each other, to open areas and to lot lines, therefore including:

(1) The size (including height and floor area) of buildings or other structures, and which may be expressed as percent of lot coverage;

(2) The area of the lot upon which a residential building is located, and the number of dwelling units within each building in relation to the area of the lot;

(3) The location of exterior walls of buildings or other structures in relation to lot lines, to other walls of the same building, or to other structures; and

(4) All open areas relating to buildings or other structures and their relationship thereto.

7.11. Clinic.

An establishment where persons are given medical, dental, or surgical treatment by one but not more than four physicians or dentists with no patients lodged overnight.

7.12. Community education.

Structure or location where knowledge is taught.

7.13. Conditional use or special permit.

A conditional use is a use that would not be appropriate generally or without restriction throughout the district but which, if controlled as to number, area, location or relation to the neighborhood, would promote the public health, safety, welfare, morals, order, comfort, convenience, appearance, prosperity or general welfare.

7.14. Construction sales and service.

Any establishment involved in the sale of materials for the erection of structures.

7.15. Convenience sales and services.

Any neighborhood retail establishment which caters to the everyday needs of the adjoining residential areas such as small country stores offering a variety of goods or services not to exceed 2,500 square feet in floor area.

7.15(a) Daycare

A place, program or organization that takes care of children during the day usually while their family members are at work with all necessary state, federal, and local licenses and approvals. **Adopted September 11, 2014**

7.16. Development.

Any manmade change to improved or unimproved real estate including, but not limited to, buildings or other structures, the placement of mobile homes, streets, and other paving, utilities, filling, grading, excavation, mining, dredging, or drilling operations. (Ord. of 11-10-88)

[7.16.1.] Dwelling, 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. For insurance purposes, the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles. (Ord. of 11-10-88)

7.17. Dwelling, mobile home (singlewide and doublewide).

A detached single-family dwelling or commercial unit with a permanent steel chassis possessing all of the following characteristics:

(1) Designed for longterm occupancy and containing a flush toilet, with plumbing and electrical connections provided for attachment to outside systems.

(2) Designed to be transported after fabrication on its own wheels.

(3) Having a U.S. Department of Housing inspection seal or code.

(4) Arriving at the site where it is to be occupied as a complete unit ready for occupancy except for minor and incidental unpacking and assembly operations, location of foundation supports, connections to utilities and the like.

7.18. Dwelling, modular home.

A single-family dwelling unit that is constructed basically as a conventionally built wood frame house except it is built at a factory and is transported to the site on which it will be permanently located. The modular home may not have a permanent steel chassis and may have either a HUD or [BOCA] Basic Building Code seal.

7.19. Dwelling, multifamily.

A building containing three or more dwelling units. The term includes cooperative apartments, condominiums and the like.

7.20. Dwelling, other.

A dwelling unit located within a structure in which the principal activity is a commercial, professional, or general personal service activity.

7.21. Dwelling, single-family detached.

A single-family dwelling entirely separated from structures on adjacent lots.

7.22. Dwelling, two-family or duplex.

A detached residential building containing two dwelling units, designed for occupancy by not more than two families.

7.23. Dwelling unit.

A room or rooms connected together, constituting a separate independent housekeeping establishment for one family only, for owner occupancy or for rental, lease or other occupancy on a weekly or longer basis, physically separated from any other rooms or dwelling units, and containing independent cooking and sleeping and bathing facilities.

7.24. Family.

An individual or a group of two or more persons related by blood, marriage or adoption, together with not more than three additional persons not related by blood, marriage or adoption, living together as a single housekeeping unit.

7.25. Flood.

A general and temporary inundation of normally dry land areas.
(Ord. of 11-10-88)

7.26. Floodway.

The area within a floodplain which is necessary for the passage of floodwaters in which no structure may be built.

7.27. Floodplain.

(1) A relatively flat or low land area adjoining a river, stream, or watercourse which is subject to partial or complete inundation;

(2) An area subject to the unusual and rapid accumulation or runoff of surface waters from any source.
(Ord. of 11-10-88)

7.28. Floor area.

The total of the gross areas of all floors, including usable basements and cellars, below the roof and within the outer surface of the main walls of principal or accessory buildings or the centerlines of party walls separating such buildings or portions thereof, but excluding the following:

(1) Areas used for off-street parking spaces or loading berths, driveways and maneuvering aisles relating thereto required in this ordinance.

(2) In the case of nonresidential facilities: arcades, porticos, and similar open areas which are located at or near street level, which areas [are] accessible to the general public, and which are not designed or used as sales, display, storage, service or production areas.

7.29. General personal service.

Any establishment not involved in the transaction of goods which caters to the needs of individuals (not including massage parlors).

7.30. Home occupation.

An occupation conducted in a dwelling unit, provided that only the [one] person other than members of the family residing on the premises shall be engaged in such occupation.

Occupations may be office used by medical, dental, legal, engineering, architectural, or similar office where clients do not normally visit the home.

7.31. Hospital.

An institution rendering medical, surgical, obstetrical or convalescent care, including nursing homes, homes for the aged and sanatoriums.

7.32. Incidental alterations.

(1) Changes or replacements in the nonstructural parts of a building or other structure without limitation to the following examples:

(a) Alteration of interior partitions to improve livability in a nonconforming residential building, provided that no additional dwelling units are created;

(b) A minor addition to the exterior of a residential building, such as an open porch;

(c) Alterations of interior nonloadbearing partitions in all other types of buildings or other structures;

(d) Replacement of, or minor changes in, capacity of utility pipes, ducts, or conduits.

(2) Changes or replacements in the structural parts of a building or other structure, limited to the following examples or others of similar character or extent:

(a) Making windows or doors in exterior walls;

(b) Replacement of building facades having nonloadbearing capacity; and

(c) Strengthening the floor loadbearing capacity, in not more than ten percent of the total floor area, to permit the accommodation of specialized machinery or equipment.

7.33. Junkyard.

The use of any area of land for the location for the storage, keeping or abandonment of junk including scrap metals or other scrap materials. This term includes the term "automobile graveyard."

7.34. Kennel.

A place prepared to house, board, breed, handle, or otherwise keep or care for dogs, cats, or other small animals for sale or in return for compensation.

7.35. Landscaping.

The planting and maintenance of trees, shrubs, lawns and other ground cover or materials, provided that terraces, fountains, retaining walls, street furniture, sculptures, or other objects and similar accessory features may be included as landscaping if integrally designed.

7.36. Library.

A building primarily used to store, and allow access to books, films, maps and other educational material.

7.37. Lot.

A parcel of land of at least sufficient size to meet minimum zoning requirements for use, coverage and area, and to provide such years [yards] and other spaces as required by this ordinance. A lot shall have frontage on an approved public street and shall either be shown on a plat of record or be considered as a unit property described by metes and bounds.

7.38. Lot area.

The entire area of a lot.

7.39. Lot frontage.

The front of a lot shall be the portion nearest the street. For the purposes of determining yard requirements on corner lots and through lots, all sides of a lot adjacent to streets shall be considered frontage, and yards shall be provided as indicated in this ordinance.

7.40. Lot line.

A line marking the boundary of a lot.

7.41. Lot measures.

(1) Lot depth shall be the average horizontal distance between the front and rear lot lines.
(2) Lot width shall be the average horizontal distance between side lot lines.

7.42. Lot of record.

A lot which is part of a subdivision recorded in the clerk's office of the circuit court, or a lot whose existence, location and dimensions have been legally recorded or registered in a deed prior to the enactment of this ordinance.

7.43. Manufacturing.

The following list is a general list and is not meant to be all inclusive. Other activities may be classified as manufacturing upon approval of the planning commission.

[1] Assembly of electrical appliances, electronic instruments and devices, radios and phonographs. Also the manufacture of small parts, such as coils, condensers, transformers and crystal holders.

[2] Automobile assembling, painting, upholstering, repairing, rebuilding, reconditioning, body and fender work, truck repairing or overhauling.

[3] Blacksmith shop, welding or machine shop, excluding punch presses exceeding 40-ton-rated capacity and drop hammers.

[4] Laboratories, pharmaceutical or medical.

[5] Manufacture, compounding, processing, packaging or treatment of such products as bakery goods, candy, cosmetics, dairy products, drugs, perfumes, pharmaceuticals, perfumed toilet soap, toiletries and food products.

[6] Manufacture, compounding, assembling or treatment of merchandise from the following previously prepared materials: bone, cellophane, canvas, cloth, cork, feathers, felt, fiber, fur, glass, hair, horn, leather, metal, paper, plastic, precious or semiprecious metals or stones, rubber, shell, straw, textiles, wood, yarn and paint.

[7] Manufacture of pottery and figurines or other similar ceramic products, using only previously pulverized clay, and kilns fired by electricity or gas, or other environmentally safe energy.

[8] Manufacture of cabinets, furniture and upholstery shops.

[9] Boat building.

[10] Monumental stone works.

[11] Truck terminals.

[12] Public utility generating, booster or relay stations, transformer substations, transmission lines and towers, and other facilities for the provisions and maintenance of public utilities, including railroads and facilities, and water and sewerage installations.

7.44. Mobile home.

(See Dwelling, mobile home.)

7.45. Mobile home park.

An area where ten or more mobile homes or trailers can be and are intended to be parked, designed or intended to be used as temporary or permanent living facilities for two or more families.

7.46. Mobile home space.

A plot of ground within a mobile home park, designed to accommodate one mobile home, and which has water, sewer and electricity available at the space.

7.47. Mobile home stand.

That part of an individual mobile home space which has been reserved for the placement of the mobile home.

7.48. Motel, motor hotel, motor lodge.

Shall mean the same as Transient lodgings.

7.49. Nonconforming.

(1) Any lawful building or other structure which does not comply with any one or more of the applicable bulk regulations; or

(2) Any lawful use which does not comply with any part or any one or more of the applicable regulations pertaining to: 1) principal permitted, conditional or accessory uses permitted in the district in which use is located; 2) signs, regulations; or 3) accessory off-street parking and loading requirements;
either on the effective date of this ordinance or as a result of any subsequent amendment.

[7.49.1.] 100-year flood (base flood).
A flood that, on the average, is likely to occur once every 100 years (i.e., that has one percent chance of occurring each year, although the flood may occur in any year).
(Ord. of 11-10-88)

7.50. Place of worship.

Structure or location where services or rites are held showing reverence for a deity.

7.51. Principal activity.

An activity which fulfills a primary function of an establishment, institution, household or other entity.

7.52. Principal building.

A building which contains the principal activity or use.

7.53. Private recreation facility.

Swimming pools, tennis courts, and other outdoor recreation facilities for use primarily by the lot owner.

7.54. Profession (professional office).

The term "profession" is limited to physicians and surgeons, lawyers, members of the clergy, architects, engineers, or other persons holding advanced degrees. The term is not intended to include insurance agents, insurance adjusters, realtors, photo studios, beauty parlors, barbershops, dance schools, business schools or any persons engaged in sales or trade.

7.55. Recreational equipment, major.

Major recreational equipment includes boats and boat trailers, travel trailers, tent trailers, pickup campers or coaches (designed to be mounted on automotive vehicles), motorized dwellings and the like.

7.56. Retail stores and shops.

Buildings for display and retail sale of merchandise or for the rendering of personal services (but specifically exclusive of coal, wood and lumber yards), such as the following examples: drugstores, newsstands, food stores, candy shops, dry goods and notions stores, antique stores and gift shops, hardware stores, household appliance stores, furniture stores, optician, music or radio stores, tailor shops, bakery shops, and beauty shops.

7.57. Required yard.

That portion of a lot that is required by the specific district regulation to be open from the ground to the sky and may contain only explicitly listed obstructions.

7.58. Residence.

A building or part of a building containing one or more dwelling units or rooming units, including single-family or two-family houses, multiple dwellings, boarding[houses] or roominghouses, or apartment hotels. However, residences do not include:

(1) Such transient accommodations as hotels, motels, tourist homes, or similar establishments;
(2) Dormitories, fraternity or sorority houses, monasteries, convents, or similar establishments containing group living or sleeping accommodations;

(3) Nurses, rest homes, or other sleeping or living accommodations in community facility buildings or portions of buildings used for community facilities; or

(4) That part of a mixed building used for any nonresidential purposes, except where such are uses accessory to residential uses.

7.59. Restaurant.

An establishment where food is ordered, prepared and served, for pay.

7.59(a) School

An institution for the teaching of children with all necessary state, federal, and local licenses and approvals. **Adopted September 11, 2014**

7.60. Setback line.

A line running parallel to the street which establishes the minimum distance the principal building must be set back from the street line.

7.61. Sign.

Any writing (including letter, word, or numeral); pictorial presentation (including illustration, or decoration); emblem (including device, symbol, or trademark); flag (including banner or pennant); or any other figure of similar character, which:

(1) Is a structure or any part thereof, or is attached to, painted on, or in any manner represented on a building or other structure, and

(2) Is used to announce, direct attention, or advertise, and

(3) Is visible from outside a building.

A sign shall include writing, representation, or other figure of similar character within a building only when illuminated and located within a window.

7.62. Sign, civic.

A sign identifying the nature of activity and other pertinent information for any community facility activity.

7.63. Sign, realty.

A sign indicating pertinent information regarding property for sale, lease or rent.

7.64. Sign, residential.

An accessory sign which indicates the name and/or address of the occupant or a permitted home occupation.

7.65. Story.

A portion of a building between the surface of any floor and the surface of the floor next above it, or, if there is no floor above it, the space between such floor and the ceiling next above it, provided that the following shall not be deemed a story:

(1) A basement or cellar if the finished floor level directly above it is not more than six feet above the average adjoining elevation of finished grade.

(2) An attic or similar space under a gable, hip or gambrel roof, [in which] the wall plates or any exterior walls are not more than two feet above the floor of such space.

7.66. Street.

A publicly maintained right-of-way, other than an alley, which affords a primary means of access to abutting property. The word "street" shall include the words "road," "highway," and "thoroughfare."

7.67. Street line.

The property line which bounds the right-of-way set aside for use as a street. Where sidewalks exist and the location of the property line is questioned, the edge of the sidewalk farthest from the traveled street shall be considered as the street line.

7.68. Structure.

Anything constructed or erected, the use of which requires a permanent location on the ground or attachment to something having a permanent location on the ground. This includes but is not limited to buildings, towers, smokestacks, television satellites, and overhead transmission lines.

7.69. Transient lodgings.

A building or a group of buildings in which sleeping accommodations are offered to the public and intended primarily for rental to transients with daily charge.

7.70. Travel trailer.

A travel trailer, pickup camper, converted bus, tent-trailer, tent or similar device used for temporary portable housing or a unit which:

(1) Can operate independent of connections to external sewer, water, and electrical systems;

(2) Contains water storage facilities and may contain a lavatory, kitchen sink and/or bath facilities; and/or

(3) Is identified by the manufacturer as a travel trailer and/or is designed as a travel trailer.

7.71. Use.

The purpose for which land or water or a structure thereon is designed, arranged, and intended to be occupied or utilized or for which it is occupied or maintained.

7.72. Use and occupancy permit.

A written permit issued by the zoning administrator required before occupying or commencing to use any building or other structure or any lot.

7.73. Use, public.

Any use that is under control of a unit of general purpose government or governmental agency.

7.74. Use, recreation.

Any use of land or water and facilities provided for the enjoyment of the general public.

7.75. Utility facilities.

Any structure involved in the transport of electricity, water, sewage or broadcasting.

7.76. Variance.

A reasonable deviation from those provisions regulating the size or area of a lot or parcel of land, or the size, area, bulk or location of a building or structure when the strict application of the ordinance would result in unnecessary or unreasonable hardship to the property owner, and such need for a variance would not be shared generally by other

properties, and provided such variance is not contrary to the intended spirit and purpose of this ordinance, and would result in substantial justice being done.

7.77. Wholesale sales.

Any establishment involved with the sale of merchandise to retail establishments.

7.78. Yard.

An open space on the same lot with a principal building, open, unoccupied and unobstructed by buildings from the ground to the sky except as otherwise provided in this ordinance. The measurement of a yard shall be construed as the minimum horizontal distance between the lot lines and any part of the building, such as roof overhang.

7.78-1. Yard locations of accessory uses. An accessory use may be located in a side or rear yard if setback standards are met. A swimming pool located at below grade level may extend to the zero rear or side yard line.

7.79. Yard, front.

A yard extending along the full length of a front lot line. In the case of a corner lot, a yard of at least the full depth required for a front yard in these regulations, and extending along the full length of a street line shall be considered a front yard. At least two such yards shall be designated for each corner lot, at least one such yard shall be designated for each through lot.

7.80. Yard, rear.

A yard extending for the full length of a rear lot line.

7.81. Yard, side.

A yard extending along a side lot line from the required front yard to the required rear yard. In the case of a corner lot, any yard which abuts a street line and which is not designated a front yard shall be considered a side yard. In the case of a through lot, side yards shall extend between the required front yards.

7.82. Zoning permit.

A written permit issued by the zoning administrator which is required before commencing any construction, reconstruction, [or] alteration of any building or other structure or before establishing, extending or changing any activity or use on any lot.

CODE COMPARATIVE TABLE

1986 CODE

This table gives the location within this Code of those sections of the 1986 Code, as updated through November 8, 1990, which are included herein. Sections of the 1986 Code, as supplemented, not listed herein have been omitted as repealed, superseded, obsolete or not of a general and permanent nature. For the location of ordinances adopted subsequent thereto, see the table immediately following this table.
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CODE COMPARATIVE TABLE

ORDINANCES

This table gives the location within this Code of those ordinances adopted since the 1986 Code, as updated through November 8, 1990, which are included herein. Ordinances adopted prior to such date were incorporated into the 1986 Code, as supplemented. This table contains some ordinances which precede November 8, 1990, but which were never included in the 1986 Code, as supplemented, for various reasons. Ordinances adopted since November 8, 1990, and not listed herein, have been omitted as repealed, superseded or not of a general and permanent nature.

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STATE LAW REFERENCE TABLE

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