

THE CODE OF

THE TOWN OF

CHINCOTEAGUE, VIRGINIA

Published by Order of the Town Council

OFFICIALS

of the

TOWN OF

CHINCOTEAGUE, VIRGINIA

AT THE TIME OF THIS CODIFICATION

John H. Tarr
Mayor

Nancy B. Conklin
James T. Frese
Terry Howard
Leonard R. Jester
Ellen W. Richardson
Glenn B. Wolffe
Town Council

James M. West
Town Manager

Jon C. Poulson
Town Attorney

CURRENT
OFFICIALS
of the
TOWN OF
CHINCOTEAGUE, VIRGINIA

John A. Leonard
Mayor

Denise P. Bowden
Ben G. Ellis
Edward W. Lewis, Jr.
Matthew T. Reed
Ellen W. Richardson
Gene Wayne Taylor
Town Council

James M. West
Town Manager

William W. Fox II
Town Attorney

PREFACE

This Code constitutes a recodification of the general and permanent ordinances of the Town of Chincoteague, Virginia.

Source materials used in the preparation of the Code were the 1977 Code and ordinances subsequently adopted by the town council. The source of each section is included in the history note appearing in parentheses at the end thereof. The absence of such a note indicates that the section is new and was adopted for the first time with the adoption of the Code. By use of the comparative tables appearing in the back of this Code, the reader can locate any section of the 1977 Code and any subsequent ordinance included herein.

The chapters of the Code have been conveniently arranged in alphabetical order, and the various sections within each chapter have been catchlined to facilitate usage. Notes which tie related sections of the Code together and which refer to relevant state law have been included. A table listing the state law citations and setting forth their location within the Code is included at the back of this Code.

Chapter and Section Numbering System

The chapter and section numbering system used in this Code is the same system used in many state and local government codes. Each section number consists of two parts separated by a dash. The figure before the dash refers to the chapter number, and the figure after the dash refers to the position of the section within the chapter. Thus, the second section of chapter 1 is numbered 1-2, and the first section of chapter 6 is 6-1. Under this system, each section is identified with its chapter, and at the same time new sections can be inserted in their proper place by using the decimal system for amendments. For example, if new material consisting of one section that would logically come between sections 6-1 and 6-2 is desired to be added, such new section would be numbered 6-1.5. New articles and new divisions may be included in the same way or, in the case of articles, may be placed at the end of the chapter embracing the subject, and, in the case of divisions, may be placed at the end of the article embracing the subject. The next successive number shall be assigned to the new article or division. New chapters may be included by using one of the reserved chapter numbers. Care should be taken that the alphabetical arrangement of chapters is maintained when including new chapters.

Page Numbering System

The page numbering system used in this Code is a prefix system. The letters to the left of the colon are an abbreviation which represents a certain portion of the volume. The number to the right of the colon represents the number of the page in that portion. In the case of a chapter of the Code, the number to the left of the colon indicates the number of the chapter. In the case of an appendix to the Code, the letter immediately to the left of the colon indicates the letter of the appendix. The following are typical parts of codes of ordinances, which may or may not appear in this Code

at this time, and their corresponding prefixes:

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Indexes

The indexes have been prepared with the greatest of care. Each particular item has been placed under several headings, some of which are couched in lay phraseology, others in legal terminology, and still others in language generally used by local government officials and employees. There are numerous cross references within the indexes themselves which stand as guideposts to direct the user to the particular item in which the user is interested.

Looseleaf Supplements

A special feature of this publication is the looseleaf system of binding and supplemental servicing of the publication. With this system, the publication will be kept up-to-date. Subsequent amendatory legislation will be properly edited, and the affected page or pages will be reprinted. These new pages will be distributed, with instructions for the manner of inserting the new pages and deleting the obsolete pages.

Keeping this publication up-to-date at all times will depend largely upon the holder of the publication. As revised pages are received, it will then become the responsibility of the holder to have the amendments inserted according to the attached instructions. It is strongly recommended by the publisher that all such amendments be inserted immediately upon receipt to avoid misplacing them and, in addition, that all deleted pages be saved and filed for historical reference purposes.

Acknowledgments

This publication was under the direct supervision of Milton E. Lefkoff, Senior Code Attorney, and Jody Wilson, Editor, of the Municipal Code Corporation, Tallahassee, Florida. Credit is gratefully given to the other members of the publisher's staff for their sincere interest and able assistance throughout the project.

The publisher is most grateful to Mr. Jon C. Poulson, Town Attorney, and Ms. Karen Hipple, Administrative Assistant, for their cooperation and assistance during the progress of the work on this publication. It is hoped that their efforts and those of the publisher have resulted in a Code of Ordinances which will make the active law of the town readily accessible to all citizens and which will be a valuable tool in the day-to-day administration of the town's affairs.

**AN ORDINANCE ADOPTING AND ENACTING A NEW
CODE FOR THE TOWN OF CHINCOTEAGUE, VIRGINIA; PROVIDING
FOR THE REPEAL OF CERTAIN ORDINANCES
NOT INCLUDED THEREIN; PROVIDING A PENALTY FOR THE
VIOLATION THEREOF; PROVIDING FOR THE MANNER OF
AMENDING SUCH CODE; AND PROVIDING WHEN SUCH
CODE AND THIS ORDINANCE SHALL BECOME EFFECTIVE.**

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

Section 1. The Code entitled “The Code of the Town of Chincoteague, Virginia,” consisting of chapters 1 through 70, each inclusive, and appendixes A and B, is adopted.

Section 2. All ordinances of a general and permanent nature enacted on or before May 16, 2002 and not included in the Code or recognized and continued in force by reference therein, are repealed.

Section 3. The repeal provided for in Section 2 hereof shall not be construed to revive any ordinance or part thereof that has been repealed by a subsequent ordinance that is repealed by this ordinance.

Section 4. Unless another penalty is expressly provided, every person convicted of a violation of any provision of the town Charter, this Code or any ordinance or resolution of the town or rule, regulation or order promulgated by an officer or agency of the town under authority duly vested in him or it shall be punished by a fine not exceeding \$500.00 or by imprisonment for a term not exceeding 12 months, or both such fine and imprisonment. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. The penalty provided by this section, unless another penalty is expressly provided, shall apply to the amendment of any Code section, whether or not such penalty is reenacted in the amendatory ordinance. In addition to the penalty prescribed above, the town may pursue other remedies such as abatement of nuisances, injunctive relief and revocation of licenses or permits.

Section 5. Additions or amendments to the Code when passed in such form as to indicate the intention of the town council to make the same a part of the Code shall be deemed to be incorporated in the Code, so that reference to the Code includes the additions and amendments.

Section 6. Ordinances adopted May 16, 2002, that amend or refer to ordinances that have been codified in the Code shall be construed as if they amend or refer to like provision of the Code.

Section 7. This ordinance shall become effective June 1, 2002.

AT THE CHINCOTEAGUE TOWN COUNCIL RECESSED MEETING HELD ON MAY 16, 2002, ON A MOTION BY COUNCILMAN WOLFFE AND SECONDED BY COUNCILMAN FRESE THIS ORDINANCE WAS PASSED AND ADOPTED.

AYES
NANCY B. CONKLIN
JAMES T. FRESE
TERRY HOWARD
LEONARD R. JESTER
ELLEN W. RICHARDSON
GLENN B. WOLFFE

NAYS
NONE

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PART I
CHARTER*

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- Sec. 1. The town corporate.
- Sec. 2. The town boundary.

Chapter 2. Powers of Town

- Sec. 1. Generally.
- Sec. 2. Daylight saving time.

Chapter 3. Town Plan

- Sec. 1. Adoption.
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- Sec. 1. Town council generally.
- Sec. 2. Mayor and vice-mayor.
- Sec. 3. Election of mayor and council; terms of office; meetings of council; vacancies.
- Sec. 4. Town clerk.[manager]
- Sec. 5. Town treasurer.
- Sec. 6. Chief of police.
- Sec. 7. Town officers generally.

***Editor's note**—Printed herein is the town Charter, derived from the 1942 Acts of Assembly, chapter 210, approved March 13, 1942. 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.

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- Sec. 7. Severability of Charter provisions.
- Sec. 8. Citation of Charter.

CHARTER

CHAPTER 1. INCORPORATION AND BOUNDARIES

Sec. 1. The town corporate.

The inhabitants of the territory comprised within the present limits of the Town of Chincoteague, as such limitations are now or may be hereafter altered and established by law, shall constitute and continue a body, politic and corporate, to be known and designated as the Town of Chincoteague, and as such shall have and may exercise all powers which are now or hereafter may be conferred upon or delegated to the town under the Constitution and laws of the Commonwealth of Virginia, as fully and completely as though such powers are specifically enumerated herein, and no enumeration of particular powers by this Charter shall be held to be exclusive and shall have, exercise and enjoy all the rights, immunities, powers, and privileges and be subject to all the duties and obligations now appertaining to and incumbent on said town as a municipal corporation, and the said Town of Chincoteague, as such, shall have perpetual secession, may sue and be sued, implead and be impleaded, contract and be contracted with, and may have a corporate seal which it may alter, renew, or amend at its pleasure by proper ordinance.

Sec. 2. The town boundary.

The corporate limits of the Town of Chincoteague, Virginia, as heretofore established, are hereby reestablished, and shall be taken and deemed as the Town of Chincoteague as follows:

Beginning at a point on the Bay Shore, at low water mark, opposite the dividing line between the lands of Daniel J. Watson on the northeast and David R. Watson on the southwest, and running thence in a southwest direction along low water mark in Chincoteague Bay and Channel, to a point opposite the northeast boundary line of the land of Ella Fish; thence along the northeast boundary line of the said Ella Fish to a point two hundred (200) yards, southeast of the Main County Shore road; thence in a northeast direction to the dividing line between the lands of W. N. Conant and Mary A. Daisey; thence along the southwest boundary line of W. N. Conant's said land to the canal; thence in a northerly direction to the dividing line between the lands of Daniel J. Watson on the northeast and David R. Watson on the southwest, aforesaid; thence in a northwesterly direction along said last named dividing line, across the Main County Shore road to the point of beginning on the Bay Shore,—the said description being as of March thirteenth, nineteen hundred and eight, and being also the boundary of the said Town of Chincoteague as set forth in an Act of the General Assembly, approved March thirteenth, nineteen hundred and eight, entitled "An act to incorporate the Town of Chincoteague, Accomack County," and there is included within the corporate limits the following territory:

1st. Beginning at the southwestern corner of the above boundary of the Town of Chincoteague and running in a southwesterly direction along low water mark to a point fifty (50) yards to the southwest of the southwest boundary of Fred Bowden's land, on which he now lives, thence south forty-five (45) degrees east, according to the magnetic variations existing today, to a point two hundred (200) yards southeast of the southeast edge of the Main County or Shore road, thence from said point in a straight line in a northeast direction to a point fifty (50) feet northwest of the north corner of Greenwood cemetery, the said point being on the southwest edge of the Bunting County road, thence in a northeast direction across said Bunting road to the northeast edge thereof, thence in a southeast direction to the north corner of the

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intersection of Willow street and the said Bunting road, thence in a northeast direction along the northwest edge of Willow street to a point where the present southern corporate limits of the Town of Chincoteague now crosses Willow street, the said point being on the northwest edge of said Willow street, thence following the present southern boundary of the Town of Chincoteague to the point of beginning,-the above description being a verbatim description of the extension of the corporate limits of the Town of Chincoteague as annexed on the 1st day of July, nineteen hundred twenty six, by the Circuit Court of Accomack County, Virginia, in the petition of Kendell J. Bunting and others to annex territory, et cetera, to the Town of Chincoteague; and

2nd. Beginning at the northwestern corner of the present boundary of the Town of Chincoteague, at low water mark, it being the dividing line between the lands owned by David Watson and Daniel Watson, thence running in a northeasterly direction along ordinary low water mark to a point opposite the land occupied by the late Joshua W. Whealton, thence in a southeasterly direction along the center of a private roadway across the lands of the late Joshua W. Whealton, as it now exists, the same running between the dwelling houses of the late Joshua W. Whealton and the one now occupied by Sidney Daisey in a straight direction across the Deep Hole County road to the canal; thence in a southwest direction along said canal to the corporate limits of the Town of Chincoteague, it being a point also that separates the land of David Watson and Daniel Watson, thence in a northwest direction following the northern boundary of the present Town of Chincoteague to low water mark, the point of beginning,-the above description being a verbatim description of the territory which was annexed to the Town of Chincoteague in the petition of A. J. Hill and others to annex territory, et cetera, to the Town of Chincoteague.

3rd. Beginning at a point on the centerline of State Route 175, said point being the intersection of the centerline of Route 175 east entering the Island and the present Corporate Limit. From this point in a northern direction along the Corporate Limit to the point of intersection with the northern right-of-way of Route 175 entering the Island. Thence westerly along the northern right-of-way of Route 175 approximately 12,000 feet to a point where the right-of-way crosses the center of Queen Sound Channel. Then following the center of Queen Sound Channel in a northwesterly direction approximately 2,500 feet to a point where the channel divides, from this point in a northeasterly direction across Chincoteague Bay to a point on the Virginia/ Maryland state line, said point being approximately 25,400 feet west of the intersection of the Virginia/Maryland state boundary and the mean low water line on the western side of Assateague Island. Then from said point in an easterly direction along the Virginia/Maryland state boundary, to a point being the intersection of the Virginia/Maryland state boundary and the westernmost mean low water line on Assateague Island. Then from said point in a southerly direction following the mean low water line to the western tip of Fishing Point the line crosses Chincoteague Inlet to a point being the westernmost point of the mean low water line on Chincoteague Point near Hammock Point Light. Then extending this line from said point in a northwesterly direction, approximately 3,000 feet to the

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middle of Queen Sound Channel, then from said point along the middle of Queen Sound Channel to its intersection with the southern right-of-way of Route 175. Then following the southern right-of-way eastward to its intersection with the present Corporate Limit, then from this point northward along the Corporate Limit to the point of beginning.

It is the purpose of the three above descriptions to include all lands within the present boundaries of said town according to the Charter of said town and the annexation proceedings of Kendall J. Bunting and others and the annexation proceedings of A. J. Hill and others as found among the records in the clerk's office of the circuit court for the County of Accomack, Virginia.

CHAPTER 2. POWERS OF TOWN

Sec. 1. Generally.

1. To raise annually, by the levy of taxes and assessments in the said town, on all such property, real and personal, as is now or may be subject to taxation by towns by the laws of this Commonwealth, such sums of money as the council thereof shall deem necessary for the purpose of the said town, in such manner as the said council shall deem expedient in accordance with the Constitution of this state and of the United States; provided, however, that it shall impose no taxes on the bonds of the said town.

2. To impose special or local assessments for local improvements and to force payment thereof, subject to such limitations prescribed by the Constitution and laws as may be in force at the time of the imposition of such special or local assessments.

3. To impose a tax not exceeding one dollar per annum upon all persons residing in said town above the age of twenty-one years, not exempt from the payment of state capitation tax.

4. (a) The town may, in the name of and for the use of the town, contract debts and make and issue, or cause to be made and issued, as evidence thereof, bonds, notes or other obligations, upon the credit of the town, or solely upon the credit of specific property owned by the town, or solely upon the credit of income derived from property used in connection with any public utility owned and operated by the town.

(b) Pending the issuance and sale of any bonds, notes or other obligations by this act (Charter) authorized, or in anticipation of the receipt of taxes and revenues of the current fiscal year, it shall be lawful for the town to borrow money temporarily and to issue notes or other evidence of indebtedness therefor, and from time to time to renew such temporary loans or to use current funds to be ultimately repaid from the proceeds of the said bonds, notes or other obligations or from the town taxes and revenues, as the case may be.

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- (c) The credit of the town shall not, directly or indirectly, under any devise or pretence whatsoever, be granted to or in aid of any person, firm, association or corporation.
 - (d) Every ordinance authorizing the issuance of bonds shall specify the purpose or purposes for which they are to be issued, the aggregate amount of the bonds, the term for which they shall be issued, and the maximum rate of interest to be paid thereon. Any such ordinance may be amended by ordinance at any time before the bonds to be affected by such amendment have been sold; provided, however, if there shall be omitted from this act (Charter) any provision essential to the valid authorization, sale, execution and issuance of any of the bonds of said town, the provisions of general law with reference to similar bonds shall supply said omission.
 - (e) Any bonds issued by the town under this act (Charter) shall be signed by the mayor and attested by the clerk under the seal of the town, and shall be made payable in the office of the town treasurer or such other place in or out of the state as the council may provide in the ordinance authorizing the issuance of the particular bonds. Such bonds may be advertised by the mayor and sold by the town treasurer, as may be provided in such ordinance, under supervision of the mayor and clerk, and the sale reported to and approved by the council, and the proceeds from said sale shall be paid to the town treasurer.
5. To expend the money of the town for all lawful purposes.
6. To acquire by purchase, gift, devise, condemnation or otherwise property, real or personal, or any estate therein within or without the town, for any of the purposes of the town; and to hold, improve, sell, lease, mortgage, pledge, or otherwise dispose of the same or any part thereof, including any property now owned by the town.
7. To establish markets in the town and regulate the same, and to enforce such regulations in regards to the keeping and sales of fresh meat, vegetables, eggs and other green groceries and the trade of hucksters and junk dealers as may be deemed advisable; and to make and enforce such regulations as shall be necessary to prevent huckstering, forestalling or regrading.
8. To own, operate and maintain water works and to acquire in any lawful manner in any county of the state, such water, lands, property rights, and riparian rights as the council of the said town may deem necessary for the purpose of providing an adequate water supply to the said town and of piping and conducting the same; to lay, erect and maintain all necessary mains and service lines, either within or without the corporate limits of the said town, for the distribution of water to its customers and consumers, both within and without the corporate limit of the said town and to charge and collect water rents thereof; to erect and maintain all necessary dams, pumping stations and other works in connection therewith; to make reasonable rules and regulations for promoting the purity of its said water supply and for protecting the same from pollution; and for this purpose to exercise full police powers and sanitary patrol over all land comprised within the limits of the

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watershed tributary to any such water supply wherever such lands may be located in this state; to impose and enforce adequate penalties for the violation of any such rules and regulations; and to prevent by injunction any pollution or threatened pollution of such water supply, and any and all acts likely to impair the purity thereof; and to carry out the powers herein granted, the said town may exercise within the state all powers of eminent domain provided by the laws of this state.

9. To establish, construct, maintain and operate public landings, public wharves, harbors and docks either within the town, or without the town not exceeding the distance of two miles from the corporate limits thereof; to acquire by condemnation or otherwise all lands, riparian and other rights and easements necessary for the purposes aforesaid; to lay and collect reasonable duties or wharfage fees on vessels coming to or using said landings, wharves, harbors or docks; to dredge or deepen the harbor or river of any branch or portion thereof; to prescribe and enforce reasonable rules and regulations for the protection and use of its said properties, whether within or without the town, and to impose and enforce adequate penalties for the violation of such rules and regulations.

10. To collect and dispose of sewage, offal, ashes, garbage, carcasses of dead animals and other refuse, and to make reasonable charges therefor; to acquire and operate reduction or any other plants for the utilization or destruction of such materials, or any of them; to contract or regulate the collection and disposal thereof and to require and regulate the collection and disposal thereof.

11. To inspect, test, measure and weigh any commodity or commodities or articles of consumption for use within the town; and to establish, regulate, license and inspect weights, meters, measures and scales.

12. To license and regulate the holding and location of shows, circuses, public exhibitions, carnivals, and other similar shows or fairs, or prohibit the holding of the same, or any of them, within the town or within one mile thereof.

13. May require every owner of motor vehicles residing in the said town, on a date to be designated by the council, to annually register such motor vehicles and to obtain a license to operate the same by making application to the treasurer of the said town, or such other person as may be designated by the council of the said town, to issue said license, and to require the said owner to pay an annual license fee therefor to be fixed by the council; provided that the said license fee shall not exceed the amount charged by the state on the said machine.

14. To construct, maintain, regulate and operate public improvements of all kinds, including municipal and other buildings, armories, sewage disposal plants, jails, comfort stations, markets, and all buildings and structures necessary or appropriate for the use and proper operation of the various departments of the town; and to acquire by condemnation or otherwise, all lands, riparian and other rights, and easements necessary for such improvements, or any of them; either within or without the town, and to construct, maintain or aid therein, roads and bridges to any property owned by the said town and situate beyond the corporate limits thereof, and to acquire land necessary for the aforesaid by condemnation or otherwise.

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15. To acquire, establish, enter, open, widen, extend, grade, improve, construct, maintain and clean public highways, streets, sidewalks, boulevards, parkways, and alleys, and to alter, vacate, or close the same; to establish and maintain parks, golf courses, playgrounds, and public grounds; to keep them lighted and in good order; to construct, maintain and operate bridges, viaducts, subways, tunnels, sewers and drains and to regulate the use of all such highways, parks, public grounds and works; to plant and maintain or remove shade trees along the streets and upon such public grounds; to prevent the obstruction of such streets and highways; to regulate the operation and speed of cars and vehicles upon said streets and highways within the town; and to do all other things whatsoever adapted to make said streets and highways safe, convenient and attractive.

16. To construct in such parks, playgrounds, and public grounds, as it may maintain, or upon any town property, stadiums, swimming pools, gymnasiums, and recreation or amusement buildings, structures, or enclosures of every character, refreshment stands, restaurants, et cetera; to charge for admissions, and use of the same, and to rent out or lease the privileges of construction or using such stadiums, swimming pools, recreation or amusement buildings, structures, or enclosures of every character, refreshment stands, or restaurants, et cetera.

17. To establish, impose, and enforce the collection of water and sewage rates, and rates and charges for public utilities, or other services, products, or conveniences, operated, rented or furnished by the town; and to assess, or cause to be assessed, after reasonable notice to the owner or owners, water and sewage rates and charges directly against the owner or owners of the buildings or against the proper tenant or tenants; and in event such rates and charges shall be assessed against a tenant then the council may, by ordinance, require of such tenant a deposit of such reasonable amount as it may by such ordinance prescribe before furnishing such service to such tenant.

18. To establish, construct, and maintain sanitary sewers, sewer lines and systems, and to require the abutting property owners to connect therewith and to establish, construct, maintain and operate sewage disposal plants, and to acquire by condemnation or otherwise, within or without the town, all lands, rights of way, riparian and other rights, and easements necessary for the purposes aforesaid, and to charge, assess, and collect reasonable fees, rentals, assessments or costs of service for connection with and using the same.

19. Subject to the provisions of the Constitution and general laws of Virginia and this Charter to grant franchises for public utilities; provided, however, the town shall at any time have the power to contract for, own, operate, manage, sell, encumber or otherwise dispose of, either within or without the town, any and all public utilities for the town and to sell the services thereof, any existing franchise to the contrary notwithstanding.

20. To charge and to collect fees for permits to use public facilities and for public services and privileges. The said town shall have the power and right to charge a different rate for any service rendered or convenience furnished to citizens without the corporate limits from the rates charged for similar service to citizens within the corporate limits.

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21. To compel the abatement and removal of all nuisances within the town or upon property owned by the town beyond its limits at the expense of the person or persons causing the same, or of the owner or occupant of the ground or premises whereon the same may be, and to collect said expense by suit or motion or by distress and sale; to require all lands, lots and other premises within the town, to be kept clean and sanitary and free from stagnant water, weeds, filth and unsightly deposits, or to make them so at the expense of the owners or occupants thereof, and to collect said expense by suit or motion or by distress and sale; to regulate, or prevent slaughterhouses or other noisome or offensive business within the said town, the keeping of hogs or other animals, poultry or other fowl therein, or the exercise of any dangerous or unwholesome business, trade or employment therein; to regulate the transportation of all articles through the streets of the town; to compel the abatement of smoke and dust and prevent unnecessary noise; to regulate the location of stables and the manner in which they shall be kept and constructed; to regulate the location, construction, operation, and maintenance of billboards, signs, advertising, and generally to define, prohibit, abate, suppress and prevent all things detrimental to the health, morals, aesthetics, safety, convenience and welfare of the inhabitants of the town; and to require all owners or occupants of property having sidewalks in front thereof to keep the same clean and sanitary, and free from all weeds, filth, unsightly deposits, ice and snow.

22. To extinguish and prevent fires, and to establish, regulate and control a fire department or division, to regulate the size, height, materials and construction of buildings, fences, walls, retaining walls and other structures hereafter erected in such manner as the public safety and convenience may require; to remove or require to be removed or reconstructed any building, structure or addition thereto which by reason of dilapidation, defect of structure, or other causes may have become dangerous to life or property, or which may be erected contrary to law; to establish and designate from time to time fire limits, within which limits wooden buildings shall not be constructed, removed, added to, enlarged or repaired and to direct that any or all future buildings within such limits shall be constructed of stone, natural or artificial, concrete, brick iron or other fireproof materials; and may enact stringent and efficient laws for securing the safety of persons from fires in halls and buildings used for public assemblies, entertainments or amusements.

23. To direct the location of all buildings for storing explosives or combustible substances; to regulate the sale and use of gunpowder, nitroglycerin, fireworks, kerosene oil or other like materials; to regulate the exhibition of fireworks, the discharge of firearms, and the making of bonfires in the streets and yards.

24. To authorize and regulate the erection of party walls and fences, and to prescribe how the cost thereof shall be borne by coterminal owners.

25. To provide for regular and safe construction of houses in the town for the future, and to provide a building code for the town, to provide setback lines on the streets beyond which no building may be constructed, to require the standard of all dwelling houses be maintained in residential sections in keeping with the majority of residences therein, and to require the standard of all business houses be maintained in business sections in keeping with the majority of the business houses therein.

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26. To provide by ordinance for a system of meat and milk inspection, and regulate the sale of meat and milk, and appoint meat and milk inspectors, agents or officers to carry the same into effect within or without the corporate limits of the said town; to license, regulate, control and locate slaughterhouses within or without the corporate limits of the town; and for such services of inspection to make reasonable charges therefor; and to provide reasonable penalties for the violation of such ordinances.

27. To provide for the preservation of the general health of the inhabitants of said town, make regulations to secure the same, inspect all foodstuffs and prevent the introduction and sale in said town of any articles or thing intended for human consumption, which is adulterated, impure or otherwise dangerous to health, and to condemn, seize and destroy or otherwise dispose of any such article or thing without liability to the owner thereof; to prevent the introduction or spread of contagious or infectious diseases, and prevent and suppress disease generally; to provide and regulate hospitals within or without the town limits, and if necessary to the suppression of diseases, to enforce the removal of persons afflicted with contagious or infectious diseases to hospitals provided for them; to construct and maintain or to aid in the construction and maintenance of a hospital or hospitals for the use of the people of the town; to provide for the organization of a department or bureau of health, to have the powers of a board of health for said town, with the authority necessary for the prompt and efficient performance of its duties, with the power to invest any or all the officials or employees of such department of health with such powers as the police officers of the town have, to establish quarantine ground within or without the town, and establish such quarantine regulations against infectious and contagious diseases as the council may see fit, subject to the laws of the state and of the United States; and to provide for a bureau of vital statistics and require physicians, midwives or parents to make reports thereto.

28. To provide for the care, support and maintenance of children and of sick, aged, insane or poor persons and paupers.

29. To provide and maintain, either within or without the town, charitable, recreative, curative, corrective, detentive or penal institutions.

30. To prevent fowls and animals being kept in or running at large in the town, or any thickly populated portion thereof, and to subject the same to such taxes, regulations and penalties as the council may think proper.

31. To prevent the riding or driving of horses or other animals at an improper speed; to prevent the flying of kites, throwing of stones, or engaging in any sort of employment in the public streets which is dangerous or annoying to passersby, and to prohibit and punish the abuse of animals.

32. Insofar as not prohibited by general law, to control, regulate, limit and restrict the operation of motor vehicles carrying passengers for hire upon the streets or alleys of the town; to regulate the use of automobiles and other automotive vehicles upon the streets; to regulate the routes in and through the town to be used by motor vehicle carriers operating in and through said town and to prescribe different routes for different carriers; to prohibit

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the use of certain streets by motor trucks; and generally to prescribe such regulations respecting motor traffic therein as may be necessary for the general welfare.

33. To grant aid to military companies and to contribute to the support of a band maintained within the said town; to associations for the advancement of agriculture or the mechanic arts, to scientific, literary, educational or benevolent organizations or institutions and to public libraries, provided such action is not prohibited by the Constitution of the state, and that all such societies, organizations or institutions be located in or near the town, and, provided, further, that no appropriation for any such purpose shall be made, nor shall aid be otherwise granted through exemption from charge for use of water or light facilities or otherwise, either with or without charge, beyond the city (town) limits, unless two-thirds of all members elected to the council vote therefor.

34. To acquire, by condemnation, purchase or otherwise, provide for, maintain, operate and protect aircraft landing fields either within or without the corporate limits of the town.

35. If any ground in said town shall be subject to be covered with stagnant water, or if the owner or owners, occupier or occupiers thereof shall permit any offensive, unsightly or unwholesome substance or material to remain or accumulate thereon, the town may cause such grounds to be filled, raised, or drained, or may cause such substance to be covered or to be removed therefrom, and may collect the expense of so doing from the owner or owners, occupier or occupiers, or any of them (except in cases where such nuisance is caused by the action of the town authorities or their agents, or by natural causes beyond the control of the owner or occupant, in which case the town shall pay the expense of abating the same), by distress and sale in the same manner in which, taxes levied upon real estate for the benefit of said town are authorized to be collected; provided, that reasonable notice and an opportunity to be heard shall be first given to said owners or their agents. In case of nonresident owners who have no agent in said town, such notice shall be given by publication at least once a week for not less than four consecutive weeks in any newspaper having general circulation in the said town.

36. To establish, organize and administer public libraries, and public schools, subject to the general laws establishing a standard of education for the state; and to provide for a census.

37. To provide in or near the town, lands to be used as burial places for the dead; to improve and care for the same and the approaches thereto, and to charge for and regulate the use of the ground therein; to cooperate with any nonprofit corporation in the improvement and care of burial places and the approaches thereto; and to provide for the perpetual upkeep and care of any plot or burial lot therein, the town is authorized to take and receive sums of money by gift, bequest, or otherwise to be kept invested, and the income thereof used in and about the perpetual upkeep and care of the said lot or plot, for which the said donation, gift, or bequest shall have been made.

38. To prevent any person having no visible means of support, paupers, and persons who may be dangerous to the peace and safety of the town, from coming to said town from without the same; and also to expel therefrom any such person who has been in said town less than twelve months.

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39. To exercise full police powers and establish and maintain a department or division of police.

40. To restrain and punish drunkards, vagrants and street beggars, to prevent and quell riots, disturbances and disorderly assemblages; to suppress houses of ill-fame and gambling houses; to prevent and punish lewd, indecent and disorderly exhibitions in said town; and to expel therefrom persons guilty of such conduct who have not resided therein as much as one year.

41. To make and enforce ordinances, insofar as not prohibited by the general laws of this state, to regulate, control, license and/or tax the manufacture, bottling, sale, distribution, transportation, handling, advertising, possession, dispensing, drinking and use of alcohol, brandy, rum, whiskey, gin, wine, beer, lager beer, ale, porter, stout, and all liquids, beverages and articles containing alcohol by distillation, fermentation or otherwise.

42. To prohibit and punish for mischievous, wanton, or malicious damage to school and public property, as well as private property.

43. To prohibit from, and punish minors for, frequenting, playing in or loitering in any public poolroom, billiard parlor, or bowling alley, and to punish any proprietor or agent thereof for permitting same.

44. Where, by provisions of this act [Charter], the town has authority to pass ordinances on any subject, they may prescribe any penalty not exceeding twelve months in jail or a fine not exceeding five hundred dollars, either or both, for a violation thereof, and may provide that the offender, on failing to pay the penalty recovered and costs shall be imprisoned in jail or prison farm of the town for a term of not exceeding ninety days, which penalties may be prosecuted and recovered with costs in the name of the Town of Chincoteague, or shall compel them to work on the streets or other public improvements of the said town. The town shall also have the right to establish a prisoner labor force in which they may require persons convicted of violations of town ordinances, to work on the streets and other public grounds of the town, and the further right to deal with the state for the use and employment of persons convicted of violations of state laws.

45. To offer and pay rewards for the apprehension and conviction of criminals.

46. To give names to or alter the names of streets.

47. To enjoin and restrain the violation of any town ordinance or ordinances, although a penalty is provided upon conviction of such violation.

48. Insofar as not prohibited by general law, to pass and enforce all bylaws, rules, regulations and ordinances which it may deem necessary for the good order and government of the town, the management of its property, the conduct of its affairs, the peace, comfort, convenience, order, morals, health and protection of its citizens or their property and to do such other things and pass such other laws as may be necessary or proper to carry into full effect, all powers, authority, capacity, or jurisdiction, which is or

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shall be granted to or vested in said town, or in the council, court, or officers thereof, or which may be necessarily incident to a municipal corporation.

49. To do all things whatsoever necessary or expedient and lawful to be done for promoting or maintaining the general welfare, comfort, education, morals, peace, government, health, trade, commerce, or industries of the town, or its inhabitants.

50. To prescribe any penalty for the violation of any town ordinance, rule, or regulation or of any provision of this Charter, not exceeding five hundred dollars or twelve months' imprisonment in jail, or both.

51. To make and adopt a comprehensive plan for the town, and to that end all plats and re-plats hereafter made subdividing any land within the town or within one mile thereof, into streets, alleys, roads, and lots or tracts shall be submitted to and approved by the council before such plats or re-plats are filed for record or recorded in the office of the clerk of Accomack County, Virginia.

52. To own, operate and maintain electric light and gas works, either within or without the corporate limits of the town and to supply electricity and gas whether the same be generated or purchased by said town, to its customers and consumers both without and within the corporate limits of the said town, at such price and upon such terms as it may prescribe, and to that end it may contract and purchase electricity and gas from the owners thereof upon such terms as it may deem expedient.

53. To exercise the power of eminent domain within this state with respect to lands and improvements thereon, machinery and equipment for any lawful purpose of said town.

54. To divert the channels of creeks and flowing streams and for that purpose to acquire property by condemnation.

55. To every case where a street in said town has been, or shall be, encroached upon by any fence, building or otherwise, the town may require the owner to remove the same, and if such removal be not made within the time prescribed by the town, they may impose such penalty as they may deem proper for each and every day it is allowed to continue thereafter, and may cause the encroachment to be removed, and collect from the owner all reasonable charges therefor, with costs by the same process that they are hereinafter empowered to collect taxes.

Except, in any case where there is a bona fide dispute as to the true boundary line or the location of the true street line (and if passage over such street is not seriously impeded) the same shall first be established and determined by an adjudication of a court of competent jurisdiction in a proceeding instituted by either the town or the property owner for that purpose before the said town shall take any steps to remove the said obstruction or encroachment, or to impose any penalty therefor. No encroachment upon any street, however long continued, shall constitute any adverse possession to or confer any rights upon the persons claiming thereunder as against the said town.

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56. Dedication of any street, alley or lane in said town may be made by plat or deed. Any street or alley reserved in the division or subdivision into lots of any portion of the territory within the corporate limits of said town, by a plan or plat of record, shall be deemed and held to be dedicated to public use, unless it appears by said record that the street or alley so reserved is designated for private use. The town shall have the right to elect, by resolution entered on its minutes whether it will, or will not accept the dedication of any street or alley.

57. (a) No action shall be maintained against the town for damages for any injury to any person or property alleged to have been sustained by reason of the negligence of the town or any officer, agent, or employee thereof, unless a written statement, verified by the oath of the claimant, his agent or attorney, or the personal representative of any decedent whose death is the result of the alleged negligence of the town, its officers, agents or employees, of the nature of the claim and the time and place at which the injury is alleged to have occurred or to have been received, shall have been filed with an attorney, appointed by the council for this purpose, within sixty days after such cause of action shall have accrued, and no officers, agents or employees of the town shall have authority to waive such conditions precedent or any of them.
- (b) In any action against the town to recover damages against it for any negligence in the construction or maintenance of its streets, alleys, lanes, parks, public places, sewers, reservoirs or water mains, where any person or corporation is liable with the town for such negligence, every such person or corporation shall be joined as defendant with the town in any action brought to recover damages for such negligence, and where there is judgement or verdict against the town, as well as the other defendant, it shall be ascertained by the court or jury which of the defendants is primarily liable for the damages assessed.
- (c) If it be ascertained by the judgement of the court that some person or corporation other than the town is primarily liable, there shall be a stay of execution against the town until execution against such person or persons or other corporation or corporations shall have been returned without realizing the full amount of such judgement.
- (d) If the town, where not primarily liable, shall pay the said judgement in whole or in part, the plaintiff shall, to the extent that said judgement is paid by the town, assign the said judgement to the town without recourse on the plaintiff, and the town shall be entitled to have execution issued for its benefit against the other defendant or defendants who have been ascertained to be primarily liable, or may institute any suit in equity to enforce the said judgement, or an action at law, or scire facias to revive or enforce said judgement.
- (e) No order shall be made, and no injunction shall be awarded, by any court or judge, to stay the proceedings of the town in the prosecution of their works, unless it be manifest that they, their officers, agents or servants are transcending the authority given them by this act [Charter], and that the

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interposition of the court is necessary to prevent injury that cannot be adequately compensated in damages.

58. Except when prohibited by general law, the town may levy a tax or a license on any person, firm or corporation pursuing or conducting any trade, business, profession, occupation, employment or calling whatsoever within the boundaries of the town, whether a license may be required by the state or not, and may exceed the state license, if any be required, and may provide penalties for any violation thereof.

59. Any payment of delinquent taxes made by the tenant, unless under an expressed contract contained in his lease, shall be credit against the person to whom he owes the rent.

60. A lien shall exist on all real estate within the corporate limits for taxes, levies and assessments in favor of the town, together with all penalties and interest due thereon, assessed thereon from the commencement of the year for which the same were assessed and the procedure for collecting the said taxes, for selling real estate for town taxes and for the redemption of real estate sold for town taxes shall be the same as provided in the general law of the state to the same extent as if the provisions of said general law were herein set out at length. The said town and its treasurer shall have the benefit of all other and additional remedies for the collection of town taxes which are now or hereafter may be granted or permitted under the general law.

61. All goods and chattels wheresoever found may be distrained and sold for taxes and licenses assessed and due thereon; and no deed of trust or mortgage upon goods and chattels shall prevent the same from being distrained and sold for taxes and licenses assessed against the grantor in such deed while such goods and chattels remain in the grantor's possession.

62. Ordinances making the annual tax levy, appropriation ordinances, ordinances and resolutions pertaining to local improvements and assessments, ordinances and resolutions providing for or directing any investigation of town affairs, resolutions requesting information from administrative bodies, or directing administrative action and emergency measures shall take effect at the time indicated in such ordinances. Except as otherwise prescribed in this Charter, all ordinances and resolutions passed by the council shall take effect at the time indicated in such ordinances, but in event no effective date shall be set forth in any such ordinance, resolution or bylaw passed by the council, the same shall become effective thirty days from the date of its passage.

63. (a) There shall be set apart annually from the revenues of the town a sinking fund sufficient in amount, to be invested as hereinafter set forth, to pay the outstanding indebtedness of the town as it matures and which by its terms is not payable in one year, and the council may in its discretion annually from time to time, set aside such additional sinking funds as may be deemed proper.

(b) When taxes on real and personal property are collected for the year, the town treasurer shall take therefrom the necessary amount and any additional sum, if any, so set apart, and deposit the same in a separate account to the credit of the sinking fund in such bank or banks as the council may designate; and the

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said council may, if it shall so elect, cause its sinking fund to be loaned on improved real estate situated in the Town of Chincoteague, secured by first mortgage liens thereon, provided such funds shall not be loaned to a greater amount than fifty per centum of the market value of the property, and fire insurance shall be carried on the property during the loan in an amount at least equal to the face amount of the loan, which money shall be loaned at the rate of six per centum per annum, payable semi-annually and for no longer than five years at any one time.

- (c) All sinking funds shall be used exclusively in the payment or purchase and redemption of outstanding bonds of the town, and when such sinking funds are not required or may not within a reasonable time be required for payment of any bond of the town, or cannot be used to advantage in the purchase and redemption of any bonds of the town which may be outstanding, the same shall be securely invested in interest bearing municipal, state or government bonds or loaned upon otherwise unencumbered real estate, within the Town of Chincoteague upon the basis hereinbefore provided, or invested in any securities approved by the general laws of the state for the investment of such funds, or deposited in a bank on a reasonable rate of interest. Such sinking fund may be used in the payment or purchase and redemption of all bonds of the town at the discretion of the council.
- (d) The town council shall act as the sinking fund commission and shall provide for the investment, deposit and application of the funds in conformity to the provisions of this Charter; and it may require of any bank or banks receiving on deposit its revenues or any of its sinking fund security satisfactory to the council.

64. Upon the death, resignation, removal or expiration of the term of any officer of the town, the council shall order an annual audit and investigation to be made of the accounts of such officer and report to be made to the council as soon as practicable. After the close of each fiscal year an audit shall be made of the accounts of all town officers; said audit shall be made by a qualified accountant, selected by the council, who shall have no personal interest, direct or indirect, in the financial affairs of the town or any of its officers or employees. The council may at any time provide for an examination or audit of the accounts of any officer or department of the town government.

65. The town council may appoint a trial justice for the said town who shall serve for two years from the date of his appointment and until his successor is appointed by the council and qualifies. The mayor, or any other qualified voter of the Town of Chincoteague whom the council deems qualified, may be appointed by it as such trial justice. If the mayor is appointed as trial justice, he shall discharge such duties as the trial justice of the town under this Charter and not as the mayor of the town, in addition to the execution of the duties of mayor imposed upon him by this Charter; and his powers, duties, authority and jurisdiction as such trial justice shall be as hereinafter provided for the trial justice. Should the mayor be appointed trial justice, he shall receive the salary of mayor provided by the

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council for the discharge of his duties as mayor as well as such salary of trial justice as may be provided by the council, if any.

Said trial justice is hereby vested with all the power, authority and jurisdiction and charged with all the duties within and for the Town of Chincoteague, and in criminal matters for one mile beyond the corporate limits thereof, which are, or may hereafter be, conferred upon trial justices by the laws of the State of Virginia, so far as the same may be applicable and not in conflict with the provisions of this Charter; and any amendments of the trial justice laws of this state shall be considered as amendments also of this section of this Charter if the same are applicable hereto.

Fees and costs shall be assessed by the trial justice and shall be collected as provided by the laws of the State of Virginia relating to trial justices as the same shall now be or as hereafter amended. All fees and costs collected by the said trial justice and all fines collected for violations of all laws and ordinances of the town shall be paid into the town treasury for the use and benefit of the town.

Removals may be taken, and appeals from the decisions of the trial justice may be taken, to the Circuit Court of Accomack County in the same manner, upon the same terms and shall be tried in the same way as removals, or as appeals from the decision of trial justices, as the case may be, are provided to be taken and tried by the laws of the State of Virginia, relating to trial justice as the same shall now be or as hereafter amended.

The council may also appoint such clerk or clerks as may in their discretion be necessary, provide for just compensation therefor and provide necessary records.

The council of said town shall provide a salary to compensate such trial justice in such amount and payable at such times as the council shall deem proper, and the council may provide also for a vacation period, either with or without pay, and for such duration, as in the judgement of the council may be proper.

Like provisions may be made for a substitute justice, and when such substitute acts, he shall receive the compensation which would have been paid him had the principal acted, and which compensation shall be deducted from the salary or allowance made to the principal.

Nothing contained herein shall prevent the Town of Chincoteague from combining with the County of Accomack for the use of one trial justice and one substitute trial justice for such combined town and county, in such manner as may be provided by the laws of the State of Virginia relating to trial justices; and if the Town of Chincoteague and County of Accomack shall at any time combine for the use of one trial justice and one substitute trial justice for the said town and the said county, the laws of the State of Virginia relating to trial justices, so far as applicable, shall control and not this section of this Charter; provided, however, that the combination of the said town with the said county for the use of one trial justice and one substitute trial justice shall not prevent the council of the town at any time thereafter it shall desire so to do from withdrawing the Town of Chincoteague from such combination by a vote of the council and appointing a trial justice and a substitute trial justice for the Town of Chincoteague under the provisions of this Charter,

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notwithstanding anything in the trial justice laws of Virginia to the contrary; and likewise nothing herein contained shall prevent the town, after withdrawing from such combination, to adopt again the combination with the county.

The powers and jurisdiction provided for in this subsection sixty-five (65) of this act [Charter] as to matters other than those pertaining or relating to violations of ordinances of the town may be exercised only to the extent permitted by general law.

66. The town shall have the power to extend or contract the corporate limits of the town as provided by the Constitution and general laws of Virginia in force at the time.

67. The Town of Chincoteague shall have authority to impose taxes or assessments upon abutting landowners for making and improving the walkways upon then existing streets, and improving and paving then existing alleys, and for either the construction, or for the use of sewers, and the same when imposed, shall not be in excess of the peculiar benefits resulting therefrom to such abutting landowners; and the procedure for making such assessments and the method of collecting such taxes and assessments, shall be in accordance with general law.

68. The Town of Chincoteague is hereby constituted a separate road taxing district. The said town shall have the power to own, layout, and maintain its street system. The County of Accomack shall not levy any tax on the said town, or any property or residents therein for road purposes. Nor shall said town be embraced in any road district of the County of Accomack.

69. The Town of Chincoteague may levy a tax on all subjects of taxation not prohibited to it by, nor exempted in, the Constitution and general laws of Virginia.

70. The council hereinafter created shall have full power and authority, except as herein otherwise specifically provided, to exercise herein all of the powers conferred upon the town, and pass all laws and ordinances relating to its municipal affairs, subject to the Constitution and general laws of the state and of this Charter, and shall have full and complete control of all fiscal and municipal affairs of said town and all of its real and personal properties, and may from time to time, amend, re-amend and/or repeal any or all of the said ordinances, for the proper regulation, management, and government of the said town and may impose fines and penalties for the violation or nonobservance thereof.

71. The enumeration of specific powers, privileges, and authority in this Charter shall not be deemed exclusive, but in addition to the powers and privileges herein mentioned, implied or appropriated, the said town shall have and may exercise, all other powers, which are or may hereafter be, possessed, or enjoyed, by any towns under the Constitution and laws of the Commonwealth of Virginia, or not denied by the same, as fully and completely as if herein set out at length.

Sec. 2. Daylight saving time.

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The council may by resolution require, provide for and enforce daylight saving time in the town. Such time when so prescribed shall govern the conduct of all businesses and town elections within the corporate limits of the town. (Acts 1958, ch. 135, § 1)

CHAPTER 3. TOWN PLAN

Sec. 1. Adoption.

The council may adopt a town plan, showing the streets, highways, and parks heretofore laid out, adopted, and established, and such town plan shall be final with respect to the location, length, and width of such streets and highways, and the location and dimensions of such parks. Such town plan is hereby declared to be established for the promotion of the health, safety, and general welfare. Upon the adoption of the town plan, or any amendment thereto, a certificate to that effect, together with a plat, shall be filed immediately with the clerk of every county affected by such town plan and amendment.

Sec. 2. Appointment, etc., of planning commission.

The council is hereby authorized to appoint a town planning commission, fix the number and term of members, remove any member for cause, fill any vacancies, which may occur, and provide for the powers and duties of such commission, not in conflict with the provisions of this act [Charter].

Sec. 3. Amendments.

The council may at any time, after a public hearing, amend the town plan, by widening, relocating, or closing existing streets and highways, and by altering any existing part or by laying out new streets and highways and establishing new parks. Before amending the town plan, the council shall refer the proposed amendment to the town planning commission for a report thereon, and shall not act on such amendment until a report has been received from said commission, unless a period of thirty days has elapsed after the date of reference to the commission. Any amendment of the town plan, upon its adoption by the council, shall be final unless changed as herein provided as to the location, length, and width of any street or highway, and the location and dimensions of any park. Any widening, relocating, closing or laying out of streets and highways proposed under the provisions of law other than those contained in this article shall be deemed an amendment of the town plan, and shall be subject in all respects to the provisions of this chapter.

Sec. 4. Approval of plats for streets and highways—Generally.

No plat showing a new street or highway within the town, shall be filed or recorded in the office of the clerk of the town or of any county until such plat has been approved by the council. Before giving any approval, the council shall refer every such plat to the town

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planning commission for a report, and shall not act on any plat so referred until a report has been received from the commission, unless a period of forty-five days has elapsed after the date of reference to the commission. Before reporting to the council on any plat, the commission shall hold a public hearing thereof. If any plat is disapproved by the commission, it shall report the reasons for such disapproval to the council. The council shall not approve any plan unless the streets and highways provided in such plats are of sufficient width, of proper grades, and suitably located to meet the probable traffic needs; to afford adequate light, air, and access of fire apparatus to such buildings as may be erected along the proposed streets and highways; and to insure healthful conditions on the land adjacent to such streets and highways. The council may, in appropriate cases, require that a plat, before being approved, shall provide adequate open spaces for parks, playgrounds, or other recreational uses; but the inclusion of such open spaces upon a plat does not require their dedication to public use. After a plat has been approved by the council, the streets, highways, parks, and other open spaces shall be a part of the town plan. The council, after a public hearing, may adopt general regulations in regard to the filing of plats.

Sec. 5. Same—Conditions.

(a) Before approving such plat, and thereby accepting the dedication of the streets, alleys, parks and public places thereon, the council shall require that the streets and alleys thereon shall be properly laid out and located with reference to the topography of the land so platted and the adjoining lands, both as to connections and widths, which widths of such streets and alleys shall be plainly marked in figures or written on such plat, and which streets and alleys shall be laid out in harmony with the general plan of the town.

(b) And, before approving such plat, and thereby accepting the dedication of the streets and alleys thereon, the council shall require the owner thereof to execute and deliver to the Town of Chincoteague a release and waiver of any claim or claims for damages which such owner, his heirs, successors or assigns may have or acquire against the Town of Chincoteague by reason of establishing proper grade lines on and along such streets and alleys and by reason of doing necessary grading or filling for the purpose of placing such streets and alleys upon the proper grade and releasing the Town of Chincoteague from building any retaining wall or walls along the streets and alleys and property lines; and the council may require such release and waiver to be written and executed on said plat and recorded therewith or by an instrument of writing to be executed and recorded in the clerk's office of the Circuit Court of Accomack County.

And the council may, in its discretion, require the owner of such platted lands to submit profiles of such streets and alleys, showing the contour thereof, together with proper grade lines laid thereon, and if and when the council is satisfied that the proper grade lines are laid on such profiles, the profiles shall be approved by the council and recorded by the owner or at his expense in the record of the profiles of the streets and alleys of the town, and the council may in its discretion, require such release and waiver to be made with reference thereto.

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(c) Before approving any such plat of any subdivision of lots or lands the town council may, at its discretion, require the owner of such lot or lands to grade the streets and alleys therein, according to grade lines approved and established by the council.

Sec. 6. Issuance of building permits.

For the purpose of preserving the integrity of the plan, no permit shall hereafter be issued for the construction of any building within the street lines of any mapped street or highway, as laid down in the town plan, within the town. Provided, however, if the land within any mapped street or highway is not yielding a fair return to the owner, the board of appeals, provided for herein, by a majority vote of all its members, may issue a permit for a building within the street line of such street or highway, upon such conditions as will increase as little as possible the cost of opening such street or highway, and will protect as far as possible the rights of the public and the integrity of the town plan. The board of appeals, hereinafter authorized, before taking any action under the provisions of this section, shall hold a public hearing, of which adequate notice shall be given to all persons deemed to be affected. Any decision by the board of appeals, rendered under the provisions of this section, shall be subject to the same court review as provided for zoning decisions of the board.

Sec. 7. Conformity with plan.

If such town plan is adopted, no public sewer, water pipe, or other public utility shall be laid and no grading or paving shall be done by the town in any street or highway in the town, unless such street or highway has been placed upon the town plan by the council. No permit shall be issued for any building in the town unless such building is located adjacent to a street or highway, which has been placed upon the town plan by the council. Provided, however, where the literal enforcement of the provisions of this section would result in practical difficulty or unnecessary hardship, or where the nature or use of the proposed building does not require its location to be adjacent to a street or highway, the board of appeals, by a majority vote of all its members, may issue a permit for a building, upon such condition as the board may deem necessary to preserve the integrity of the town plan and to insure the proper location of future streets and highways in the town and the surrounding area. Any decisions of the board of appeals, rendered under the provisions of this section, shall be subject to the same court review as provided for zoning decisions of the board.

CHAPTER 4. ZONING

Sec. 1. Generally.

For the purpose stated in chapter one hundred and ninety seven of the Acts of Assembly, approved March 18, 1926, the town council is hereby empowered to pass zoning ordinances in conformity with the said act, as amended, subject, however, to the following modifications thereto:

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- (a) The council shall not adopt any zoning ordinance or map until it shall have appointed a town planning commission, as provided for in this act [Charter] and shall have received from said commission its recommendations as to a zoning ordinance and map, and shall have held a public hearing thereon.
- (b) Any zoning ordinance, regulations, restrictions, and boundaries of districts may be changed from time to time by the council, either upon its own motion or upon petition, under such conditions as the council may prescribe, after a public hearing and adequate notice to all owners and parties affected. If a protest or protests be filed with the council, signed by the owners of twenty per centum or more of the area of the land included in the proposed change, or by the owners of twenty per centum or more of the area of the land immediately adjacent to the land included in the proposed change, within a distance of one hundred feet therefrom, or by the owners of twenty per centum or more of the area of the land directly opposite across any street or streets from the land included in the proposed change, within a distance of one hundred feet from the street lines directly opposite, then no such change shall be made except by the majority vote of all of the members of the council. No change shall be made by the council in any zoning ordinance or map until such change has been referred to the town planning commission for a report thereon, and no action shall be taken by the council until a report has been received from the commission, unless a period of thirty days has elapsed after the date of reference to the commission.
- (c) Within thirty days after the adoption of any zoning ordinance and map, the council shall appoint a board of appeals, consisting of seven members, none of whom shall hold any other positions with the town. (Ord. of 7-1-1994)

The council may remove any member of the board for cause, after a public hearing. If a vacancy occurs otherwise than by the expiration of the term of the different members, it shall be filled by the council for the unexpired term.

Unless the council designates some member of the board as a chairman, the board shall select a chairman from among its own members, and may create and fill such other offices as it may choose. The board may employ such persons as the council may approve, and may expend such sums as are appropriated by the council for its work.

CHAPTER 5. ADMINISTRATION AND GOVERNMENT

Sec. 1. Town council generally.

- (a) The present mayor and council of the Town of Chincoteague shall continue in office until the expiration of the terms for which they were respectively elected.

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(b) The administration and government of the Town of Chincoteague shall be vested in one body to be called the council of the Town of Chincoteague, which shall consist of seven members, six of whom shall be known as councilmen and one to be known as mayor, all of whom shall be residents and qualified voters of the said town. No person shall be a candidate simultaneously for the office of mayor and council member. No council member shall be eligible for qualification or election to the office of mayor unless (i) the council member's term of office will expire on June 30 of the year of the election for mayor or (ii) the council member's term of office will expire after June 30 of the year of the election for mayor, the council member submits his written resignation to the council at least 120 days before the day of the election for mayor, and such resignation shall become effective on June 30 of the year of the election for mayor. The council may create, appoint, or elect such departments, bodies, boards, and other officers, or assessors or attorneys, as are hereinafter provided for, or as are permitted or required by law to be appointed by the council, or as may be deemed necessary or proper, and may fix their compensation and define their duties.

(Ord. of 7-1-1993)

Sec. 2. Mayor and vice-mayor.

(a) The mayor shall preside at the meetings of the council and perform such other duties as may be prescribed by this Charter and by general law, and such as may be imposed by the council, consistent with his office. He shall be recognized as the official head of the town for all ceremonial purposes, by the courts for the purpose of serving civil process, and by the Governor for military purposes. In time of public danger or emergency, he may take command of the police, maintain order and enforce the law. Such course of action shall be subject to review by the council.

The mayor shall have no right to vote in the council except that in every case of a tie vote of the council, the mayor shall be entitled to vote and his vote in case of a tie only shall have the same weight and effect as the vote of a councilman.

The mayor shall have no power to suspend, remove or discharge any officer, agent or employee of the town nor shall he have any power or authority to appoint or employ any officer, agent or employee of the town nor to fix the term of office or employment, or the compensation, or to increase or decrease the power and authority of any officer, agent, or employee of the town, unless such power shall have been given him by the council, but the mayor shall have such powers with respect to the chief of police, the police, the policemen and employees of the police force when and if the mayor is given the control and supervision of the chief of police.

(b) Every ordinance, or resolution having the effect of an ordinance, shall, before it becomes operative be presented to the mayor. If he approves, he shall sign it, but if not, he may return it, with his objections in writing, to the town manager who shall enter the mayor's objections at length on the minute book of the council. The council shall thereupon proceed to reconsider such ordinance or resolution. If, after such consideration, two-thirds of all the members elected to the council shall agree to pass the ordinance or resolution, it shall become operative notwithstanding the objection of the mayor. In all such cases the votes of members of the council upon such reconsideration shall be determined by "yeas"

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and "nays," and the names of the members voting for and against the ordinance or resolution shall be entered on the minute book of the council. If any ordinance or resolution shall not be returned by the mayor within five days (Sunday excepted) after it shall have been presented to him, it shall become operative in like manner as if he has signed it, unless his term of office or that of the council, shall expire within said five days.

(c) The council shall at its first meeting in July following every regular municipal election, choose one of its members as vice-mayor. The vice-mayor shall perform the duties of the mayor during his absence or disability.

The member of the council who shall be chosen vice-mayor, shall continue to have all of the rights, privileges, powers, duties and obligations of councilmen even when performing the duties of mayor during the absence or disability of the mayor of the town.

(Acts 1981, ch. 84, § 1)

Sec. 3. Election of mayor and council; terms of office; meetings of council; vacancies.

(a) At the regular municipal election to be held in the town in 1982, and every two years thereafter, there shall be elected, in the manner prescribed by law, three councilmen for terms of four year(s). A mayor shall be elected for a term of four years in 1984 and every four years thereafter.

Municipal elections shall be held at the time and in the manner provided for by general law. Terms of office shall begin on the first day of July next following the election. Each councilman and the mayor elected as herein above provided shall serve for the term stated or until his successor shall have been elected and qualified. The council shall be a continuing body, and no measure pending before such body shall abate or be discontinued by reason of expiration of the term of office or removal of the members of said body or any of them.

(b) The council shall, by ordinance, fix the time for their stated meetings. Special meetings shall be called by the clerk of the council upon the request of the mayor, or any three members of the council; no business shall be transacted at a special meeting but that for which it shall be called, unless the council be unanimous. The meetings of the council shall be open to the public, except when the public welfare shall require executive sessions.

If any member of the said council shall be voluntarily absent from three regular meetings of the council consecutively, his seat may be deemed vacant by resolution of the council and thereupon his unexpired term shall be filled according to the provisions of this act [Charter]. (Acts 1958, ch. 135, § 1; Acts 1981, ch. 84, § 1)

Sec. 4. Town clerk [manager].

The town clerk [manager] shall be appointed by the council, and shall attend the meetings of the council and shall keep permanent records of its proceedings; he shall be custodian of the town seal and shall affix it to all documents and instruments requiring the seal, and shall attest the same; he shall keep all papers, codes, documents, and records

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pertaining to the town, the custody of which is not otherwise provided for in this Charter; he shall give notice to all parties presenting petitions, or communications to the council of the final action of the council on such communications or petitions; he shall give to the proper department or officials ample notice of the expiration or termination of any franchise, contracts or agreements; he shall publish such reports and ordinances as the council is required to publish, and such other records and ordinances as it may direct; he shall upon final passage transmit to the proper departments or officials copies of all ordinances or resolutions of the council relating in any way to such departments or to the duties of such officials, and he shall perform such other acts and duties as the council may, from time to time, allow or require.

Sec. 5. Town treasurer.

(a) The town treasurer shall, before entering upon the duties of his office, give bond with sufficient surety to be approved by the council, in a penalty of such amount as may be fixed by the council from time to time, payable to the Town of Chincoteague, conditioned for the true and faithful performance of the duties of his office. The treasurer shall be responsible for the collection of all taxes, licenses and levies and charges for services furnished by the public utilities of the town. The council shall have authority to place in the hands of a town collector to be appointed by it, the collection of any taxes, licenses and other levies at any time if in the discretion of the council it shall be proper so to do.

(b) The town treasurer shall receive all moneys belonging to the town which it is his duty to collect from persons owing the same to the town, or which it is the duty of other officers of the town to collect and pay over to him, and pay the same out as the ordinances of the town may prescribe; to keep such moneys safely and account therefor; and to pay all drafts or orders made on him in conformity with the ordinances of the town.

(c) The funds of the town shall be deposited by the treasurer in such bank or banks as the council may direct, and such bank or banks may be required to give security in such sum or sums as the council shall fix. He shall keep books showing accurately the state of his accounts and the money of the town shall be kept distinct and separate from his own money and he is hereby expressly prohibited from using directly or indirectly the town's money, checks, or warrants in his custody and keeping for his own use and benefit, or that of any person or persons whomsoever, and any violation of this provision shall subject him to immediate removal from office.

(d) The books and accounts of the town treasurer and all papers relating to the accounts and transactions of the town, shall be at all times subject to the inspection of the mayor, the town council, and such other persons as the council may appoint, to examine the same, and all such books and accounts, together with any balance or moneys on hand, shall be transferred by the treasurer to his successor at every new appointment, or delivered up as the council may at any time require.

(e) The town treasurer shall, when required by the council, render an account to the council showing the state of the treasury and the balance of money on hand. He shall also, if required so to do by the council, accompany such account with a statement of all money

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received by him and on what account, with a list of all checks paid by him during the month then closed, and shall furnish such other information, accounts and statements as the town council may direct.

(f) The town treasurer shall annually submit to the town council, at such time as directed by the council, a full and detailed account of all receipts and disbursements made during the fiscal year just closed.

(g) All taxes, levies or other sums of money of whatever nature received by the town treasurer belonging to the Town of Chincoteague shall be credited by the treasurer on his books to the Town of Chincoteague and shall be paid out by him only on a warrant of the clerk of the council, countersigned, by the mayor.

(h) The treasurer shall keep a separate account of each fund and appropriation and the debts and credits belonging thereto; provided, however, that the council shall have the right to require all town funds to be deposited to the credit of the town and may prescribe by resolution or ordinance such other method of disbursement as it shall from time to time deem proper.

(i) All moneys received on all special assessments shall be held by the treasurer as a special fund, to be applied to the payment of the matter for which the assessment was made and said moneys shall be used for no other purpose.

(j) The treasurer shall perform such additional duties as may be required of him by the council not inconsistent with the laws of the state.

(k) The town treasurer shall receive for his services such compensation, if any, as the council may deem proper.

Sec. 6. Chief of police.

There shall be appointed by the council a chief of police who shall qualify and give bond in such amount as the council may require. He shall be vested with powers of a conservator of the peace, and shall have the same powers and discharge the same duties as a constable within the corporate limits of the town and to a distance of one mile beyond the same, and shall perform such other duties as may be from time to time prescribed by the council.

(Acts 1958, ch. 135, § 1)

Sec. 7. Town officers generally.

(a) The town council may combine offices when not expressly prohibited, except that the assessing and collecting officers shall not be the same person.

(b) The town council shall grant and pay to all town officers and employees such salaries or compensation, if any, as the said council may from time to time deem just and proper, or which shall be fixed by this act [Charter], except as such salaries or compensation may be fixed by general law.

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(c) If any person, having been an officer of such town, shall not within ten days after he shall have vacated, or removed from office, and upon notification or request of the clerk of the council, or within such time thereafter as the town council shall allow, deliver over to his successor in office all property, books, and papers belonging to the town, or appertaining to such office in his possession or under his control, he shall forfeit and pay to the town the sum of five hundred dollars, to be sued for in the name of the town and recovered with costs; and all books, records, and documents used in any such office by virtue of any provision of this act [Charter], or of any ordinance or order of the town council or any superior officer of the said town, shall be deemed the property of the said town and appertaining to said office, and the chief officer thereof shall be responsible therefor.

(d) All officers hereafter elected under this act [Charter], shall be elected at the times and for the terms, as hereinbefore provided, and shall enter upon the discharge of their duties, in accordance with the provisions of the general laws of this state concerning town officers.

(e) The Town of Chincoteague and the officers thereof, elected or appointed in accordance with the provisions of this act [Charter], shall be clothed with all the powers, and be subject to all the provisions of law not in express conflict with the provisions of this act [Charter].

(f) The mayor, the town councilmen, the chief of police and the members of the police force of the town shall have jurisdiction, power and authority in criminal and police matters for one mile from the corporate limits of the said town.

(g) All officers elected or appointed under the provisions of this Charter, shall, unless otherwise provided under general law or by this Charter, or by ordinance of the council execute such bond with such approved security as may be required by general law, by this Charter, or by ordinance or resolution of the council, and file the same with the town clerk [manager] before entering upon the discharge of their duties; and in event of default on the part of any bonded municipal officer, the town shall have the same remedies against him and his sureties as are provided for the state in enforcing the penalty of any official bond given to it.

(h) All officers elected or appointed under the provisions of this Charter shall take the oath of office required by general laws before entering upon the discharge of his duties, and if these requirements have not been complied with within thirty days after the term of office shall have begun or after his appointment to fill a vacancy, then such office shall be considered vacant.

(Acts 1958, ch. 135, § 1)

CHAPTER 6. GENERAL PROVISIONS

Sec. 1. Officers authorized to administer oaths.

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The mayor, town clerk [manager] and town treasurer shall have power to administer oaths, and to take and sign affidavits in the discharge of their respective official duties.

Sec. 2. Investigations.

The council, mayor, and any officer, board or commission authorized by the council, shall have power to make investigations as to town affairs and for that purpose to subpoena witnesses, administer oaths and compel the production of books and papers.

Any person refusing or failing to attend or to testify or to produce such books and papers may, by summons issued by such officer or board or the town council, be summoned before the mayor of said town by the board, official, or council making such investigation and upon his failure to give satisfactory explanation of such failure or refusal, may be fined by the mayor not exceeding one hundred dollars or imprisoned not exceeding thirty days, and such person shall have the right to appeal to the Circuit Court of Accomack County. Any person who shall give false testimony under oath at any such investigation shall be liable to prosecution for perjury.

Sec. 3. Changes in form of government.

The plan of government provided by this Charter may be changed to any other plan provided for the government of incorporated towns in the manner provided by general law therefor; and if and when the Town of Chincoteague shall become a city of the second class in the manner provided by general law, the plan of government provided by this Charter shall continue so far as applicable, but such plan of government may be changed to any other plan provided for the government of cities of the second class at any time in the manner provided by general law.

Sec. 4. Prior contracts and obligations.

All contracts and obligations heretofore or hereafter made by the council of the Town of Chincoteague, while in office, not inconsistent with this Charter, or the Constitution, or the general laws of this state shall be, and are hereby declared to be valid and legal.

Sec. 5. Continuation of ordinances.

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

Sec. 6. Vacancies in office.

Vacancies in all elective or appointive offices may be filled by a majority vote of the council. No appointive officer shall be appointed for a term longer than two years at anyone time. Such provision shall not prevent the council from appointing such officer for as many unexpired or full terms as the council may desire. A vacancy in the elective offices of the town shall be filled by the council within thirty days of such vacancy, and upon a failure of a majority of the remaining members of council to so act, the judges of the Circuit Court of the County of Accomack shall make such appointment in accordance with the provisions

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of Code of Virginia, § 24.1-76 [24.2-225 et seq.]. Any such person so appointed shall be fully eligible to hold such office. The person so appointed shall hold office until the qualified voters shall fill the vacancy in a special election in accordance with [Code of Virginia,] § 24.1-76 and such person so elected qualifies, or until such time as otherwise provided by [Code of Virginia,] § 24.1-76. Upon the occurrence of any such vacancy, the town council shall forthwith advise the judges of the Circuit Court of said County who shall, subject to the provisions of [Code of Virginia,] § 24.1-76, issue a writ of election to fill such vacancy.
(Ord. of 7-1-1993)

Sec. 7. Severability of Charter provisions.

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

Sec. 8. Citation of Charter.

This act [Charter] may for all purposes be referred to or cited as the Chincoteague Charter of 1942.

CHARTER COMPARATIVE TABLE

ACTS

This table shows the location of Acts in the basic Charter.

Year	Chapter	Section	Section this Charter
1958	135	1	Ch. 2, § 2 Ch. 5, § 3 Ch. 5, § 6, Ch. 5, § 7
1981	84	1	Ch. 5, § 2, Ch. 5, § 3

CHARTER COMPARATIVE TABLE

ORDINANCES

This table shows the location of the ordinances in the basic Charter.

Date	Section this Charter
7- 1-1993	Ch. 5, § 1
	Ch. 6, § 6
7- 1-1994	Ch. 4, § 1

PART II

CODE

Chapter 1

GENERAL PROVISIONS*

- Sec. 1-1. Designation and citation of Code.
- Sec. 1-2. Definitions and rules of construction.
- Sec. 1-3. Section catchlines and other headings.
- Sec. 1-4. History notes.
- Sec. 1-5. Notes and references.
- Sec. 1-6. Repeal of prior ordinances; provisions saved from repeal.
- Sec. 1-7. Continuation of existing ordinances.
- Sec. 1-8. Severability of parts of Code.
- Sec. 1-9. Classification of and penalties for violations; continuing violations.
- Sec. 1-10. Amendments to Code.
- Sec. 1-11. Supplementation of Code.

***Charter references** —Incorporation and boundaries, ch. 1; general provisions, ch. 6.

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Sec. 1-1. Designation and citation of Code.

The ordinances embraced in this and the following chapters and sections shall constitute and be designated "The Code of the Town of Chincoteague, Virginia," and may be so cited. Such ordinances may also be cited as "The Chincoteague Town Code."
(Code 1977, § 1-1; Ord. of 11-2-1992, § 1-1)

State law reference —Authority of town to codify ordinances, admissibility of Code as evidence in courts, Code of Virginia, § 15.2-1433.

Sec. 1-2. Definitions and rules of construction.

In the construction of this Code and of all ordinances and resolutions of the town, the following rules shall be observed, unless otherwise specifically provided or unless such construction would be inconsistent with the manifest intent of the council:

Charter. The term "Charter" shall mean the Charter of the town, as it now exists or as it may be amended in the future.

Code. Whenever the term "Code" or "this Code" is referred to, without further qualification, it shall mean The Code of the Town of Chincoteague, Virginia, as designated in section 1-1.

Code of Virginia. The term "Code of Virginia" shall mean the Code of Virginia of 1950, as amended.

Computation of time. When a provision of this Code requires a notice to be given or any other 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; but when a provision of this Code requires a notice 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 —Computation of time, Code of Virginia, § 1-13.3.

Council; town council. Whenever the term "council" or "town council" is used, it shall be construed to mean the council of the Town of Chincoteague.

County. The term "county" or "the county" shall mean the County of Accomack in the State of Virginia.

Gender. A word importing the masculine gender only shall extend and be applied to females and to firms, partnerships and corporations, as well as to males.

State law reference —Gender, Code of Virginia, § 1-13.7.

Health officer. The term "health officer" shall mean the health director of the county health department or his duly authorized agent.

May. The term "may" is permissive.

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

State law reference—Number, 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 references—Oath, Code of Virginia, § 1-13.16; when affirmation may be made, Code of Virginia, § 49-9.

Officers, employees, departments, boards, commissions or agencies. Any reference to an officer, an employee, a department, a board, a commission or an agency shall be construed as if followed by the phrase "of the Town of Chincoteague, Virginia".

Person. The term "person" shall include any individual, firm, corporation, partnership, association, joint stock association, company, business, trust, joint venture or other legal entity or any assemblage, group or combination of individuals.

State law reference—"Person" defined, Code of Virginia, § 1-13.19.

Preceding; following. The terms "preceding" and "following" mean next before and next after respectively.

State law references—"Following" defined, Code of Virginia, § 1-13.6; "preceding" defined, Code of Virginia, § 1-13.23.

Shall. The term "shall" is 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.

State; commonwealth. The term "state" or "commonwealth" shall be construed as if the phrase "of Virginia" followed it.

Street. The term "street" shall mean any passageway in the stated right-of-way that is maintained by the town and/or the commonwealth.

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

State law references—Similar provisions, Code of Virginia, § 1-13.28; when affirmation may be made, Code of Virginia, § 49-9.

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

Town. The term "town" shall be construed as if the phrase "of Chincoteague" followed it. (Code 1977, § 1-2)

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Sec. 1-3. Section catchlines and other headings.

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

(Code 1977, § 1-3)

State law reference—Headlines of sections in state law, Code of Virginia, § 1-13.9.

Sec. 1-4. History notes.

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

Sec. 1-5. Notes and references.

The notes, Charter references, cross references and state law references in this Code are not intended to have any legal effect, but are merely intended to assist the user of this Code.

Sec. 1-6. Repeal of prior ordinances; provisions saved from repeal.

(a) All ordinances and parts of ordinances inconsistent with the provisions of this Code are, except as otherwise provided, repealed to the extent of such inconsistency.

(b) The repeal of the former town Code, effective as of the effective date of this Code, shall not affect:

- (1) Any act or offense done or committed or any penalty or forfeiture incurred or any right established, accrued, or accruing on or before such date or any prosecution, suit or action pending on that day. Except as otherwise provided, neither the repeal of the former town Code nor the enactment of this Code shall apply to offenses committed prior to the effective date of this Code, and prosecutions for such offenses shall be governed by the former town Code, which is continued in effect for that purpose. For the purposes of this subsection, an offense was committed prior to the effective date of this Code if any of the essential elements of the offense occurred prior thereto.
- (2) Any ordinance or resolution promising or guaranteeing the payment of money for the town, authorizing the issuance of any bonds of the town, or any evidence of the town's indebtedness, or any contract established, or obligation assumed, by the town.
- (3) Any annual tax levy.

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- (4) Any franchise conferred by ordinance or resolution of the town on any person or corporation.
- (5) Any ordinance adopted for purposes which have been consummated.
- (6) Any ordinance which is temporary, although general in effect, or special, although permanent in effect.
- (7) Any ordinance relating to the salaries of the town officers, officials or employees or any other policies, procedures, rules and regulations pertaining to personnel.
- (8) Any ordinance annexing territory to the town.
- (9) Any ordinance naming, renaming, opening, accepting or vacating streets or alleys in the town.
- (10) Any ordinance relating to zoning, rezoning or zoning maps or subdivisions or plats or subdivisions and amendments and additions thereto.
- (11) Any ordinance pertaining to traffic or parking regulations applicable to specific locations.
- (12) Any retirement plan.
- (13) Any fees and charges consistent with this Code.
- (14) Any judgment rendered prior to the effective date of this Code.
- (c) All such provisions shall remain in full force and effect as if set out fully in this Code.

State law reference—Similar provisions, Code of Virginia, §§ 19.2-1, 19.2-2.

Sec. 1-7. Continuation of existing ordinances.

The provisions appearing in this Code, so far as they are the same in substance as ordinances previously adopted by the town council, shall be considered as continuations thereof and not as new enactments. (Code 1977, § 1-4)

Sec. 1.8. Severability of parts of Code.

It is 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, or its application to any persons or circumstances, shall be 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 or sections of this Code, or their application.

(Code 1977, § 1-5)

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Sec. 1-9. Classification of and penalties for violations; continuing violations.

(a) Whenever in the Charter, this Code or in any town ordinance or resolution or rule, regulation or order promulgated by any town officer or agency under authority duly vested in him or it, it is provided that a violation of any provision thereof shall constitute a class 3 or 4 misdemeanor, such violation shall be punished as follows:

- (1) Class 3 misdemeanor by a fine of not more than \$500.00.
- (2) Class 4 misdemeanor by a fine of not more than \$250.00.

(b) Whenever in the Charter, this Code or in any town ordinance or resolution or rule, regulation or order promulgated by any town officer or agency under authority duly vested in him or it any act is prohibited or is declared to be unlawful or a misdemeanor or the doing of any act is required or the failure to do any act is declared to be unlawful or a misdemeanor, and no specific penalty is provided for the violation thereof, the violation of any such provision of the Charter, this Code or of any such ordinance, resolution, rule, regulation or order shall be punished by a fine not exceeding \$500.00 or by imprisonment for a term not exceeding 12 months or by both such fine and imprisonment.

(c) Each day any violation of the Charter, this Code or any such ordinance, resolution, rule, regulation or order shall continue shall constitute, except where otherwise provided, a separate offense.

(d) Such penalties shall not exceed those penalties prescribed by general law for like offenses.

(Code 1977, § 1-6)

Charter references—Penalties for violation of ordinances, ch.2, § 1(44), (50); authority of town to enjoin ordinance violations, ch. 2, § 1(47).

State law references—Charter powers not affected by local government law, Code of Virginia, § 15.2-100; penalties for violations of ordinances, Code of Virginia, § 15.2-1429; penalties for conviction of misdemeanors, Code of Virginia, §§ 18.2-11, 18.2-12.

Sec. 1-10. Amendments to Code.

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

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

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

Sec. 1-11. 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 this 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 which 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 the preparation of a supplement to this Code, all portions of the Code which 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, agency or organization authorized to prepare the supplement, may make formal, non substantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them in 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 _____ through _____," inserting section numbers to indicate the sections of the Code which embody the substantive sections of the ordinance incorporated in the Code; and
- (5) Make other nonsubstantive changes necessary to preserve the original meaning of ordinance sections inserted in 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.

(d) Each supplement will indicate the adoption date of the latest ordinance included in the supplement.

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State law reference—Authority to supplement Code at direction of council, Code of Virginia, § 15.2-1433.

Chapter 2 ADMINISTRATION*

Article I. In General

- Sec. 2-1 Town seal.
- Sec. 2-2. Signature and seal on deeds, bonds, notes, contracts and other instruments.
- Sec. 2-3. Emergency management organization.
- Secs. 2-4—2-30. Reserved.

Article II. Council

- Sec. 2-31. Date of regular meetings; calling of special meetings.
- Sec. 2-32. Ordinances granting right or privilege to private person.
- Sec. 2-33. Presentation of proposed franchise to council.
- Secs. 2-34—2-60. Reserved.

Article III. Officers and Employees

- Sec. 2-61. Town manager.
- Sec. 2-62. Town clerk.
- Sec. 2-63. Financial officer.
- Sec. 2-64. Chief of police.
- Secs. 2-65—2-105. Reserved

Article IV. Boards and Commissions

Division 1. Generally

- Secs. 2-106—2-130. Reserved.

***Charter references**—Powers of town, ch. 2; audits of accounts, ch. 2, § 1(64); town plan, ch. 3; administration and government, ch. 5; general provisions, ch. 6.

Cross references—Any retirement plan saved from repeal, § 1-6(a)(12); law enforcement, ch. 34; taxation, ch. 54; administration of property taxes regulations, § 54-92; utilities, ch. 62; administration and interpretation of zoning regulations, app. A, § 11.1 et seq; administration and enforcement of land subdivision and development regulations, app. B, §9.

State law references—The Virginia Freedom of Information Act, Code of Virginia, § 2.1-340 et seq.; State and Local Government Conflict of Interests Act, Code of Virginia, § 2.1-639.1 et seq.; Virginia Public Procurement Act, Code of Virginia, § 11-35 et seq.; counties, cities and towns, Code of Virginia, tit. 15.2; Virginia Public Records Act, Code of Virginia, § 42.1-76 et seq.

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Division 2. Planning Commission

- Sec. 2-131. Created.
- Sec. 2-132. Appointment, terms of office and removal of members; vacancies.
- Sec. 2-133. Powers and duties.
- Secs. 2-134—2-180. Reserved.

Article V. Finance

Division 1. Generally

- Secs. 2-181—2-205. Reserved.

Division 2. Procurement

Subdivision I. In General

- Sec. 2-206. Definitions.
- Sec. 2-207. Authority.
- Sec. 2-208. Objectives.
- Sec. 2-209. Implementation.
- Sec. 2-210. Centralized purchasing.
- Sec. 2-211. Sources of supply.
- Sec. 2-212. Commitments.
- Sec. 2-213. Interdepartment relations.
- Sec. 2-214. Vendor relations.
- Sec. 2-215. Expediting.
- Sec. 2-216. Tax exemption.
- Sec. 2-217. Compliance with federal grants.
- Sec. 2-218. Vendor selection.
- Sec. 2-219. Invitation for bids; opening of bids; award of bids generally.
- Sec. 2-220. Request for quotations.
- Sec. 2-221. Open market purchases.
- Sec. 2-222. Emergency purchases.
- Sec. 2-223. Bidders' list.
- Sec. 2-224. Competitive bidding on state-aid projects.
- Sec. 2-225. Withdrawal of bid due to error.
- Sec. 2-226. Bid deposits.
- Sec. 2-227. Bid bonds.
- Sec. 2-228. Alternative forms of security.
- Sec. 2-229. Prequalification for construction.
- Sec. 2-230. Use of brand names.
- Sec. 2-231. Award of bid-based contracts.
- Sec. 2-232. Performance and payment bonds.
- Sec. 2-233. Employment discrimination by contractor prohibited.
- Sec. 2-234. Retainage on construction contracts.
- Sec. 2-235. Deposit of certain retained funds; failure to timely complete contract.

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- Sec. 2-236. Public construction contract provisions barring damages for unreasonable delays declared void.
- Secs. 2-237—2-265. Reserved.

Subdivision II. Purchase Orders

- Sec. 2-266. When required; contents; procedures for approval.
- Sec. 2-267. Notice to vendors; tax exempt number.
- Sec. 2-268. Purchasing procedures.
- Sec. 2-269. Payment approval procedures.
- Secs. 2-270—2-295. Reserved.

Subdivision III. Competitive Negotiation

- Sec. 2-296. Procedures generally.
- Sec. 2-297. Award of a service generally.
- Sec. 2-298. Procurement of professional services.
- Secs. 2-299—2-325. Reserved.

Subdivision IV. Ethics in Public Contracting

- Sec. 2-326. Purpose.
- Sec. 2-327. Definitions.
- Sec. 2-328. Penalty for violation.
- Sec. 2-329. Proscribed participation by public employees in procurement transactions.
- Sec. 2-330. Solicitation or acceptance of gifts.
- Sec. 2-331. Disclosure of subsequent employment.
- Sec. 2-332. Gifts by bidders, offerors, contractors or subcontractors.
- Sec. 2-333. Kickbacks.
- Sec. 2-334. Participation in bid preparation; submitting bid for same procurement.
- Sec. 2-335. Purchase of building materials, supplies or equipment from architect or engineer.
- Sec. 2-336. Certification of compliance; false statements.
- Sec. 2-337. Misrepresentations.
- Secs. 2-338—2-380. Reserved.

Article VI. Unclaimed Personal Property

- Sec. 2-381. Definition.
- Sec. 2-382. Disposal of unclaimed property.
- Sec. 2-383. Disposal of bicycles, mopeds, etc.
- Sec. 2-384. Requirements prior to sale.
- Sec. 2-385. Proceeds of sale.
- Sec. 2-386. Worthless property.

ADMINISTRATION

ARTICLE I. IN GENERAL

Sec. 2-1. Town seal.

The seal of the town shall be represented by a design formed within two concentric circles, the outer circle having a diameter of 1 3/4 inches. Between the circles shall be a legend "TOWN OF CHINCOTEAGUE, VIRGINIA" in Roman characters. Within the inner circle the word "SEAL" shall be inscribed. No other seal shall be used as the seal of the town, and no paper issued with municipal authority which requires the town seal shall be valid, unless the seal described in this section shall be affixed to such paper. The town manager shall be the keeper of the town seal.

(Code 1977, § 1-8)

Charter reference—Corporate seal, ch. 1, § 1.

Sec. 2-2. Signature and seal on deeds, bonds, notes, contracts and other instruments.

All deeds, bonds, notes, leases, contracts, conveyances and instruments of whatever nature or description authorized to be made or entered into by the town shall, unless otherwise specially provided by the council, be signed and, when necessary, acknowledged by the mayor, sealed with the corporate seal of the town, and attested by the town manager. Such deeds, bonds, notes, leases, contracts, conveyances and instruments, when so signed and sealed, shall be taken as and for the true act of the town.

(Code 1977, § 2-1)

Sec. 2-3. Emergency management organization.

The town shall operate an emergency management organization separate from the county. The town's emergency management organization shall be responsible for local disaster mitigation, preparedness, response and recovery.

State law reference—Emergency Services and Disaster Law, Code of Virginia, § 44-146.14 et seq.

Secs. 2-4—2-30. Reserved.

ARTICLE II. COUNCIL*

Sec. 2-31. Date of regular meetings; calling of special meetings.

The regular meetings of the council shall be on the first Monday night of each month at such an hour as the council may from time to time designate. If the night for the meeting shall fall on a legal holiday, the meeting shall be held the following night. Special meetings may be called by the mayor or any three members of the council. For a called meeting, every member shall be notified, either verbally or by a written notice left at his domicile,

***Charter references**—Town council generally, 5, § 1; mayor and vice-mayor, ch. 5, § 2; election of mayor and council, ch. 5, § 3.

State law reference—Governing bodies of localities, Code of Virginia, § 15.2-1400 et seq.

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but no notice shall be required for regular meetings unless requested by a citizen of the commonwealth.

(Code 1977, § 2-4; Ord. of 4-7-1980, § 2-4)

Charter reference—Meetings of council, 5, § 3.

State law reference—Meetings of local governing bodies, Code of Virginia, § 15.2-1415 et seq.

Sec. 2-32. Ordinances granting right or privilege to private person.

Whenever any ordinance granting any right or privilege to any corporation, receiver or private person named therein shall be published in a paper published in the county which has a general circulation in the town, in the manner prescribed by law, the expense of such publication shall be borne entirely by such corporation, receiver or private person, who shall be deemed to have assumed such expenses by the acceptance of the provisions of such ordinance. Any officer or other person violating this section shall pay to the town the cost of advertising or publishing such notice.

(Code 1977, § 2-5)

Charter references—Effective date of ordinances, ch. 2, § 1(62); enactment of ordinances, ch. 5, § 2.

State law reference—Ordinance proposing grant of franchise, etc., to be advertised, Code of Virginia, § 15.2-2101.

Sec. 2-33. Presentation of proposed franchise to council.

Every proposed franchise asked for from the council shall be presented in printed or typewritten form, at the expense of the petitioner, and a copy of such proposed franchise shall be provided for each member of the council at the meeting when such franchise is so presented. No request for a franchise shall be considered after having been presented to the council until so printed or typewritten.

(Code 1977, § 2-6)

Charter reference—Authority of town with regard to franchises, ch. 2, § 1(19).

Secs. 2-34—2-60. Reserved.

ARTICLE III. OFFICERS AND EMPLOYEES*

***Charter references**—Mayor and vice-mayor, ch. 5, § 2; town clerk, ch. 5, § 4; town treasurer, ch. 5, § 5; chief of police, ch. 5, § 6; town officers generally, ch. 5, § 7; general provisions, ch. 6; vacancies in town offices, ch. 6, § 6.

Cross references—Any ordinance relating to the salaries of the town officers, officials or employees, or any other policies, procedures rules and regulations pertaining to personnel saved from repeal, § 1-6(a)(7); building administrator, app. A, § 2.3; zoning administrator, app. A, § 2.4, app. A, § 2.180.

State law reference—Local government personnel, Code of Virginia, § 15.2-1500 et seq.

ADMINISTRATION

Sec. 2-61. Town manager.

The town council may appoint a town manager in accordance with Code of Virginia § 15.2-1540 to serve as the administrative head of government, whose duties shall be in accordance with § 15.2-1541 and as otherwise prescribed by council. The town manager shall serve at the pleasure of council.

Unless otherwise specifically prohibited, the town manager position may be combined with other positions as deemed necessary by the council.

Sec. 2-62. Town clerk.

The town council shall appoint a town clerk in accordance with Code of Virginia § 15.2-1538 whose duties shall be in accordance with § 15.2-1539 of the Code of Virginia and as otherwise prescribed by council. The town clerk shall serve at the pleasure of the council.

Unless otherwise specifically prohibited, the town clerk position may be combined with the town manager position or other positions as deemed necessary by the Council.

Sec. 2-63. Financial Officer.

The town council shall appoint an officer to be responsible for its financial affairs in accordance with Code of Virginia § 15.2-1537. The duties of the financial officer shall be as assigned by the council.

The town council may appoint a town treasurer to serve as the financial officer and be responsible for its financial affairs. Unless otherwise specifically prohibited, the financial officer position may be combined with the other positions as deemed necessary by the council.

Sec. 2-64. Chief of police.

The town council may appoint a chief of police whose duties shall be as prescribed by law and as otherwise determined by the council. The chief of police shall serve at the pleasure of council.

Secs. 2-65—2-105. Reserved.

ARTICLE IV. BOARDS AND COMMISSIONS*

DIVISION 1. GENERALLY

***Cross references**—Control committee for weeds, § 66-51; harbors and wharves committee, § 70-56 et seq.; board of zoning appeals, app. A, § 2.16; building administrator, app. A, § 2.21, app. A, § 8.1.

†**Charter reference**—Planning commission, ch. 3, § 2.

Cross references—Planning commission, app. A, § 2.120; zoning, app. A.

State law reference—Local planning commissions, Code of Virginia, § 15.2-2210 et seq.

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Secs. 2-106—2-130. Reserved.

DIVISION 2. PLANNING COMMISSION

Sec. 2-131. Created.

A town planning commission is created pursuant to Code of Virginia, §§ 15.2-2210-15.2-222.

(Code 1977, § 2-10)

Sec. 2-132. Appointment, terms of office and removal of members; vacancies.

(a) The planning commission shall consist of seven members, appointed by the town council, all of whom shall be residents of the town, qualified by knowledge and experience to make decisions on questions of community growth and development, provided that at least one-half of the members so appointed shall be freeholders. The town council may require each member of the commission to take an oath of office.

(b) One member of the commission may be a member of the town council, and one member may be a member of the administrative branch of the town government. The term of each of these two members shall be coextensive with the term of office to which he has been elected or appointed, unless the town council, at the first regular meeting each year, appoints others to serve as its representatives. The remaining members of the commission shall serve for staggered terms of four years each. The town council may establish different terms of office for subsequent appointments. Vacancies shall be filled by appointment for the unexpired term only. Members may be removed for malfeasance in office.

(Code 1977, § 2-11)

State law reference—Similar provisions, Code of Virginia, § 15.2-2212.

Sec. 2-133. Powers and duties.

The planning commission shall exercise such powers and shall have such duties as are conferred upon such commissions by state law. (Code 1977, § 2-12)

State law references—Duties of planning commission, Code of Virginia, § 15.2-2221; comprehensive plan, Code of Virginia, § 15.2-2223.

Secs. 2-134—2-180. Reserved.

ARTICLE V. FINANCE*

DIVISION 1. GENERALLY

Secs. 2-181—2-205. Reserved.

***Cross references**—Any ordinance or resolution promising or guaranteeing the payment of money for the town, authorizing the issuance of any bonds of the town, or any evidence of the town's indebtedness, or any contract established or obligation assumed, by the town saved from repeal, § 1-6(a)(2); any fees and charges consistent with this Code saved from repeal- § 1-6(a)(13); taxation, ch. 54.

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DIVISION 2. PROCUREMENT

Subdivision I. In General

Sec. 2-206. Definitions.

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

IFB means invitation for bids.

PO means purchase order.

PR means purchase requisition.

Purchasing agent means the town manager or his designee who is authorized and responsible for the procurement of supplies and services for town use.

RFQ means request for quotations.

Vendor means any person who or company that sells supplies or services.
(Code 1977, § 2-13)

State law reference—Definitions, Code of Virginia, § 2.2-4301.

Sec. 2-207. Authority.

This division is enacted pursuant to the authority granted in Code of Virginia, § 2.2-4300 et seq. (Code 1977, § 2-13)

Sec. 2-208. Objectives.

The objectives of this division shall be to:

- (1) Establish an ongoing centralized purchasing function capable of providing daily service and support on an organization-wide basis.
- (2) Introduce a greater measure of responsibility and accountability over implementation of the annual budget, specifically as related to the procurement of contractual services, materials, supplies, and capital outlay items.
- (3) Ensure realization of the principles of competitive purchasing and best buy at the least cost.
- (4) Assist management at all levels in reaching responsible, cost-effective decisions in the procurement of quality supplies and services for town use.
- (5) Formulate policies and procedures designed to systematize and enhance the efficiency of the town's procurement process and ensure procurement in a timely and proper manner.

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(6) Promote good will and clear communication in town-vendor relations and intra organization relations relative to purchasing.

(7) Promote the realization of equal opportunity policies through procurement relations with vendors.

(Code 1977, § 2-14)

State law reference—Purpose of public procurement law, Code of Virginia, § 2.2-4300.

Sec. 2-209. Implementation.

The town manager shall develop a purchasing procedure based on the policies and procedures established in this division and shall promulgate such administrative regulations necessary for the implementation of the standards established by this division.

(Code 1977, § 2-17-1)

Sec. 2-210. Centralized purchasing.

It shall be the policy of the town to maintain a purchasing process with the town manager or department heads as purchasing agent. It shall be the purchasing agent's responsibility to administer purchasing performance, negotiate and approve term contracts in connection with town departments, consolidate purchases of like or common items, analyze prices paid for materials and equipment and generally define how to obtain savings and to coordinate purchasing procedures.

(Code 1977, § 2-15-2)

(Amended 10/07/13)

Sec. 2-211. Sources of supply.

As a general policy, purchases shall be awarded, with local vendor preference, on the basis of availability, best price, delivery and quality, taking into consideration the reputation and performance capability of the suppliers.

(Code 1977, § 2-15-3)

(Amended 10/07/13)

Sec. 2-212. Commitments.

In connection with town departments, the purchasing agent shall conduct and conclude all negotiations affecting vendor selection, price, terms, delivery, etc. No one other than the town manager or department heads shall commit the town to any purchase, vendor, or product. Exceptions to this include emergencies and purchases made from the petty cash fund.

(Code 1977, § 2-15-4)

(Amended 10/07/13)

Sec. 2-213. Interdepartment relations.

It shall be the policy of the town to promote an intelligent and harmonious relationship between the town departments relative to procurement.

(Code 1977, § 2-15-5)

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Sec. 2-214. Vendor relations.

The town will develop and promote a program of fairness with all vendors and salespersons.

(Code 1977, § 2-15-6)

(Amended 10/07/13)

Sec. 2-215. Expediting.

Expediting or "followup" on the delivery of materials or orders will be accomplished by the town manager or department heads. Any information other town departments may acquire or be requested to acquire concerning the delivery status of ordered material should be passed on to the purchasing agent.

(Code 1977, § 2-15-17)

(Amended 10/07/13)

Sec. 2-216. Tax exemption.

The town is exempt from all state and federal sales and excise taxes.

(Code 1977, § 2-15-18)

Sec. 2-217. Compliance with federal grants.

The town may comply with mandatory federal requirements in grants or contracts not in conformance with this division only upon a written determination of the town council that acceptance of the applicable provisions is in the public's interest.

(Code 1977, § 2-15-19)

Sec. 2-218. Vendor selection.

Vendors will be selected on a competitive basis. Bids, quotations and proposals will be solicited by newspaper advertisement, by direct mail request to prospective suppliers, and/or by telephone. Purchase orders or contracts will be awarded to the lowest and best responsible vendor. All bids, etc., may be rejected if it is in the public's interest to do so. In determining the lowest and best responsible vendor, in addition to price, the following will be considered:

- (1) The character, integrity, reputation, judgment, experience and efficiency of the vendor.
- (2) The ability, capacity and skill of the vendor to perform the contract, fill the order or provide the service.
- (3) The ability of the vendor to provide material or service promptly or within the time specified, without delay or interference-
- (4) The quality of performance by the vendor on previous contracts, orders or services.
- (5) The ability of the vendor to provide future maintenance and service for all equipment purchased from the vendor.

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(Code 1977, § 2-16-1)

Sec. 2-219. Invitation for bids; opening of bids; award of bids generally.

(a) When the cost of a contract, lease or other agreement for materials, supplies, equipment or contractual services other than professional exceeds \$50,000.00 (Code of Virginia, § 2.2-4303(H)), an invitation for bids (IFB) notice will be prepared. This notice will be published at least once in at least one official newspaper of general circulation within the community. This newspaper notice must appear not less than seven days and not more than 21 days before the due date for bid proposals. The IFB will include a general description of the items to be purchased and the bid deposit and performance bond required and shall state where bid blanks and specifications may be secured and the time and place for opening bids. The town manager or department heads may also solicit sealed bids from responsible prospective suppliers by sending them a copy of such notice.

(b) Sealed bids will be opened in public by the town manager at the time and place stated in the IFB. The bids will be tabulated by the town manager. The results of the tabulation and the bid material will be examined by the town manager, the appropriate department head and the appropriate appointed committee to determine the best bid. Recommendations for the bid award will be submitted by the town manager to the town council at a public meeting. After the bid award is made by the town council, a purchase order and/or contract shall be prepared for execution by the successful bidder. After the purchase order is issued and/or the contract signed, all bid deposits will be returned to all unsuccessful bidders.

(Code 1977, § 2-16-2)

(Amended 10/07/13)

Sec. 2-220. Request for quotations or electronic or written or telephone quotes.

(a) Purchases of supplies, equipment and services of less than \$50,000.00 (Code of Virginia, § 2.2-4303 (H)) but of \$30,000.00 or more will require four (4) attempted request for quotations (RFQ). An RFQ is similar to an IFB except that advertising is required and detailed specifications may be appropriate. Forward your quotes with your purchase order and check requisition to accounts payable.

(b) Purchases of supplies, equipment and services of less than \$30,000.00 but of \$10,000.00 or more will require at least three (3) attempted electronic or written quotes to be obtained by the department. Forward your quotes with your purchase order and check requisition to accounts payable.

(c) Purchases of supplies, equipment and services of less than \$10,000.00 but of \$1,000.00 or more will require at least two (2) attempted telephone, catalog or electronic or written quotes to be obtained by the department. Forward your quotes with your requisition to accounts payable.

(d) The following procedures will be followed in obtaining a request for quotations:

(1) Complete a request for quotations and distribute copies to vendors.

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- (2) File unopened sealed quotations received, together with a machine copy of the original request for quotations.
- (3) On the designated date, remove the quotes received from the file.
- (4) Open the quotes and determine which vendor offers the item at the lowest price and issue a purchase order to the successful vendor.

(Code 1977, § 2-16-3)

(Amended 10/07/13)

Sec. 2-221. Open market purchases.

Purchases of less than \$1,000.00 will be made in the open market without necessary resort to an IFB or RFQ. No competition is required. Forward your purchase order and check requisition to accounts payable.

(Code 1977, § 2-16-4)

(Amended 10/07/13)

Sec. 2-222. Emergency purchases.

Emergency purchases shall be exempt from this division, provided that an emergency exists which affects the public health, safety or welfare. The mayor shall certify that an emergency exists.

(Code 1977, § 2-16-7)

Sec. 2-223. Bidders' list.

With the aid of other town departments, the town manager shall compile and maintain a bidders' list. Vendors desiring to be listed shall advise the town manager, in writing of the following:

- (1) Type of business;
- (2) Names of officers, owners or partners;
- (3) Persons authorized to sign bids, offers and contracts;
- (4) Type of equipment, supplies, materials sold and/or services provided; and
- (5) How long in the present business.

(Code 1977, § 2-15-10)

Sec. 2-224. Competitive bidding on state-aid projects.

No contract for the construction of any building or for an addition to or improvement of an existing building by the town or any subdivision of the town for which state funds of not more than \$30,000.00 in the aggregate or for the sum of all phases of a contract or project either by appropriation, grant-in-aid or loan are used or are to be used for all or part of the cost of construction shall be let except after competitive sealed bidding or after competitive negotiation as provided under subsection 2-296(c). The procedure for the advertising for bids or for proposals and for letting of the contract shall conform, mutatis mutandis, to this division.

State law reference—Similar provisions, Code of Virginia, § 2.2-4305.

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Sec. 2-225. 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 of work, labor or material made directly in the compilation 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. If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid which shall 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 the town and stated in the advertisement for bids: (i) 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 and shall submit original work papers with such notice; or (ii) the bidder shall submit to the town 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. In either instance, such work papers, documents and materials may be considered as trade secrets or proprietary information subject to the conditions of Code of Virginia, § . The bids shall be opened one day following the time fixed by the town for the submission of bids. Thereafter, the bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined in this subsection and withdraw his bid. The contract shall not be awarded by the 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 subsection.

(b) The 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 to 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.

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(f) If the town denies the withdrawal of a bid under 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.

(Code 1977, § 2-15-12)

State law reference—Withdrawal of bid due to error, Code of Virginia, § 2.2-4330.

Sec. 2-226. Bid deposits.

Bid deposits or surety may be prescribed in the public notices inviting bids. Unsuccessful bidders shall be entitled to the return of that deposit or surety. A successful bidder, upon failure on his part to enter into a contract within the time specified after written notification of the bid award, shall forfeit, as liquidated damages, any surety deposited with the town.

(Code 1977, § 2-15-8)

State law reference—Bid bonds, Code of Virginia, § 2.2-4334.

Sec. 2-227. 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 the commonwealth, 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 the following:

(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 preclude the town from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$100,000.00.

(Code 1977, § 2-15-14)

State law reference—Bid bonds, Code of Virginia, § 2.2-4336.

Sec. 2-228. 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, a bidder may furnish a personal bond, property bond, or bank or savings institution's letter of credit on certain designated 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 of security proffered affords protection to the town equivalent to a corporate surety's bond.

(Code 1977, § 2-15-14)

State law reference—Similar provisions, Code of Virginia, § 2.2-4338.

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Sec. 2-229. Prequalification for construction.

(a) Any prequalification of prospective contractors for construction by the town subsequent to July 1, 1995, shall be pursuant to a prequalification process for construction projects adopted by the town. Such process shall be consistent with this section.

(b) The application form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. Such form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this section shall be considered a trade secret or proprietary information subject to Code of Virginia, § 2.2-4317.

(c) In all instances in which the town requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this section to be accomplished.

(d) At least 30 days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the town shall advise in writing each contractor who submitted an application whether that contractor has been prequalified. If a contractor is denied prequalification, the written notification to such contractor shall state the reasons for such denial of prequalification and the factual basis of such reasons.

(e) A decision by the town denying prequalification under this section shall be final and conclusive unless the contractor appeals the decision as provided in Code of Virginia, § 2.2-4317.

(f) The town may deny prequalification to any contractor only if the town finds one of the following:

- (1) The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the town shall be sufficient to establish the financial ability of such contractor to perform the contract resulting from such procurement;
- (2) The contractor does not have appropriate experience to perform the construction project in question;
- (3) The contractor or any officer, director or owner thereof has had judgments entered against him within the past ten years for the breach of contracts for governmental

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or nongovernmental construction, including but not limited to design-build or construction management;

- (4) The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with a public body without good cause. If the town has not contracted with a contractor in any prior construction contracts, the town may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. The town may not utilize this subsection to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction project file and such information relating thereto given to the contractor at that time, with the opportunity to respond;
- (5) The contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past ten years of a crime related to governmental or nongovernmental construction or contracting, including but not limited to a violation of (i) Code of Virginia, Article 6, § 2.2-4367 et seq., (ii) the Virginia Governmental Frauds Act (Code of Virginia, § 18.2498.1 et seq.), (iii) Code of Virginia, § 59.1-68.6 et seq., or (iv) any substantially similar law of the United States or another state;
- (6) The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government; and
- (7) The contractor failed to provide to the town in a timely manner any information requested by the public body relevant to subsections (f)(1) through (6) of this section.

(g) If the town has a prequalification ordinance which provides for minority participation in municipal construction contracts, the town may also deny prequalification based on minority participation criteria; provided, however, that nothing in this subsection shall authorize the adoption or enforcement of minority participation criteria except to the extent that such criteria, and the adoption and enforcement thereof, are in accordance with the Constitution and laws of the United States and the commonwealth.

State law reference—Similar provisions, Code of Virginia, § 2.2-4317.

Sec. 2-230. Use of brand names.

Unless otherwise provided in the invitation for bids, 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 the 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.

(Code 1977, § 2-15-11)

State law reference—Use of brand names, Code of Virginia, § 2.2-4317.

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Sec. 2-231. Award of bid-based contracts.

The town council will award bid-based contracts on the recommendation of the appointed reviewing committee, which is to be created in each case, and the town manager. The award will usually be to the lowest and best responsible bidder. A full and complete statement of the reasons shall be prepared by the committee and town manager and shall be filed along with other papers relating to the transaction.

(Code 1977, § 2-15-16)

Sec. 2-232. Performance and payment bonds.

(a) Upon the award of any public construction contract exceeding \$100,000.00 awarded 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 "labor 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 the commonwealth.

(c) Such bonds shall be payable to the town.

(d) Each of the bonds shall be filed with the town or a designated office or official thereof.

(e) Nothing in this section shall preclude the 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 provided for in the subcontract.

(Code 1977, §§ 2-15-9, 2-15-14)

State law reference—Similar provisions, Code of Virginia, § 2.2-4337.

Sec. 2-233. Employment discrimination by contractor prohibited.

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The town shall include in every contract of over \$10,000.00 the following:

- (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 that such contractor is an equal opportunity employer.
 - c. Notices, 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 subsections (1)a, (1)b and (1)c of this section in every subcontract or purchase order of over \$10,000.00, so that the provisions will be binding upon each subcontractor or vendor.

(Code 1977, § 2-15-15)

State law reference—Employment discrimination by contractor prohibited, Code of Virginia, § 2.2-4311.

Sec. 2-234. Retainage on 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 ensure 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.

(Code 1977, § 2-15-13)

State law reference—Retainage on construction contracts, Code of Virginia, § 2.2-4333.

Sec. 2-235. Deposit of certain retained funds; failure to timely complete contract.

(a) 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, the town shall include in the bid proposal an option for the contractor to use an escrow account procedure for utilization of the town's retainage funds by so indicating in the space provided in the proposal documents. If the contractor elects to use the escrow account procedure, the escrow agreement form included in the bid

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proposal and contract shall be executed and submitted to the 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 the town shall be substantially the same as that used by the commonwealth 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 of 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, 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 payments shall be subject to this section.

State law reference—Similar provisions, Code of Virginia, § 2.2-4334.

Sec. 2-236. Public construction contract provisions barring damages for unreasonable delays declared void.

(a) Any provision contained in any public construction contract entered into on or after July 1, 1991, that purports to waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable delay in performing such contract, either on his behalf or on behalf of his subcontractor, if and to the extent such delay is caused by acts or omissions of the town, its agents or employees and due to causes within their control is against public policy and is void and unenforceable.

(b) Subsection (a) of this section shall not be construed to render void any provision of a public construction contract that:

- (1) Allows the town to recover that portion of delay costs caused by the acts or omissions of the contractor or his subcontractors, agents or employees;
- (2) Requires notice of any delay by the party claiming the delay;
- (3) Provides for liquidated damages for delay; or
- (4) Provides for arbitration or any other procedure designed to settle contract disputes.

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(c) A contractor making a claim against the town for costs or damages due to the alleged delaying of the contractor in the performance of its work under any public construction contract shall be liable to the town and shall pay it for a percentage of all costs incurred by the town in investigating, analyzing, negotiating, litigation and arbitrating the claim, which percentage shall be equal to the percentage of the contractor's total delay claim which is determined through litigation or arbitration to be false or to have no basis in law or in fact.

State law reference—Similar provisions, Code of Virginia, § 2.2-4335.

Secs. 2-237—2-265. Reserved.

Subdivision II. Purchase Orders

Sec. 2-266. When required; contents; procedures for approval.

(a) Purchase orders are required for all purchases over \$100.00. The purchase must be approved in advance of the actual purchase, except in emergency situations.

(b) The purchase order shall include the following:

- (1) Items required;
- (2) Quantity required;
- (3) Price of each item;
- (4) Date required;
- (5) Tax exempt number;
- (6) Short reason for the items required; and
- (7) Classification of expense; budget line item account number shall be shown for each line if the items are not all the same on one purchase order.

(c) Authorization levels for purchase order approval shall be as follows:

- (1) A purchase order of \$0.00 to \$2,000.00 may be approved by the following:
 - a. Town manager.
 - b. Finance director.
 - c. Chief of police.
 - d. Assistant chief of police (may approve only in the absence of primary authorized personnel for each department).
 - e. Public works director.
- (2) A purchase order of \$2,001.00 to \$4,000.00 may be approved by the following:
 - a. Town manager.
 - b. Public works director.
 - c. Chief of police.

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(3) A purchase order of \$4,001.00 to \$10,000.00 may be approved by the town manager.

(4) A purchase order of \$10,001.00 and over may be approved by the town manager and the mayor with prior approval by the town council.

(Code 1977, § 2-18)

(Amended 10/07/13)

Sec. 2-267. Notice to vendors; tax exempt number.

All regular vendors shall be notified that an approved purchase order is required before giving credit for any item or purchase over \$100.00. The tax exempt number shall also be sent to each vendor where regular charge accounts are maintained. The tax exempt number is also printed on the purchase order, to ensure that no tax is charged to the town.

(Code 1977, § 2-18-6)

(Amended 10/07/13)

Sec. 2-268. Purchasing procedures.

As each purchase is made, the following must be accomplished:

(1) The purchase order shall be approved if the purchase is going to be over \$100.00,

(2) When the purchase is made, whether over or under \$100.00, the invoice must be approved.

(3) After the purchase is made, the invoice must be turned in for payment requisition.

(Code 1977, § 2-18-3)

(Amended 10/07/13)

Sec. 2-269. Payment approval procedures.

(a) *Responsibilities of office staff.* In the approval of payment for purchase orders, the office staff will be responsible for the following:

(1) Matching the purchase order to the appropriate invoice if the item/purchase is over \$100.00, posting invoices to accounts payable on a daily basis and ensuring that invoices are scheduled for payment prior to the due date or earlier in order to obtain prompt payment discounts.

(2) Checking the actual purchases on the invoice to the items authorized for purchase on the purchase order, to ascertain that only authorized items were received for all purchases over \$100.00.

(3) Mathematical verification of each invoice before approval by the town manager for all invoices whether over or under \$100.00.

(4) No sales tax appears on the invoice.

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(b) *Responsibilities of approving official:* The approving official shall verify that the following items of control have been accomplished before approving invoices for payment:

(1) The attached purchase order was appropriately authorized.

(2) The office staff member has verified items, quantities, and mathematical calculations on the invoices to the appropriate purchase order and the purchase order is in fact attached to the invoice.

(Code 1977, § 2-18-4)

(Amended 10/07/13)

Secs. 2-270—2-295. Reserved.

Subdivision III. Competitive Negotiation

Sec. 2-296. Procedures generally.

(a) Upon a determination made in advance by the 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.

(b) Upon a written determination made in advance by the town council 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 subdivision 3 b of the definition of "competitive negotiation" in Code of Virginia, § 2.2-4302.2. The basis for this determination shall be documented in writing.

(c) 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 the 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:

(1) For the alteration, repair, renovation or demolition of buildings when the contract is not expected to cost more than \$500,000.00;

(2) For the construction of highways and any draining, dredging, excavating, grading or similar work upon real property; or

(3) As otherwise provided in Code of Virginia, § 2.2-4303.

(Code 1977, § 2-16-5)

State law reference—Methods of procurement, Code of Virginia, § 2.2-4303.

Sec. 2-297. Award of a service generally.

The town manager or his designee shall engage in individual discussions with all offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence to provide the required services. Such offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project. These discussions may encompass nonbinding estimates of total projects costs, including where appropriate design,

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construction and life cycle costs. Methods to be utilized in arriving at price for services may also be discussed. At the conclusion of discussion on the basis of evaluation factors published in the request for proposals and all information developed to this point, the town manager shall select in the order of preference two or more offerors whose professional qualification and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations 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.

(Code 1977, § 2-16-6)

Sec. 2-298. Procurement of professional services.

Where the cost of a professional service is expected to exceed \$30,000.00 in the aggregate or for the sum of all phases of a contract or project, the town shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses 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, the 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 section, on the basis of evaluation factors published in the request for proposal and all information developed in the selection process to this point, the town shall select 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 the 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 the 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.

State law reference—Similar provisions, Code of Virginia, § 2.2-4301.

Secs. 2-299—2-325. Reserved.

Subdivision IV: Ethics in Public Contracting

Sec. 2-326. Purpose.

The sections of this subdivision supplement, but do not supersede, other provisions of law, including but not limited to the State and Local Government Conflict of Interests Act (Code of Virginia, § 2.1-639.1 et seq.), the Virginia Governmental Frauds Act (Code of

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Virginia, § 18.2-498.1 et seq.), and Code of Virginia, §§ 18.2-438 et seq. and 18.2-446 et seq. The sections of this subdivision apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.

State law reference—Similar provisions, Code of Virginia, § 2.2-4367.

Sec. 2-327. Definitions.

The words defined in this section shall have the meanings set forth throughout this subdivision.

Immediate family means a spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee.

Official responsibility means administrative or operating authority, whether intermediate or final, to initiate, approve, disapprove or otherwise affect a procurement transaction, or any claim resulting therefrom.

Pecuniary interest arising from the procurement means a personal interest in a contract as defined in the State and Local Government Conflict of Interests Act (Code of Virginia, § 2.1-639.1 et seq.).

Procurement transaction means all functions that pertain to the obtaining of any goods, services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

Public employee means any person employed by the town, including elected officials or appointed members of the town council.

Cross reference—Definitions generally, § 1-2.

State law reference—Similar provisions, Code of Virginia, § 2.2-4368.

Sec. 2-328. Penalty for violation.

Willful violation of any section of this subdivision shall constitute a class 1 misdemeanor. Upon conviction, any public employee, in addition to any other fine or penalty provided by law, shall forfeit his employment.

State law reference—Similar provisions, Code of Virginia, § 2.2-4377.

(Amended 10/07/13)

Sec. 2-329. Proscribed participation by public employees in procurement transactions.

(a) Except as may be specifically allowed by Code of Virginia, § 2.1-639.11(A)(2) and (3), no public employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the town when the employee knows that:

- (1) The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction; or
- (2) The employee, the employee's partner, or any member of the employee's immediate family:

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- a. Holds a position with a bidder, offeror or contractor, such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent;
- b. Has a pecuniary interest arising from the procurement transaction; or
- c. Is negotiating, or has an arrangement concerning, prospective employment with a bidder, offeror or contractor.

(b) This section prohibits officers and employees who have dealt in a procurement capacity with a particular firm from accepting employment with that firm for a period of one year from cessation of the public employment, unless the officer or employee provides written notification to the town council prior to the start of employment with such private firm.

(Code 1977, § 2-15-7)

State law reference—Similar provisions, Code of Virginia, § 2.2-4369.

Sec. 2-330. Solicitation or acceptance of gifts.

(a) No public employee having official responsibility for a procurement transaction shall solicit, demand, accept, or agree to accept from a bidder, offeror, contractor or subcontractor any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged. The town may recover the value of anything conveyed in violation of this section.

(b) Accordingly, the town may terminate, at no charge to the town, any purchase order or contract if it is found that substantial gifts or gratuities were offered to a town employee. The town may also take disciplinary action, including dismissal, against a town employee who solicits or accepts gifts or gratuities of any value whatsoever.

(Code 1977, § 2-15- 7)

State law reference—Similar provisions, Code of Virginia, § 2.2-4371.

Sec. 2-331. Disclosure of subsequent employment.

No public employee or former public employee having official responsibility for procurement transactions shall accept employment with any bidder, offeror or contractor with whom the employee or former employee dealt in an official capacity concerning procurement transactions for a period of one year from the cessation of employment by the town unless the employee or former employee provides written notification to the town or a public official if designated by the town or both prior to commencement of employment by that bidder, offeror or contractor.

State law reference—Similar provisions, Code of Virginia, § 2.2-4370.

Sec. 2-332. Gifts by bidders, offerors, contractors or subcontractors.

No bidder, offeror, contractor or subcontractor shall confer upon any public employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

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State law reference—Similar provisions, Code of Virginia, § 2.2-4371.

Sec. 2-333. Kickbacks.

(a) No contractor or subcontractor shall demand or receive from any of his suppliers or his subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.

(b) No subcontractor or supplier shall make or offer to make kickbacks as described in this section.

(c) No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a public contract.

(d) If a subcontractor or supplier makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by the town and will be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

State law reference—Similar provisions, Code of Virginia, § 2.2-4372.

Sec. 2-334. Participation in bid preparation; submitting bid for same procurement.

No person who, for compensation, prepares an invitation to bid or request for proposal for or on behalf of a town shall (i) submit a bid or proposal for that procurement or any portion thereof or (ii) disclose to any bidder or offeror information concerning the procurement which is not available to the public. However, the town may permit such person to submit a bid or proposal for that procurement or any portion thereof if the town determines that the exclusion of such person would limit the number of potential qualified bidders or offerors in a manner contrary to the best interests of the town.

State law reference—Similar provisions, Code of Virginia, § 2.2-4373.

Sec. 2-335. Purchase of building materials, supplies or equipment from architect or engineer.

(a) No building materials, supplies or equipment for any building or structure constructed by or for the town shall be sold by or purchased from any person employed as an independent contractor by the town to furnish architectural or engineering services, but not construction, for such building or structure or from any partnership, association or corporation in which such architect or engineer has a personal interest as defined in Code of Virginia, § 2.1-639.2.

(b) No building materials, supplies or equipment for any building or structure constructed by or for the town shall be sold by or purchased from any person which has provided or is currently providing design services specifying a sole source for such materials, supplies or equipment to be used in such building or structure to the independent contractor employed by the town to furnish architectural or engineering services in which such person has a personal interest as defined in Code of Virginia, § 2.1-639.2.

(c) Subsections (a) and (b) of this section shall not apply in cases of emergency or for

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transportation-related projects conducted by the department of transportation and the Virginia Port Authority.

State law reference—Similar provisions, Code of Virginia, § 2.2-4374.

Sec. 2-336. Certification of compliance; false statements.

(a) The town may require public employees having official responsibility for procurement transactions in which they participated to annually submit for such transactions a written certification that they complied with this subdivision.

(b) Any public employee required to submit a certification as provided in subsection (a) of this section who knowingly makes a false statement in such certification shall be punished as provided in section 2-328.

State law reference—Similar provisions, Code of Virginia, § 2.2-4375.

Sec. 2-337. Misrepresentations.

No public employee having official responsibility for a procurement transaction shall knowingly falsify, conceal, or misrepresent a material fact; knowingly make any false, fictitious or fraudulent statements or representations; or make or use any false writing or document knowing it to contain any false, fictitious or fraudulent statement or entry.

State law reference—Similar provisions, Code of Virginia, § 2.2-4376.

Secs. 2-338—2-380. Reserved

ARTICLE VI. UNCLAIMED PERSONAL PROPERTY

Sec. 2-381. Definition.

Unclaimed personal property shall mean any personal property belonging to another which has been acquired by a law-enforcement officer pursuant to his duties, which is not needed in any criminal prosecution, which has not been claimed by its rightful owner and which the state treasurer has indicated will be declined if remitted under the Uniform Disposition of Unclaimed Property Act of the Code of Virginia.

Sec. 2-382. Disposal of unclaimed property.

Any unclaimed personal property which has been in the possession of the town police department and remains unclaimed for a period of more than sixty (60) days may be publicly sold or retained for use by the police department.

Sec. 2-383. Disposal of bicycles, mopeds, etc.

Any unclaimed bicycle, electric power-assisted bicycle, moped, or electric personal assistive mobility device which has been in the possession of the town police department and remains unclaimed for a period of more than thirty (30) days may be publicly sold or donated to a charitable organization.

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Sec. 2-384. Requirements prior to sale.

Prior to the sale of any unclaimed item, the chief of police or his duly authorized agent shall make reasonable attempts to notify the rightful owner of the property, obtain from the commonwealth's attorney in writing a statement advising that the item is not needed in any criminal prosecution and cause to be published in a newspaper of general circulation in the town once a week for two (2) successive weeks, notice that there will be a sale of unclaimed personal property. Such property shall be described generally in the notice, together with the date, time and place of the sale.

Sec. 2-385. Proceeds of sale.

(a) The chief of police or his duly authorized agent, shall hold the proceeds of the sale of unclaimed personal property or any bicycle, electric power assisted bicycles, moped, and electric personal assistive mobility devices. Expenses for the sale shall be deducted from the proceeds of the sale; the cost of advertisement, removal, storage, investigation as to ownership and lien, and notice of sale. The balance of the funds shall be held for the owner and paid to the owner upon satisfactory proof of ownership.

If no claim has been made by the owner for the property or proceeds of such sale within sixty days of the sale, the remaining funds shall be deposited in the general fund of the town and the retained property may be placed into use by the police department.

(b) Any such owner shall be entitled to apply to the town within three years from the date of the sale and, if timely application is made therefore and satisfactory proof of ownership of the funds or property is made, the locality shall pay the remaining proceeds of the sale or return the property to the owner without interest or other charges or compensation. No claim shall be made nor any suit, action or proceeding be instituted for the recovery of such funds or property after three years from the date of the sale.

Sec. 2-386. Worthless property.

Notwithstanding any other provisions of this article, if any goods, ware, merchandise, clothing, or chattels are found to be worthless and at any time remain unclaimed in the custody of the police department, the chief of police may dispose of such items in any manner which to him may seem proper.

(Adopted 09-03-02)

Chapters 3—5

RESERVED

Chapter 6

AMUSEMENTS AND ENTERTAINMENTS*
(RESERVED)

***Charter references**—Regulation of shows, fairs, etc., ch. 2, § 1(12); amusement buildings, ch. 2, § 1(16); minors in pool room or bowling alley, ch. 2, § 1(43).

Cross reference—Businesses, ch. 18.

State law references—Charitable gaming, Code of Virginia, § 18.2-340.15 et seq.; minors in public places of amusement, Code of Virginia, §§ 18.2-432, 40.1-100; public dance halls, Code of Virginia, § 18.2-433.

Chapters 7—9

RESERVED

Chapter 10

ANIMALS*

Article I. In General

Secs. 10-1—10-25. Reserved.

Article II. Dogs

Sec. 10-26. Definitions.
Sec. 10-27. Enforcement.
Sec. 10-28. Prohibited acts; penalty.
Secs. 10-29—10-55. Reserved.

Article III. Livestock

Sec. 10-56. Hog pens; keeping hogs.
Sec. 10-57. Selling livestock on streets.
Sec. 10-58. Livestock running at large.
Sec. 10-59. Enclosures.
Secs. 10-60—10-85. Reserved.

Article IV. Animal Wastes

Sec. 10-86. Penalty.
Sec. 10-87. Prohibited acts.

***Charter reference**—Keeping of animals, ch. 2, § 1(21), (30), (31).

Cross references—Environment, ch. 22; persons riding bicycles or riding or driving animals, § 58-6; agricultural district A, app. A, § 3.10 et seq.

State law references—Livestock and poultry, Code of Virginia, § 3.1-723 et seq.; comprehensive animal laws, Code of Virginia, § 3.1-796.66 et seq.; cruelty to animals, Code of Virginia, § 3.1-796.122 et seq.; dogs and cats deemed personal property, rights relating thereto, Code of Virginia, § 3.1-796.127; penalties for offenses involving animals, Code of Virginia, §§ 3.1-796.128, 18.2-403.1 et seq.; diseased animals, dead animals, etc., Code of Virginia, §§ 18.2-323, 18.2-510; game, inland fisheries and boating, Code of Virginia, tit. 29.1; hunting near public schools and public parks, Code of Virginia, § 29.1-527; estrays, Code of Virginia, § 55-202 et seq.

ANIMALS

ARTICLE I. IN GENERAL

Secs. 10-1—10-25. Reserved.

ARTICLE II. DOGS

Sec. 10-26. 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:

Dog means every dog, regardless of sex or age.

Owner means who: (i) has a right of property in an animal; (ii) keeps or harbors an animal; (iii) has an animal in his care; or (iv) acts as a custodian of an animal.

Run at large or *running at large* means to roam, run or self-hunt off the property of its owner or custodian and not under its owner's or custodian's immediate control.
(Code 1977, § 4-4)

Cross reference—Definitions generally, § 1-2.

State law reference—Similar provisions, Code of Virginia, § 3.1-796.93 and § 3.1-6500.

Sec. 10-27. Enforcement.

The town grants the county animal control officer the authority to enforce this article within the town limits.

(Code 1977, § 4-6; Ord. of 4-2-1979, § 4-6)

State law reference—Animal control officers, Code of Virginia, § 3.1-796.104.

Sec. 10-28. Prohibited acts; penalty.

(a) It shall be unlawful for the owner of any dog to allow such dog to run at large at any time within the town limits, even though the dog is both lawfully licensed and vaccinated.

(b) It shall be unlawful for the owner of any dog to allow, cause or permit such dog to enter any public building, office or store during the time that such business establishment is open for public business, unless the dog is on a leash or otherwise under the immediate control of such owner.

(c) Any person violating this section, upon conviction, shall be guilty of a class 4 misdemeanor for each violation.

(Code 1977, § 4-5)

State law reference—Dogs confined or restrained, Code of Virginia, §§ 3.1-796.93, 3.1-796.95.

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Sec. 10-29—10-55. Reserved.

ARTICLE III. LIVESTOCK

Sec. 10-56. Hog pens; keeping hogs.

Within the corporate limits, it shall be unlawful for any person to:

- (1) Have a hog pen.
- (2) Keep one or more hogs.

(Code 1977, § 4-1)

Sec. 10-57. Selling livestock on streets.

It shall be unlawful for any person to sell or offer for sale, publicly or privately, livestock on the town streets.

(Code 1977, § 4-2)

Cross reference—Streets, sidewalks and other public places, ch. 50.

Sec. 10-58. Livestock running at large.

If any horse, mule, cow, hog, sheep, goat, colt, pony or goose is found at large within the town limits, it shall be the duty of the chief of police to put every such animal in a suitable and convenient pound or lot for safekeeping, supplying it with suitable food and water while there at the expense of the owner of such animal. Such animal shall be retained by the chief of police until the fine and expenses in caring for it are paid. It shall also be the duty of the chief of police to advertise any such animal immediately, in two or more public places in the town, describing it as near as may be in such advertisements. If such animal is not redeemed within ten days, it shall be sold at public auction for cash, and the proceeds, after paying expenses, shall be held for the benefit of the owner. The owner of any such animal or goose found at large shall be guilty of a class 4 misdemeanor for each horse, mule, cow, hog, sheep, colt, pony or goose.

(Code 1977, § 4-2.1)

State law reference—Estrays, Code of Virginia, § 55-202 et seq.

Sec. 10-59. Enclosures.

It shall be unlawful for any person to keep horses, ponies, mules, donkeys, cattle, sheep, goats or similar animals in the town unless they are safely and securely enclosed by a fence and provided they are properly housed. Such housing shall not be nearer than ten feet to any adjoining property line and no nearer than 30 feet to the principal building on any adjoining property. The enclosure shall be kept in such sanitary condition as to comply with all provisions of law.

(Code 1977, § 4-3; Ord. of 4-15-1999)

Secs. 10-60—10-85. Reserved.

ANIMALS

ARTICLE IV. ANIMAL WASTES*

Sec. 10-86. Penalty.

Any person who violates this article shall be deemed guilty of a class 4 misdemeanor.
(Code 1977, § 4-8)

Sec. 10-87. Prohibited acts

(a) It shall be unlawful for any person to allow animal wastes to be deposited on public land or private property other than that of the animal's owner.

(b) It shall be unlawful for the owner of property to allow the accumulation of animal wastes on the premises of the owner.
(Code 1977, § 4-7)

*Cross reference—Solid waste, ch. 46.

Chapters 11—13

RESERVED

Chapter 14

BUILDINGS AND BUILDING REGULATIONS*

Article I. In General

Secs. 14-1—14-25. Reserved.

Article II. Building Code

Division 1. Generally

Sec. 14-26. Enforcement of Uniform Statewide Building Code.
Secs. 14-27—14-55. Reserved.

Division 2. Permit Fees

Sec. 14-56. Established.
Sec. 14-57. Exceptions
Sec. 14-58. Repealed.
Secs. 14-59—14-85. Reserved.

Article III. Unsafe Buildings

Sec. 14-86. Removal, repair or securing of buildings and other structures.
Sec. 14-87. Buildings exempt from Uniform Statewide Building Code.

***Charter references**—Regulation of buildings, ch. 2, § 1(22), (25); issuance of building permits in conformity with town plan, ch. 3, §§ 6, 7.

Cross references—Environment, ch. 22; fire prevention and protection, ch. 26; floods, ch. 30; solid waste, ch. 46; streets, sidewalks and other public places, ch. 50; building numbers, § 50-176 et seq.; utilities, ch. 62; vegetation, ch. 66; waterways, ch. 70; zoning, app. A; land subdivision and development, app. B.

State law references—Access to and use of buildings by handicapped, Code of Virginia, § 2.1-517; removal, repair, etc., of buildings and other structures, Code of Virginia, § 15.2-906 et seq.; light, ventilation, sanitation and use and occupancy of buildings, Code of Virginia, § 15.2-1117; limitation of prosecutions of building code violations, Code of Virginia, § 19.2-8; Virginia Industrialized Building Safety Law, Code of Virginia, § 36-70 et seq.; Uniform Statewide Building Code, Code of Virginia, § 36-97 et seq.; effect of building code on other building regulations, Code of Virginia, § 36-98; enforcement of building code, appeals from decisions of local building department, inspection of buildings, Code of Virginia, § 36-105; voluntary apprenticeship, Code of Virginia, § 40.1-117 et seq.; contractors, Code of Virginia, § 54.1-1100 et seq.; local licensing of certain contractors, Code of Virginia, § 54.1-1117.

BUILDINGS AND BUILDING REGULATIONS

ARTICLE I. IN GENERAL

Secs. 14-1—14-25. Reserved.

ARTICLE II. BUILDING CODE

DIVISION 1. GENERALLY

Sec. 14-26. Enforcement of Uniform Statewide Building Code.

The town shall enforce the Uniform Statewide Building Code in the town and shall provide its own inspectors. (Code 1977, § 5-1)

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

Secs. 14-27—14-55. Reserved.

DIVISION 2. PERMIT FEES

Sec. 14-56. Established.

The Town council shall establish a schedule of fees and charges for building and zoning permits and related costs. Such schedule of fees and charges shall be posted in the office of the building and zoning administrator and may be amended only by action of the town council upon recommendation of the budget and personnel committee.

(Code 1977, § 5-2; Ord. of 3-14-1994, § 5-2 a-d; Ord. of 5-17-2001, § 5-2 e)

(Amended 01/02/07)

Sec. 14-57. Exceptions.

No building permit fee shall be required for the following:

- (1) Repealed.
- (2) Structures or buildings owned by a nonprofit organization, approved by the United States Internal Revenue Service, or local, state or federal governments. A building permit is still required.
- (3) Repealed.
- (4) Repealed.
- (5) Repealed.
- (6) Repealed.

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(7) A fence. A zoning permit is still required.

(8) Repealed.

(Code 1977, § 5-2; Ord. of 4-01-1991 (4); Ord. of 11-5-1990 (5); Ord. of 12-03-1990 (6-7); Ord. of 5-17-2001 (8))

(Amended 01/02/07)

Sec. 14-58. Repealed.

(Code 1977, § 5-2; Ord. of 6-25-1992 § 5-2 (1-7))

(Amended 01/02/07)

Secs. 14-59—14-85. Reserved.

ARTICLE III. UNSAFE BUILDINGS*

Sec. 14-86. Removal, repair or securing of buildings and other structures.

(a) The owners of property in the town shall, at such time as the town council may prescribe, remove, repair or secure any building, wall or any other structure which might endanger the public health or safety of other town residents.

(b) The town, through its own agents or employees, may remove, repair or secure any building, wall or any other structure which might endanger the public health or safety of other town residents if the owner and lien holder of such property, after reasonable notice and a reasonable time to do so, have failed to remove, repair or secure the building, wall or other structure. For 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 includes a written notice (i) mailed by certified or registered mail, return receipt requested, sent to the last known address of the property owner and (ii) published once a week for two successive weeks in a newspaper having general circulation in the locality. 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.

(c) If the town, through its own agents or employees, removes, repairs or secures any building, wall or any other structure after complying with the notice given under 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 in the manner taxes are collected.

(d) Every charge authorized by this section with which the owner of any such property has 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 Code of Virginia, §§ 58.1-3940 et seq. and 58.1-3965 et seq. The town may waive such lien in order to facilitate the sale of the property. Such lien may be waived only as to a

*Cross reference—Environment, ch. 22.

BUILDINGS AND BUILDING REGULATIONS

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.

(Code 1977, § 5-3; Ord. of 9-16-1981)

State law references—Authority for above section, Code of Virginia, § 15.2-906; authority of town council to require removal, repair, etc., of buildings and other structures, Code of Virginia, § 15.2-906.

Sec. 14-87. Buildings exempt from Uniform Statewide Building Code.

(a) This section shall apply to buildings and structures which are or may be determined to be unsafe under the terms of this section, notwithstanding that buildings and structures erected after the enactment of the Uniform Statewide Building Code shall be regulated under the provisions of that code. However, if the construction of such buildings or structures were exempt from that code, this section shall apply.

(b) All buildings or structures that are or shall become unsafe, unsanitary or deficient in adequate exit way facilities or that constitute a fire hazard or are otherwise dangerous to human life or the public welfare or that, because of illegal or improper use, occupancy or maintenance, shall be deemed unsafe buildings or structures. All unsafe buildings shall be taken down and removed or made safe and secure, as the town building official may deem necessary and as provided in this section. A vacant building, unguarded or open at door or window, shall be deemed a fire hazard and unsafe within the meaning of this section.

(c) Whenever the building official shall find any building or structure or portion thereof to be unsafe, he shall give the owner, agent or person in control of such building or structure written notice stating the defects thereof. This notice shall require the owner, within a stated time, either to complete specified repairs or improvements or to demolish or remove the building or structure or portion thereof. Such notice shall require the person thus notified to immediately declare to the building official his acceptance or rejection of the terms of the order. If no such person can be found within the town, the notice shall be sent by registered or certified mail to the owner of such real estate, as shown on the town tax records or, if the property is not assessed for taxation, to the last known address of the owner, agent or person in control of such building or structure, and a copy of such notice shall be posted in a conspicuous place on the premises, and such procedure shall be deemed the equivalent of personal notice.

(d) If necessary, such notice shall also require the building, structure or portion thereof to be vacated forthwith and not reoccupied until the specified repairs and improvements are completed, inspected and approved by the building official. The building official shall cause to be posted at each entrance to such building a notice stating: "This building is unsafe and its use or occupancy has been prohibited by the town building official." Such notice shall remain posted until the required repairs are made or demolition is completed. It shall be unlawful for any person or his agents or other servants to remove such notice without written permission of the building official or for any person to enter the building except for the purpose of making the required repairs or of demolishing the building, structure or portion thereof.

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(e) The owner, agent or person in control shall have the right, except in cases of emergency, to appeal from the decision of the building official, as provided in this section, and to appear before the board of building code appeals at a specified time and place to show cause why he should not comply with the notice. Such appeal shall be made by notification to the building official in writing within 30 days of receipt of the notice required by this section or within 30 days of the mailing of such notice if such person cannot be found.

(f) If the owner, agent or person in control cannot be found within the stated time limit or if such owner, agent or person in control shall fail, neglect or refuse to comply with the notice to repair, to rehabilitate or to demolish and remove the building or structure or portion thereof, the building official, after having ascertained the cost, shall cause such building or structure or portion thereof to be demolished, secured or required to remain vacant.

(g) The decision of the building official shall be final in cases of emergency, which, in his opinion, involve imminent danger to human life or health. He shall promptly cause such building, structure or portion thereof to be made safe or removed. For this purpose, he may at once enter such structure or land on which it stands or abutting land or structures, with such assistance and at such cost as he may deem advisable. He may vacate adjacent structures and protect the public by an appropriate fence or such other means as may be necessary and for this purpose may close a public or private way.

(h) Any cost or expenses in connection with the enforcement of this section shall be the responsibility of the owner of such real estate, and any portion which shall have been billed to such owner and which remains unpaid after having been billed for 30 days shall constitute a lien against such real estate and may be collected by the town in the same manner as taxes are collected. A bill mailed to the last mailing address of the owner shall constitute billing for the purpose of this section.

(Code 1977, § 5-4; Ord. of 9-16-1981)

Chapters 15—17

RESERVED

Chapter 18

BUSINESSES*

Article I. In General

- Sec. 18-1. Precious metals dealers.
- Sec. 18-2. Tattooing; operating tattoo business.
- Sec. 18-3. Going out of business sales.
- Secs. 18-4—18-30. Reserved.

Article II. Licenses

Division 1. Generally

- Sec. 18-31. Statement of policy.
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State law references—Sale of ice cream and similar products, state preemption, Code of Virginia, § 3.1-562.4; going-out-of-business sales, Code of Virginia, §§ 18.2-223, 18.2-224; licensing of bail bondsmen, Code of Virginia, § 19.2-152.1; professions and occupations, Code of Virginia, tit. 54.1; regulation of precious metals dealers, Code of Virginia, § 54.1-4111; records of firearms dealers, Code of Virginia, § 54.1-4200 et seq.; local license taxes, Code of Virginia, § 58.1-3700 et seq.; enforcement, collection, refunds, remedies and review of local taxes, Code of Virginia, § 58.1-3900 et seq.

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ARTICLE I. IN GENERAL

Sec. 18-1. Precious metals dealers.

The provisions of Code of Virginia, §§ 54.1-4100-54.1-4110 are adopted as if set out at length in this section, except that the words "class 1 misdemeanor" and "class 2 misdemeanor" in such provisions shall be changed to the word "misdemeanor."
(Code 1977, § 10-36)

Sec. 18-2. Tattooing; operating tattoo business.

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

Tattoo means to mark or color the skin by pricking in coloring matter so as to form indelible marks or figures or by the production of scars.

Tattoo artist means any person who actually performs the work of tattooing.

Tattoo establishment means any room or space where tattooing is practiced or where the business of tattooing is conducted or any part thereof.

Tattoo operator means any person who controls, operates, conducts or manages any tattoo establishment, whether actually performing the work of tattooing or not.

(b) It shall be lawful for any person in the town to operate a tattoo establishment or engage in the practice or business of tattooing, as a tattoo operator or as a tattoo artist.
(Amended 11-07-16)

(c) Any person who shall violate this section shall be guilty of a misdemeanor.
(Code 1977, § 13-4)

Sec. 18-3. Going out of business sales.

(a) No person shall sell or offer or advertise for sale any goods, wares or merchandise, falsely representing or pretending, orally or by advertisement, sign or otherwise, that such goods, wares or merchandise are, in whole or in part, a bankrupt or insolvent stock or damaged goods or goods saved from fire or that such person is going out of business or make any false statement or issue any false advertisement as to the purchase, history or character of such goods, wares or merchandise.

(b) Before advertising any going out of business sale; such person desiring to so advertise shall secure a permit from the town, which permit shall be issued by the town manager upon application and payment of a fee of \$50.00 for such permit. The permit shall be issued for such period as may be reasonably necessary to enable the applicant to close out his business, not exceeding 30 days, and may be renewed for two additional periods not exceeding 30 days each upon application therefore, payment of the fee of \$50.00 for the renewal permit and the production of evidence satisfactory to the council that the applicant is bona fide going out of business. Renewal permits shall only be issued upon approval of a majority vote of the council.

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(c) Failure to go out of business within the time limited by such permit or renewal of the permit shall constitute a prima facie case of violation of this section, and the burden shall be upon such person so advertising a going out of business sale to show that such advertisement was made in good faith.

(Code 1977, § 13-3)

State law reference—Going out of business sales, Code of Virginia, §§ 18.2-223, 18.2-224.

Secs. 18-4—18-30. Reserved.

ARTICLE II. LICENSES

DIVISION 1. GENERALLY

Sec. 18-31. Statement of policy.

It is the purpose of the town in enacting this article to pursue the collection of license taxes and the enforcement therefore required in a most uniform, strenuous and honest manner and to equalize as far as practicable the burden of license taxation among those liable therefore, by adopting a system of license taxes measured by the gross receipts of the business, trade or occupation in respect of which the tax is levied, except as may be otherwise provided. All information, estimates and records provided in compliance with this article shall be considered privileged information entitled to all the protection provided by the Privacy Protection Act of 1976 (Code of Virginia, § 2.1-377 et seq.) except as specifically excluded in this article.

(Code 1977, § 10-2)

Sec. 18-32. Definitions.

As used in this article and as applied to the business, trade or occupation subject to the license taxes set forth in this article and not specifically otherwise taxed, the following words and terms shall have the respective meanings ascribed to them:

Amusement means every business or trade enumerated in section 18-123.

Builder. Every person who shall build, erect or construct a house or building for the purpose of selling or renting the house or building and who shall not employ therefore in writing a contractor or person who shall act as superintendent of the whole construction and who has paid the license tax required by this article shall, himself, be deemed a contractor and shall be subject to all the applicable sections of this article. Any person who shall erect or construct a house or building and later sell or offer to sell or rent the house or building without having himself resided in the house or building for not less than 90 days shall be prima facie deemed to have erected or constructed that house or building for the purpose of selling or renting the house or building.

Business service means every business or trade enumerated in section 18-124.

Contractor means any person:

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(1) Accepting or offering to accept orders or contracts for doing any work on or in any building or structure, requiring the use of paint, stone, brick, mortar, wood, cement, structural iron or steel, sheet iron, galvanized iron, metallic piping, tin, lead, or other metal or any other building material;

(2) Accepting or offering to accept contracts to do any paving, curbing or other work on sidewalks, streets, alleys or highways or public or private property, using asphalt, brick, stone, cement, concrete, wood or any composition;

(3) Accepting or offering to accept an order for or contract to excavate earth, rock, or other material for foundation or any other purpose or for cutting, trimming or maintaining rights-of-way;

(4) Accepting or offering to accept an order or contract to construct any sewer of stone, brick, terracotta or other material;

(5) Accepting or offering to accept orders or contracts for doing any work on or in any building or premises involving the erecting, installing, altering, repairing, servicing, or maintaining electric wiring, devices or appliances permanently connected to such wiring or the erecting, repairing or maintaining of lines for the transmission or distribution of electric light and power; or

(6) Engaging in the business of plumbing and steam fitting.

Gross receipts means the whole, entire, total receipts, without deduction, for the preceding year from any business, profession, trade, occupation, vocation, calling or activity, including fees, commissions, brokerage charges and rentals on property of any kind (excluding any property consisting of land, house or mobile home used as a permanent residence), nature or description from either sales made or services rendered without any deduction there from on account of cost of property sold and the cost of materials, labor or services or other costs, interest or discounts paid or any expense whatsoever and includes for merchants the amount of the sale price of supplies and goods furnished or to be used by the licensee or his family or other persons for which no charge is made. However, the term "gross receipts" with respect to licensees dealing in articles or services upon which there is levied a direct excise tax payment to the United States government and any local sales or excise tax collected for the state or town may be excluded from gross receipts.

The term "gross receipts" shall be used in connection with or in respect to financial transactions for the preceding year involving the sale of notes, stocks, bonds or other securities or the loan, collection or advance of money or the discounting of notes, bills or other discount, gross commission or the other gross receipts earned by means of or resulting from such financial transactions, but the term "gross receipts" shall not include amounts received as payments of debts. The calculation of gross receipts for license tax purposes shall be on either a cash accrual basis; provided, however, that the basis used must coincide with the system of accounts used by the taxpayer and with the method employed by the taxpayer for federal and state income tax purposes. The preceding year's gross receipts may be either the fiscal year used by the business or the calendar year, provided that the year employed must also coincide with the year used for federal and state income tax purposes.

Merchant means any person who is both a retail merchant and a wholesale merchant,

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as they are defined in this section, and who is required to obtain both classes of license. However, any retail merchant who desires to do a wholesale business, also, may elect to do such wholesale business under his retailer's license by paying license taxes as a retailer on both his retail and wholesale business, but this shall not apply to any retail merchant, the greater part of whose business at the licensed place during the preceding year was wholesale, nor to a beginner, the greater part of whose business it is estimated will be wholesale for the period covered by the license.

Personal service means every business or trade enumerated in section 18-127.

Professional occupation means every person engaged in an occupation enumerated in section 18-128.

Purchases mean all goods, wares and merchandise received for sale at each definite place of business of a wholesale merchant. The term also includes the cost of manufacture of all goods, wares and merchandise manufactured by any wholesale merchant and sold or offered for sale. A wholesale merchant may elect to report the gross receipts from the sale of manufactured goods, wares and merchandise if he cannot determine the cost of manufacture or chooses not to disclose the cost of manufacture.

Repair service means the business of repairing, renovating or servicing any or several of those items or articles enumerated in section 18-129.

Retail merchant means every person engaged in the conduct of business enumerated in section 18-130. The term "retail merchant" is further defined to mean every merchant who sells to others for retail, only, and not for resale. Every person engaged in the business of selling goods, wares or merchandise through the use of coin-operated vending machines shall be classified as a "retail merchant."

Superintendent. Every person other than the owner of a house or building who shall act as superintendent of the erection, construction or repair of buildings for which a building or other permit is required shall be deemed a contractor and shall pay the annual license tax required of a contractor by this article.

Wholesale merchant means every person engaged in the conduct of a business enumerated in section 18-131. The term "wholesale merchant" is further defined to mean every merchant who sells to others for resale, only, or who sells to institutional, commercial or industrial users. (Code 1977, § 10-3)

Cross reference—Definitions generally, § 1-2.

State law reference—Similar provisions, Code of Virginia, §§ 58.1-3700.1, 58.1-3714.

Sec. 18-33. Rules of construction and interpretation; adoption of state laws.

As to all questions in regard to the duty and conduct of town officers in collecting and enforcing the license taxes imposed by this article and in regard to questions of construction, for definitions of terms used in this article and the rules and regulations applicable to putting them in operation, reference is made to the laws of the state for the assessment, levy and collection of license taxes for the current year or to so much thereof as is applicable to this article and is not inconsistent with this article and this Code. For the conduct and guidance of the town officers and other parties affected by this article and for fixing their powers, rights, duties and obligations, the provisions of such laws, so far as applicable, are adopted without being specifically quoted in this article.

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(Code 1977, § 10-4)

Sec. 18-34. Applicability to business, employment or profession not included.

Nothing contained in this article shall be construed to repeal any license tax imposed by this article upon persons, property, admissions or any subject not mentioned in this article. In every case in which a license is imposed by the state on any business, employment or profession not specifically mentioned, a town license tax equal to the amount of the state tax is imposed for the privilege of conducting such business, employment or profession in the town.

(Code 1977, § 10-5)

Sec. 18-35. Violations; penalties.

It shall be unlawful and shall constitute a misdemeanor for any person to conduct a business or to engage in a profession, trade or occupation before procuring a license as required under this article or then and there having a valid license. It shall also be unlawful and shall constitute a misdemeanor for any person to violate any of the sections of this article.

(Code 1977, § 10-6; Ord. of 8-5-1996)

Sec. 18-36. Required.

Every person shall apply for a license for each business or profession when engaging in a business in this jurisdiction if:

- (1) The person has a definite place of business in this jurisdiction;
- (2) There is no definite place of business anywhere and the person resides in this jurisdiction; or
- (3) There is no definite place of business in this jurisdiction but the person operates amusement machines or is classified as an itinerant merchant, peddler, carnival, circus, or contractor subject to Code of Virginia, § 58.1-3715 or a public service corporation.

(Code 1977, § 10- 7; Ord. of 8-5-1996)

Sec. 18-37. Application; issuance.

(a) Every person desiring to obtain a license to pursue any business, trade or occupation or to do anything for which a license is required shall make application therefore in writing to the town manager. The application shall state the residence of the applicant; the social security number or tax identification number of the applicant; the nature of the business, employment, profession or thing to be done; and the place where it is proposed to be prosecuted. Where the license tax is to be measured by gross receipts, the applicant shall make a statement under oath as required by subsection (b) of this section. The town manager shall assess such applicant or other person of whom a license is required with the license tax required by law and shall issue a license to the applicant to practice the business, trade or occupation or other thing therein named, which license shall not be valid or effective unless and until the license tax required shall be paid to the town. If it is a business for which a license can be granted only on the certificate of a court or

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other officer, such license shall not be valid or effective until such certificate shall be obtained.

(b) When the license tax is based upon gross receipts, the town manager shall require a signed statement from the applicant as to the amount of such gross receipts, except for a beginner. After computing the amount of the license tax in each case, the town manager shall retain one copy of the license tax form and shall furnish the applicant with one copy. Upon payment of the required license tax by the licensee, the manager shall receipt the payment upon both the original and the copy presented by the licensee, after which the manager shall give the original to the licensee and retain the copy of the receipted form.

(c) Any business owned and operated by a full-time student under the age of 23 having gross receipts, as defined in section 18-32, for the preceding year of less than \$5,000.00 shall require a license but shall be exempt from payment of license tax.

(d) No business license shall be issued, new or renewal, until the applicant has produced satisfactory evidence that all delinquent business license, personal property, meals, transient occupancy, severance and admissions taxes owed by the business to the town have been paid which have been properly assessed against the applicant by the town. (Code 1977, § 10-8; Ord. of 5-17-2001, (c); Ord. of 8-5-1996, (d))

Sec. 18-38. Separate license required for each place of business.

A separate license shall be required for each place of business and for each business. A person engaged in two or more businesses or professions carried on at the same place of business may elect to obtain one license for all such businesses and professions if all of the following criteria are satisfied:

- (1) Each business or profession is subject to licensure at the location and has satisfied any requirement imposed by state law or other sections of this Code or provisions of town ordinances.
 - (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.
 - (3) The taxpayer agrees to supply such information as the assessor may require concerning the nature of the several businesses and their gross receipts.
- (Code 1977, § 10-9; Ord. of 8-5-1996)

Sec. 18-39. Businesses, trades or occupations prohibited by zoning.

The town manager shall not issue a license for conducting any business, trade or occupation at a location where the conducting of such business, trade or occupation at such location is prohibited by the town zoning ordinance.
(Code 1977, § 10-10)

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Sec. 18-40. Display.

Every person required to pay a license tax or to obtain any tag or sign under this article shall keep the license tag or sign in a convenient place and, whenever required to do so, shall exhibit the license, tag or sign to any authorized town representative. No license measured by volume of business shall be required to be publicly displayed.
(Code 1977, § 10-11)

Sec. 18-41. Transferability.

Licenses issued under this article shall be transferable, except where otherwise provided, but in no case shall any transfer of a license be legal or valid unless and until notice in writing of such transfer shall have been given to the town manager, who shall have approved the transfer in writing on the license. The notice shall state the time of the transfer, the place of business and the name of the person to whom transferred. The town manager shall keep a record of such transfers and shall submit a copy of each such transfer to the proper enforcement officer.
(Code 1977, § 10-12)

Sec. 18-42. Suspension.

The enforcement officer, unless otherwise specified, is authorized and empowered to suspend any license issued under this article for violation of the terms of the license granted, and such suspension shall continue until the cause is removed. Such action shall be reported immediately to the town council. Such suspension, when written notice thereof is received by the licensee or any person in charge of the place of business, shall place the licensee in the same position as if he had never obtained a license. Any such license shall, further, be immediately suspended upon the failure of the licensee to comply with section 54-259 of article IV of chapter 54 pertaining to the transient occupancy tax or section 54-301 of article V of chapter 54 pertaining to the meals tax.
(Code 1977, § 10-13; Ord. of 8-5-1996)

Sec. 18-43. Expiration.

All licenses issued pursuant to this article shall expire on December 31 of each year, except where it is otherwise specifically provided.
(Code 1977, § 10-14)

Sec. 18-44. Nonresident businesses, trades or occupations.

It is the declared intent of the town to avoid either discrimination or protective license taxation as it affects any business, trade or occupation, regardless of location or type of transaction, and to this end businesses, trades or occupations carried on in part within the town, but having no regularly constituted place of business in the town, shall be subject to equal conditions and equal rates of license taxation as those businesses, trades or occupations having a regularly constituted place of business within the town. For nonresident businesses, trades or occupations, the license tax liability shall be measured by only that portion of the business, trade or occupation carried on within the town.
(Code 1977, § 10-15)

Sec. 18-45. Tax imposed on privilege of doing business.

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Each and all of the license taxes imposed pursuant to this article are in all cases imposed upon the privilege of doing business in the town, including all phases and activities of the business, trade or occupation conducted in the town.

(Code 1977, § 10-17)

Sec. 18-46. Levy, collection; term; use of money received.

For each and every year beginning with January 1 of each year and ending December 31 following, until otherwise changed, there are levied and there shall be collected the annual license taxes set forth in this article, except as otherwise provided in this article, on persons, firms, corporations, companies and associations conducting or engaging in the businesses, trades or occupations in the town for the support of the town government, the payment of the town debt and for other municipal purposes.

(Code 1977, § 10-18)

Sec. 18-47. Determination of taxes of new businesses.

Whenever any person begins a business, trade or occupation on or after January 1 of the license year, that person shall pay a licensing fee for the year of application of \$50.00. Each following year shall be measured in accordance with this article as specified.

(Code 1977, § 10-19) (*Amended 6/17/10*) (*Effective 7/1/10*)

Sec. 18-48. Proration of taxes.

There shall be no abatement from or proration of any license tax imposed under this article, except that any person who pays a flat-rate license tax and who shall begin business after the beginning of the license tax year shall pay to the town a license tax for the whole of the year. However, such portion of the license tax as the period between the first day of the year and the date of issuing the license shall bear to the whole year shall be deducted from the license tax to be assessed against the person for the privilege of doing the same business for the ensuing year when the tax becomes payable, and in computing the license tax, no deduction shall be made therefrom for any fractional part of a month. This section shall not apply to any gross receipts licenses issued under this article or to any license tax computed upon the amount of sales or contracts made or done by the licensee during the preceding year, nor shall this section apply to any such license taxes, the proration of which is expressly prohibited under other sections of this article.

(Code 1977, § 10-20)

State law reference—Proration of license taxes, Code of Virginia, § 58.1-3710.

Sec. 18-49. Corporations, partnerships and sole proprietors.

When the business, trade or occupation is conducted by a corporation, partnership or sole proprietor, the license tax shall be imposed upon the gross receipts of the corporation, partnership or sole proprietor and paid by it. When so paid and, also, when paid by an individual employing persons who otherwise would be liable for a license, it shall be deemed to discharge the license tax liability of the officers and partners of such corporation or firm and of such persons employed by any employer who otherwise would be liable for such tax, insofar as the licensed business is concerned.

(Code 1977, § 10-21)

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Sec. 18-50. Due date of tax.

All license taxes imposed by this article shall be deemed to be due and payable on or before April 30 of each license year by persons who had a license for the preceding year. A person who did not have a license for the preceding year shall pay the license tax at the time of the application for the license.

(Code 1977, § 10-22)

Sec. 18-51. Interrogatories, other evidence used in determining amount of tax.

As one of the means of ascertaining the amount of any license tax, the town council may propound interrogatories to each applicant and use such other evidence as it may procure. Such interrogatories shall be answered under oath.

(Code 1977, § 10-23)

Sec. 18-52. Oath of applicant.

Every person liable for a license tax under this article, based upon the amount of his actual gross receipts or graduated in any other way, shall, before he shall be granted a certificate for obtaining such license, be required to make oath in writing before a notary public or the town manager upon the forms to be prepared by the town manager, stating his business, occupation or profession or any other matter that may be pertinent to the assessment of the tax on such license. For an incorporated company, such oath shall be made by the chief officers or agent resident in the town or in charge of the business of the company, and for firms by any member thereof.

(Code 1977, § 10-24)

Sec. 18-53. Assessment of additional license taxes.

Whenever the town manager shall ascertain that any person shall be assessed with an additional license tax pursuant to this article, it shall be his duty to assess such person with such additional license tax. The town manager shall mail a copy of such assessment to the person against whom assessed and distribution of copies shall be further made as provided in subsection 18-37(b). If the additional license tax so assessed shall not have been paid within 30 days after such assessment, the town manager shall proceed to collect the license tax as delinquent taxes.

(Code 1977, § 10-25)

Sec. 18-54. Records required on gross receipts.

(a) Every person liable for a license tax under this article, which is based on gross receipts, shall keep all records necessary to show and compute such gross receipts, and the report of the gross receipts shall be taken from such records. All such records and general books of account shall be open to inspection and examination by any authorized town representative.

(b) Each person subject to a license shall apply no later than March 1 of the license year to the town manager if he had been issued a license for the preceding year and shall at such time submit a report of his gross receipts of the preceding year if such license is based upon gross receipts.

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(c) If any licensee shall fail to maintain the records required in this section, the proper town enforcement officer is authorized and directed to estimate the taxpayer's gross receipts on the basis of the best evidence he can obtain, and the town manager shall make an assessment on the basis of such determination.

(Code 1977, § 10-26; Ord. of 8-5-1996 (b))

Sec. 18-55. Gross receipts records.

(a) *Town's authority to audit and examine.* The town shall have the right and authority to audit and examine any return or report of gross receipts and/or purchases from any business, occupation or profession. In connection with such audit, the town is further authorized and empowered to examine the records, books and papers of any person required by this article to have a license.

(b) *Failure to produce.* The penalties for failure to produce gross receipts records as required shall be as follows:

- (1) Any person who shall be liable for a license tax measured upon gross receipts shall, upon request of the town council, produce and exhibit to the manager at the manager's office his records, books and papers pertaining to the gross receipts of such person. Any person failing to produce his records, books and papers upon request of the town council shall, in addition to any other liability imposed, suffer an immediate revocation of his license, if already issued, and, if not already issued, no such license shall be issued unless or until such person shall have produced and exhibited to the town manager at the manager's office his records, books and papers pertaining to his gross receipts and unless or until such person shall have fully complied with the other sections of this article.
- (2) Any person who shall refuse to permit the town to examine and audit his records, books and papers pertaining to the gross receipts of such person shall be guilty of a violation of this article.

(Code 1977, §§ 10-27, 10-28; Ord. of 8-5-1996, § 10-27)

Sec. 18-56. Penalty for late payment and/or late application.

A penalty of ten percent of the license 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. For 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 or reckless or intentional disregard of the law by the taxpayer, there shall be no late penalty assessed with the additional tax. If any assessment of the tax by the assessing official is not paid within 30 days, the treasurer or other collecting official may impose a ten-percent late payment penalty. If the failure to file or pay was not the fault of the taxpayer, the penalties shall not be imposed or, if imposed, shall be abated by the official who assessed them. In order to

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demonstrate lack of fault, the taxpayer must show that he acted responsibly and that the failure was due to events beyond his control. (Code 1977, § 10-29; Ord. of 8-5-1996)

Sec. 18-57. Appeals and rulings.

(a) Any person assessed with a local license tax as a result of an audit may apply within 90 days from the date of such assessment to the assessor for a correction of the assessment. The application must be filed in good faith and shall sufficiently identify the taxpayer, audit period, remedy sought, each alleged error in the assessment, the grounds upon which the taxpayer relies, and any other facts relevant to the taxpayer's contention. The assessor may hold a conference with the taxpayer, if requested by the taxpayer, or require submission of additional information and documents, a further audit, or other evidence deemed necessary for a proper equitable determination of the application. The assessment shall be deemed prima facie correct. The assessor shall undertake a full review of the taxpayer's claims and shall issue a determination to the taxpayer setting forth its position. Every assessment pursuant to an audit shall be accompanied by a written explanation of the taxpayer's right to seek correction and the specific procedure to be followed in the jurisdiction (e.g., the name and address to which an application should be directed).

(b) Provided a timely and complete application is made, 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 Code of Virginia, § 58.1-3703.1(A)(2)e, 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 (i) depart quickly from the locality, (ii) remove his property there from, (iii) conceal himself or his property therein, or (iv) 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 local license tax 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 state department of taxation shall be made a party to an application to correct an assessment merely because the tax commissioner has ruled on it.

(d) On receipt of a notice of intent to file an appeal to the tax commissioner under 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

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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 Code of Virginia, § 58.1-3703.1(A)(2)e, 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 a local license 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 (i) there is a change in the law, a court decision, or the guidelines issued by the state department of taxation upon which the ruling was based on; or (ii) 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. (Code 1977, § 10-29.1; Ord. of 8-5-1996)

Sec. 18-58. Exemptions.

Notwithstanding any of the sections of this division, the license tax applications may be declared exempt as to any business or individual by order of the town council, for good cause shown. (Code 1977, § 10-55; Ord. of 8-5-1996)

Secs. 18-59—18-85. Reserved.

DIVISION 2. SPECIFIC BUSINESSES AND OCCUPATIONS

Sec. 18-86. Subcontracts.

It shall be the duty of every contractor who subcontracts any portion of the work contracted for to notify the town manager of such subcontract, giving the amount so subcontracted, the names and addresses of all persons, firms or corporations to whom any portion of the work is subcontracted, and for failure to do so shall be guilty of a class 4 misdemeanor. (Code 1977, § 10-3)

Sec. 18-87. Bail bonds.

For every license for persons furnishing bail bonds for cash or by any other method and making a charge for such services there shall be paid a license tax of \$500.00 per year, which shall not be prorated or transferred. (Code 1977, § 10-31)

State law references—Bondsmen's certificate, Code of Virginia, § 19.2-152.1; local licensing of bondsmen, Code of Virginia, § 58.1-3724.

Sec. 18-88. Billposters.

BUSINESSES

For every billposter license, there shall be license tax of \$500.00 per annum. All persons who post or distribute notices, bills, labels, etc., for compensation shall be construed as billposters; provided, however, that persons advertising goods to be sold and delivered by merchants doing business in the town shall not be considered billposters.
(Code 1977, § 10-33)

Sec. 18-89. Savings institutions; credit unions.

The specific license tax on every savings institution or state-chartered credit union for the privilege of doing business in the town shall be \$50.00. The license tax shall be levied only when the main office of the savings institution or credit union is located in the town.
(Code 1977, § 10-34)

Sec. 18-90. Bus and freight terminals.

(a) The license tax for the privilege of maintaining and operating a bus terminal in the town for the purpose of receiving or discharging passengers or freight shall be \$85.00, not proratable.

(b) The license tax for the privilege of maintaining and operating a motor freight terminal in the town for the purpose of receiving or discharging freight shall be \$85.00, not proratable. (Code 1977, § 10-35)

Sec. 18-91. Carnivals, circuses.

(a) For the purposes of this section, the definition of a carnival shall include any type of show or exhibition mentioned and described in Code of Virginia, § 58.1-3728.

(b) For every license to operate a carnival or circus or other similar organization, there shall be paid a license tax of \$500.00 for each day an exhibition is given in the town;

(c) No carnival or circus which is produced or operated or owned primarily by amateurs who are town residents and the gross income of which inures exclusively to the benefit of a school, church or fire department or of any locally sponsored nonprofit organization operated for charitable and benevolent purposes shall be subject to any license tax.

(d) A circus or carnival, which is sponsored by a local nonprofit organization, operated for charitable and benevolent purposes shall not be subject to a license tax.
(Code 1977, § 10-37)

Sec. 18-92. Itinerant vendors.

(a) The term "itinerant vendors," as used in this section, shall be construed to mean and include all persons, whether as principal, agent or salesman, who engage in temporary or transient business in this town in one or more places and who, for the purpose of carrying on such business, hire, lease or occupy any building or structure for the exhibition or sale of such fruits, goods or merchandise for a period of less than one year.

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(b) A license tax of \$500.00 per annum shall be assessed on all persons bringing to and exhibiting for sale to consumers at retail in the town, in temporary places or fixed places of sale, fruits and goods or merchandise as bankrupt, consigned trustee, railroad wreck, fire, slaughter stock, leftover exposition stock sale or sale of like character and on all itinerant vendors doing business in the town.
(Code 1977, § 10-39)

Sec. 18-93. Pawnbrokers.

(a) *License fee.* On every license to a pawnbroker, the license tax shall be \$100.00, not proratable, plus gross receipts.

(b) *Scope of license.* Such license shall not authorize the holder thereof to sell any goods or things, except unredeemed pledges at a statutory action sale thereof. A pawnbroker desiring to purchase and sell, at retail, shall secure and pay for, in addition to the pawnbroker's license, a retail merchant's license as provided for in his article.

(c) *Records required.* Pawnbrokers doing business in the town shall, in addition to the duties required of them under state law, keep a book and file a copy of the book daily with the town sergeant at his office, in which book shall be plainly written the following information:

- (1) A complete and accurate description of the goods, articles or things purchased, including the number of items;
- (2) The time and date of receiving the goods, articles or things;
- (3) The amount of money paid for the goods, articles or things; and
- (4) The name and complete and accurate address of the person selling the goods, articles or things, which information shall be taken from a valid driver's license or special identification card issued by the state department of motor vehicles, together with a particular physical description of such person.

(d) *Availability of records.* The register required to be maintained by this section shall be open to inspection by any federal, state or local law enforcement officer during business hours.

(e) *Search by law enforcement officers.* Every pawnbroker and every person in the employ of a pawnbroker shall admit to his premises during business hours any federal, state or local law enforcement officer to examine any item purchased and to search for and to take into possession any article known by him to be missing or known or believed by him to have been stolen. However, the officer shall not take possession of any article without providing to the pawnbroker a receipt.

(Code 1977, § 10-40)

State law reference—Pawnbrokers, Code of Virginia, §§ 15.2-1114, 54.1-4000 et seq.

Sec. 18-94. Peddlers.

BUSINESSES

(a) *Generally.* Any person who shall carry from place to place any goods, wares or merchandise and offer to sell or barter the goods, wares or merchandise or who actually sells or barter the goods, wares or merchandise shall be deemed to be a peddler. Any delivery made on the day of the sale shall be construed as equivalent to delivery at the time of the sale. Any person claiming exemption from this section on the grounds that he is delivering goods, wares or merchandise previously sold to the customer shall, upon request of any police, tax or revenue officer, furnish evidence of his claim, other than his mere statement, voiced or signed order describing the goods, wares or merchandise involved and the amount and price thereof. Failure to furnish such evidence shall be sufficient grounds for charging the person operating the vehicle with a violation of this section. In any prosecution for a violation of this section, the claim must be corroborated by satisfactory evidence. The license tax for peddlers shall be as follows:

- (1) *Wholesale peddlers.* By virtue of the authority conferred in Code of Virginia, § 58.1-3718, there shall be a license tax of \$100.00 for each truck or vehicle used by any peddler who may sell and deliver at the same time to licensed dealers and retailers, except a farmer, a dealer in forest products, a producer or a manufacturer taxable on capital by this state. This license tax shall not apply to persons properly licensed and doing business in the town.
- (2) *Retail peddlers.* The license tax for retail peddlers shall be as follows:
 - a. Peddlers of goods, wares or merchandise, on foot, \$225.00.
 - b. Peddlers of goods, wares or merchandise, other than on foot, \$500.00.
 - c. Peddlers of meats, milk, butter, eggs, poultry, game, vegetables, fruits or other family supplies of a perishable nature, not grown or produced by the peddler, for each vehicle, \$75.00.

(b) *Exemptions generally.* No peddler's license shall be required of a dealer in ice, wood or charcoal, who peddles the ice, wood or charcoal from a vehicle, provided such dealer has taken out a merchant's licenses.

(c) *Farm or family supplies of perishable nature.* Nothing contained in this section shall be construed as imposing any license tax upon a person selling farm or family supplies of a perishable nature within the town when the products to be sold are grown or produced by such person, but proof shall be shown that such products are so raised by the party offering them for sale. Before any license shall be issued to any person to be a grower, producer or manufacturer, the licensee shall first file with the town manager a written statement duly sworn to and attested to by a notary public or magistrate of his community, setting out in full and in detail the facts claimed to make the applicant a grower, producer or manufacturer. No license shall be issued by the town manager until such certificate, duly sworn, shall first be produced and filed. The name, address and occupation of the applicant and the witness who executed the certificate shall be given in full.

(d) *Time limits and locations of sales.* No licensee under this section shall park his truck, wagon, cart or vehicle within the business district or at any location upon any street or public place in the town for a longer period than 15 minutes or within 100 feet of any

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store, shop or stand from which similar merchandise is sold or in any block for a longer period than one hour in any day to sell and deliver any article which he might offer for sale from house to house, except in such defined areas as may be specifically set aside by the town council for sale of such merchandise.

(e) *Enforcement.* It shall be the duty of the police officers and other town officers to fully enforce this section and to have warrants issued against any person violating this section. (Code 1977, § 10-41)

Cross reference—Streets, sidewalks and other public places, ch. 50.

Sec. 18-95. Special event vendors, carnivals, and circuses.

(a) Notwithstanding the provisions of Sec. 18-91 and Sec. 18-92 and the license requirements enumerated therein, any person, firm, or corporation engaged as an itinerant vendor or operating a carnival or circus at a special event conducted or sponsored by a local “charitable nonprofit organization” or a local nonprofit organization, as herein defined, or the Chincoteague Recreation and Convention Center Authority shall be exempted from such license tax, unless such person, firm, or corporation is otherwise required to be licensed in accordance with Chapter 18.

(b) A “Special Event” for purposes of this section shall be an event which is conducted for a limited number of days not exceeding fourteen (14) in any calendar year.

(c) A local “charitable nonprofit organization” for purposes of this section shall mean an organization which is described in Internal Revenue Code §501(c)(3) and to which contributions are deductible by the contributor under Internal Revenue Code §170, except that educational institutions shall be limited to schools, colleges, and other similar institutions of learning, and a majority of such organization’s receipts are utilized, directly or indirectly, within the Town of Chincoteague.

(d) A local nonprofit organization means an organization exempt from Federal Income Tax under Internal Revenue Code §501 other than a charitable nonprofit organization, and the majority of such organization’s receipts are utilized, directly or indirectly within the Town of Chincoteague.

(Adopted 02-07-05, Amended 03-06-06)

Sec. 18-96. Pony Penning Sales.

(a) *Generally.* *Pony Penning sales* is herein defined in this ordinance to mean and include all general sales within the town that are open to the public during the event.

(b) *Permit.* A permit is required for conducting Pony Penning sales within the town and must be secured eight days prior to the Saturday preceding Pony Penning. The permit shall be displayed at the sale location for the entire length of the sale.

(c) *Permit fee.* The permit fee shall be \$60.00.

BUSINESSES

- (1) Anyone with an established town business license is exempted from the permit fee, but shall be required to obtain a permit. An established town business license shall mean a business that has a permanent location within the town limits and operates at a minimum of 90 days per year.
- (2) Anyone selling prepared food as defined in Chapter 54, Article V. Excise Tax (Meals) of this code must submit a deposit to the town manager in an amount of \$500.00 prior to receiving such permit, which amount shall be applied to any tax due as a result of such sales. Report of actual sales must be submitted within 30 days from the end of the event. Failure to report actual sales by the due date will forfeit the deposit. The remaining balance of the deposit, if any, shall be refunded to permittee upon computation of the actual tax due any payable as determined by such sales.

(d) *Duration of sale; hours of operation; frequency.* Sales conducted under this section are restricted to a maximum period beginning no sooner than the Saturday preceding Pony Penning and ending on the Saturday immediately following Pony Penning. Any sale exceeding this time period or otherwise not in compliance with this section will not be considered Pony Penning sales and will be in violation of this section and will be considered a business and must comply with all applicable zoning and business licensing requirements.

(e) Yard sales are prohibited the Saturday preceding Pony Penning day, until the Saturday after the Pony Penning event.
(Amended 5/7/12, 5/6/13)

Secs. 18-97-18-120. Reserved.

DIVISION 3. BUSINESSES AND PROFESSIONS MEASURED BY GROSS RECEIPTS

Sec. 18-121. Minimum license tax.

The minimum license tax on all businesses and professions measured by gross receipts or gross purchases in the case of wholesale merchants shall be \$50.00, which amount shall be absorbed into the total tax when such tax exceeds \$50.00 at the applicable rate.
(Code 1977, § 10-42) (Amended 6/17/10) (Effective 7/1/10)

Sec. 18-122. Maximum license tax.

The maximum license tax on all businesses and professions measured by gross receipts or gross purchases in the case of wholesale merchants as detailed in this division shall be \$500.00 per licensing year unless otherwise provided.
(Code 1977, § 10-51-1)

Sec. 18-123. Amusements.

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Every person conducting, operating or engaging in any of the following amusement businesses, trades or occupations shall pay an annual license tax of \$0.13 for each \$100.00 of gross receipts in such business, trade or occupation for the preceding calendar year:

Arcade or building devoted to general amusement or entertaining.

Auditorium, to a maximum annual tax of \$1,000.00, in excess of 10,000 seats.

Billiard and poolrooms.

Bowling alley.

Coliseum, to a maximum annual tax of \$1,000.00 in excess of 10,000 seats.

Dance hall.

Garden, display or amusement.

Golf driving range.

Miniature golf.

Movie theater.

Park athletic field, operated for profit.

Riding academy.

Shooting gallery.

Swimming pool open to the public.

Other amusements and entertainments.

(Code 1977, § 10-43)

Sec. 18-124. Business service occupations.

Every person conducting, operating or engaging in any part of the following service businesses, trades or occupations shall pay an annual license tax of \$0.13 for each \$100.00 of gross receipts in such business, trade or occupation for the preceding calendar year:

Airport.

Canvassers, solicitors and vendors.

Erecting, installing, removing or storing awnings.

Hauling or transfer.

Impounding lot.

Job printing, printing shop, bookbinding, duplicating processes.

Leasing films for compensation.

Packing, crating, shipping, hauling or moving goods or chattels for others.

BUSINESSES

Parking lot.

Public garage.

Radio station.

Renting airplanes.

Renting bicycles.

Storage, all types.

Taxicab.

Theater.

Title plant or abstracting, other than licensed attorney.

U-drive-it firm or business.

Vehicular advertising, electric advertising, bus advertising, other advertising

Other business service occupations.

(Code 1977, § 10-44)

Sec. 18-125. Contractors and contracting.

Subject to the limitation of Code of Virginia, § 58.1-3715, every person conducting, operating or engaging in any of the following contractor or contracting businesses, trades or occupations shall pay an annual license tax of \$0.13 for each \$100.00 of gross receipts in such business, trade or occupation for the preceding calendar year:

Air conditioning.

Brick contracting, stone and other masonry.

Building.

Cement.

Dredging, sand and gravel.

Electrical.

Exterminating rats, vermin, termites, etc.

Floor scraping or finishing.

Foundations.

Fumigating or disinfecting.

Interior decorating.

Paint, paper decorating.

Plastering.

Plumbing, heating, steam fitting, gas fitting.

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Road, street, bridge, sidewalk, curb and gutter.

Sewer drilling and well digging

Structural metal.

Tile, glass, flooring, floor covering

Wrecking, moving, excavating.

Other contractors and contracting.

(Code 1977, § 10-45)

Sec. 18-126. Loan companies.

Every person, except the savings institutions and credit unions subject to section 18-89 and national banks, who shall lend money shall pay a license tax of \$0.13 per \$100.00 on gross receipts.

(Code 1977, § 10-46)

Sec. 18-127. Personal service occupations.

Every person conducting, operating or engaging in any of the following personal service businesses, trades or occupations shall pay an annual license tax of \$0.13 for each \$100.00 of gross receipts in such business, trade or occupation for the preceding calendar year:

Addressing letters or envelopes.

Barbershop.

Beauty parlor.

Bottle exchange.

Chartered club.

Cleaning chimneys, furnaces.

Correspondent establishment or bureau.

Dental laboratory.

Embalmer, undertaker.

Furnishing ambulance service, except by the volunteer fire company.

Furnishing clean diapers.

Furnishing house cleaning service.

Furnishing messenger service, except telegraph or telephone messenger service.

Furnishing statistical service.

Hairdressing establishment.

BUSINESSES

Hotel, motel, motor lodge, auto court, tourist court, travel trailer park, lodging house, rooming house, boardinghouse.

Laundering, cleaning, pressing or dyeing establishment.

Nurses' registry.

Operating a kennel or small animal hospital.

Operating a scalp-treating establishment.

Photographer.

Physicians' registry.

Picture framing or gilding.

Private school, other than religious and nonprofit.

Renting any kind of tangible personal property.

Renting or furnishing automatic washing machines.

Supplying clean linens, coats, aprons, towels, uniforms.

Other personal service occupations.

(Code 1977, § 10-47)

Sec. 18-128. Professional occupations.

Every person conducting or engaging in any of the following professional occupations shall pay an annual license tax of \$0.13 for each \$100.00 of gross receipts in the occupation for the preceding calendar year:

Accountant, public.

Advertising agent or firm.

Air conditioning engineer.

Appraiser or evaluator of real estate for others for compensation.

Architect, landscaper.

Artist.

Assayer.

Attorney at law.

Auctioneer, all types.

Auditing company or firm.

Broker, any type other than pawnbroker.

Blueprinter.

Bookkeeper, public.

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Chemical engineer.
Chemist.
Chiropractor.
Civil engineer.
Collection agent or agency.
Consulting engineer.
Contracting engineer.
Dentist.
Detective.
Doctor of medicine.
Electrical engineer.
Furnishing of domestic help or clerical help, labor or employment.
Homeopath.
Industrial engineer.
Land agent, rental agent.
Lumber measurer.
Mechanical engineer.
Mercantile agent or agency.
Metallurgist.
Mining engineer.
Naturopath.
Neurologist.
Ophthalmologist.
Optometrist or optician.
Orthodontist.
Osteopath.
Patent attorney or patent agent.
Physician.
Physiotherapist.
Public relations counselor.
Public stenographer.

BUSINESSES

Publicity service, booking agent, concert manager.

Radio engineer.

Recorder of proceedings in any court, commission or other organization.

Refrigerator engineer.

Sales agent or agency.

Sculptor.

Surgeon.

Surveyor.

Veterinarian.

Other professional occupations.

(Code 1977, § 10-48)

Sec. 18-129. Repair service occupations.

Every person conducting, operating or engaging in any of the following repair service businesses, trades or occupations shall pay an annual license tax of \$0.13 for each \$100.00 of gross receipts in such business, trade or occupation for the preceding calendar year:

Auto repair, engine repair of all types.

Bicycle repair.

Business and office machines repair.

Clothes, hat, carpet or rug repair.

Furniture and upholstering repair.

Gunsmith, gun repair.

Machine shop, boiler shop.

Mattress repair.

Nickel and chrome plating.

Paint shop, other than contractor.

Piano tuning.

Radio, refrigerator, electrical appliance, home appliance repair.

Reweaving.

Road machinery and farm machinery repair.

Saw and tool repair.

Scales, repair of.

Shades, repair of.

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Shoe repair.

Television repair.

Tire repair.

Toy repair.

Umbrella, harness, leather goods repair.

Washing or cleaning of automobiles.

Watch and clock repair.

Welding shop.

Other repair services not otherwise taxed.

(Code 1977, § 10-49)

Sec. 18-130. Retail merchants.

Every person conducting, operating or engaging in any of the following retail businesses, trades or occupations shall pay an annual license tax of \$0.13 for each \$100.00 of gross receipts in such business, trade or occupation for the preceding calendar year:

Aircraft or aircraft parts.

Antiques.

Auto accessories, tires or batteries.

Bakery, caterer.

Bicycles.

Boats, motors.

Books, stationery.

Building materials.

Candy, nut stores.

Cigar, tobacco stand, newsstand.

Clothing not specified elsewhere.

Coin-operated vending machines.

Commission merchant.

Confectionery.

Custom tailor.

Dairy products.

Delicatessen.

BUSINESSES

Dentures.
Department store.
Draperies, curtains, upholstery.
Drugs.
Dry goods store.
Eggs, poultry.
Family clothing.
Farm equipment.
Filling station.
Fish, seafood market.
Floor covering.
Florist.
Fruit store, vegetable market.
Fuel, ice.
Furniture.
Furrier.
Garden supplies.
General store.
Gifts, novelties, souvenirs.
Grocery.
Hardware.
Heating, plumbing, electric equipment.
Hog, grain, feed, seed.
Hosiery.
Jewelry.
Livestock dealer.
Luggage.
Lumber goods.
Meat market.
Men's and boys' clothing.
Millinery.
Motorcycles.

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Musical instruments.

Office, store, appliance supplies.

Optical.

Paint, glass, wallpaper.

Photographic supply, equipment.

Radio or household appliances.

Ready-mixed concrete.

Restaurants, catering places, nightclubs.

Secondhand stores, other than junk.

Scientific, medical supplies.

Shoes.

Soda fountain.

Sporting goods.

Used cars.

Variety store.

Workers' clothing.

Other retail stores and retail merchants.

(Code 1977, § 10-50)

Sec. 18-131. Wholesale merchants.

Every person conducting or operating any of the following wholesale businesses, trades or occupations shall pay an annual license tax of \$0.05 for each \$100.00 of his purchases in such business, trade or occupation for the preceding calendar year:

Automotive.

Chemicals.

Clothing, furnishings.

Coal, coke.

Drugs.

Dry goods.

Electrical, plumbing goods.

Farm products or supplies.

Furniture and house furnishings.

BUSINESSES

Groceries and foods.

Hardware.

Jewelry.

Lumber, paint and construction materials.

Machinery, equipment and supplies.

Metals and metalwork.

Other goods, wares, merchandise.

Paper and paper products.

Seafood.

Soft drinks.

Sporting goods.

Tobacco and tobacco products, except leaf tobacco.

Waste materials.

Other wholesale merchants.

(Code 1977, § 10-51)

Sec. 18-132. Coin-operated machines.

(a) There is imposed an annual license tax of \$200.00 on every operator of ten or more coin-operated or coin-in-the-slot-type vending machines and an annual license tax of \$175.00 on every operator of fewer than ten such machines. The term "operator" means any person selling, leasing, renting or otherwise furnishing or providing a coin-operated machine or device operated on the coin-in-the-slot principle; provided, however, the term "operator" shall not include a person owning less than three coin machines or operating such machines on property owned or leased by such person.

(b) The coin machine operator's license tax imposed in subsection (a) of this section shall not be applicable to operators of the following:

- (1) Weighing machines;
- (2) Automatic baggage or parcel checking machines or receptacles;
- (3) Vending machines that are so constructed as to do nothing but vend goods, wares and merchandise or postage stamps or provide service only;
- (4) Viewing machines or photomat machines; or
- (5) Devices or machines affording rides to children or for the delivery of newspapers.

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(c) In addition, there is imposed a gross receipts tax on the gross receipts actually received from any coin-operated machines or devices that are operated within the town. Reference is made to the sections in this division for applicable rates.

(d) No license shall be issued to any person for permission to use slot or vending machines for any purpose which is prohibited by law. Any license issued under this section shall stand forthwith revoked upon legal proof that such machines are being used in any illegal manner whatsoever; the order of revocation of the license to be entered by the town council after investigation. No license issued pursuant to this section shall be transferable, except that a transfer of such license shall be legal when the business is sold by a person to another, provided the machines remain at the same place, stall or stand for which the license was originally issued and there is compliance with this article.

(e) Any person providing any such coin machines or other devices and failing to procure a town license shall be subject to a fine of not more than \$500.00 for each offense, and the machine or other device shall become forfeited to the town.

(Code 1977, § 10-52)

State law reference—Similar provisions, Code of Virginia, § 58.1-3723.

Secs. 18-133—18-160. Reserved.

DIVISION 4. PUBLIC SERVICE CORPORATIONS AND TELECOMMUNICATIONS

Sec. 18-161. Public service corporation license tax.

(a) Pursuant to Code of Virginia, § 58.1-3731, every person engaged in the business of providing telephone and telegraph communications in the town shall pay for the privilege an annual license tax equal to one-half of one percent of the gross receipts during the preceding calendar year accruing from sales to the ultimate consumer in the town; provided, however, charges for long distance telephone calls shall not be considered receipts of business in the town.

(b) Pursuant to Code of Virginia, § 58.1-3731, every person furnishing heat, light, power and gas for domestic, commercial and industrial consumption in the town shall pay for the privilege an annual license tax equal to one-half of one percent of the gross receipts accruing from sales to the ultimate consumer within the town during the preceding calendar year, excluding such service furnished to other electric utilities for resale.

(Code 1977, § 10-53)

Sec. 18-162. Cable television service.

All persons furnishing cable television service shall pay for the privilege an annual license tax equal to two percent of the gross income.

(Code 1977, § 10-54)

BUSINESSES

State law reference—Licensing, etc., and regulation of cable television systems, Code of Virginia, § 15.2-2108.

Secs. 18-163—18-190. Reserved.

ARTICLE III. MESSAGE BUSINESSES*

Sec. 18-191. 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:

Certified massage therapist means a person at least 18 years old who has:

***State law reference**—Licensing of massage parlors, Code of Virginia, § 58.1-3706(A).

- (1) Successfully completed a minimum of 500 hours of training from a massage therapy program, having received programmatic approval from the state board of education, division of proprietary schools, or certified or approved by the state board of education, division of proprietary schools; the state council of higher education; or an agency in another state, the District of Columbia or a United States territory which approves educational programs, notwithstanding the provisions of Code of Virginia, § 22.1-320;
- (2) Passed the National Certification Exam for Therapeutic Massage and Bodywork or an exam deemed acceptable to the board of nursing leading to national certification; and
- (3) Not committed any acts or omissions that would be grounds for disciplinary action or denial of certification as set forth in Code of Virginia, § 54.1-3000 et seq.

Massage means a method of treating the external parts of the body for remedial or hygienic purposes, consisting of rubbing, kneading or tapping with the hand or any instrument.

Massage parlor means an establishment having a fixed place of business where any person engages in, conducts or carries on or permits to be engaged in, conducted or carried on any business of giving Turkish, vapor, sweat, electric, salt, magnetic or any other kind or character of massage, bath, alcohol rub, fomentation, manipulation of the body or similar procedures. This definition shall not be construed to include a hospital, nursing home, medical clinic, or the office of a duly licensed physician, surgeon, physical therapist, chiropractor, osteopath or a certified massage therapist.

Masseur or masseuse means a person who practices any one or more of the arts of body massage, whether by hand or mechanical apparatus, oil rubs, corrective gymnastics,

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mechanotherapy, including color therapy, dietetics, hot packs, cabinet, tub, shower, sitz, vapor, steam or any other special type of bath.

(Code 1977, § 13-6-1)

Cross reference—Definitions generally, § 1-2.

State law reference—Similar provisions, Code of Virginia, § 54.1-3029.

Sec. 18-192. Legislative authority; purpose.

This article is enacted pursuant to the provisions of chapter 2, section 1(48) and (49) of the Charter for the purpose of securing and promoting the health, safety and general welfare of the people of the town.

(Code 1977, § 13-6-2; Ord. of 8-5-91)

Sec. 18-193. Policy.

It is declared that the business of operating a massage parlor, as defined in this article, is a business affecting the public health, safety and general welfare.

(Code 1977, § 13-6-3)

Sec. 18-194. Compliance.

It shall be unlawful for any person to engage in the business of a massage parlor without a permit or to be in violation of any requirements or prohibitions set forth in this article or in applicable sections of chapter 38 or any regulation issued pursuant thereto.

Hospitals, nursing homes, medical clinics, or the offices of a duly licensed physician, surgeon, physical therapist, chiropractor, osteopath or a certified massage therapist are exempt from this section.

(Code 1977, § 13-6-4; Ord. of 5-17-2001)

Sec. 18-195. Permits.

(a) Except as otherwise provided in section 18-191, it shall be unlawful for any person to:

- (1) Own or manage a massage parlor or give a massage for compensation within the town or offer to give a massage for compensation within the town or offer to give a massage for compensation elsewhere if such offer is made within the town or for any masseur or masseuse to give or offer a massage for compensation without a valid nonsuspended permit issued pursuant to this section. The permit must be conspicuously posted in the massage parlor, so that the permit may be readily seen by persons entering the premises in the public room.
- (2) Establish, maintain or operate a massage parlor in which he or a masseur or masseuse who does not have a valid nonsuspended permit issued pursuant to this section performs or offers to perform or where it is offered to perform massages, for compensation, in the town.

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(b) Any person desiring a permit under this section shall make application of the chief of police on forms provided by him. Each permit application shall be accompanied by an application fee of \$50.00 payable to the town treasurer. Each application shall contain the name, address, social security number, height, weight and current and last previous employment of the applicant. In addition, such application shall include a sworn statement as to whether or not the applicant has been, within the last five years, convicted, pleaded nolo contendere or suffered a forfeiture on any felony charge or on a charge of violating any provision included in Code of Virginia, §§ 18.2-344—18.2-371 and 18.2-372—18.2-387, which laws relate to sexual offenses, or on a charge of violating a similar law of any other jurisdiction or on a charge of violating any section of this article or a similar ordinance in any other jurisdiction. The application shall state thereon, "It is unlawful for any person to make a false statement on this application, and discovery of a false statement shall constitute grounds for denial of an application or revocation of a permit." Each applicant shall be photographed and shall have his fingerprints taken, which fingerprints and photograph shall constitute part of the application. The permit shall be valid for a period of one year, and it may be renewed for additional one-year periods upon the filing of a new application and payment of the application fee of \$50.00. All sections of this article shall apply to renewals in the same manner as they apply to applications for and granting of initial permits.

(c) Upon receipt of the application fee as provided for in subsection (b) of this section, the chief of police shall make or cause to be made a thorough investigation relative to the application. The chief shall deny or revoke any application for a permit under this section after notice and hearing if the chief finds that the applicant has been, during the previous five years, convicted, pleaded nolo contendere or suffered a forfeiture on any felony charge or on a charge of violating any provision included in Code of Virginia, §§ 18.2-344—18.2-371 and 18.2-372—18.2-387, which laws relate to sexual offenses, or on a charge of violating any similar law of any other jurisdiction or on a charge of violating any provision of this section or similar ordinance in any other jurisdiction. The making of a false statement on the application as provided for in this section shall also be grounds for denial of this permit. Notice of the hearing before the chief of police for denial of this application shall be given in writing, setting forth the grounds of the proposed denial of permit and the time and place of the hearing. Such notice shall be mailed by certified mail to the applicant's last known address at least five days prior to the date set for the hearing. The chief of police shall submit his decision to the applicant within five days of his decision or within 30 days of his receipt of the application, whichever is the sooner.

(d) It shall be unlawful for any person to purport to hold a valid permit when he does not or to fail to display, upon request by any police officer, corroborating identifying evidence that he is, in fact, the person displaying the permit or to fail to display the permit upon request by a police officer. It shall likewise be an automatic cause for revocation of the permit of any owner or manager of a massage parlor if he has two or more violations of this section in his establishment within a 12-month period.

(e) A person applying for a permit under this section shall include a partnership or association and any partner or member thereof, or, if the applicant is a corporation, it shall

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include any officer, director or manager thereof or shareholder owning ten percent or more of its stock and shall likewise include members of both sexes.

(f) If the chief of police should deny or revoke any permit under this section, the applicant shall have an automatic right to appeal such denial or revocation to the town manager. The town manager shall hold a hearing, with the same procedural guidelines as set out in this section for the chief of police, within 30 days of the date of the denial or revocation. The town manager shall render his decision after a review of the findings of the chief of police and any other evidence submitted to him. The town manager shall submit his decision to the applicant or permit holder within five days of his decision or within 30 days of the hearing, whichever is sooner.

(Code 1977, § 13-6-5; Ord. of 8-6-1991 (c-d))

Sec. 18-196. Training requirements for masseur or masseuse.

(a) No person shall give or offer or hold oneself out to offer a massage as a masseur or masseuse within the meaning of this article or employ or engage as an independent contractor any masseur or masseuse who gives or offers or holds oneself out to offer a massage unless such person shall have satisfactorily completed a course of study in body massage in an approved school of instruction or training within the following criteria and guidelines:

(1) The courses shall pertain to anatomy, physiology, hygiene, first aid, exercise therapy, massage techniques and related aspects of the art and science.

(2) A course of study in body massage shall constitute 1,000 hours of study in connection with an approved school, as follows:

- a. Five hundred hours shall be accredited instructional hours pertaining to the following:
 1. Classroom or clinical training in therapeutic massage and reflexology techniques.
 2. Classroom or clinical instruction on contraindications for massage.
 3. Classroom or clinical or laboratory instruction to develop a knowledge of the anatomy and physiology of the systems of the body with emphasis on the muscular and skeletal systems.
- b. The additional 500 hours may be accomplished simultaneously with the academic, clinical or classroom or laboratory training by virtue of what is commonly known as on-the-job training or they can be certified to by an employer of a masseur or masseuse by sworn affidavit as having been accomplished during or before the effective date of the ordinance from which this article derives. Such training shall pertain to understanding the benefits of

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massage and assisting the students in developing an awareness of massage as a therapeutic process.

(b) Approved schools shall include the following:

- (1) Any school or educational institution licensed to do business as a school or educational institution in the state in which it is located and providing requisite training provided for in this section shall constitute an approved school.
- (2) Any school recognized by or approved by or affiliated with the American Massage and Therapy Association, Inc. shall constitute an approved school.

(c) Compliance with this section shall first be determined by the chief of police, with the same rights of appeal to and the holding of a hearing by the town manager as elsewhere granted in this article.

(d) Employment shall be established by sworn affidavit from the employer, after which time such person must be actively engaged, enrolled or participating in a course of study designed to fulfill the requirements of this section and which is certified to by an official of the approved school. The burden of establishing such active engagement, enrollment or participation shall be upon the person seeking a permit.

(e) In no event shall any person within the purview of this article act as provided in this section without satisfying the training requirement set forth within the Town.
(Code 1977, § 13-6-6)

Sec. 18-197. Standards for equipment and facilities.

(a) All tables, tubs, shower stalls and floors of a massage parlor, except reception and administrative areas, shall be made of nonporous materials which may be readily disinfected.

(b) Closed containers shall be provided for wet towels and waste material.
(Code 1977, § 13-6-7)

Sec. 18-198. Building structure and layout.

(a) No massage parlor shall begin operations until the building occupied or to be occupied shall have been approved by the town manager, who shall establish procedures for investigation and report by the administrative officers of the building, plumbing, electrical and fire prevention codes.

(b) An applicant for a permit to operate a massage parlor shall submit to the town manager plans and specifications of the quarters proposed to be occupied. Such plans shall show details of entrances, partitions, windows, openings, ventilation, plumbing fixtures, water supply and vent connections.

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(c) Each massage parlor shall be equipped with readily available toilet and lavatory facilities for patrons and separate readily available toilet and lavatory facilities for personnel. Each operating area shall be equipped with a hand lavatory.

(d) Either the massage parlor quarters or the floor of the building on which the quarters are located shall be equipped with a service sink for custodial services.
(Code 1977, § 13-6-8)

Sec. 18-199. Sanitation and hygiene.

(a) All equipment, shower stalls, toilets, lavatories and any other such accoutrements of the massage establishment shall be regularly treated with disinfectants and shall be maintained in a clean and sanitary condition at all times.

(b) Health, plumbing, electrical and other inspectors shall be given access to any part of the quarters of a massage parlor for purposes of inspection at all reasonable times.

(c) No person shall practice any of the services of a massage parlor without a certificate of good health issued by a duly licensed physician, commensurate with the type of the services rendered. Such certificate shall be renewed every six months.

(d) No massage parlor shall knowingly serve any patron infected with any fungus or other skin infection, nor shall services be performed on any patron exhibiting skin inflammation or eruptions, provided that a duly licensed physician may certify that a person may be safely served, prescribing the conditions thereof.

(e) All personnel shall wash their hands in hot running water, using a proper soap or disinfectant, before giving any service or treatment to each separate patron.

(f) All towels and tissues and all sheets or other coverings shall be used singularly for each patron and discarded for laundering or disposal immediately after use.

(g) Nondisposable tools of the trade shall be disinfected after use upon one patron.
(Code 1977, § 13-6-9)

Sec. 18-200. Sleeping quarters.

No part of any quarters of any massage parlor shall be used for or connected with any bedroom or sleeping quarters, nor shall any person sleep in such massage parlor, unless it shall be for limited periods incidental to and directly related to a massage or bath. This section shall not preclude the location of a massage parlor in separate quarters of a building housing a hotel or other separate businesses or clubs.
(Code 1977, § 13-6-10)

Sec. 18-201. Massages or baths administered by person of opposite sex.

It shall be unlawful for any establishment, regardless of whether it is a public or private facility, to operate as a massage parlor, bath parlor or any similar type business where any

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physical contact with the recipient of such services is provided by a person of the opposite sex. Any person violating this section shall, upon conviction, be punished as provided in this Code. In addition to such penalty, it shall be the duty of the town manager to revoke the license of the owner or manager of the establishment, wherein the provisions of this section shall have been violated.

(Code 1977, § 13-6-11)

Sec. 18-202. Prohibited acts.

(a) No owner or manager of a massage parlor shall tolerate in his establishment any activity or behavior prohibited by the laws of the commonwealth, particularly, but not exclusive of, Code of Virginia, § 18.2-344 et seq. proscribing prostitution, crimes against nature, a bawdy place, adultery, fornication and any lewd and lascivious cohabitation, etc., and Code of Virginia, § 18.2-372 et seq., being the state statutes on obscenity, dealing with shameful or morbid interest in nudity or sex, which appeals to the prurient interest in sex, and which covers obscene items, exhibitions, performances, indecent exposure, illicit photographs or photographic activity and illicit modeling; nor shall any owner or manager tolerate in the establishment any activity or behavior which violates this Code, particularly, but not exclusive of, those sections which parallel the state statutes on immorality and obscenity detailed in this subsection.

(b) Any conviction of any employee of a massage parlor of a violation of the statutes and codes mentioned in subsection (a) of this section shall devolve upon the owner or manager of such establishment, it being specifically declared that, following such a conviction of an employee, the owner or manager of the club shall be prosecuted as an accessory to such violation.

(Code 1977, § 13-6-12; Ord. of 11-3-1997)

Chapters 19—21

RESERVED

Chapter 22

ENVIRONMENT*

Article I. In General

Secs. 22-1—22-25. Reserved.

Article II. Noise

- Sec. 22-26. Definitions.
- Sec. 22-27. Authority.
- Sec. 22-28. Exemptions for nonprofit organizations.
- Sec. 22-29. Exemptions for governmental functions.
- Sec. 22-30. Measurement of noises.
- Sec. 22-31. Cease and desist.
- Sec. 22-32. Violation and penalties.
- Sec. 22-33. Injunctive relief.
- Sec. 22-34. Unreasonably loud noises prohibited.
- Sec. 22-35. Certain prohibited noises enumerated.
- Sec. 22-36. Construction noises.
- Secs. 22-37—22-60. Reserved.

Article III. Nuisances

Division 1. Generally

- Sec. 22-61. Prohibited generally.
- Sec. 22-62. Certain nuisances enumerated.
- Sec. 22-63. Responsibility of property owners, occupants and others.
- Sec. 22-64. Penalty
- Secs. 22-65—22-90. Reserved.

Division 2. Abatement

- Sec. 22-91. Inspections, investigations and complaints.
- Sec. 22-92. Right to enter private premises.
- Sec. 22-93. Notice to cease and desist.
- Sec. 22-94. Notice to abate condition; appeal.
- Sec. 22-95. Failure to comply with notice to abate.

***Charter reference**—Noise, abatement of nuisances, ch. 2, § 1(21), (35).

Cross references—Animals, ch. 10; buildings and building regulations, ch. 14; dangerous buildings, § 14-86 et seq.; storage tanks for inflammable or explosive substances, § 26-2; floods, ch. 30; parks and recreation, ch. 42; solid waste, ch. 46; streets, sidewalks and other public places, ch. 50; utilities, ch. 62; vegetation, ch. 66; waterways, ch. 70; zoning, app. A; land subdivisions and development, app. B.

State law references—Erosion and sediment control, Code of Virginia, § 10.1-560 et seq.; stormwater management, Code of Virginia, § 10.1-603.3; local air pollution ordinances, Code of Virginia, § 10.1-1321; abatement or removal of nuisances, Code of Virginia, §§ 15.2-900, 15.2-1115.

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Sec. 22-96. Arrest for committing or maintaining nuisance.
Secs. 22-97—22-125. Reserved.

Article IV. Erosion and Sediment Control

Sec. 22-126. Town subject to county ordinance.
Secs. 22-127—22-150. Reserved.

Article V. Cemeteries

Sec. 22-151. Definitions.
Sec. 22-152. Purposes and authority.
Sec. 22-153. Prohibited acts.
Sec. 22-154. Non prohibited acts.
Sec. 22-155. Inspection.
Sec. 22-156. Violation and penalties.
Sec. 22-157. Injunctive relief.
Sec. 22-158. Maintenance.
Secs. 22-159—22-170. Reserved.

Article VI. Grass, Weeds and Other Foreign Growth on Private Property

Sec. 22-171. Definitions.
Sec. 22-172. Duty of owner to cut and/or maintain any vacant developed property.
Sec. 22-173. Duty of owner to cut and/or maintain any occupied property.
Sec. 22-174. Duty of owner to cut and/or maintain any undeveloped property.
Sec. 22-175. Penalties for violation(s).
Sec. 22-176. Notice to cut.
Sec. 22-177. Cutting by the town.
Sec. 22-178. Authority.
Sec. 22-166. Effective date.
Secs. 22-167—22-189. Reserved.

ARTICLE VII. STORM WATER MANAGEMENT

Sec. 22-190. Town subject to county ordinance.

ENVIRONMENT
ARTICLE I. IN GENERAL

Secs. 22-1—22-25. Reserved.

ARTICLE II. NOISE

Sec. 22-26. 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:

ANSI means the American Standards Institute or its successor bodies.

Daytime hours means 7:00 a.m. to 12:00 a.m. midnight, local time.

dB(A) is the abbreviation for the sound level in decibels determined by the A-weighting network of a sound-level meter or by calculation from octave band or one-third octave band data.

Decibel (dB) means a unit of measure, on a logarithmic scale, or the ratio of a particular sound pressure squared to a standard reference pressure squared. For the purpose of this article, 20 micropascals shall be the standard reference pressure.

Nighttime hours means 12:00 a.m. midnight of one day through 7:00 a.m.

Noise means the intensity, frequency, duration and character of sound, including sound and vibration of subaudible frequencies.

Person, firm or entity means any individual, group of individuals, lessee, lessor, guest, licensee, firm, partnership, voluntary association or private or public corporation, specifically including any person in charge of or supervising any property owned or possessed by any such person, firm or entity.

Sound level means, in decibels, the weighted sound-pressure level measured by the use of a sound-level meter satisfying the requirements of ANSI SI.4, 1971, Specifications for Sound-Level Meters. The terms "sound level" and "noise level" are synonymous.

Sound-level meter means an instrument meeting ANSI SI.4, 1971, Specifications for Sound-Level Meters, comprising a microphone, an amplifier, an output meter and frequency weighting networks, that is used for the measurement of sound-pressure levels in a specified manner.

Source means any person or property, real or personal, contributing to noise.
(Code of 1977, § 12-10; Ord. of 6-21-2001)

Cross reference—Definitions generally, § 1-2.

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Sec. 22-27. Authority.

This article is adopted pursuant to the authority contained in the Charter, chapter 2, section 1(48), (49) and (5), and Code of Virginia, § 15.2-1102.
(Code of 1977, § 12-22; Ord. of 5-15-1999)

Sec. 22-28. Exemptions for nonprofit organizations.

This article shall not apply to any function or activity and the noise emanating therefrom conducted by any nonprofit organization which secures a permit from the town manager, who may issue such a permit if, in his reasonable discretion, the public health and safety will not be impaired by the function or activity.
(Ord. of 5-15-1999, § 12-14)

Sec. 22-29. Exemptions for governmental functions.

This article shall not apply to the use of any machines or the noise emanating from the use thereof when operated or utilized by the town while performing municipal functions, such activities and noises being expressly exempted from this article.
(Ord. of 5-15-1999(1), § 12-15)

Sec. 22-30. Measurement of noises.

(a) Wherever in this article any noise level is prohibited by or is to be determined by decibel level, the measurement of such emanating sound shall be conducted at the nearest corner of the main structure on the real estate owned, possessed, or being lawfully used by any affected party who makes complaint thereof. Such measurement shall be conducted at a height of at least three feet above ground and at least three feet from any reflecting surface. Any such prohibited decibel level will be exceeded when the sound level meter set for FAST response, using the A-weighting network, exceeds the specified level
(Amended 02/19/04)

(b) Measurement equipment shall be sound-level meters complying with ANSI SI.4, 1983, American National Standard Specifications for Sound-Level Meters, ANSI SI.4a-1985, and amendment to ANSI SI.4, or IEC 651-1979, "Sound Level Meters", of at least type 2 quality and sensitivity, comprising a microphone, amplifier, output meter and frequency weighting network. The meter operation shall be as prescribed by the equipment manufacturer, from time to time.
(Amended 02/19/04)

(c) Measurement equipment operators shall be officers of the police department who have been trained in the proper use of the sound-level meter by the equipment manufacturer. Representatives of the manufacturer may also train those department officers who are certified instructors, as designated by the Commonwealth Department of Criminal Justice Services, who may then train other officers within the department.
(Ord. of 5-15-1999(1), § 12-16)

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Sec. 22-31. Cease and desist.

No prosecution shall be initiated under this article unless and until there has been a complaint by any affected person, firm or entity, excepting noises emanating from publicly used and/or owned property and as described in Sec. 22-35(3)(b) and (4), and such violating person, firm or entity has been advised of the violation of this article and such person, firm or entity has failed to cease and desist such unlawful noise. For the purposes of this section, any such warning to any such violating person, firm or entity shall be continuous and sufficient for the 30-day period then following as to the same noise or the same type or similar or like noise, and no further warning shall be required during such period.

(Ord. of 5-15-1999(1), § 12-17) (*Amended 02/19/04*)

Sec. 22-32. Violation and penalties.

Any violation of this article shall constitute a misdemeanor and shall be punishable by confinement in jail for a period not to exceed 12 months and/or a fine of not more than \$500.00. (Ord. of 5-15-1999(1), § 12-18)

Sec. 22-33. Injunctive relief.

In addition to any criminal penalty for the violation of this article, the town manager is further authorized on behalf of the town to initiate and seek injunctive relief in the circuit court of the county to prohibit any such unlawful noises as provided for in this article.

(Ord. of 5-15-1999(1), § 12-19)

Sec. 22-34. Unreasonably loud noises prohibited.

(a) It shall be unlawful for any person to make, continue or cause to be made any unreasonably loud noise or any noise which annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others within the corporate limits.

(b) It shall be unlawful for any person, firm or entity to knowingly permit the making of any such unreasonably loud noise or any noise which annoys, disturbs, injures or endangers the comfort, health, peace or safety of others upon any premises owned, possessed or under the control of any such person, firm or entity within the corporate limits.

(Ord. of 5-15-1999(1), § 12-11)

Sec. 22-35. Certain prohibited noises enumerated.

The following acts and/or noises are declared to create and/or constitute unreasonably loud noises prohibited by this article, and it is expressly provided that such enumeration shall not be exclusive, and the failure to enumerate a specific act and/or noise shall not be deemed to exclude any such act and/or noise from this article:

- (1) Generally, district levels. The making of any noise at a sound/noise level exceeding that level permitted in decibels in the applicable zoning district of the town within the specified period, measured as follows, excepting such noises as

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are either expressly regulated by other sections of this article or exempted:

<i>District</i>	<i>Daytime Level (dBA)</i>	<i>Nighttime Level (dBA)</i>
R-1	65	55
R-2	65	55
R-3	65	55

<i>District</i>	<i>Daytime Level (dBA)</i>	<i>Nighttime Level (dBA)</i>
C-1	70	60
C-2	70	60

(Amended 02-19-04)

(2) Horns, signaling devices, etc.

- a. The sounding of any horn or signaling device on any automobile, motorcycle, or other vehicle on any town street, way, avenue or alley, or other public place, except as a danger warning;
- b. The creation by means of any such horn or signaling device of any unreasonably loud or harsh sound;
- c. The sounding of any such horn or signaling device for an unnecessary or unreasonable length of time;
- d. The use of any horn or signaling device operated by engine exhaust; and
- e. The use of any horn or signaling device when traffic is for any reason stopped and such horn or signaling device is not being reasonably utilized as a danger warning.

(3) Radios, phonographs, musical instruments, loudspeakers, etc.

- a. Use of, operation of or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph or other machine or device for the producing or reproducing of sound on private property that is above the permitted decibel level as measured in a zoning district as specified in this section.
- b. Use of, operation of or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph or other machine or device for the producing of sound on the public streets or other public ways in such a manner as is unreasonably loud so as to disturb the peace, quiet and comfort of other persons or at a louder volume than is necessary for the convenient hearing of the individual carrying the instrument, machine or device or those individuals immediately adjacent thereto and who are voluntary listeners thereto.

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- c. Using, operating or permitting to be played, used or operated any radio, phonograph, loudspeaker, sound amplifier, or other machine or device for the

producing or reproducing of sound which is cast upon the public streets for the purpose of commercial advertising or attracting the attention of the public to any location.

- (4) *Yelling, shouting, hooting, whistling and singing.* Yelling, shouting, hooting, whistling, or singing on the public streets or public areas or from private property at any time or place so as to annoy or disturb the quiet, comfort, or repose of persons in any dwelling, motel, hotel, residence, business, or in the vicinity of any such noise.
- (5) *Operation of boats and other water vessels.* The operation of any boat or other water vessel with an outboard motor or with an inboard motor, unless equipped with an adequately muffled exhaust system. The use of any siren or other noise-producing or noise-amplifying instrument or mechanical device on a boat in such a manner as the peace and good order of the neighborhood is disturbed; provided, however, that nothing in this article shall be construed to prohibit the use of whistles, bells, or horns as signals as required by any state or federal law for the safe navigation of motorboats or vessels.
- (6) *Animals, birds, etc.* The maintaining of any animal or bird which, by causing frequent or long noise, shall disturb the comfort or repose of any person in the vicinity.
- (7) *Steam whistles.* The blowing of any steam whistle attached to any stationary boiler, except to give notice of the time to begin or stop work or as a warning of fire or danger or upon request of proper town authorities.
- (8) *Exhausts.* The discharge in the open air of the exhaust of any steam engine, stationary internal combustion engine, or motor vehicle, except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.
- (9) *Defect in vehicle or equipment.* The operation of any automobile, motorcycle or vehicle so out of repair, so equipped, or in such a manner as to create loud and unnecessary grating, grinding, rattling or other noise.
- (10) *Loading or off-loading of vehicle or vessel.* The loading or off-loading of any vehicle or vessel creating loud and disturbing noise between the hours of 10:00 p.m. and 7:00 a.m. on weekdays and between 6:00 p.m. and 7:00 a.m. on weekends, with the exception of the loading or off-loading of perishable products, and except when a permit is granted by the town manager, in a bona fide emergency to life or property, and the public health and safety will not be impaired by such work, as reasonably determined by the town manager.
- (11) *Schools, courts, churches, hospitals, etc.* The creation of excessive noise on any street adjacent to any school, institution of learning, church, hospital, clinic, or public building, when such is in use, which unreasonably interferes with the workings of such institution or building, provided that conspicuous signs are

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displayed on such streets indicating that such is a school, church, hospital, clinic or other public building.

(12) *Hawkers, peddlers, etc.* The shouting and crying of peddlers, hawkers and vendors which disturbs the peace and quiet of the neighborhood.

(13) *Grasscutters, tillers or other similar mechanical devices.* The operation of any grasscutter, tiller or other similar mechanical device utilizing a gasoline or diesel powered engine creating an emanating sound plainly audible beyond the property line of the property at which the device is being utilized, except between the hours of 7:00 a.m. and 9:00 p.m., Monday through Saturday, inclusive.

(Ord. of 5-15-1999(1), § 12-12)

Sec. 22-36. Construction noises.

(a) The erection, excavation, demolition, alteration, or repair of any building or other improvement other than between the hours of 7:00 a.m. and 7:00 p.m., Monday through Saturday, inclusive, is prohibited, except when a permit is granted by the town manager, in a bona fide emergency to life or property, and the public health and safety will not be impaired by such work, as reasonably determined by the town manager.

(b) The making of any noises at a sound/noise level exceeding 89 decibels from any construction site, as measured as provided in this article, is prohibited at any time.

(Ord. of 5-15-1999(1), § 12-13)

Secs. 22-37—22-60. Reserved.

ARTICLE III. NUISANCES*

DIVISION 1. GENERALLY

Sec. 22-61. Prohibited generally.

It shall be unlawful for any person to cause, harbor, commit or maintain or to 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 town ordinance at any place within

the town.

(Code 1977, § 12-1)

Sec. 22-62. Certain nuisances enumerated.

(a) The following acts when committed or conditions when existing within the town are 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, maintain, placed or found in or upon any public or private place which is injurious or dangerous to the public health or

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***Cross reference**—Nuisance declared on Johnson grass, § 66-52.

State law reference—Abatement or removal of nuisances, Code of Virginia, §§ 15.2-900, 15.2-1115.

safety.

- (2) All buildings, bridges, streets, roadways, or other structures of whatever character owned or maintained or which are permitted by any person owning or person having control thereof to be kept and maintained in a condition unsafe, dangerous, unhealthy, injurious or annoying to the occupants or users thereof, or the general public.

(Amended 02/01/10)

- (3) 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 disturbing to the public.
- (4) 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 disturbance of the public.
- (5) All obstructions caused or permitted on any street or sidewalk to the danger or disturbance of the public and all stones, rubbish, dirt, filth, slops, vegetable matter or other article 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 disturbance to the public.
- (6) All sidewalks, gutters or curbstones permitted to remain in an unsafe condition or out of repair.
- (7) All stables, kennels, cattle yards, sheep or cow pens or yards or structures for poultry or other animals permitted by the owner thereof or the person responsible therefor to be a harboring or breeding place for rodents or which accumulate animal wastes or which are otherwise to be in such a condition as to become offensive, disturbing or injurious to the public or to persons in the neighborhood thereof.
- (8) All houses or buildings used for special storage of powder, dynamite or other explosive substances, except those maintained pursuant to a permit issued by competent authority.
- (9) 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 thereof.
- (10) a. The filling or placing, or permitting the filling or placing, or allowing to remain and/or the maintaining of, any material or substance, whether manmade or natural, in any creek, basin, canal, ditch, or any other drainage way, whether

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on public property or private property, which in any way impedes, obstructs, blocks, adversely alters, or otherwise detrimentally affects the volume or flow of water through such creek, basin, canal, ditch, or other drainage way.

As to any such creek, basin, canal, ditch, or other drainage way on private property, this provision shall only apply to those creeks, basins, canals, ditches, or other drainage ways which, when connected to other such creeks, basins,

canals, ditches or other drainage ways constitute the system, or a part thereof, that drains public lands or improvements within the town, or otherwise assists in the removal of stagnant water from such private property whereon such creek, basin, canal, ditch, or other drainage way is situated. Prior to performing any work, such private owner shall seek a determination by the director of public works as to whether such creek, basin, canal, ditch, or other drainage way is subject to or exempt from this provision.

(Ord. of 5-6-2002)

- b. Notwithstanding the provisions hereinabove any private land owner, if otherwise in compliance with all other provisions of law, may place piping and suitable fill in any such canal, ditch, or other drainage way situated on such owner's private property, expressly provided such is installed in accordance with a plan approved by the town director of public works, which plan shall specify such pipe size and type, the fill material, and all other specifics required by the director of public works to ensure that the existing volume or flow of water is not adversely affected, or adversely affects the drainage of any adjacent properties. The director of public works shall issue a permit for the work and such work shall be completed in strict accordance therewith. Such work shall be inspected by the director of public works upon its completion. The fee for any such permit shall be as specified by the town council from time to time.

(Ord. of 5-6-2002)

- c. Whenever any such material or substances is caused to be deposited into any such creek, basin, canal, ditch, or other drainage way on private property by Acts of God, or other natural causes, such material or substance may be removed by the town at no cost to the landowner.

(Ord. of 5-6-2002)

(b) The provision of Section 15.2-900 of the Code of Virginia of 1950, as amended, including the definition of the term "nuisance" and the remedies provided therein are hereby adopted mutatis mutandis.

(Amended 02/01/10)

(c) The nuisances described in this section shall not be construed as exclusive, and any act of commission or omission and any condition which constitutes a nuisance by statute or common law of the state, when committed, omitted or existing within the town limits,

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is declared to constitute a nuisance.
(Code 1977, § 12-2)

Sec. 22-63. Responsibility of property owners, occupants and others.

Each owner, lessee, tenant, occupant or other person in charge of any real property within the town and each agent or representative of any such person is 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 shall comply with all of the sections 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 1977, § 12-3)

Sec. 22-64. Penalty.

The failure of the person or entity to abate any such nuisance in accordance with section 22 - 94 shall constitute a violation and be punishable by a fine not to exceed Five Hundred Dollars (\$500.00) or twelve (12) months in jail, either or both. Each day in violation shall constitute a separate offense.
(Code 1977, § 12-2; Ord. of 10-19-2000) (*Amended 02/01/10*)

Secs. 22-65—22-90. Reserved.

DIVISION 2. ABATEMENT

Sec. 22-91. Inspections, investigations and complaints.

It shall be the duty of the chief of police and the town manager 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 made by any responsible person.
(Code 1977, § 12-4)

Sec. 22-92. Right to enter private premises.

Town officers shall have the right to enter upon private premises for the purposes specified in section 22-91 as permitted by law.
(Code 1977, § 12-5)

Sec. 22-93. Notice to cease and desist.

If at any time a town officer shall find 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 forthwith.
(Code 1977, § 12-6)

Sec. 22-94. Notice to abate condition; appeal.

If at any time a town officer shall find 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 such condition exists. The notice shall state the condition which constitutes a nuisance and shall direct such addressee to remedy the

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condition within the time stated in the notice, which shall be not more than ten days. It shall be unlawful for any such owner, occupant or person in charge to fail to comply with the terms of such notice. However, 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 town council, which shall be final. If the officer giving notice shall state in such notice that the condition which constitutes a nuisance is such as to be an imminent hazard to the health, safety or welfare of the public or any person within or near the premises upon which such nuisance exists, the addressee shall comply with the terms of such notice.

(Code 1977, § 12-7)

Sec. 22-95. Failure to comply with notice to abate.

(a) Upon failure of any person to whom notice has been given pursuant to section 22-94 to comply with the terms of such notice or with the terms imposed by the town council on appeal, as the case may be, the officer giving such notice shall forthwith direct the appropriate town officer to remedy the condition which is the subject of such notice, and the expense incurred by the town in so doing shall be charged to the addressee of such notice, to be collected as town taxes 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 of expenses incurred thereby shall not bar prosecution for maintenance of a nuisance and shall not bar the town attorney from seeking an injunction for the abatement of the nuisance.

(Code 1977, § 12-8)

Sec. 22-96. Arrest for committing or maintaining nuisance.

Nothing in this article shall be construed to prohibit any police officer from arresting any person for committing or maintaining a nuisance when such arrest is made pursuant to law.

(Code 1977, § 12-9)

Secs. 22-97—22-125. Reserved.

ARTICLE IV. EROSION AND SEDIMENT CONTROL*

Sec. 22-126. Town subject to county ordinance.

Pursuant to Code of Virginia, § 10.1-526, the town shall be subject to the erosion and sediment control ordinance of the county, as such ordinance may be in full force and effect from time to time. Such ordinance shall be enforced by the county within the geographical boundaries of the town.

(Code 1977, §§ 5-6-1—5-6-12)

Secs. 22-127—22-150. Reserved.

ARTICLE V. CEMETERIES

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Sec. 22-151. Definitions.

Cemetery means any place presently utilized for the internment of human remains, whether publicly, privately, or charitably owned, including existing grave site(s) on private

***State law reference**—Erosion and sediment control, Code of Virginia, § 10.1-560 et seq.

property and family burial grounds. For purposes of this article the term “cemetery” shall include the land adjacent to any physical grave site situated within an area extending fifteen feet from any part of the physical grave site, or the area designated by any fence or other boundary, natural or manmade, indicating the actual area designated by any fence or other boundary, natural or manmade, indicating the actual area set aside for cemetery purposes, whichever is the greater area.

Person, firm or entity means any individual, group of individuals, lessee, lessor, guest, licensee, firm, partnership, voluntary association or private or public cooperation, specifically including any person in charge of or supervising any property owned or possessed by any such person, firm or entity.

Sec. 22-152. Purposes and authority.

The stated purpose of this article is to regulate cemeteries within the Town of Chincoteague so as to insure that cemeteries and grave sites contained therein are not disturbed nor used other than for the purposes of the internment of human remains, and that such remains will be afforded the perpetual dignity to which entitled.

This article is adopted pursuant to the authority contained in § 15.2-1102 and § 15.2-1111 of the Code of Virginia of 1950 as amended.

Sec. 22-153. Prohibited acts.

No person, firm, or entity shall disturb, alter, remove, excavate, destroy, injure, deface, or erect and/or maintain any improvement, or otherwise use, except as permitted herein, any cemetery as herein defined.

Sec. 22-154. Non prohibited acts.

The provisions hereof shall not prohibit the internment of any other human remains in any cemetery, if otherwise lawfully permitted, nor shall it prohibit any person, firm, or entity from removing brush, weeds, or debris or otherwise maintaining a cemetery, nor the erection and/or maintenance of customary markers, monuments, remembrances, or fencing.

Sec. 22-155. Inspection.

The town manager, or his designee shall have the authority during normal business hours to enter on to any cemetery, whether public, private, or charitable for the purpose of inspection and the insuring of compliance with the provisions hereof, provided however that the town manager, or designee, may inspect any such cemetery at any time if he or she has a reasonable suspicion that any provision of this article is being violated.

Sec. 22-156. Violation and penalties.

Any violation of this article shall constitute a misdemeanor and shall be punishable by

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confinement in jail for a period not to exceed 12 months and/or a fine of not more than \$500.00.

Sec. 22-157. Injunctive relief.

In addition to any criminal penalty for the violation of this article, the town manager is

further authorized on behalf of the town to initiate and seek injunctive relief in the Circuit Court of Accomack County to prohibit any such unlawful acts as provided in this article.

Sec. 22-158. Maintenance.

The town's public works department shall be responsible to maintain the grass, weeds and other foreign growth according to this chapter on the following cemeteries: Mechanics/Daisey, Greenwood, Redman, and Bunting. (*Amended 11-7-16.*)

Secs. 22-159—22-170. Reserved.

ARTICLE VI. GRASS, WEEDS AND OTHER FOREIGN GROWTH ON PRIVATE PROPERTY.

Sec. 22-171. Definitions.

For purposes of this Article VI, the following words and terms shall have the meaning respectively ascribed to them by this section.

(a) *Owner.* Any person or entity holding record title to any lot or parcel of land within the town, including fiduciaries holding title to or having the legal care, custody, control, or management of any such lot or parcel.

(b) *Grass, weeds, and other foreign growth.* Uncontrolled or unmanaged vegetation of every kind standing or growing on any lot or parcel other than trees, ornamental shrubbery or vegetation, flowers, vegetable gardens, or grasses or bushes classified as wetlands under any local, state, or federal law.

(c) *Undeveloped property.* Any lot or parcel of land located within the town that either (1) does not contain a structure or other improvements, or (2) is not served by the town public water system, or (3) does not have an installed sewage disposal system approved by the Eastern Shore Health District.

(d) *Vacant developed property.* Any lot or parcel of land located within the town that either (1) contains a structure or other improvements, or (2) is served by the town public water system, or (3) has an installed sewage disposal system approved by the Eastern Shore Health District, and on which lot or parcel no person or entity has either resided, conducted any business or other activity, or physically occupied such lot or parcel at any time within the 45 day period immediately preceding any notice by the zoning administrator/code compliance officer as provided by § 22-176 hereof.

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(e) *Occupied property.* Any lot or parcel of land located within the town that either (1) contains a structure or other improvements, or (2) is served by the town public water system, or (3) has an installed sewage disposal system approved by the Eastern Shore Health District, and on which lot or parcel any person or entity has resided, conducted any business or activity, or physically occupied such for any period within the 45 days immediately preceding any notice by the zoning administrator/code compliance officer pursuant to § 22-176 hereof.

(f) *Same set of operative facts.* Means the situation or facts existing either before or after an owner has been given a Notice to Cut by the zoning administrator/code compliance officer. The “operative facts” shall change only after either the owner has cut such grass, weeds, or other foreign growth to compliance after such notice, or the town has so cut.

(g) *Violation.* A violation occurs when any such owner fails to cut such grass, weeds, or foreign growth from their lot or parcel so as to prevent it from attaining the applicable prohibited height. A Notice to Cut by the zoning administrator/code compliance officer shall not be required to constitute a violation by such owner.

Sec. 22-172. Duty of owner to cut and/or maintain any vacant developed property.

Any owner, as herein defined, shall cut the grass, weeds, and other foreign growth on any vacant developed property, as defined herein, located within the town when the height of such grass, weeds, or other foreign growth exceeds ten inches (10") to a height cut not to exceed five inches (5"). Notwithstanding the preceding provisions, that part of any such property located twenty five feet (25') or more, rearward of any structure on said property and not actively used in conjunction with the structure(s) on said property shall be cut in accordance with the provisions of § 22-174.

Sec. 22-173. Duty of owner to cut and/or maintain any occupied property.

Any owner, as herein defined, shall cut the grass, weeds, and other foreign growth on any occupied property, as defined herein, located within the town when the height of such grass, weeds, or other foreign growth exceeds ten inches (10") to a height cut not to exceed five inches (5"). Notwithstanding the preceding provisions, that part of any such property located twenty five feet (25') or more, rearward of any structure on said property and not actively used in conjunction with the structure(s) on said property shall be cut in accordance with the provisions of § 22-174.

Sec. 22-174. Duty of owner to cut and/or maintain any undeveloped property.

Any owner, as herein defined, shall cut the grass, weeds, and other foreign growth on any occupied property or vacant developed property for a width or depth of five feet (5') from the boundary of any adjacent property, any street, roadway, easement or right-of-way when the height of such grass, weeds or other foreign growth exceeds ten inches (10") to a height cut not to exceed five inches (5").

Sec. 22-175. Penalties for violation(s).

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Any owner who violates any provision of this Article by not cutting the grass, weeds or other foreign growth on any lot or parcel as provided for herein shall be subject to a civil penalty of fifty dollars (\$50) for the first violation, or a violation arising from the same set of operative facts. The penalty for subsequent not arising from the same set of operative facts within twelve (12) months of the first violation shall be two hundred dollars (\$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 operative facts result in civil penalties that exceed a total of three thousand dollars (\$3,000) in a twelve (12) month period.

Violation of any provision of the Article shall be a class 3 misdemeanor in the event three (3) civil penalties have been imposed on the same defendant for the same or similar violation, nor arising from the same set of operative facts, within a twenty four (24) month period. The punishment for a class 3 misdemeanor shall be a fine not to exceed five hundred dollars (\$500). Classifying such subsequent violations as criminal offences shall preclude the imposition of civil penalties for the same violation.

Sec. 22-176. Notice to cut.

When there exists upon any vacant developed property, occupied property, or undeveloped property as defined herein within the town grass, weeds, or other foreign growth, as prohibited herein, the zoning administrator/code compliance officer shall immediately notify the owner of such lot or parcel to cut such grass, weeds, or other foreign growth exceeds ten inches (10") to a height cut not to exceed five inches (5"). Such notification shall be by certified mail to the address of such owner as appearing on the real estate tax records of the Town of Chincoteague. Such owner shall cut such grass, weeds, or other foreign growth exceeds ten inches (10") to a height not to exceed five inches (5") within ten (10) days of the posting of such notice or the town may take the action provided under § 22-177.

Sec. 22-177. Cutting by the town.

If such grass, weeds, or other foreign growth has not been cut as required under the provisions hereof within ten (10) days from the posting of such Notice to Cut by the zoning administrator/code compliance officer, the zoning administrator/code compliance officer shall cause such grass, weeds, or other foreign growth to be cut to the required height by the employees or agents of the town, or any contractor at the cost of such owner.

Where grass, weeds, or other foreign growth have not been cut by the owner within ten (10) days from the date of the Notice to cut by the zoning administrator/code compliance officer pursuant to the provisions of this section, and it is necessary for the town to cut as provided herein, the cost of such cutting shall be billed to the owner of the property. If such bill is not paid within fifteen (15) days, it shall be added to the town real estate bill on such property and shall be a lien on such property to the same extent and effect as real estate taxes.

The Town may waive such lien(s) in order to facilitate the sake of the property. Such

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lien(s) may be waived only as to a purchaser who is unrelated by blood or marriage to the owner and/or who has no business association with the owner. All such lien(s) shall remain a personal obligation of the owner of the property at the time the liens were imposed even if waived.

Sec. 22-178. Authority.

This Article VI is adopted pursuant to the provisions of § 15.2-901, § 15.2-1102, and § 15.2-1115 of the Code of Virginia of 1950, as amended.

Sec. 22-179. Effective date.

The provisions hereof shall be effective upon adoption by the governing body of the Town of Chincoteague. Adopted October 1, 2012.

Secs. 22-180—22.189. Reserved.

ARTICLE VII. STORM WATER MANAGEMENT

Sec. 22-190. Town subject to county ordinance.

Pursuant to Code of Virginia, § 62.1-44.15:27, the town shall be subject to the storm water management ordinance of the county, as such ordinance may be in full force and effect from time to time. Such ordinance shall be enforced by the county within the geographical boundaries of the town.

(Effective date of this section is July 1, 2014.)

Adopted 6-3-14.

Chapters 23—25

RESERVED

Chapter 26

FIRE PREVENTION AND PROTECTION*

Article I. In General

- Sec. 26-1. Age requirement for volunteer fire company.
- Sec. 26-2. Storage tanks for inflammable or explosive substances.
- Secs. 26-3—26-30. Reserved

Article II. Fireworks

- Sec. 26-31. Penalty for violation.
- Sec. 26-32. Unlawful manufacture, transportation, sale, purchase, use.
- Sec. 26-33. Permits for display; sales for use thereunder.
- Sec. 26-34. Exemptions.

***Charter reference**—Fire prevention and protection, ch. 2, § 1(22), (23).

Cross reference—Buildings and building regulations, ch. 14.

State law references—Smoke detectors, Code of Virginia, § 15.2-922; appropriations for voluntary firefighting organizations, rescue squads, etc., Code of Virginia, § 15.2-953 et seq.; explosive and inflammable substances, fireworks, Code of Virginia, § 15.2-1113; fuel-burning equipment, Code of Virginia, § 15.2-1116; regulation of the making of fires, Code of Virginia, § 15.2-1118; false fire alarms, Code of Virginia, § 18.2-212; fire protection generally, Code of Virginia, tit. 27; furnishing fire protection beyond territorial limits, Code of Virginia, § 27-1 et seq.; fire departments and fire companies, Code of Virginia, § 27-6.1 et seq.; ordinances as to fire departments, etc., Code of Virginia, § 27-14; local fire marshals, Code of Virginia, § 27-30 et seq.; relief for firefighters and dependents, Code of Virginia, § 27-39 et seq.; mobilization of firefighters during state of war, Code of Virginia, § 44-152 et seq.; explosives, Code of Virginia, § 59.1-137 et seq.; fireworks, Code of Virginia, § 59.1-142 et seq.

FIRE PREVENTION AND PROTECTION
ARTICLE I. IN GENERAL

Sec. 26-1. Age requirement for volunteer fire company.

It shall be lawful for any person 16 years of age or older, with parental or guardian approval, to work with or participate fully in all activities of any volunteer fire company, provided such person has attained certification under National Fire Protection Association 1001, level one, firefighter standards, as administered by the state department office programs. Such parental or guardian approval shall be given to the volunteer fire company in writing.

(Code 1977, § 7-3; Ord. of 9-7-1982)

State law reference—Authority for above section, Code of Virginia, § 40.1-79.1.

Sec. 26-2. Storage tanks for inflammable or explosive substances.

It shall be unlawful for any person to place or erect, either above or below the ground, any tank or container, the capacity of which is more than 1,000 gallons, or to store, cause to be stored, keep or cause to be kept gasoline, fuel oil, kerosene, gas or any inflammable or explosive substance in the amount of more than 1,000 gallons within the corporate limits unless such person has first obtained from the town council permission to place such tank or container or to store, cause to be stored, keep or cause to be kept gasoline, fuel oil, kerosene, gas or any inflammable or explosive substance in the amounts of more than 1,000 gallons within the town. It shall be unlawful for any person to place two or more tanks or containers either above or below the ground within the corporate limits, the total capacity of such two or more tanks or containers, together, shall be more than 1,000 gallons, unless such person has first obtained from the town council permission to place such tanks or containers within the corporate limits.

(Code 1977, § 7-2)

Cross reference—Environment, ch. 22.

Sec. 26-3. Statewide Fire Prevention Code.

The town adopts enforcement of the Virginia Statewide Fire Prevention Code in its present and future editions. Through agreement, the Accomack County fire official will be used as the town fire official

(Amended 08/01/16)

Secs.26-4—26-30. Reserved.

ARTICLE II. FIREWORKS

Sec. 26-31. Penalty for violation.

Any person who violates any section of this article shall be guilty of a misdemeanor and, upon conviction, shall be punished by confinement in jail not to exceed 12 months or by a fine not exceeding \$500.00 or by both such fine and imprisonment.

State law reference—Similar provisions, Code of Virginia, § 59.1-145.

Sec. 26-32. Unlawful manufacture, transportation, sale, purchase, use.

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(a) Except as otherwise provided in this article, it shall be unlawful for any person to transport, manufacture, store, sell, offer for sale, expose for sale or to buy, use, ignite or explode any firecracker, torpedo, skyrocket, or other substance or thing, of whatever form or construction, that contains any explosive or inflammable compound or substance and that is intended or commonly known as fireworks and which explodes, rises into the air or travels laterally or fires projectiles into the air, other than sparks, or those fireworks excepted under subsection 26-34(b).

(b) Subsection (a) of this section shall not be applicable to any person who manufactures, stores, markets and distributes fireworks for the sole purpose of fireworks displays permitted under section 26-33 or the laws of other states.
(Code 1977, § 7-1)

State law reference—Similar provisions, Code of Virginia, § 59.1-142.

Sec. 26-33. Permits for display; sales for use thereunder.

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

State law reference—Similar provisions, Code of Virginia, § 59.1-144.

Sec. 26-34. Exemptions.

(a) This article shall have no application to any officer or member of the armed forces of this commonwealth 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 article, when such materials are or equipment is used or to be used by any person for signaling or other emergency use in the operation of any boat, railroad train or other vehicle for the transportation of persons or property.

(b) This article shall not apply to the use or the sale of sparklers, fountains, Pharaoh's serpents, caps for pistols, or to pinwheels commonly known as whirligigs or spinning jennies. However, the fireworks listed in this subsection may only be used, ignited or exploded on private property with the consent of the owner of such property.

State law reference—Similar provisions, Code of Virginia, §§ 59.1-146, 59.1-147.

ARTICLE III. FALSE ALARMS.

Sec. 26-40. Purpose.

The purpose of this article is to reduce the number of nuisance fire alarms and thereby protect public safety by minimizing unnecessary use of the town's emergency services (Volunteer Fire Company and Emergency Medical Services Division). This article governs

FIRE PREVENTION AND PROTECTION

the installation and maintenance of alarm systems, establishes service fees for false alarms and provides a system of administration.

Sec. 26-41. Definitions.

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

Alarm system means any device or system, including but not limited to an answering service, automatic dialing service or indirect alarm transmittal system, which transmits a signal visibly, audibly, electronically, mechanically or by any combination of these methods which indicates a hazard or occurrence requiring urgent attention and to which law enforcement personnel or firefighters are expected to respond. The term "alarm system" shall not include a personal direct telephonic call requesting emergency services.

Alarm user or user means the owner or occupant of premises protected by an alarm system.

Answering service means a telephone answering service that receives emergency signals from alarm systems and inform the Eastern Shore of Virginia 911 Communications Center.

Automatic dialing service means a device interconnected to a telephone line and programmed to select a predetermined telephone number and transmit by voice message or code signal an emergency message indicating a need for emergency response.

Chief means any one of the volunteer fire department fire chiefs or their designee.

Commercial means any building/business required to have a town business license (Sec. 18-36).

False alarm means any alarm signal received by the Eastern Shore of Virginia 911 Communications Center which is not in response to an actual or possible emergency. False alarms include negligently activated signals, signals due to faulty, malfunctioning or improperly installed or maintained equipment, and signals purposely activated to summon fire, rescue and/or law enforcement personnel in non-emergency situations. False alarms do not include signals activated by unusually severe weather conditions, utility conditions or other causes which the chief determines were beyond the user's control.

Indirect alarm transmittal means any alarm system which causes a third party or answering service to notify the Eastern Shore of Virginia 911 Communications Center of an alarm activation.

Installer means any person who installs, services, monitors, sells or leases any alarm system.

Interconnect means to connect an alarm system to a voice-grade telephone line, either directly or through a mechanical device that utilizes a standard telephone, for the purpose

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of using the telephone line to transmit an emergency message upon the activation of the alarm system.

Negligently activated signals means signals transmitted due to carelessness or negligence in installation, maintenance or operation of an alarm system, such signals being the result of the doing of an act where ordinary care suggests that the act should not have been done at all or that it should have been done in some other way.

Non-emergency situations means situations where an immediate response to a hazard or occurrence by fire personnel and/or rescue personnel is not deemed necessary to protect life or property.

Sec. 26-42. Penalty.

Violations of Sections 26-43, 26-44, 26-45 and 26-48 shall be punishable as a class 1 misdemeanor.

Any other violation of this article shall constitute a class 4 misdemeanor.

The town council may institute in the Circuit Court of Accomack County or in any other court of competent jurisdiction to restrain, enjoin or otherwise prevent a violation of the article.

Sec. 26-43. Training of persons using system; maintenance of system.

It shall be the responsibility of alarm system users to provide training to employees, tenants or other persons about activation of the alarm system in emergency situations and about proper operation of the alarm system, including setting, activating and resetting the alarm. All instructions about alarm systems and procedures shall be in writing, suitable for distribution and shall be available for inspection by the appropriate town employees or agents of the town herein being the chief of the Chincoteague Volunteer Fire Department. The user shall also be responsible for maintaining the alarm system in proper working order.

Sec. 26-44. Automatic dialing devices.

It shall be unlawful for any person to install, sell, lease, use or cause or allow to be installed, sold, leased or used, within the town, automatic dialing devices or systems which are set or programmed to directly contact the Eastern Shore of Virginia 911 Communications Center without the prior approval of the Eastern Shore of Virginia 911 Communications Center and the town's Building and Zoning Department.

Sec. 26-45. Deliberate false alarms.

It shall be unlawful for any person to knowingly activate or cause to be activated an alarm system in a non-emergency situation without just cause. This shall not prohibit periodic testing of direct transmittal systems when the Eastern Shore of Virginia 911

FIRE PREVENTION AND PROTECTION

Emergency Communications Center has been notified in advance.

Sec. 26-26. Service fee for false alarms.

Response by fire and/or rescue personnel to a false alarm shall result in fees in the following amount being assessed against alarm system users for false alarms resulting in response by fire and/or rescue personnel and occurring during any period of 365 successive days. Alarm system users shall pay such service fee for false alarms within thirty days of billing.

(a) Commercial response by fire and/or rescue personnel:

- | | |
|------------------------|---|
| (1) first false alarm | no charge |
| (2) second false alarm | \$150.00 |
| (3) third false alarm | \$250.00 |
| (4) fourth false alarm | \$350.00 |
| (5) fifth false alarm | \$500.00 and each subsequent false alarm. |

(b) Residential response by fire and/or rescue personnel:

- | | |
|------------------------|---|
| (1) first false alarm | no charge |
| (2) second false alarm | no charge |
| (3) third false alarm | \$50.00 |
| (4) fourth false alarm | \$100.00 |
| (5) fifth false alarm | \$200.00 and each subsequent false alarm. |

Sec. 26-47. Exceptions.

Service fees shall not be charged for false alarms from alarm systems in premises owned, leased, occupied or under the control of the United States, the Commonwealth of Virginia, political subdivisions of the Commonwealth of Virginia, or any of their officers, agents or employees while they are acting or are employed in their official capacity. However, all other requirements of this article shall apply to such systems.

Sec. 26-48. Billing; interest on unpaid charges.

The chief shall notify the town's emergency management coordinator of each false alarm to which they respond by submitting the designated report form EMFA-Form 1 and such information shall be retained and maintained by the emergency management coordinator. At the end of each month, the emergency management coordinator shall

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notify the town manager of the Town of Chincoteague of service fee assessments for false alarms by submitting form EMFA-Form 2. The form shall provide the date of the each false alarm, name of the alarm system user, the address of the false alarm, and the amount due for the false alarm. The town managers shall bill for any due service fees. Any account more than thirty days in arrears shall be subject to interest at the legal rate provided by the Code of Virginia. All monies collected as a result of enforcement of this ordinance shall be earmarked for Emergency Management (EOC Operations/Training).

Sec. 26-49. Effective date.

This ordinance shall become effective September 1, 2015.

Chapters 27—29

RESERVED

Chapter 30

FLOODS*

ARTICLE I. GENERAL PROVISIONS

- Sec. 30-1. Statutory authority and purpose.
- Sec. 30-2. Applicability.
- Sec. 30-3. Compliance and liability.
- Sec. 30-4. Abrogation and greater restrictions.
- Sec. 30-5. Severability.
- Sec. 30-6. Penalty for violations.

ARTICLE II. FLOODPLAIN MANAGEMENT

- Sec. 30-7. Definitions.
- Sec. 30-8. Reserved.

ARTICLE III. ESTABLISHMENT OF ZONING DISTRICTS

- Sec. 30-9. Description of districts.
- Sec. 30-10. Official floodplain map.
- Sec. 30-11. District boundary changes.
- Sec. 30-12. Interpretation of district boundaries.
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ARTICLE IV. DISTRICT PROVISIONS

- Sec. 30-14. Permit and application requirements.
- Sec. 30-15. General standards.
- Sec. 30-16. Specific standards.
- Sec. 30-17. Standards for subdivision proposals.
- Sec. 30-18. Standards for the coastal 'A' zone.
- Sec. 30-19. Standards for the coastal high hazard district.
- Sec. 30-20. Anchoring fuel tanks.

ARTICLE V. EXISTING STRUCTURES IN FLOODPLAIN AREAS.

- Sec. 30-21. Existing structures.

***Cross references**—Buildings and building regulations, ch. 14; environment, ch. 22; streets, sidewalks and other public places, ch. 50; utilities, ch. 62; waterways, ch. 70; zoning, app. A; land subdivision and development, app. B.

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ARTICLE VI.. VARIANCES

Sec. 30-20. Factors to be considered.

ARTICLE VII. ENACTMENT

FLOODS
ARTICLE I. GENERAL PROVISIONS

Sec. 30-1. Statutory authority and purpose.

This ordinance is adopted pursuant to the authority granted to localities by the Flood Damage Reduction Act, Code of Virginia, § 10.1-600 et seq.

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.

(d) protecting individuals from buying land and structures which are unsuited for intended purposes because of flood hazards.

The special flood hazard areas are generated for storm surges and coastal flood hazards, and then designated on the Flood Insurance Rate Maps (FIRMs) as zones AE (base flood elevation data has been provided), Coastal A Zone (area subject to wave heights between 1.5 feet and 3 feet) and zones VE (Coastal high hazard base flood elevation data has been provided). References to other special flood hazard areas have been omitted from this ordinance since they are not identified on the Town of Chincoteague (Accomack County) FIRMs. If other special flood hazard areas are added as revisions to the FIRMs, this ordinance will be revised to reflect the additional zones. Since the FIRMs are based on storm surges and coastal flood hazards, paragraph 60.3 (c)(10) of the CFR 44 (cumulative effects of proposed developments), which does not apply along lakes, bay shores, estuaries, and the ocean coast, has been omitted from this ordinance as not being applicable.

Amended 4-7-14.

Sec. 30-2. Applicability.

These provisions shall apply to all lands within the jurisdiction of the town and identified as areas of special flood hazard according to the flood insurance rate map (FIRM) that is provided to the town (Accomack County) by FEMA.

Amended 4-7-14.

Sec. 30-3. Compliance and liability.

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(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. 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 that land uses permitted within such district, will be free from flooding or flood damages.

(c) Records of actions associated with administering this ordinance will be kept on file and maintained by the zoning administrator.

(d) This ordinance shall not create liability on the part of the town or any officer or employee thereof for any flood damages that result from reliance on this ordinance and/or any administrative decision made in good faith thereunder.

Amended 4-7-14.

Sec. 30-4. Abrogation and greater restrictions.

This ordinance supersedes Chapter 30 Floods of the Code of the Town of Chincoteague previously in effect prior to the adoption of these provisions. However, any underlying ordinance shall remain in full force and effect to the extent that its provisions are more restrictive than this ordinance.

Amended 4-7-14.

Sec. 30-5. 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.

Sec. 30-6. Penalty for violation.

Any person who fails to comply with any of the requirements or provision of this article or directions of the town manager or any authorized employee of the town shall be guilty of a Class 3 misdemeanor and subject to the penalties therefore. In addition to the above criminal penalties, all other actions by the town for enforcement hereunder are hereby reserved, including but not limited to injunctive relief in the Circuit Court of Accomack County. Violations and associated penalties are addressed in Appendix A, Article 10 of this code.

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

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persons shall be required to correct or remedy such violations or noncompliance within such time as reasonably determined by the officer charged with the enforcement hereof, based on the nature and seriousness of the violation, and other material circumstance. Any structure constructed, reconstructed, enlarged, altered or relocated in noncompliance with this article may be declared by the town to be a public nuisance and abatable as such. Flood insurance may be withheld from structures constructed in violation of this article.

Amended 4-7-14.

ARTICLE II. FLOODPLAIN MANAGEMENT

Sec. 30-7. 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:

Base flood, means the flood having a one percent chance of being equaled or exceeded in any given year.

Base flood elevation means the water surface elevations of the base flood, that is, the flood level that has a one (1) percent or greater chance of occurrence in any given year. The water surface elevation of the base flood in relation to the datum specified on the community's Flood Insurance Rate Map. For the purpose of this ordinance, the base flood is the 1% annual chance flood.

Basement means any area of the building having its floor sub-grade (below ground level) on all sides.

Board of Zoning Appeals means the board appointed to review appeals made by individuals with regard to decisions of the Zoning Administrator in the administration of this ordinance.

Breakaway wall means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

Coastal A zone means flood hazard areas that have been delineated as subject to wave heights between 1.5 feet and 3 feet.

Coastal high hazard area means a special flood hazard area extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

Development means 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.

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Elevated building means a non-basement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, or columns (posts and piers).

Existing construction means structures for which the “start of construction” commenced before March 1, 1977, within the former town limits prior to the 1989 annexation, and June 1, 1984 within the areas annexed from Accomack County in 1989. “Existing construction” may also be referred to as “existing structures”.

(Amended 5/18/2015)

Flood or flooding means:

(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.

(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.

Flood Insurance Rate Map (FIRM) means an official map of a community, or which the administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

Flood insurance study (FIS) means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudflow and/or flood-related erosion hazards.

Floodplain means any land area subject to a one (1) percent or greater chance of being flooded in any given year as determined in Article III, §30-10 of this ordinance.

Flood proofing means 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.

Freeboard means 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

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for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization in the watershed.

Fuel oil tank means any container greater than 10 gallons used for storage of fuel oil.

Highest adjacent grade means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic structure means 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.

Letters of map change (LOMC) means an official FEMA determination, by letter, that amends or revises an effective FIRM or FIS. Letters of Map Change include:

(a) 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.

(b) 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 town's floodplain management regulations.

(c) 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

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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.

Lowest adjacent grade means the lowest natural elevation of the ground surface next to the walls of a structure.

Lowest floor means 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.

Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term manufactured home also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days.

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

New construction means for the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after March 1, 1977, within the former town limits prior to the 1989 annexation, and June 1, 1984, within the areas annexed from Accomack County in 1989, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which start of construction commenced on or after June 1, 1984 within the areas annexed from Accomack County in 1989 and on or after February 2, 1989 for area within the former town limits prior to the 1989 annexation and includes any subsequent improvements to such structures.

(Amended 5/18/2015)

Post-FIRM structures means a structure for which construction or substantial improvement occurred after March 1, 1977 within the former town limits prior to the 1989 annexation, and June 1, 1984 within the areas annexed from Accomack County in 1989..

(Amended 5/18/2015)

Pre-FIRM structures means a structure for which construction or substantial improvement occurred on or before March 1, 1977 within the former town limits prior to 1989 annexation, and June 1, 1984 within the areas annexed from Accomack County in 1989.

(Amended 5/18/2015)

Primary frontal dune means a continuous or nearly continuous mound or ridge of sand with relatively steep seaward and landward slopes immediately landward and adjacent to the beach and subject to erosion and overtopping from high tides and waves during major

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coastal storms. The inland limit of the primary frontal dune occurs at the point where there is a distinct change from a relatively steep slope to a relatively mild slope.

Propane or liquefied petroleum gas tank means a container greater than 50 pounds used for the storage of propane.

Recreational vehicle means 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.

Repetitive loss structure means a building covered by a contract for flood insurance that has incurred flood -related damages on two occasions within a 10-year period, in which the cost of the repair, on the average equaled or exceeded 25 percent of the market value of the structure at the time of each such flood event; and at the time of the second incident of flood-related damage, the contract for flood insurance contains increased cost of compliance coverage.

(Amended 5/18/2015)

Severe repetitive loss structure means a structure that:

- (1) is covered under a contract for flood insurance made available under the NFIP; and
- (2) has incurred flood related damage
 - (a) for which four (4) or more separate claims payments have been made under flood insurance coverage with the amount of each such claim exceeding \$5,000 and with the cumulative amount of such claims payment exceeding \$20,000; or
 - (b) for which at least two (2) separate claims payment have been made under such coverage, with the cumulative amount of such claims exceeding the market value of the insured structure.

Special flood hazard area means 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 III, Section 30-10 of this ordinance.

Start of construction 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,

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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 on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of the construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Structure means 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. “Structure” for insurance coverage purposes means

(1) a building with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site;

(2) a manufactured home, also known as a mobile home, is a structure: built on a permanent chassis, transported to its site in one or more sections and affixed to a permanent foundation or

(3) a travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the town’s floodplain management and building ordinance or laws.

For insurance purposes “structure” does not mean a recreational vehicle or a park trailer or other similar vehicle except as described in paragraph (3) of this definition, or a gas or liquid storage tank.

Substantial damage means 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.

Substantial improvement means 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.

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Violation means the failure of a structure or other development to be fully compliant with the town's floodplain management regulations, as applicable.

Sec. 30-8. Reserved.

ARTICLE III. ESTABLISHMENT OF ZONING DISTRICTS

Sec. 30-9. Description of districts.

(a) Basis of Districts - The various floodplain districts shall include special flood hazard areas subject to a one percent (1%) or greater chance of being flooded in any given year. The basis for the delineation of these districts shall be the Flood Insurance Study (FIS) and the Flood Insurance Rate Map (FIRM) for the Town of Chincoteague (Community number 510002) prepared by the Federal Emergency Management Agency, Federal Insurance Administration, dated May 18, 2015, and any subsequent revisions or amendments thereto.

(Amended 5/18/2015)

(1) The Coastal Floodplain District shall be those areas identified as coastal AE Zones on the maps accompanying the Flood Insurance Study. Flood elevations are provided in these tidal floodplains; however, floodway data is not applicable.

(2) The Coastal A District shall be those flood hazard areas that have been delineated as subject to wave heights between 1.5 feet and 3 feet.

(3) The Coastal High Hazard District shall be those areas identified as VE, or V Zones that have been delineated as subject to wave heights in excess of 3 feet or subject to high-velocity wave action or wave-induced erosion..

(b) Overlay Concept

(1) 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.

(2) 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.

(3) 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.

Sec. 30-10. Official floodplain map.

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The boundaries of the Special Flood Hazard Area and Floodplain Districts are established as shown on the Flood Insurance Rate Map panels 51001C0065G, 51001C0070G, 51001C0260G, 51001C0270G, 51001C0280G, 51001C0285G, 51001C0290G, 51001C0485G and 51001C0505G which are declared to be a part of this ordinance and which shall be kept on file at the town offices.

(Amended May 18, 2015)

Sec. 30-11. District boundary changes.

The delineation of any of the Floodplain Districts may be revised by the town 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 (FEMA).

Sec. 30-12. Interpretation of district boundaries.

(a) Initial interpretations of the boundaries of the Floodplain Districts shall be made by the Zoning Administrator. 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.

(b) The town base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six (6) months after the date such information becomes available, the town shall notify the Federal Insurance Administrator 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 floodplain management requirements will be based upon current data.

Sec. 30-13. Reserved.

ARTICLE IV. DISTRICT PROVISIONS

Sec. 30-14. Permit and application requirements.

(a) Floodplain Administrator - the Zoning Administrator is designated to administer and implement the provisions of this ordinance. Any decision of the zoning administrator may be appealed to the Board of Zoning Appeals pursuant to the Code of Virginia, Sec. 15.2-2311.

(b) Duties and responsibilities of the Floodplain Administrator - the duties and responsibilities of the Floodplain Administrator shall include, but are not limited to:

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(1) review applications for permits to determine whether proposed activities will be located in the Special Flood Hazard Area (SEHA),

(2) interpret floodplain boundaries and provide available base flood elevation and flood hazard information.

(3) 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.

(4) review applications to determine whether all necessary permits have been obtained from the Federal, State or local agencies from which pitot or concurrent approval is required.

(5) use discretion to exempt obviously insignificant activities from the permit requirements.

(c) Permit Requirement - All uses, activities, and development occurring within any floodplain district shall be undertaken only upon the issuance of a floodplain zoning permit. Such use, activity, or development shall be undertaken only in compliance with the provisions of this Chapter 30, the Virginia Uniform Statewide Building Code, and all other applicable codes and ordinances, including any subdivision regulations, if applicable.

Prior to the issuance of any such permit, the zoning administrator shall require all applications to include compliance with all applicable state and federal laws and shall review all sites for the purpose of determining that they will be in compliance with the issued permit in his reasonable discretion, upon completion of such work.

(d) 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 lowest floor (including basement).

(2) or structures to be flood-proofed (non-residential only), the elevation to which the structure will be flood-proofed and the supporting engineering certificate.

(3) the elevation of the one percent (1%) chance or 100 year flood.

(4) topographic information showing existing and proposed ground elevations.

Sec. 30-15. General standards.

In all special flood hazard areas the following provisions shall apply:

(a) New construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.

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(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 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 and 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.

(i) Any alteration, repair, reconstruction or improvements to a building that is in compliance with the provisions of this ordinance shall meet the requirements of "new construction" as contained in this ordinance.

(j) Any alteration, repair, reconstruction or improvements to a building that is not in compliance with the provisions of this ordinance, shall be undertaken only if said non-conformity is not furthered, extended, or replaced.

(k) Prior to any proposed alteration or relocation of any channels or of any watercourse, stream, etc. within the town a permit shall be obtained, if required 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). The flood carrying capacity within an altered or relocated portion of any watercourse shall be maintained.

Sec. 30-16. Specific standards.

In all special flood hazard areas the following provisions shall apply:

(a) Residential Construction - New construction or substantial improvement of any residential structure (including manufactured homes) shall have the lowest floor, including basement, elevated no lower than base flood elevation. New construction or substantial

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improvement of any residential structure (including manufactured homes) after May 18, 2015 shall have the lowest floor, including basement, elevated no lower than base flood elevation plus two (2) feet of freeboard.

(Amended 5/18/2015)

(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 to no lower than base flood elevation. New construction or substantial improvement of any commercial, industrial, or non-residential building (or manufactured home) after May 18, 2015, shall have the lowest floor, including basement, elevated to no lower than base flood elevation plus two (2) feet of freeboard. Non-residential construction may be flood-proofed in lieu of being elevated provided that all areas of the building components below the elevation corresponding to the BFE plus two (2) feet 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 buoyance. 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 flood-proofed, shall be maintained by the zoning administrator.

(Amended 5/18/2015)

(c) Elevated Buildings - Enclosed areas, of new construction or substantially improved structures, which are below the lowest floor 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). The interior portion of such enclosed area shall not be partitioned or finished into separate rooms, except to enclose storage areas;

(2) be constructed entirely of flood resistant materials below the regulatory flood protection elevation;

(3) in the Coastal High Hazard District, follow the standards for elevation outlined in Article IV, Section 30-19.

(4) in the Coastal A Zone, follow the standards outlined in Section 30-18(a).

(5) include, in Zones AE measures to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of flood waters. 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.

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- (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 flood waters 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 flood waters 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, in expansions to existing manufactured home parks or subdivisions, in a new manufactured home park or subdivision or in substantially improved manufactured home parks or subdivisions, must meet all the requirements for new construction, including elevation and anchoring.

(2) All manufactured homes placed or substantially improved in an existing manufactured home park or subdivision must be elevated so that:

- (a) the lowest floor of the manufactured home is elevated no lower than base flood elevation; or,
- (b) the manufactured home chassis is supported by reinforced piers or other foundation elements of at least an equivalent strength, of no less than 36 inches in height above the grade, only in parks and subdivisions with no record of flood damage;
- (c) the manufactured home must be securely anchored to the adequately anchored foundation system to resist flotation, collapse and lateral movement;
- (d) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage," any manufactured home placed or substantially improved must meet the standards of Article IV, Section 30-16(d)(2)(a) and (c) above.

(3) All recreational vehicles placed on sites must either:

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- (a) be on the site for fewer than 180 consecutive days;
- (b) 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,
- (c) meet all the requirements for new construction, including anchoring and elevation requirements of Article IV, Section 30-16(d)(1) or (2)(a) and (c), above.

Sec. 30-17. 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 provided 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.

Sec. 30-18. Standards for the coastal 'A' zone.

The Coastal A Zone shall be those areas, as defined by the Virginia USBC, that are subject to wave heights between 1.5 and 3 feet, and identified on the FIRM by Limits of Moderate Wave Action (LiMWA). For these areas, the following provisions shall apply:

- (a) Buildings and structures within this zone shall have the lowest floor elevated to or above the base flood elevation plus one foot of freeboard, and must comply with all other applicable provisions of this ordinance.

Sec. 30-19. Standards for the coastal high hazard district.

The VE or V Zones shall be those areas that are known as Coast High Hazard having been determined to be subject to wave heights in excess of 3 feet or subject to high-velocity wave action or wave-induced erosion. For these areas, the following provisions shall apply:

- (a) All new construction and substantial improvements in Zones VE and V to be elevated on pilings or columns so that:

- (1) the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level if the lowest

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horizontal structural member is parallel to the direction of wave approach or elevated at least one foot above the base flood level if the lowest horizontal structural member is perpendicular to the direction of wave approach; and,

(2) the pile or column foundation and structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Wind and water loading values shall each have a one percent chance of being equaled or exceeded in any given year (one-percent annual chance).

(b) A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of Article IV, Section 30-19(a).

(c) Obtain the elevation (in relation to mean sea level) of the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings and columns) of all new and substantially improved structures in Zones V and VE. The Floodplain Management Administrator shall maintain a record of all such information.

(d) All new construction shall be located landward of the reach of mean high tide.

(e) Provide that all new construction and substantial improvements have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood-lattice work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purpose of this section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by local codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:

(1) Breakaway wall collapse shall result from water load less than that which would occur during the base flood; and

(2) The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and nonstructural). Maximum wind and water loading values to be used in this determination shall each have a one percent chance of being equaled or exceeded in any give year.

(f) The enclosed space below the lowest floor shall be useable solely for parking of vehicles, building access, or storage. Such space shall not be partitioned into multiple rooms, temperature-controlled, or used for human habitation.

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(g) Prohibit the use of fill for structural support of buildings. When fill is proposed in a coastal high hazard area, appropriate engineering analyses shall be conducted to evaluate the impacts of the fill prior to issuance of a development permit.

(h) Prohibit man-made alteration of sand dunes which would increase potential flood damage.

(i) All manufactured homes to be placed or substantially improved within Zones V and VE on the town's Flood Insurance Rate Map on sites must meet the standards of Article IV, Section 30-19(a) through (h) and that manufactured homes placed or substantially improved on other sites in an existing manufactured home park or subdivision with Zones V and VE on the Flood Insurance Rate Map meet the requirements of Article IV, Section 30-16(d)(1) and (2), if they are located:

(1) outside of a manufactured home park or subdivision,

(2) in a new manufactured home park or subdivision,

(3) in an expansion to an existing manufactured home park or subdivision, or

(4) in an existing manufactured home park or subdivision in which a manufactured home has incurred "substantial damage" due to flooding.

(j) Recreational vehicles placed on sites within Zones V and VE on the community's Flood Insurance Rate Map must either:

(1) be on the site for fewer than 180 consecutive days,

(2) be fully licensed and ready for highway use, 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,

(3) meet the requirements of Article IV, Section 30-14 and Article IV, Section 30-19(a) through (h).

Sec. 30-20. Anchoring fuel tanks.

(a) The owner of any new, replaced, or existing oil, and propane tanks must be anchored fuel tanks against floatation, collapse and lateral movement under flood conditions by means of an approved anchorage system or shall be installed at or above base flood elevation and shall be set upon a firm foundation and supports to prevent floatation, collapse and lateral movement under flood conditions. It shall be unlawful to fill or refill any such tank that is not so anchored or elevated.

(Amended 04/04/11)

(b) All new, replaced, or existing oil tanks shall have their vent pipe extended at least three feet above the top most portion of the body of the tank. This provision shall also apply to substantial improvement buildings and buildings experiencing repetitive loss.

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(c) All new, replaced, or existing oil tanks must all be fitted with a fill tube screw-on tight-fit cap with gasket.

(d) The installation requirements for strapping and anchoring fuel tanks shall follow FEMA recommended guidelines.

(e) If ownership of a fuel tank is unknown or unclaimed, the property owner shall be responsible.

(Amended 04/04/11)

(f) This section shall be effective November 4, 2012 for new, existing or replaced fuel tanks.

(Amended 4/7/08, 09/16/10)

ARTICLE V. EXISTING STRUCTURES IN FLOODPLAIN AREAS

Sec. 30-21. Existing structures.

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) 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 and the appropriate provisions of this ordinance.

(b) 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 (5) 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

Sec. 30-22. Factors to be considered.

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 showing of good and sufficient cause.

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(b) 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 (1) percent chance in one hundred (100)-year flood elevation.

(c) The danger that materials may be swept on to other lands or downstream to the injury of others.

(d) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.

(e) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.

(f) The importance of the services provided by the proposed facility to the community.

(g) The requirements of the facility for a waterfront location.

(h) The availability of alternative locations not subject to flooding for the proposed use.

(i) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.

(j) The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.

(k) The safety of access by ordinary and emergency vehicles to the property in time of flood.

(l) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.

(m) The repair or rehabilitation of historic structures 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.

(n) Such other factors which are relevant to the purposes of this ordinance.

All applicants must obtain documentation pertaining to the request for a variance from a Virginia certified engineer to evaluate the proposed project in relation to flood heights and velocities, and the adequacy of the plans for flood protection and other related matters prior to referring such to the board of zoning appeals.

Variances shall be issued only after the board of zoning appeals has determined that the granting of such will not result in

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- (1) unacceptable or prohibited increases in flood heights,
- (2) additional threats to public safety,
- (3) extraordinary public expense; and will not
- (4) create nuisances,
- (5) cause fraud or victimization of the public, or
- (6) 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 from exceptional hardship to the applicant.

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.

ARTICLE VII. ENACTMENT

This ordinance shall become effective upon passage on April 7, 2014. Amendments approved on April 6, 2015 with an effective date of May 18, 2015.

Chapters 31—33

RESERVED

Chapter 34

LAW ENFORCEMENT*

Sec. 34-1. Issuance and service of summons in place of warrant.

***Charter references**—Jails, ch. 2, § 1(14); police department, ch. 2, § 1(39).

Cross references—Administration, ch. 2; offenses and miscellaneous provisions, ch. 38; traffic and vehicles, ch. 58.

State law references—Police and public order, Code of Virginia, § 15.2-1700 et seq.; powers of governor as to local law enforcement agencies, Code of Virginia, § 18.2-410.

LAW ENFORCEMENT

Sec. 34-1. Issuance and service of summons in place of warrant.

(a) Whenever any person is detained by or is in the custody of an arresting officer for any violation committed in such officer's presence, which offense is a violation of any town ordinance or of any section of this Code punishable as a class 2 misdemeanor or any other misdemeanor for which he may receive a jail sentence, except as otherwise provided in Code of Virginia, tit. 46.2 or Code of Virginia, § 18.2-266, or an arrest on a warrant charging an offense for which a summons may be issued, and when specifically authorized by the judicial officer issuing the warrant, the arresting officer shall take the name and address of such person and issue a summons or otherwise notify him in writing to appear at a time and place to be specified in such summons or notice. Upon the giving by such person of his written promise to appear at such time and place, the officer shall forthwith release him from custody. However, if any such person shall fail or refuse to discontinue the unlawful act, the officer may proceed according to the provisions of Code of Virginia, § 19.2-82.

(b) Anything in this section to the contrary notwithstanding, if any person is believed by the arresting officer to be likely to disregard a summons issued under subsection (a) of this section or if any person is reasonably believed by the arresting officer to be likely to cause harm to himself or to any other person, a magistrate or other issuing authority having jurisdiction shall proceed according to the provisions of Code of Virginia, § 19.2-82.

(c) Whenever any person is detained by or is in the custody of an arresting officer for a violation of any town ordinance or of any section of this Code, punishable as a class 3 or class 4 misdemeanor or any other misdemeanor for which he cannot receive a jail sentence, except as otherwise provided in Code of Virginia, tit. 46.2, the arresting officer shall take the name and address of such person and issue a summons or otherwise notify him in writing to appear at a time and place to be specified in such summons or notice. Upon the giving of such person of his written promise to appear at such time and place, the officer shall forthwith release him from custody. However, if any such person shall fail or refuse to discontinue the unlawful act, the officer may proceed according to the provisions of Code of Virginia, § 19.2-82.

(d) Any person so summoned shall not be held in custody after the issuance of such summons for the purpose of complying with the requirements of Code of Virginia, § 19.2-387 et seq. Reports to the central criminal records exchange concerning such persons shall be made after a disposition of guilt is entered as provided for in Code of Virginia, § 19.2-390.

(e) Any person refusing to give such written promise to appear under this section shall be taken immediately by the arresting or other police officer before a magistrate or other issuing authority having jurisdiction, who shall proceed according to provisions of Code of Virginia, § 19.2-82.

(f) Any person who willfully violates his written promise to appear, given in accordance with this section, shall be treated in accordance with the provisions of Code of

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Virginia, § 19.2-128, regardless of the disposition of, and in addition to, the charge upon which he was originally arrested.

(g) The summons used by a law enforcement officer pursuant to this section shall be in form the same as the uniform summons for motor vehicle law violations as prescribed pursuant to Code of Virginia, § 46.2-388.

(Code 1977, § 1-7)

State law reference—Similar provisions, Code of Virginia, § 19.2-74.

Chapters 35—37

RESERVED

Chapter 38

OFFENSES AND MISCELLANEOUS PROVISIONS*

Article I. In General

Secs. 38-1—38-25. Reserved.

Article II. Weapons

Sec. 38-26. Repealed.
Sec. 38-27. Repealed.
Sec. 38-28. Discharging firearms.
Secs. 38-29—38-55. Reserved.

Article III. Obscenity

Division 1. Generally

Sec. 38-56. Definitions.
Sec. 38-57. Exceptions from division.
Sec. 38-58. Violations of article.
Sec. 38-59. Obscene items enumerated.
Sec. 38-60. Production, publication, sale, possession or distribution of obscene items.
Sec. 38-61. Obscene exhibitions and performance generally.
Sec. 38-62. Advertising obscene items, exhibitions or performances.
Sec. 38-63. Obscene placards, posters, bills, writings or pictures.
Sec. 38-64. Coercing acceptance of obscene articles or publications.
Sec. 38-65. Photographs, slides and motion pictures.
Sec. 38-66. Public nudity generally.
Sec. 38-67. Indecent exposure.
Sec. 38-68. Urination or defecation in public.
Sec. 38-69. Employing or permitting minor to assist in violation of division.
Sec. 38-70. Proceeding against obscene book or motion picture film.
Secs. 38-71—38-95. Reserved.

Division 2. Juveniles

Sec. 38-96. Definitions.
Sec. 38-97. Violations of division.
Sec. 38-98. Unlawful sales or loans generally.
Sec. 38-99. Admitting juveniles to premises exhibiting obscene films or other presentations or exhibiting motion pictures visible to public way.

***Charter reference**—Police powers, ch. 2, § 1(39) et seq., (42), (48) et seq.

Cross references—Law enforcement, ch. 34; traffic and vehicles, ch. 58.

State law references—Crimes and offenses generally, Code of Virginia, tit. 18.2; local ordinances prohibiting obscenity, Code of Virginia, § 18.2-389. Prohibiting loitering; curfew for minors, Code of Virginia, § 15.2-926.

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- Sec. 38-100. Misrepresentation as to juvenile.
- Sec. 38-101. Display of obscene materials at business establishments open to juveniles.
- Sec. 38-102. Exceptions from division.
- Secs. 38-103—38-130. Reserved.

Division 3. Nude or Partially Nude Models

- Sec. 38-131. Information to be filed with chief of police.
- Sec. 38-132. Registration of customers.
- Sec. 38-133. Closing of studios during certain hours.
- Sec. 38-134. Presence of third person when model being photographed or painted.
- Sec. 38-135. Obscene photographs or paintings.
- Secs. 38-136—150. Reserved

Article IV. Curfew

- Sec. 38-151. Curfew-minors.
- Sec. 38-152. Enforcement.
- Sec. 38-153. Penalty for violation.
- Secs. 38-154—174. Reserved.

Article V. Trespass Violations

- Sec. 38-175. Trespassing.

OFFENSES AND MISCELLANEOUS PROVISIONS

ARTICLE I. IN GENERAL

Secs. 38-1—38-25. Reserved.

ARTICLE II. WEAPONS

Sec. 38-26. Repealed. 10/07/13.

Sec. 38-27. Repealed. 10/07/13.

Sec. 38-28. Discharging firearms.

(a) It shall be unlawful for any person to shoot any gun, rifle, pistol, revolver, air rifle, or any firearm of any kind on Chincoteague Island. It shall also be unlawful for any person to use a bow and arrow or other similar device or weapon for hunting on Chincoteague Island. Surrounding marshy islands are not included in this prohibition. This section shall not apply to any police officer, town sergeant, sheriff, conservator of the peace, or collecting officer while in the discharge of his official duty nor to any person destroying a rabid animal nor for a similar necessity.

(b) The prohibitions in subsection (a) of this section shall not apply to any person while participating in any shooting event organized and supervised by any bona fide nonprofit organization which has secured a license from the town acting through the town manager. The license shall only be issued after investigation by the chief of police or other officer in charge as to whether appropriate safeguards are being undertaken to reasonably ensure the safety of the participants and general public and such officer's recommendation for issuance. As a condition of the issuance of the license, such organization shall agree to indemnify and save harmless the town and/or its agents from any and all claims or liability resulting from the activity and/or any license issued to conduct the event. Any such license shall further bear the notation that the town assumes no responsibility for the safety and welfare of the participants and general public by the issuance of such license. The town manager shall develop an application and license form with an appropriate indemnification provision to accomplish the purposes of this subsection.

(Code 1977, § 13-2; Ord. of 11-18-1993)

Secs. 38-29—38-55. Reserved.

ARTICLE III. OBSCENITY

DIVISION 1. GENERALLY

Sec. 38-56. 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:

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Obscene means that which, considered as a whole, has as its dominant theme or purpose an appeal to the prurient interest in sex, that is, a shameful or morbid interest in nudity, sexual conduct, sexual excitement, excretory functions or products 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, does not have serious literary, artistic, political or scientific value.

(Code 1977, § 13-5-2)

Cross reference—Definitions generally, § 1-2.

State law reference—Similar provisions, Code of Virginia, § 18.2-372.

Sec. 38-57. Exceptions from division.

Nothing contained in this division shall be construed to apply to the following:

- (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 theater, museum of fine arts, school or institution of higher learning, supported by public appropriation.

(Code 1977, §§ 13-5-14, 13-5-15)

State law reference—Similar provisions, Code of Virginia, § 18.2-383.

Sec. 38-58. Violations of article.

Except as otherwise specifically provided, a violation of any section of this article shall constitute a misdemeanor.

(Code 1977, § 13-5-1)

Sec. 38-59. Obscene items enumerated.

For the purposes of this division, obscene items shall include the following:

- (1) Any obscene book;
- (2) Any obscene leaflet; pamphlet; magazine; booklet; picture; painting; bumper sticker; drawing; photographic film, negative, slide; motion picture; videotape recording; or
- (3) Any obscene figure, object, article, instrument, novelty, device, or recording or transcription used or intended to be used in disseminating any obscene song, ballad, words or sounds.

(Code 1977, § 13-5-3)

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State law reference—Similar provisions, Code of Virginia, § 18.2-373.

Sec. 38-60. Production, publication, sale, possession or distribution of obscene items.

(a) For the purposes of this section, the term "distribute" shall mean delivery in person, by mail, by messenger or by any other means by which obscene items, as defined in this article, may pass from one person to another.

(b) It shall be unlawful for any person knowingly to:

- (1) Prepare any obscene item for the purposes of sale or distribution;
- (2) Print, copy, manufacture, produce, or reproduce any obscene item for purposes of sale or distribution;
- (3) Publish, sell, rent, lend, transport in intrastate commerce, or distribute or exhibit any obscene item or offer to do any of these things; or
- (4) Have in his 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, as defined in this article, shall be deemed prima facie evidence of a violation of this section.

(Code 1977, § 13-5-4)

State law reference—Similar provisions, Code of Virginia, § 18.2-374.

Sec. 38-61. Obscene exhibitions and performance 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; or
- (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 fail to post prominently therein the name and address of a person resident in the town who is the manager of such theater, garden, building, structure, room or place.

(Code 1977, § 13-5-5)

State law reference—Similar provisions, Code of Virginia, § 18.2-375.

Sec. 38-62. Advertising obscene items, exhibitions or performances.

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It shall be unlawful for any person to knowingly 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 38-59 or of any obscene performance or exhibition referred to in section 38-61, stating or indicating where such obscene item, exhibition or performance may be purchased, obtained, seen, or heard. (Code 1977, § 13-5-6)

State law reference—Similar provisions, Code of Virginia, § 18.2-376.

Sec. 38-63. Obscene placards, posters, bills, writings or pictures.

It shall be unlawful for any person knowingly to expose, place, display, post up, exhibit, paint, print or mark or cause to be exposed, placed, displayed, posted, exhibited, painted, printed or marked, in or on any building, structure, billboard, wall or fence or on any street or in or upon any public place any placard, poster, banner, bill, writing or picture which is obscene or which advertises or promotes any obscene item referred to in section 38-59 or any obscene exhibition or performance referred to in section 38-61 or knowingly to permit such to be displayed on property belonging to or controlled by him.

(Code 1977, § 13-5-7)

State law reference—Similar provisions, Code of Virginia, § 8.2-377.

Sec. 38-64. 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, because of the failure or refusal of any person to accept such articles, books or publications or because of the return thereof.

(Code 1977, § 13-5-8)

State law reference—Similar provisions, Code of Virginia, § 18.2-378.

Sec. 38-65. Photographs, slides and motion pictures.

Every person shall be guilty of a class 3 misdemeanor if the person 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.

(Code 1977, § 13-5-9)

State law reference—Similar provisions, Code of Virginia, § 18.2-382.

Sec. 38-66. Public nudity generally.

(a) As used in this section, the term "state of nudity" means a state of undress so as to expose the human male or female genitals, pubic area or buttocks with less than a fully 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.

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(b) It shall be unlawful for any person to knowingly, voluntarily and intentionally appear in public or in a public place or in a place open to public view in a state of nudity or to employ, encourage or procure another person to so appear.

(c) Nothing contained in this section shall be construed to apply to the exhibition, presentation, showing or performance of any play, ballet, drama, tableau, production or motion picture in any theater, concert hall, museum of fine arts, school, institution of higher learning or other similar establishment which is primarily devoted to such exhibitions, presentations, shows or performances as a form of expression of opinion, communication, speech, ideas, information, art or drama, as differentiated from commercial or business advertising, promotion or exploitation of nudity for the purpose of advertising, promoting, selling or serving products or services or otherwise advancing the economic welfare of a commercial or business enterprise, such as a hotel, motel, bar, nightclub, restaurant, tavern or dancehall.

(Code 1977, § 13-5-10)

Sec. 38-67. Indecent exposure.

Every person who intentionally makes 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 procures another to so expose himself shall be guilty of a misdemeanor. No person shall be deemed to be in violation of this section for breastfeeding a child in any public place or any place where others are present.

(Code 1977, § 13-5-11)

State law reference—Similar provisions, Code of Virginia, § 18.2-387.

Sec. 38-68. Urination or defecation in public.

Any person who urinates or defecates in public or in a place open to public view except in public restroom facilities shall be guilty of a class 4 misdemeanor.

(Code 1977, § 13-5-12)

Sec. 38-69. Employing or permitting minor to assist in violation of division.

It shall be unlawful for any person knowingly to 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 division.

(Code 1977, § 13-5-13)

State law reference—Similar provisions, Code of Virginia, § 18.2-379.

Sec. 38-70. Proceeding against obscene book or motion picture film.

Whenever the town has reasonable cause to believe that any person is engaged in the sale or commercial distribution of any obscene book or motion picture film in the town, any citizen or the town attorney may institute a proceeding in the circuit court of the county for adjudication of the obscenity of the book or motion picture film pursuant to Code of Virginia, §§ 18.2-384 and 18.2-385.

(Code 1977, § 13-5-14)

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Secs. 38-71—38-95. Reserved.

DIVISION 2. JUVENILES

Sec. 38-96. 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 in the town as a whole with respect to what is suitable material for juveniles; and
- (3) Is, when taken as a whole, lacking in serious literary, artistic, political or scientific value for juveniles.

Juvenile means any person less than 18 years of age.

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 under this division if the defendant made a reasonable bona fide attempt to ascertain the true age of such 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 fully 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.

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 female, breast.

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Sexual excitement means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(Code 1977, § 13-5-16)

Cross reference—Definitions generally, § 1-2.

State law reference—Similar provisions, Code of Virginia, § 18.2-390.

Sec. 38-97. Violations of division.

Unless otherwise specifically provided, a violation of any section of this division shall constitute a misdemeanor.

(Code 1977, § 13-5-17)

Sec. 38-98. Unlawful sales or loans generally.

It shall be unlawful for any person knowingly to sell, rent or loan to a juvenile or to knowingly display for commercial purpose in a manner whereby juveniles may examine and peruse:

- (1) Any picture, photography, drawing, sculpture, motion picture film, electronic file or message containing an image 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; or
- (2) Any book, pamphlet, magazine, printed matter however reproduced, electronic file or message containing words, 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 1977, § 13-5-18)

State law reference—Similar provisions, Code of Virginia, § 18.2-391.

Sec. 38-99. Admitting juveniles to premises exhibiting obscene films or other presentations or exhibiting motion pictures visible to public way.

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 such premises which are not designed to prevent viewing from any public way of such motion picture by juveniles not admitted to any such premises.

(Code 1977, § 13-5-19)

State law reference—Similar provisions, Code of Virginia, § 18.2-391.

Sec. 38-100. Misrepresentation as to juvenile.

(a) It shall be unlawful for any juvenile falsely to represent to any person mentioned in sections 38-98 and 38-99 or to his agent that such juvenile is 18 years of age or older,

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with the intent to procure any material set forth in section 38-98 or with the intent to procure such juvenile's admission to any motion picture, show or other presentation set forth in section 38-99.

(b) It shall be unlawful for any person knowingly to make a false representation to any person mentioned in section 38-98 or 38-99 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 38-98 or with the intent to procure such juvenile's admission to any motion picture, show or other presentation as set forth in section 38-99.

(Code 1977, § 13-5-20)

State law reference—Similar provisions, Code of Virginia, § 18.2-391.

Sec. 38-101. Display of obscene materials at business establishments open to juveniles.

It shall be unlawful for any person to exhibit, expose or display in public, at a newsstand or any other business or commercial establishment frequented by juveniles or where juveniles or may be invited as part of the general public:

- (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 nudity, sexual conduct or sadomasochistic abuse and which is harmful to juveniles; or
- (2) Any book, pamphlet, magazine or 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 1977, § 13-5-21)

Sec. 38-102. Exceptions from division.

Nothing contained in this division shall be construed to apply to the following:

- (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 1977, § 13-5-22)

State law reference—Similar provision, Code of Virginia, § 18.2-391.1.

Secs. 38-103—38-130. Reserved.

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DIVISION 3. NUDE OR PARTIALLY NUDE MODELS

Sec. 38-131. Information to be filed with chief of police.

(a) Each person who shall engage in the business in the town of providing live nude or partially nude models to be painted, sketched or photographed, whether by appointment or otherwise, shall file with the chief of police his name, age and current residential address and business address, together with all residential addresses for the previous five years. Such person shall also file with the chief of police the name, age, residential address and occupation of each model employed or to be employed in such business.

(b) Any person who shall fail or refuse to file with the chief of police the information required by subsection (a) of this section shall be guilty of a class 4 misdemeanor.
(Code 1977, § 13-5-24)

Sec. 38-132. Registration of customers.

(a) Each person who shall engage in the business in the town of providing live nude or partially nude models to be painted, sketched or photographed shall at all times keep and maintain therein a book or register in which shall be inscribed, with ink or indelible pencil, the name and address of each customer, in his own handwriting, with a clear and definite showing of the model painted, sketched or photographed, by name. Such book or register shall be maintained for a period of two years from the date of each entry and shall be open to inspection by the town law enforcement officers at reasonable hours.

(b) It shall be unlawful for any person to sign or cause to be signed, in the book or register referred to in subsection (a) of this section, a false or fictitious name when seeking to paint, sketch or photograph a model.

(c) Any person violating this section shall be guilty of a class 4 misdemeanor.
(Code 1977, § 13-5-25)

Sec. 38-133. Closing of studios during certain hours.

It shall be unlawful for any person engaged in the business of providing live nude or partially nude models to be painted, sketched or photographed by the general public to remain open for such business between the hours of 10:00 p.m. and 6:00 a.m. the following day.
(Code 1977, § 13-5-23)

Sec. 38-134. Presence of third person when model being photographed or painted.

In order to protect nude or partially nude models, it shall be unlawful for any person engaged in the business of providing live nude or partially nude models to be painted, sketched or photographed by the general public to allow or permit the painting, sketching or photographing of live nude or partially nude models in a room unless there is present in the room a responsible adult individual in addition to the model and the customer.
(Code 1977, § 13-5-26)

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Sec. 38-135. Obscene photographs or paintings.

(a) It shall be unlawful for any person to operate a business in the town which provides models or facilities for obscene sketching, painting or photographing of the human figure, where the nude or partially nude model's posture or the reproduction of the nude or partially nude model, whether by sketching, painting or photographing, appear in a manner which:

- (1) Predominantly appeals to the prurient interests;
- (2) Is patently offensive to contemporary community standards; and
- (3) Is utterly without redeeming social value.

(b) It shall be unlawful for any person to act as a nude or partially nude model or to present any posture whereby the reproduction thereof shall appear in a manner which:

- (1) Predominantly appeals to the prurient interests;
- (2) Is offensive to contemporary community standards; and
- (3) Is utterly without redeeming social value.

(c) It shall be unlawful for any person to cause to be made, whether by photography, sketching, painting or otherwise, reproductions of any nude or partially nude model which shall appear in a manner which:

- (1) Predominantly appeals to the prurient interests;
- (2) Is patently offensive to contemporary community standards; and
- (3) Is utterly without redeeming social value.

(d) A violation of any subsection of this section shall constitute a class 3 misdemeanor. (Code 1977, § 13-5-27)

Secs. 38-136—38-150. Reserved.

ARTICLE IV. CURFEW

Sec. 38-151. Curfew-minors.

(a) It shall be unlawful for any minor under the age of 18 to be present on any street, road, alley, avenue, park or other public place, or in any vehicle operating or parked thereon in the Town, between the hours of 12:01 a.m. and 5:00 a.m., unless accompanied by the parent, guardian or other adult person having the care, custody or control of such minor, except as specifically excepted hereunder.

(b) It shall be unlawful for any parent, guardian or other adult person having the care, custody or control of any minor under the age of 18 to permit, allow or encourage such minor to be present on any street, road, alley, avenue, park, other public place, or in any vehicle operating or parked thereon in the Town, between the hours of 12:01 a.m. and 5:00

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a.m., unless accompanied by such parent, guardian or other adult person having the care, custody or control of such minor, except as specifically excepted hereunder.

(c) It shall not constitute a violation hereof for any such minor under the age of 18 to be present on any street, road, alley, avenue, park or other public place, or in any vehicle operating or parked thereon in the Town, if not accompanied by a parent, guardian or other adult person having the care, custody or control of such minor, if (1) such minor is on a bona fide emergency errand, or (2) is then engaged in bona fide lawful employment or is going directly to the place of such employment or returning directly to the place of residence, or (3) such minor has the signed written permission of a parent, guardian or other adult person having the care, custody or control of such minor to attend a specified engagement or performance which begins prior to midnight, and ends either after midnight or so close to midnight that it is impractical for such minor to reach his residence before midnight by traveling in a prudent manner and such minor is present at such engagement or performance or is proceeding directly to his place of residence upon conclusion thereof. (Code 1977, § 13-9; Ord. of 8-7-2000)

Sec. 38-152. Enforcement.

Whenever any police or other officer charged with the duty of enforcing the laws of the state or ordinances of the Town shall discover or has his attention called to the fact that any minor under 18 years of age is present on any street, road, alley, avenue, park, other public place, or in any vehicle operating or parked thereon in the Town, between the hours of 12:01 a.m. and 5:00 a.m. and that such minor is not accompanied by his parent, guardian, or other adult person having the care, custody or control of such minor, such officer shall make an immediate investigation for the purpose of ascertaining whether or not the presence of such minor on such street, road, avenue, alley, park, other public place or in any vehicle operating or parked thereon in the Town, is in violation of the provisions of this section. If such investigation reveals that the presence of such minor on such street, road, avenue, alley, park, other public place or in any vehicle operating or parked thereon in the Town, is in violation of the provisions of this section, the officer shall cause the minor to be taken to his home or place of residence and the minor and his parent, guardian or other adult person having the care, custody or control of the minor may be summonsed to appear before the juvenile and domestic relations court, or other court of appropriate jurisdiction, to be dealt with in accordance with the provisions of this section. Should the investigation, however, show that the minor is probably not within the purview of the juvenile and domestic relations court law and has not violated this section or any other provision of law or ordinances, the minor shall be immediately released from custody or returned to his home or to the custody of his parent, guardian or person having the care, custody or control of the minor, as appropriate.

Sec. 38-153. Penalty for violation.

Unless otherwise specifically provided, a violation of any provision of this section shall constitute a class 3 misdemeanor and be punishable by a fine not to exceed \$500.00.

Secs. 38-154—38-174. Reserved.

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ARTICLE V. TRESPASS VIOLATIONS

Sec. 38-175. Trespassing.

(a) 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 charge thereof, or after having been forbidden to do so by a sign or signs posted on such lands, buildings, premises or part, 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 sections 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, 16.1-279.1, 19.2-152.8, 19.2-152.9, 19.2-152.10 or an ex parte order issued pursuant to Code of Virginia section 20-103, and after having been served with such order, he shall be guilty of a Class 1 misdemeanor. This section shall be construed to affect in any way the provisions of Code of Virginia section 18.2-132 through 18.2-136.

(b) Any owner, lessee, custodian, or person lawfully in charge of real property may, in writing on a form prescribed by the chief of police, designate the police department as a "person lawfully in charge thereof," as those terms are used in subsection (a) of this section, for the purpose of forbidding another to go or remain upon the lands, buildings, or premises of such owner. Such designation shall include a description of the land(s), building(s), or premises to which it applies; shall reference the period of time during which it is in effect; and shall be kept on file in the police department.

(Adopted 08-05-02)

Chapters 39—41

RESERVED

Chapter 42

PARKS AND RECREATION*

Article I. In General

Secs. 42-1—42-25. Reserved.

Article II. Park Regulations

- Sec. 42-26. Authority.
- Sec. 42-27. Compliance required.
- Sec. 42-28. Penalty for violation.
- Sec. 42-29. Rules and regulations.

***Charter references**—Parks, playgrounds, etc., ch. 2, § 1(15), (16); town plan, ch. 3.

Cross references—Environment, ch. 22; streets, sidewalks and other public places, ch. 50; vegetation, ch. 66; waterways, ch. 70; recreational park, app. A, § 2.136.

State Law references—Swimming pools, lakes and other waters, Code of Virginia, § 15.2-1110; local parks, recreation facilities and playgrounds, Code of Virginia, § 15.2-1806 et seq.; Public Recreational Facilities Authorities Act, Code of Virginia, § 15.2-5600 et seq.; Park Authorities Act, Code of Virginia, § 15.2-5700 et seq.

PARKS AND RECREATION
ARTICLE I. IN GENERAL

Secs. 42-1—42-25. Reserved.

ARTICLE II. PARK REGULATIONS.

Sec. 42-26. Authority.

This article is adopted pursuant to the authorities contained, among other things, in Charter chapter 2, section 1(9), (15), (21), (22), (41), (44), (48), (49), (50) and (71) and Code of Virginia, § 4.1-128 and 15.2-1102.
(Code 1977, § 16-7; Ord. of 11-7-1991)

Sec. 42-27. Compliance required.

All persons using the town-owned recreational facilities, shall fully comply with all rules and regulations provided for in this article or as the rules and regulations may be amended from time to time. It shall be unlawful for any person to violate any such rule or regulation set forth in this article or any section of this article.
(Code 1977, § 16-3)

Sec. 42-28. Penalty for violation.

Any person violating any provision of this article shall, upon conviction, be guilty of a misdemeanor and shall be punished by confinement in jail for not more than 12 months and a fine of not more than \$500.00, either or both, except as may be otherwise specifically provided under this article.
(Code 1977, § 16-5)

Sec. 42-29. Rules and regulations.

(a) The following rules and regulations shall be applicable to the uses of all town-owned recreational facilities:

- (1) Each facility shall be open from
 - a. Robert N. Reed Park shall have the hours of operation from one-half hour before sunrise to midnight each day.
 - b. Veterans Memorial Park shall have the hours of operation from on-half hour before sunrise to 10 p.m. each day, with fishing allowed to midnight.
 - c. Donald J. Leonard Park shall have the hours of operation from one-half hour before sunrise to midnight each day.
 - d. Island Nature Trail shall have the hours of operation from one-half hour before sunrise to one-half hour after sunset.

Such hours of operation may be modified by the town manager, his designee, or the director of public works from time to time. Hours of operation shall be conspicuously posted. Entering onto the facility between the hours of closure

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except during the course of a bona fide emergency shall constitute a criminal trespass.

- (2) No person shall take a drink of an alcoholic beverage as defined under Code of Virginia, § 4.1-100 et seq. or tender a drink thereof to another, at any such public facility, except as may be expressly permitted under Code of Virginia, tit. 4.1.
- (3) No person shall possess any opened container of alcoholic beverage, as defined in subsection (a)(2) of this section, at any such public facility, except as may be expressly permitted under Code of Virginia, tit. 4.1.
- (4) Except as otherwise provided by law and giving due consideration to the present and proposed uses of the public facility, no person shall take a drink of or consume any alcoholic beverage, as defined in subsection (b)(2) of this section, or tender a drink thereof to another or possess any opened container of an alcoholic beverage at such public facility.
- (5) The above provision for consumption of alcohol will not apply to any person while situated on a boat for which a slip has been leased at the Robert N. Reed Park.
- (6) Violation of subsections (a)(2), (3) and (4) of this section shall constitute a class 4 misdemeanor.
- (7) No person shall, with the intent to cause public inconvenience, annoyance or alarm or recklessly creating a risk thereof, while at such public facility, engage 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 this article.
- (8) No open fires or burning shall be permitted at any time except for the purpose of the preparation of food and in cooking grills situated at the facility or provided by such persons. This subsection shall not prohibit the smoking of tobacco products except as may be required by state law.
- (9) No person shall destroy, deface or injure any part of such property, real or personal, or otherwise throw or discard or cause to be thrown or discarded on such property or any part thereof any paper, bottle, can, fruit or vegetable peeling, glass, rag or any other refuse or waste, except in a receptacle provided for the disposal of refuse or waste.
- (10) Repealed. 10/07/13.
- (11) No drugs are permitted.
- (12) No excessive noise, as provided by article II of chapter 22, shall be permitted.

PARKS AND RECREATION

(13) No pets shall be permitted in the park, except in Donald J. Leonard Park and Phase I (paved section) of the Island Nature Trail.

(14) No fireworks or explosives are permitted unless a special permit is issued by the town.

(b) For the purpose of this subsection the word “group” shall additionally mean either a preplanned assemblage of ten or more persons engaging in one joint activity, or an informal assemblage of ten or more persons coming together and engaging in one joint activity. The following rules and regulations shall be applicable to the use of the facility by groups for Veterans Memorial Park and the Robert N. Reed Downtown Park, so as to ensure that the facility is reasonably accessible to all citizens and guests, no liability is incurred by the town or its agents and employees and the property is preserved and maintained for the benefit of future users:

- (1) Any such group or member thereof shall, prior to utilizing the facility, secure a written permit from the office of the town manager.
- (2) Such permit shall specify the area of the facility to be used by the group for its activity and the permitted hours, consistent with the planned activity, other groups desiring to use the facility or particular part thereof, and such other reasonable factors that the town manager or his designee may determine. The playground equipment cannot be exclusively reserved.
- (3) The permit shall be further executed by the group or a member thereof and shall provide that the group or person executing the permit shall be responsible for any and all damages to the facility committed by such group or any member thereof. The town manager or his designee may require either that such person or the group provides evidence of financial responsibility or appropriate liability insurance.
- (4) A copy of the permit shall be maintained in the town office and a copy delivered to the applicant, which shall be exhibited, upon request, to any member of the town manager’s staff or any police officer.
- (5) The town manager shall, further, provide such group or person acting on behalf of the group a copy of the rules and regulations applicable to the facility. The person scheduling the event is responsible for cleaning the park at the conclusion of the event. If cleaning is not performed to the town’s satisfaction, the town will clean the park at the expense of the responsible party.
- (6) The town manager shall, further, maintain a scheduling book in such a form as to show the particulars of each permit issued so as to not create unnecessary scheduling conflicts.
- (7) Permits shall be generally issued on a first come, first served basis.

(c) The town manager, his designee, or any public officer who has probable cause to believe that any person is not utilizing the facility in accordance with this article shall have

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the right to terminate such person's use of the facility and to expel such person from the premises. Any person failing to leave when so instructed by any such person shall be guilty of a separate offense of trespass and punished as provided in this article.

(d) The following only pertains to the Robert N. Reed Downtown Park

- (1) A user fee of \$50.00 shall be charged for each scheduled event with the exception of a community service event for which the fee may be waived at the discretion of the town manager. The income from user fees is a project program income and as such may only be utilized for park purposes.

(Code 1977, § 16-4; Ord. of 11-7-1991; Ord. of 7-6-1992 h, i, k(2)) (*Amended 11/02/09*)

Chapters 43—45

RESERVED

Chapter 46

SOLID WASTE*

Article I. In General

Division 1. Generally

- Sec. 46-1. Definitions.
- Sec. 46-2. Accumulations on property.
- Sec. 46-3. Deposits on sidewalks, streets, lanes, alleys.
- Secs. 46-4—46-15. Reserved.

Division 2. Fees and Billing

- Sec. 46-16. Solid waste collection fees.
- Sec. 46-17. Billing and other charges.
- Secs. 46-18—46-30. Reserved.

Article II. Collections

Division 1. Generally

- Sec. 46-31. Tree trimmings.
- Sec. 46-32. Removal of disease-bearing refuse.
- Secs. 46-33—46-60. Reserved.

Division 2. Receptacles

- Sec. 46-61. **Repealed.**
- Sec. 46-62. Type and construction of refuse receptacles.
- Sec. 46-63. Size of refuse receptacles.
- Sec. 46-64. Compliance
- Sec. 46-65. **Repealed.**

***Charter references**—Collection of refuse, ch. 2, § 1(10); condition of premises, ch. 2, § 1(21), (35).

Cross references—Animal waste, § 10-86 et seq.; buildings and building regulations, ch. 14; environment, ch. 22; utilities, ch. 62.

State law references—Virginia Waste Management Act, Code of Virginia, § 10.1-1400 et seq.; removal of trash, garbage, etc., weeds and other foreign growth, Code of Virginia, § 15.2-901; garbage and refuse disposal, Code of Virginia, § 15.2-927; regulation of garbage and refuse pickup and disposal services, contracts, Code of Virginia, § 15.2-930; contracts for garbage and refuse pickup and disposal services, waste recovery facilities, Code of Virginia, § 15.2-932; delivery of garbage, trash and refuse to certain facilities, Code of Virginia, § 15.2-933; mailing summons for violation of trash ordinance, Code of Virginia, § 19.2-76.2.

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- Sec. 46-66. Prohibited.
- Sec. 46-67. Placement.
- Sec. 46-68. Removal from streets.
- Sec. 46-69. Commercial garbage.
- Sec. 46-70. Overturning; molesting or interfering with contents.

ARTICLE I. IN GENERAL

DIVISION 1. GENERALLY

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:

Garbage means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.

Refuse means all putrescible solid wastes, except garbage and body wastes.

Rubbish means nonputrescible solid wastes, consisting of both combustible and noncombustible wastes, such as paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery and similar materials.

Cross reference—Definitions generally, § 1-2.

(Amended 05/05/03)

Sec. 46-2. Accumulations on property.

(a) *Prohibited.* No person owning real estate shall keep trash, garbage, refuse, litter, and other substances which might endanger the health or safety of other town residents on such real estate for a period of more than seven days.

(b) *Action by town after notice and assessment.* If any such person owning any such real estate shall fail to remove any such trash, garbage, refuse, litter, or other substance which might endanger the health or safety of other residents, the town may give such owner, as shown on the town's real estate tax records, written notice by certified mail at the address shown on such records of the requirements of this section, such owner's violation, and that if such owner does not comply with this section within ten days from the posting of the written notice the town may take legal action as may be required toward the removal of accumulations prohibited by this action.

(Amended 05/05/03)

(c) *Authority.* This section is adopted pursuant to, among other things, authority contained in Code of Virginia, §§ 15.2-901 and 15.2-1429 and chapter 2, section 1(10), (21), (27), (44), (48), (49), (50), and (60) of the Charter.

(d) *Penalty.* Any person violating this section shall be guilty of a misdemeanor and, upon conviction, shall be confined in jail for not more than 12 months and fined up to \$500.00, either or both.

(Code 1977, § 8-16; Ord. of 7-18-1991)

Sec. 46-3. Deposits on sidewalks, streets, lanes, alleys.

No person shall throw upon any sidewalk, street, lane or alley any paper, rags, old shoes, tin cans, bottles, fruit or vegetable peelings, glass, decayed fruit, dead animals or any other refuse or waste.

(Code 1977, § 8-2)

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Cross reference—Streets, sidewalks and other public places, ch. 50.

Secs. 46-4—46-15. Reserved.

DIVISION 2. FEES AND BILLING

Sec. 46-16. Solid waste collection fees.

The town council shall designate certain reasonable weekly rates to be paid for the collection of solid waste, which the weekly rate shall be set each year at the time of establishing the annual budget, and which weekly rates shall apply for that year. The town manager shall bill residents and commercial businesses in accordance with the weekly rates established by the council and shall be in charge of collecting these charges.

(Amended 6/4/07)

Sec. 46-17. Billing and other charges.

(a) All habitable residential dwelling units shall be assessed per parcel and charged to the property owner and not the tenant(s) of each parcel. Short term rental properties subject to transient occupancy taxes shall be considered commercial entities and charged according to subsection (d) below. A property owner may be granted exemption from charges if the dwelling or commercial property is unoccupied on a long term basis (twelve months or greater). Written requests for this exemption must be directed to the town manager for approval.

(Amended 10/18/07)

(b) All solid waste will be billed quarterly and shall be delinquent 30 days after the billing date, with an applicable interest per month charge.

(Amended 6/4/07)

(c) Any parcel that qualifies for exemption from real estate taxes pursuant to Sec. 54-93 shall also be exempt from solid waste collection fees.

(Amended 10/18/07)

(d) Commercial properties shall be assessed per parcel and charged to the property owner and not the tenant(s). Each commercial parcel will be eligible for collection services in volumes and at frequencies determined by the town from time to time. If actual volumes exceed allowed amounts, the property owner shall be responsible for the provision of commercial trash collection services.

(Amended 10/18/07)

Secs. 46-18—46-30. Reserved.

ARTICLE II. COLLECTIONS

DIVISION 1. GENERALLY

Sec. 46-31. *Repealed.* (05/07/2018)

Sec. 46-32. Removal of disease-bearing refuse.

The removal of wearing apparel, bed clothing or other refuse from homes or other places where highly contagious or infectious diseases have prevailed shall be performed under the direction of the county health department or by the state, and such wearing apparel, bed clothing or other refuse shall not be placed in containers or otherwise for collection by the town.

(Code 1977, § 8-15)

Secs. 46-33—46-60. Reserved.

DIVISION 2. RECEPTACLES

Sec. 46-61. *Repealed.* (05/07/2018)

Sec. 46-62. Type and construction of refuse receptacles.

All single-family residences and each unit of a duplex will utilize rollout carts as refuse receptacles for pick up by the town or its contractor. Rollout carts are defined as a plastic container of substantial construction with a tight-fitting lid, having a maximum capacity of 96 gallons, equipped with wheels and designed to be picked up curbside by an automated style garbage truck. Exclusions may be granted by the public works director.

Amended (05/07/2018)

Sec. 46-63. Size of refuse receptables.

The total capacity of rollout carts placed at curbside shall not exceed 130 gallons or two (2) carts of 65 gallons each or alternately one (1) 96 gallons.. The total loaded weight of any individual rollout cart shall not exceed 75 pounds.

The property owner will be responsible for maintaining the rollout cart in a good, serviceable and sanitary condition at all times, replacing rollout carts that have been lost, stolen, or damaged unless otherwise caused by the town or sanitation contractor. Additional rollout carts necessary to comply with this chapter must be purchased by the property owner.

Amended (05/07/2018)

Sec. 46-64. Compliance.

Any refuse receptacle which does not conform to the provisions of this chapter or which has ragged or sharp edges or other defects likely to hamper or injure the person collecting contents thereof, or the public generally, shall be promptly replaced or repaired upon notice. If such refuse receptacle, after due and proper notice, has not been replaced or repaired within 30 day, the public works department shall have the authority to remove such receptacle as refuse.

Amended (05/07/2018)

Sec. 46-65. Repealed.

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Sec. 46-66. Prohibited.

No wooden boxes, barrels or other wooden receptacles shall be used for garbage or kitchen refuse, and the garbage or waste collectors shall be required to remove all such wooden boxes, barrels or other wooden receptacles if so used. All receptacles must, at all times, be so constructed and maintained and so covered as to prevent the entrance of flies therein.

(Code 1977, § 8-13)

Sec. 46-67. Placement.

The occupant of every house and lot within the corporate limits shall, before 7:00 a.m., and in no case prior to 7 p.m. the day before the scheduled pick up, cause all garbage and waste which is to be removed from the premises by the town during the day to be placed in such receptacles as are prescribed in this article and shall have such receptacles placed on the inside line of the sidewalk in front of the premises.

(Code 1977, § 8-4)

Sec. 46-68. Removal from streets.

No refuse receptacle of any kind shall remain upon or along any public street, lane or alley, but all receptacles used for garbage or household waste of any kind shall be taken into the premises promptly as they have been emptied.

(Code 1977, § 8-5)

Cross reference—Streets, sidewalks and other public places, ch. 50.

Sec. 46-69. Commercial garbage.

As used in this section, the term “commercial businesses” shall mean all businesses licensed by the town. Garbage to be removed from commercial businesses will be picked up by the town only when all trash has been placed in proper containers, as described in section 46-62.

(Code 1977, § 8-8; Ord. of 4-7-1980) *Amended (05/07/2018)*

Cross reference—Businesses, ch. 18.

Sec. 46-70. Overturning; molesting or interfering with contents.

No person shall overturn or molest or interfere with the contents of any receptacle set out for removal by the town, except the town employees or any person or his employees who may, by contract with the town, be employed to remove the receptacles unless by permission of the town.

(Code 1977, § 8-12)

Chapters 47—49

RESERVED

Chapter 50

STREETS, SIDEWALKS AND OTHER PUBLIC PLACES*

Article I. In General

Secs. 50-1—50-25. Reserved.

Article II. Streets

Sec. 50-26. Warning lights on obstructions.

Sec. 50-27. Games in streets prohibited.

Secs. 50-28—50-55. Reserved.

Article III. Sidewalks

Sec. 50-56. Duty to keep clean.

Sec. 50-57. Removal of snow.

Sec. 50-58. Obstructions.

Secs. 50-59—50-85. Reserved.

Article IV. Street and Road Names; Street Signs; Building Numbers

Division 1. Generally

Sec. 50-86. Definitions.

Sec. 50-87. Notice of violation.

Sec. 50-88. Penalty for violation.

Secs. 50-89—50-115. Reserved.

Division 2. Street and Road Names

Sec. 50-116. Road name index.

Sec. 50-117. Authority to assign.

Sec. 50-118. Duplicate or similar names.

***Charter references**—Roads, streets, sidewalks, etc., ch. 2, § 1(14) et seq., (21), (46), (55) et seq., (67) et seq.; town plan, ch. 3.

Cross references—Any ordinance naming, renaming, opening, accepting or vacating streets or alleys in the town saved from repeal, § 1-6(a)(9); selling livestock on streets, § 10-57; buildings and building regulations, ch. 14; peddlers, § 18-94; environment, ch. 22; floods, ch. 30; parks and recreation, ch. 42; deposits of solid waste on sidewalks, streets, lanes, alleys- § 46-3; removal of solid waste from streets, § 46-68; washing, polishing, greasing, vehicle on street or sidewalk, § 58-8; riding bicycles on certain designated sidewalks, § 58-17; parades and processions, § 58-136 et seq.; parking on and driving over sidewalks, § 58-167; land subdivision and development, app. A; street, app. A, § 2.156.

State law references—Local streets and alleys, Code of Virginia, § 15.2-2000 et seq.; state highway plat book, Code of Virginia, § 17.1-238; state highway system, Code of Virginia, § 33.1-25 et seq.; local authority over highways, Code of Virginia, § 33.1-224 et seq.; pipelines and other works in streets, alleys, etc., Code of Virginia, § 56-257 et seq.

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- Sec. 50-119. Registration of new name on subdivision plat.
- Sec. 50-120. Registration of existing name on subdivision plat.
- Secs. 50-121—50-145. Reserved.

Division 3. Street Name Signs

- Sec. 50-146. Erection.
- Sec. 50-147. Erection by owner of subdivision or other development.
- Secs. 50-148—50-175. Reserved.

Division 4. Building Numbers

- Sec. 50-176. Uniform numbering system.
- Sec. 50-177. Adjustments and modifications.
- Sec. 50-178. Assignment of number.
- Sec. 50-179. Placement.
- Sec. 50-180. Standards for residences.
- Sec. 50-181. Standards for commercial and industrial structures.
- Sec. 50-182. Standards for apartments and similar complexes.
- Sec. 50-183. Responsibility of property owner.

STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

ARTICLE I. IN GENERAL

Secs. 50-1—50-25. Reserved.

ARTICLE II. STREETS

Sec. 50-26. Warning lights on obstructions.

Any person who shall break or dig up any street, lane or alley or deposit rubbish or other material thereon shall place so many lights as may be necessary to warn passersby of such break or obstruction in the streets, lanes or alleys on each and every night, from sunset until sunrise, so long as such breaks or obstructions shall remain.
(Code 1977, § 14-4)

Sec. 50-27. Games in streets prohibited.

It shall be unlawful for any person to play the games known as football, baseball, or bandy or to use in the streets any skateboard, roller blade, roller skate or nonmotorized scooter, or any instrument known as a slingshot or any other noiseless instruments by which leaden shot or pebbles or any other missiles are projected, and it shall be unlawful to fly kites or throw stones, shells or balls in the streets.
(Code 1977, § 14-5)

Secs. 50-28—50-55. Reserved.

ARTICLE III. SIDEWALKS

Sec. 50-56. Duty to keep clean.

(a) It shall be the duty of the occupant or of the owner of any land or premises abutting upon any paved sidewalk in the town to have the sidewalk abutting such property swept and kept clean of all debris, dirt, refuse, grass, weeds, and other forms of overgrowth, including any limbs or other parts of trees or bushes over the sidewalks less than eight feet above the surface of the sidewalks.

(b) If such person occupying or owning such property shall fail, refuse, or neglect to keep the sidewalk as described in subsection (a) of this section, the town shall have the right to enter upon such sidewalk and have such debris, dirt, refuse, grass, weeds, and other forms of overgrowth, including any limbs or other parts of trees or bushes over such sidewalk less than eight feet above the surface of such sidewalk, removed by its agents and employees. The cost thereof shall be chargeable to and paid by the occupant or the owner of such property

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and shall be collected by the treasurer or such other proper official, as an assessment against the property, in the manner that taxes and levies are collected.

(Code 1977, § 14-1)

State law reference—Abatement or removal of nuisances, Code of Virginia, §§ 15.2-900, 15.2-1115.

Sec. 50-57. Removal of snow.

It shall be the duty of each person using or occupying in any manner any house, shop, store, stable, church or tenement of any kind and of persons having charge of churches and public buildings of any description and of owners of unoccupied houses and unimproved lots situated on any paved street, lane or alley in the town, within three hours after the fall of any snow, except when the snow shall have ceased to fall between the hours of 3:00 p.m. and 7:00 a.m., in which case it shall be removed before 11:00 a.m., to remove and clear away or cause to be removed and cleared away the snow from the footpaths fronting the respective stores, houses, shops, stables or churches, in such manner as not to obstruct the passage of the water in the gutters.

(Code 1977, § 14-2)

State law reference—Removal of snow from sidewalks, Code of Virginia, § 15.2-1115.

Sec. 50-58. Obstructions.

No person shall place goods, wares or merchandise on the sidewalks unless such person is receiving or delivering the goods, wares or merchandise, and in no case shall such goods be allowed to remain on the sidewalks longer than is reasonably necessary for the removal of the goods.

(Code 1977, § 14-6)

Secs. 50-59—50-85. Reserved.

ARTICLE IV. STREET AND ROAD NAMES; STREET SIGNS; BUILDING NUMBERS

DIVISION 1. GENERALLY

Sec. 50-86. 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:

Street and *road* mean the same and include avenues, boulevards, highways, lanes, ways, and similar street types.

(Code 1977, § 17-1; Ord. of 7-1-1991)

Cross reference—Definitions generally, § 1-2.

STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

Sec. 50-87. Notice of violation.

Whenever the town manager or his authorized agent has reason to believe that there has been or there exists a violation of this article, he shall give written notice of such violation to the person failing to comply and order the person to take corrective measures within 30 days from the date of notification. If such person fails to comply with the duly issued order, the town manager or his agent shall initiate necessary actions to terminate the violation through criminal or civil measures.

(Code 1977, § 17-18; Ord. of 7-1-1991)

Sec. 50-88. Penalty for violation.

Any violation of this article shall constitute a class 4 misdemeanor.

(Code 1977, § 17-19; Ord. of 7-1-1991)

Secs. 50-89—50-115. Reserved.

DIVISION 2. STREET AND ROAD NAMES*

Sec. 50-116. Road name index.

The Town of Chincoteague Road Name Index, on file in the office of the town manager, is adopted as the official listing of names for streets and roads in the town, and such streets and roads are assigned the names listed therein.

(Code 1977, § 17-1; Ord. of 7-1-1991)

Sec. 50-117. Authority to assign.

The town manager or his duly authorized agent is authorized to assign names to any public or private road or street in the town which provides access to two or more occupied buildings.

(Code 1977, § 17-2; Ord. of 7-1-1991)

Sec. 50-118. Duplicate or similar names.

The town manager or his duly authorized agent is authorized to negotiate with residents along streets or roads bearing duplicate or confusingly similar names in the town and to change the names of such roads or streets to eliminate such duplications.

(Code 1977, § 17-3; Ord. of 7-1-1991)

Sec. 50-119. Registration of new name on subdivision plat.

No street or road within the town shall be assigned a name on a subdivision plat or

***State law reference**—Localities may name streets, roads and alleys, Code of Virginia, § 15.2-2019.

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otherwise until such name is registered with the town manager or his duly authorized agent, approved, and added to the Town of Chincoteague Road Name Index. The town manager shall have authority to refuse registration of any name already in use, confusingly similar to a name already registered, or deemed confusing for purposes of emergency response. (Code 1977, § 17-4; Ord. of 7-1-1991)

Sec. 50-120. Registration of existing name on subdivision plat.

No street or road name currently shown on a subdivision plat filed with the town or otherwise shall be implemented by a subdivision owner until such name has been registered with the town manager or his duly authorized agent, approved and added to the Town of Chincoteague Road Name Index. However, this section shall not apply to any road or street presently constructed on which street name signs have been placed prior to the effective date of the ordinance from which this section derives. The town manager shall have the right to refuse registration of any name already in use, confusingly similar to a name already registered, or deemed confusing for purposes of emergency response. (Code 1977, § 17-5; Ord. of 7-1-1991)

Secs. 50-121—50-145. Reserved.

DIVISION 3. STREET NAME SIGNS

Sec. 50-146. Erection.

All new street name signs erected within the town shall be in conformance with the specifications of this section, unless a variance is granted by the state department of transportation, or the town council. The minimum height of each sign blank shall be six inches with four-inch series C letters for the street name and two-inch series C letters for the suffix street type abbreviation. The maximum length of each sign blank shall be 54 inches. Where the length of a street name will not fit the specified size sign blank, the lettering may be reduced by one inch and to a series B letter if necessary. The finish of all signs shall be either engineering grade or high intensity reflective sheeting. Signs at intersections of public roads or streets, subdivision streets, and streets which may become eligible for acceptance as state-maintained roads shall be green with white lettering. Signs for private roads or driveways assigned names under this article shall be brown with white letters. Unless otherwise approved by the town manager or his authorized agent, signs at intersections of public and subdivision roads shall be mounted atop 2 3/8-inch galvanized pipes or galvanized U-channel posts with the signs appearing at a height of not less than nine feet above grade. Signs for private roads or driveways may be optionally mounted on the side of a four-inch by four-inch wood post at a height of not less than seven feet above grade. Nothing in this section shall be interpreted to apply to signs posted by the state department of transportation in conformance with its specifications. (Code 1977, § 17-6; Ord. of 7-1-1991)

STREETS, SIDEWALKS AND OTHER PUBLIC PLACES

Sec. 50-147. Erection by owner of subdivision or other development.

The owner of any subdivision or other development shall erect or cause to be erected street name signs in conformance with this article at any and all intersections within such subdivision or development upon the construction of any street on or after the effective date of the ordinance from which this section derives. Where any subdivision owner is currently required to erect street signs but has failed to do so, the future erection of street signs shall be in conformance with this article.

(Code 1977, § 17-8; Ord. of 7-1-1991)

Secs. 50-148—50-175. Reserved.

DIVISION 4. BUILDING NUMBERS*

Sec. 50-176. Uniform numbering system.

All properties or parcels of land within the town shall be identified by reference to a uniform numbering system, as shown on maps filed in the office of the town manager. Such maps and the explanatory matter thereon are adopted and made a part of this division.

(Code 1977, § 17-9; Ord. of 7-1-1991)

Sec. 50-177. Adjustments and modifications.

In applying the guidelines specified in this division, the town manager or his authorized agent shall have the authority to make minor adjustments and modifications to ensure a logical and efficient street address system.

(Code 1977, § 17-16; Ord. of 7-1-1991)

Sec. 50-178. Assignment of number.

A house or building number shall be assigned to each dwelling or other building in the town. The combination of such number and the road or street name shall be the official location address of such dwelling or building. Such location shall serve as the official mailing address for postal patrons receiving home, rural, or contract delivery.

(Code 1977, § 17-10; Ord. of 7-1-1991)

Sec. 50-179. Placement.

When each house or building has been assigned its respective address, the owner, occupant,

***Cross reference**—Buildings and building regulations, ch. 14.

State law reference—Numbers to be displayed on buildings, Code of Virginia, § 15.2-2024.

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or agent shall place or cause to be placed upon each house or building controlled by him the number assigned under the uniform numbering system. Such number shall be placed on existing buildings within 60 days of notification of the assigned address. Such number shall be placed on a new building prior to occupancy. The cost of posting the address shall be the responsibility of the property owner.

(Code 1977, § 17-11; Ord. of 7-1-1991)

Sec. 50-180. Standards for residences.

Street address numbers for residences shall be at least three inches in height and shall be made of a durable and clearly visible material. The number shall be conspicuously placed on, above, or at the side of the main entrance so that the number is discernible from the street. Whenever a residence is more than 100 feet from the street or when the residence is not visible from the street, the number shall be placed along a walk, driveway, or other suitable location so that the address number is discernible from the street. Street addresses shall be of a contrasting color to the background on which they are mounted.

(Code 1977, § 17-12; Ord. of 7-1-1991)

Sec. 50-181. Standards for commercial and industrial structures.

Street address numbers for commercial and industrial structures shall be at least three inches in height if located within 50 feet of the street or at least six inches in height if located greater than 50 feet from the street. The number shall be placed above or on the main entrance to the structure when possible. If such number is not visible from the street, the number shall be placed along a driveway or on a sign visible from the street.

(Code 1977, § 17-13; Ord. of 7-1-1991)

Sec. 50-182. Standards for apartments and similar complexes.

Apartments and similar complexes assigned a single building number shall display the address numbers on each assigned structure using numbers having a minimum height of six inches. Numbers or letters for individual apartments, suites, or units within these complexes shall be displayed on, above, or to the side of the main doorway of each apartment, suite, or unit and shall be at least three inches in height.

(Code 1977, § 17-14; Ord. of 7-1-1991)

Sec. 50-183. Responsibility of property owner.

Whenever any house, building or structure shall be erected or located after the initial establishment of the uniform numbering system as provided in this division, it shall be the duty of the property owner to procure the correct number for the property and to affix the number to the building in accordance with this division. An application for a building permit for a new building shall be considered an application for an address assignment. The building official shall coordinate the application with the designated agent of the town manager responsible for

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the assignment of addresses and shall forward the assigned address to the applicant not later than 60 days following issuance of the permit. The applicant shall be required to furnish such measurements in relation to other properties or intersections as shall be deemed necessary for assignment of a valid address.

(Code 1977, § 17-15; Ord. of 7-1-1991)

Chapters 51—53

RESERVED

Chapter 54

TAXATION*

Article I. In General

Sec. 54-1. Bank franchise tax.
Secs. 54-2—54-30. Reserved.

Article II. Property Taxes

Division 1. Generally

Sec. 54-31. Due date; use of revenue; enforcement.
Sec. 54-32. Penalties, interest, attorneys' fees and administrative fees for delinquent payment.
Secs. 54-33—54-60. Reserved.

Division 2. Real Estate Tax

Subdivision I. In General

Sec. 54-61. Levied.
Secs. 54-62—54-90. Reserved.

Subdivision II. Exemptions for Elderly and Handicapped

Sec. 54-91. Definitions.
Sec. 54-92. Administration.
Sec. 54-93. Eligibility.
Sec. 54-94. Application.
Sec. 54-95. Schedule.
Sec. 54-96. Additional considerations.
Sec. 54-97. Penalty for violation.
Secs. 54-98—54-125. Reserved.

***Charter reference**—Levy and collection of taxes, ch. 2, § 1(1), (59) et seq., (68) et seq.

Cross references—Any ordinance or resolution promising or guaranteeing the payment of money for the town, authorizing the issuance of any bonds of the town, or any evidence of the town's indebtedness, or any contract established or obligation assumed, by the town saved from repeal, § 1-6(a)(2); any annual tax levy saved from repeal, § 1-6(a)(3); administration, ch. 2; finance, § 2-181 et seq.; businesses, ch. 18.

State law references—Municipal taxes and assessments, Code of Virginia, § 15.2-1104; taxation generally, Code of Virginia, § 58.1-1 et seq.; priority of taxes in distribution of assets of person or corporation, Code of Virginia, § 58.1-6 et seq.; Setoff Debt Collection Act, Code of Virginia, § 58.1-520 et seq.; local sales and use taxes, Code of Virginia, § 58.1-605 et seq.; local bank franchise tax, Code of Virginia, § 58.1-1208 et seq.; local taxes generally, Code of Virginia, § 58.1-3000 et seq.; enforcement, collection, refunds, remedies and review of local taxes, Code of Virginia, § 58.1-3900 et seq.

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Subdivision III. Exemption for Certain Rehabilitated Real Estate

- Sec. 54-110. Definitions.
- Sec. 54-111. Exemption declared.
- Sec. 54-112. Schedule.
- Sec. 54-113. Administration.
- Sec. 54-114. Eligibility.
- Sec. 54-115. Penalty.
- Secs. 54-116–125. Reserved.

Division 3. Personal Property Tax

Subdivision I. In General

- Secs. 54-126—54-150. Reserved.

Subdivision II. Motor Vehicles; Mobile Homes, Trailers; Semi-trailers; Boats

- Sec. 54-151. Rate.
- Sec. 54-152. Reserved.
- Sec. 54-153. Procedures.
- Secs. 54-154—54-170. Reserved.

Subdivision III. Personal Property Tax Relief Act of 1998

- Sec. 54-171. Purpose, definitions, relation to other ordinances.
- Sec. 54-172. Method of computing and reflecting tax relief.
- Secs. 54-173—54-180. Reserved.

Article III. Consumer Utility Taxes

Division 1. Telecommunications Service

- Sec. 54-181. Definitions.
- Sec. 54-182. Rate; levy; procedure as to payment.
- Sec. 54-183. Exemptions from division.
- Sec. 54-184. Billing, collection and remittance.
- Sec. 54-185. Records to be kept.
- Sec. 54-186. Penalty for violation.
- Secs. 54-187–54-200. Reserved.

Division 2. Electric Service.

- Sec. 54-201. Definitions.
- Sec. 54-202. Rate, levy, procedure as to payment.
- Sec. 54-203. Exemptions.
- Sec. 54-204. Billing, collection and remittance.
- Sec. 54-205. Computation of bills not on monthly basis.
- Sec. 54-206. Records to be kept.
- Sec. 54-207. Penalty for violation.

TAXATION

Secs. 54-208–54-250. Reserved.

Division 3. Repealed 11/14/2013

Article IV. Excise Tax (Transient Occupancy)

Sec. 54-251. Definitions.
Sec. 54-252. Levied and rate.
Sec. 54-253. Exceptions.
Sec. 54-254. Enforcement.
Sec. 54-255. Penalty for violation.
Sec. 54-256. Collection procedure.
Sec. 54-257. Reports and remittance.
Sec. 54-258. Interest and penalties.
Sec. 54-259. Failure or refusal to collect and report.
Sec. 54-260. Records required.
Sec. 54-261. Duty upon cessation of business.
Sec. 54-262. Allocation of funds.
Sec. 54-263. Responsibility for tax funds dedication.
Sec. 54-264. County tax permitted.
Secs. 54-265–54-290. Reserved.

Article V. Excise Tax (Meals)

Sec. 54-291. Definitions.
Sec. 54-292. Regulations for administration and enforcement.
Sec. 54-293. Enforcement.
Sec. 54-294. Penalty for violation.
Sec. 54-295. Levied and rate.
Sec. 54-296. Exemptions.
Sec. 54-297. Payment and collection.
Sec. 54-298. Collections in trust for town.
Sec. 54-299. Reports and remittances.
Sec. 54-300. Penalty and interest.
Sec. 54-301. Procedure when tax not reported or collected.
Sec. 54-302. Preservation of records.
Sec. 54-303. Duty upon cessation of business.
Sec. 54-304. Advertising payment or absorption of tax prohibited.
Sec. 54-305. Tips and service charges.
Sec. 54-306. Disposition of revenue.
Secs. 54-307–54-350. Reserved.

Article VI. Motor Vehicle License Tax

Sec. 54-351. Tax levied.
Sec. 54-352. License year.

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- Sec. 54-353. Payment of vehicle personal property taxes prerequisite to licensing.
- Sec. 54-354. Exemptions.

TAXATION
ARTICLE I. IN GENERAL

Sec. 54-1. Bank franchise tax.

A franchise tax of \$0.80 shall be levied on each \$100.00 of net capital of each and every bank, as defined in Code of Virginia, § 58.1-1201, located in the town, in accordance with Code of Virginia, tit. 58.1.
(Code 1977, § 6-6; Ord. of 9-2-1997)

Secs. 54-2—54-30. Reserved.

ARTICLE II. PROPERTY TAXES

DIVISION 1. GENERALLY

Sec. 54-31. Due date; use of revenue; enforcement.

(a) Real and personal property taxes levied under this article shall be due and payable on or before December 5 of the year for which the taxes are imposed, unless otherwise expressly provided.

(b) Revenue derived from the real estate and personal property taxes levied under this article and all penalties and interest collected pursuant to section 54-32 shall be used for general purposes and credited to the town's general revenue fund.

(c) Enforcement, collection, refunds, remedies and review of the town taxes, penalties and interest imposed by this article shall be in accordance generally with Code of Virginia, § 58.1-3900 et seq.
(Code 1977, § 6-3; Ord. of 6-18-1998)

Sec. 54-32. Penalties, interest, attorneys' fees and administrative fees for delinquent payment.

(a) If any tax due under this article is not paid on or before the due date specified in section 54-31, there shall be added to the tax an assessed penalty for the delinquent payment of taxes equal to the greater of \$10.00 or ten percent of the amount of delinquent tax, subject to the exceptions set forth in Code of Virginia, § 58.1-3916. Any such penalty when so assessed shall become a part of the tax.

(b) If any portion of a tax or penalty imposed under this article is not paid on or before the due date, there shall be added to the tax and/or penalty remaining due interest at the rate of ten percent per annum, with daily accruals, such interest commencing on the first day following the due date of such taxes and/or penalty and continuing until the taxes and/or penalties are paid.

(c) If any town taxes, penalties and/or interest imposed under this article are not paid when due and such delinquent account is turned over to an attorney or private collection agency for collection, there shall be added to the town taxes, penalties and interest due an attorney's or collection agency fee in the amount of 20 percent of the amount of taxes, penalties and interest otherwise due.

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(d) There is imposed on delinquent taxpayers an administrative cost fee, which shall be in addition to all penalties, interest, attorney's fees and collection agency's fees, in the amount of \$20.00 for taxes collected subsequent to the filing of a warrant or other appropriate legal document but prior to judgment and in the amount of \$25.00 for taxes collected subsequent to judgment.

(e) This section shall be effective for any taxes and/or penalties remaining due as of June 18, 1998 and for any taxes and/or penalties thereafter becoming due under this article.
(Code 1977, § 6-4; Ord. of 6-18-1998)

Secs. 54-33—54-60. Reserved.

DIVISION 2. REAL ESTATE TAX

Subdivision I. In General

Sec. 54-61. Levied.

There is levied an annual tax on real property within the corporate limits at the rate established by council annually as a part of the adopted fiscal year budget for the town, which tax shall be administered as provided generally in Code of Virginia, § 58.1-3200 et seq.
(Amended 06-02-03, 08/01/16)

Secs. 54-62—54-90. Reserved.

*Subdivision II. Exemptions for Elderly and Handicapped**

Sec. 54-91. Definitions.

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

Commissioner of the revenue means the commissioner of the revenue of the county or any of his duly authorized deputies or agents.

Dwelling means the full-time residence of the person claiming exemption.

Exemption means exemption from the town real estate tax according to this subdivision.

Net combined financial worth means all assets of the owners of the dwelling who reside therein and of the spouses of any such owners, including equitable interest, excluding the

***State law reference**—Exemptions for elderly and handicapped, Code of Virginia, § 58.1-3210 et seq.

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value of the dwelling and the land in an amount not to exceed one acre upon which it is situated. For determination of value of real estate properties, the fair market value shall be used.

Permanently and totally disabled means unable to engage in any substantial gainful activity because of any medically determinable physical or mental impairment or deformity which can be expected to result in death or can be expected to last for the duration of such person's life.

Property means real property.

Taxable year means the calendar year, from January 1 through December 31, inclusive, for which exemption is claimed.

Total combined income means total income from all sources of the owners of the dwelling who use it as their principal residence and of any relatives of the owners who reside in the dwelling.

Town manager means the town or any of his duly authorized deputies or agents.
(Code 1977, § 6-52)

Cross reference—Definitions generally, § 1-2.

Sec. 54-92. Administration.

The exemption granted under this subdivision shall be administered by the town manager. The town manager is authorized and empowered to prescribe, adopt and enforce rules and regulations, including the requirement of answers under oath, as may be reasonably necessary to determine qualifications for exemption. The town manager may require production of certified tax returns and appraisal reports to establish income or financial worth.

(Code 1977, § 6-53)

Cross reference—Administration, ch. 2.

Sec. 54-93. Eligibility.

Under this subdivision, the exemption shall be granted to persons subject to the following:

- (1) The title to the property for which exemption is claimed is held or partially held, on December 31, immediately preceding the taxable year by the person claiming exemption. If the ownership of the property for which application for exemption is made is not held solely by the applicant or jointly with the applicant's spouse, the amount of the tax exemption shall be in proportion to the applicant's ownership interest in the subject real property, as that ownership may appear.
- (2) The head of the household occupying the dwelling and owning title or partial title thereto is 65 years or older on December 31 of the year immediately preceding the taxable year, or such person is permanently and totally disabled as defined in this subdivision and was so on December 31 of the year immediately preceding the

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taxable year. Such dwelling must be occupied as the sole dwelling of the person claiming exemption.

- (3) The total combined income of the owners during the year immediately preceding the taxable year shall be determined by the town manager to be an amount not to exceed \$17,500.00. Total combined income shall include from all sources of the owners, spouses, and of the owner's relatives living in the dwelling for which exemption is claimed; provided, however, that the first \$6,500.00 of annual income of the owner's relatives living in the dwelling other than the spouse's shall be excluded in computing total combined income.
- (4) The net combined financial worth as of December 31 of the year immediately preceding the taxable year of the owners and of the spouse of any owner shall be determined by the town manager to be an amount not to exceed \$50,000.00. Net combined financial worth shall include the value of all assets, including equitable interests of the owners and the spouse of any owner, excluding the fair market value of the dwelling and the land, not exceeding one acre, upon which it is situated and for which exemption is claimed.
- (5) The person claiming exemption files annually with the commissioner of the revenue an affidavit as required and shall present to the town manager certification of such affidavit as provided in this subdivision.
- (6) In making the determinations provided for in this section, the town manager may rely on such determinations as may be made by the commissioner of the revenue for exemptions from county taxes.

(Code 1977, § 6-54; Ord. of 3-15-1993 (3), (4)) (*Amended 07/07/03*)

Sec. 54-94. Application.

(a) Annually after January 1 and before April 1 of the taxable year, the person claiming an exemption pursuant to this subdivision shall file with the commissioner of the revenue, on forms supplied by the commissioner of the revenue, an affidavit setting forth the location and assessed value of the property, the names of all the related persons occupying such real estate, the total combined income of the persons as specified in section 54-93(3), and the net combined financial worth of the persons as specified in section 54-93(4). If such person is under 65 years of age, such form shall have attached thereto a certification by the Social Security Administration, the Department of Veterans' Affairs or the railroad retirement board or, if such person is not eligible for certification by any of these agencies, a sworn affidavit by two medical doctors who are either licensed to practice medicine in the commonwealth or are military officers on active duty who practice medicine with the United States armed forces, to the effect that the person is permanently and totally disabled, as defined in Code of Virginia, § 58.1-3217; however, a certification pursuant to 42 USC 423(d) by the Social Security Administration so long as the person remains eligible for such social security benefits shall be deemed to satisfy such definition in Code of Virginia, § 58.1-3217. The affidavit of at least one of the doctors shall be based upon a physical examination of the person by such doctor. The affidavit of one of the doctors may be based upon medical information contained in the records of the civil service commission which is relevant to the standards for determining permanent and total disability as defined in Code

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of Virginia, § 58.1-3217. The commissioner of the revenue shall also make such further inquiry of persons seeking an exemption requiring answers under oath, as may be reasonably necessary to determine qualifications therefor, including qualifications as permanently and totally disabled. The commissioner of the revenue is authorized to require the production of certified tax returns to establish the income or financial worth of any applicant for the exemption.

(b) If, after audit and investigation, the commissioner of the revenue determines that the person is qualified for exemption, he may so certify by letter to the applicant applying for exemption, and the applicant shall present a copy of such certifying letter to the town manager. The town manager may deduct the amount of the exemption from the claimant's real estate tax liability for the taxable year in question or may conduct such further investigation as he may deem necessary as stated in section 54-92.
(Code 1977, § 6-55) (*Amended 07/07/03*)

Sec. 54-95. Schedule.

Where the person claiming exemption pursuant to this subdivision conforms to the standards and does not exceed the limitation contained in this subdivision, the real estate tax exemption shall be as shown on the following schedule:

<i>Total Combined Income from All Sources</i>	<i>Tax Exemptions</i>
\$12,501.00 to \$17,500.00	50%
\$0.00 to \$12,500.00	100%

Sec. 54-96. Additional considerations.

(a) The fact that persons who are otherwise qualified for tax exemption pursuant to this subdivision are residing in hospitals, nursing homes, convalescent homes or other facilities for physical or mental care for extended periods of time shall not be construed to mean that the real estate for which exemption is sought does not continue to be the sole dwelling of such persons during such extended periods of other residence so long as such real estate is not used by or leased to others for consideration.

(b) Changes in respect to income, financial worth, ownership of property or other factors occurring during the taxable year for which the affidavit is filed and having the effect of exceeding or violating the limitations and conditions provided in this subdivision shall nullify any exemption for the remainder of the current taxable year and the taxable year immediately following.

(c) For purposes of this subdivision, a mobile home shall be real estate if the owner's intention that it be permanently affixed is shown by the facts that it is anchored, skirted and connected to permanently installed water and sewer lines or facilities. It can be located on land belonging to persons described in section 54-93 or on rented land.
(Code 1977, § 6-57)

Sec. 54-97. Penalty for violation.

Any person falsely claiming an exemption or knowingly and intentionally furnishing

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false information under this subdivision or otherwise violating this subdivision shall be guilty of a misdemeanor and, upon conviction, may be punished by a fine not exceeding \$1000.00 or by confinement in jail not exceeding 12 months or both.

(Code 1977, § 6-58) (*Amended 07/07/03*)

Secs. 54-98—54-109. Reserved.

Subdivision III. Partial Exemption for Certain Rehabilitated, Renovated, or Replaced Structures or Improvements on Real Estate

Sec. 54-110. Definitions.

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

Amount of Exemption means the amount equal to the increase in assessed value resulting from the rehabilitation, renovation, or replacement of qualified real estate as described hereunder as determined by the town assessment officer on January 1 of the year following the completion of the rehabilitation, renovation, or replacement of any structure or improvement on such real estate. An increase in the assessment occurring after the first year subsequent to such rehabilitation, renovation, or replacement, shall not result in an increase in such partial exemption or otherwise affect same.

Partial Exemption means exemption from a portion of the town real estate tax assessment and resulting tax that would otherwise be due by reason of said real estate being otherwise fully assessed and billed for real estate taxation purposes.

Qualifying Real Estate means:

1. Any real estate used for residential purposes located within a qualifying zone or district on which any structure or other improvements, at least fifteen (15) years of age, has undergone substantial rehabilitation, renovation or replacement, and which results in an increase in the assessed value of said real estate as a result of such rehabilitation, renovation, or replacement, such replaced structure or improvement shall not exceed the total square footage of the replaced structure or improvement by more than thirty percent (30%) in order to qualify hereunder. Expressly provided that when rehabilitation is achieved through demolition and replacement of an existing structure, the exemption shall not apply when the structure demolished is a registered Virginia landmark or is determined by the Department of Historic Resources to contribute to the significance of a registered historic district.
2. Any real estate used for commercial or industrial purposes located within a Qualifying Zone or District on which any structure or other improvements, at least twenty (20) years of age, has undergone substantial rehabilitation, renovation or replacement, and which results in an increase in the assessed value of said real

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estate as a result of such rehabilitation renovation or replacement of at least thirty percent (30%). When such rehabilitation is by replacement, such replaced structure or improvements shall not exceed the total square footage of the replaced structure or improvement by more than one hundred percent (100%) in order to qualify hereunder Expressly provided that when rehabilitation, renovation or replacement is achieved through demolition and replacement of an existing structure, the exemption shall not apply when the structure demolished is a registered Virginia landmark or is determined by the Department of Historic Resources to contribute to the significance of a registered historic district.

Qualifying Zone or District means real estate located within the boundaries of the CDBG Downtown Revitalization Project as delineated in the Downtown Revitalization Plan dated March 2001, on file in the town offices.

Taxable Year means the calendar year from January 1 through December 31, inclusive, for which exemption is claimed.

Sec. 54-111. Partial exemption declared.

There is hereby declared a partial exemption for town real estate taxation purposes for qualifying real estate as delineated herein, in accordance with the schedule provided for under §54-112, effective for taxable years beginning 2002 and completed pursuant to a building permit issued subsequent to the effective date hereof.

Sec. 54-112. Schedule of partial exemption.

Any such real estate taxpayer rehabilitating, renovating, or replacing any structure or other improvements on qualified real estate within any qualifying zone or district as herein above provided shall be entitled to apply for and claim the amount of partial exemption in accordance with the following schedule:

1. One hundred percent (100%) of the increase in assessed value for the first taxable year following the completion of such rehabilitation, renovation, or replacement.
2. Eighty percent (80%) of the increase in assessed value for the second taxable year following the completion of such rehabilitation, renovation, or replacement.
3. Sixty percent (60%) of the increase in assessed value for the third taxable year following the completion of such rehabilitation, renovation, or replacement.
4. Forty percent (40%) of the of the increase in assessed value for the fourth taxable year following the completion of such rehabilitation, renovation, or replacement
5. Twenty percent (20%) of the increase in assessed value for the fifth taxable year following the completion of such rehabilitation, renovation, or replacement.

The increase in assessed value as a result of the rehabilitation, renovation or replacement of any such structure or improvement shall not cause the assessed value of such real estate

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to be reduced on the real estate tax records of the town.

Sec. 54-113. Other requirements.

No such real estate taxpayer shall be entitled to apply for and claim such partial exemption unless such real estate taxpayer materially complies with the following additional requirements:

1. Obtain a building permit from the town prior to the initiation of the permitted work.
2. File the application for partial exemption on a form prescribed by the town manager prior to January 1 of the first taxable year subsequent to the completion of the work, and for which the partial exemption is to be claimed.
3. Submit an application fee in the amount of fifty dollars (\$50.00) with said application. Any application for which the processing fee of fifty dollars (\$50.00) is not paid prior to January 1 of the first taxable year subsequent to such rehabilitation, renovation or replacement, shall be deemed to not be timely filed.

Sec. 54-114. Administration.

The partial exemption granted under this subdivision shall be administered by the town manager who is deemed the assessing officer for purposes of this subdivision. The town manager is authorized and empowered to prescribe, adopt and enforce rules and regulations, including the requirement of answers under oath, as may be reasonably necessary to determine qualifications for exemption. The town manager may require production of assessments or other documents to establish the increase in assessed value due to the approved rehabilitation. No partial exemption shall be approved until such time as the assessing officer has verified that the rehabilitation, renovation or replacement indicated on the application has been completed. The billing to the taxpayer shall contain sufficient information to show the partial exemption and the computation of the adjusted tax bill.

Sec. 54-115. Penalty.

Failure to remit the required tax payment to the Town for such qualified real estate by the due date of the applicable taxable year shall void partial exemption for such taxable year and all tax years remaining under the Schedule for such claimed rehabilitation, renovation, or replacement.

Sec. 54-116. Conflict with state law.

In the event of any conflict between the provisions hereof and §58.1-3220 and §58.1-3221 relative to the interpretation and application hereof, state law shall supersede and govern.
(Ord. of 4-18-2002)

Secs. 54-117–125. Reserved.

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DIVISION 3. PERSONAL PROPERTY TAX*

Subdivision I. In General

Secs. 54-126—54-150. Reserved

Subdivision II. Motor Vehicles; Mobile Homes; Trailers; Semi-trailers; Boats†

Sec. 54-151. Rate.

(a) There is levied an annual tax on motor vehicles, trailers, semi-trailers, and boats, including boats weighing over five tons or more, with situs, as defined in Code of Virginia, § 58.1-3511, within the corporate limits at the rate established annually as a part of the adopted budget for the town, which tax shall be administered as provided generally in Code of Virginia, § 58.1-3500 et seq.

(Code 1977, § 6-2(a)) (*Amended 12/05/05*)

(b) There is hereby levied an annual tax on mobile homes within the cooperative limits at the rate established annually as a part of the adopted budget for the town, which tax shall be administered as provided in Code of Virginia, § 58.1-3500 et seq.

(*Amended 12/05/06*)

Sec. 54-152. Reserved.

Sec. 54-153. Procedures.

(a) *Definitions.* All words and terms used in this section shall, for purposes of this section, have the same meaning as set forth in Code of Virginia, § 58.1-3516, except when the context clearly indicates a different meaning.

(b) *Proration of tax.* Pursuant to Code of Virginia, § 58.1-3516, there shall be a personal property tax at a rate established each year by the town council on automobiles which have a situs within the town on January 1 of each year and additionally on automobiles (referred to as "prorated property"), which acquires a situs within the town on or after January 2 of each year. When prorated property acquires a situs within the town on or after January 2, the personal property tax for the year shall be assessed to the owner prorated on a monthly basis for the portion of the tax year during which the prorated property has a situs within the town. For purposes of proration, a period of more than one-half of a month shall be counted as a full month, and a period of less than one-half of a month shall not be counted. The owner of any property constituting prorated property acquiring a situs within the town or to which prorated property is transferred shall file a declaration of property ownership with the county commissioner of the revenue within 30 days of the date on which the property acquired a situs within the town or has its title transferred to the new owner.

***State law references**—General classification of tangible personal property, Code of Virginia, § 58.1-3503; other classifications of tangible personal property for taxation, Code of Virginia, § 58.1-3506.

†**Cross reference**—Traffic and vehicles, ch. 58.

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(c) *Transfer of property.* Any taxpayer shall be relieved from personal property tax and amount of any tax paid on any such defined tangible personal property, which shall be prorated on a monthly basis as provided in subsection (b) of this section, when such tangible personal property loses its situs within the town after the tax day or after the day on which it acquires situs as provided in this section. However, no such relief shall be had nor refund shall be made if the defined tangible personal property acquires a situs within the commonwealth in a nonprorating town. When any person sells or otherwise transfers title to any such defined tangible personal property with a situs in the town after the tax day or situs day, the tax shall be relieved, prorated on a monthly basis, and the appropriate amount of tax paid, if any, shall be refunded or credited, at the option of the taxpayer, against the tax due on any such personal property owned by the taxpayer during the same tax year and taxed, provided that the taxpayer makes application to the town and provided that such application is made within three years of the last day of the tax year in which the property lost its situs or was transferred. Any refunds by the town shall be made within 30 days of the date such tax is relieved. No refund of less than \$5.00 shall be issued to a taxpayer unless specifically requested by the taxpayer.

(d) *Relocation of taxpayer from nonprorating locality to town during tax year:* Any person who moves from a nonprorating locality in a single tax year shall be entitled to a property tax credit in the town as to any such item of defined tangible personal property if the person was liable for personal property taxes on a motor vehicle and has paid those taxes to the nonprorating jurisdiction. Further, as to any replacement vehicle acquired by any taxpayer who has moved, the taxpayer shall be entitled to a credit against the tax due on any such replacement vehicle to the town in an amount equal to the tax paid to the nonprorating locality on the original motor vehicle replaced for the period of time commencing with the disposition of the original vehicle and continuing through the close of tax year in which the taxpayer incurred tax liability to the nonprorating locality for the original vehicle.

(e) *Exemption of certain taxed personal property.* No tax shall be imposed on and any such defined tangible personal property shall be exempt for any tax year or portion thereof during which the property was legally assessed by another jurisdiction in the commonwealth and the tax was paid.

(f) *Billing of prorated property taxes.* Notwithstanding any other day provided by law for the billing and payment of local personal property tax, the town may bill all personal property taxes on prorated defined tangible personal property assessed for a portion of the tax year on or after December 15 of any such year, which tax shall be due and payable in not less than 30 days after the date of the tax bill.

(g) *Conflicting provisions.* If any conflict occurs between any subsection of this section and Code of Virginia, § 58.1-3516, the provisions of Code of Virginia, § 58.1-3516 shall be deemed to supersede such inconsistent provision.
(Code 1977, § 6-2; Ord. of 1-3-2000)

Secs. 54-154—54-170. Reserved.

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Subdivision III. Personal Property Tax Relief Act of 1998

Sec. 54-171. Purpose, definitions, relation to other ordinances.

(a) The purpose of this subsection is to provide for the implementation of the changes to the Personal Property Act of 1998 affected by legislation adopted during the 20-04 Special Session I and the 2005 Regular Session of the General Assembly of Virginia.

(b) Terms used in this subsection that have defined meanings set forth in the Personal Property Relief Tax Act of 1998 shall have the same meanings as set forth in Code of Virginia, § 58.1-3523.

(c) To the extent that the provision of this subsection conflicts with any prior ordinance or provision to the town code, this subsection shall control.

(Adopted 12/05/05)

Sec. 54-172. Method of computing and reflecting tax relief.

(a) For tax years commencing in 2006, the town adopts the provisions of item 503E of the 2005 Appropriations Act, providing for the computation of tax relief as a specific dollar amount to be offset against the total taxes that would otherwise be due but for the Personal Property Tax Relief Act of 1998 and the reporting of such specific dollar relief in the tax bill.

(b) The council shall, by resolution set the percentage of tax relief at such a level that it is anticipated fully to exhaust Personal Property Tax Relief Act of 1998 funds provided to the town by the Commonwealth.

(c) Each Personal property tax bill shall set forth on their face the specific dollar amount of relief credited with respect to each qualifying vehicle together with an explanation of the general manner in which relief is allocated.

(Adopted 12/05/05)

Sec. 54-173. Allocation of relief among taxpayers.

(a) Allocation of relief shall be provided in accordance with the general provisions of this subsection, as implemented by the specific provision of the town's annual budget relating to relief.

(b) Relief shall be allocated in such a manner as to eliminate personal property taxation on each qualifying vehicle with an assessed value of \$1,000 or less.

(c) Relief with respect to qualifying vehicles with assessed values of more than \$1,000 shall be provided at a percentage annually fixed and applied to the first \$20,000 in value of each such qualifying vehicle, that is estimated fully to all available state relief. The percentage shall be established annually as a part of the adopted budget for the town.

(Adopted 12/05/05)

Secs. 54-174—54-180. Reserved.

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ARTICLE III. CONSUMER UTILITY TAXES*

DIVISION 1. TELECOMMUNICATIONS SERVICE

Sec. 54-181. 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:

Consumer means every person who, individually or through agents, employees, officers, representatives or permittees, makes a purchase of electricity in the town.

Non-residential consumer means the owner or tenant of property used primarily for commercial or industrial purposes.

Person Individuals, firms, partnerships, associations, corporations and combinations of individuals of whatever form and character.

Residential consumer means the owner or tenant of property used primarily for residential purposes, including but no limited to, apartment house and other multiple-family dwellings.

Service provider means a person who delivers local exchange telephone service to a consumer.

Used primarily relates to the larger portion of the use for which telephone service is furnished.

(Code 1977, § 6-8; Ord. of 10-19-2000)

Cross reference—Definitions generally, § 1-2.

Sec. 54-182. Rate; levy; procedure as to payment.

There is hereby imposed and levied by the town upon each and every consumer of telephone service and mobile local telecommunications service, a tax for general purposes in the following amounts:

(a) On residential consumers of telephone service for residential purposes, the tax shall be in the amount of ten percent of the charge billed, exclusive of any federal or state tax thereon, made by the service provider against the residential consumer with respect to such residential telephone service; provided, however, that in any case a monthly bill submitted by the service provider for telephone service for residential purposes shall exceed fifteen dollars, the tax computed on so much of such bill as shall exceed fifteen dollars shall be two percent.

(b) On non-residential consumers of telephone service for commercial or industrial purposes, the tax shall be in the amount of ten percent of the charge billed, exclusive of any federal or state tax thereon, made by the service provider against the non-residential

***Cross reference**—Utilities, ch. 62.

State law reference—Consumer utility taxes, Code of Virginia, § 58.1-3812 et seq.

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consumer with respect to such commercial or industrial telephone service, provided, however, that in any case any monthly bill submitted by the service provider for telephone service for commercial or industrial purposes shall exceed one hundred dollars. The tax computed on so much of such bill as shall exceed one hundred dollars shall be two percent

(c) On consumers of mobile local telecommunications service, the tax shall be in the amount of ten percent of the monthly gross charge and shall not be applicable to any amount so charged in excess of thirty dollars per month for each mobile service customer, exclusive of any federal or state tax thereon.

(Code 1977, § 6-9; Ord. of 10-19-2000)

Sec. 54-183. Exemptions from division.

The following consumers of telephone and mobile local telecommunications service shall be exempt for the tax imposed above.

(a) Any public safety agency as defined in Virginia Code §58.1-3813.

(b) Any church or religious body entitled to exemption pursuant to Article 4 of Chapter 36 of Tit. 58.1-3650 et seq.

(c) The United States of America, the Commonwealth and the political subdivisions thereof, including this jurisdiction.

(Code 1977, §§ 6-9-1; Ord. of 10-19-2000)

Sec. 54-184. Billing, collection and remittance.

The service provider shall collect the tax from the consumer by adding the tax to the monthly gross charge for such services. The tax shall, when collected, be stated as a distinct item separate and apart from the monthly gross charge. Until the consumer pays the tax to the service provider, the tax shall constitute a debt of the consumer to the town. If any consumer refuses to pay the tax, the service provider shall notify the town. After the consumer pays the tax to the service provider, the taxes collected shall be deemed to be held in trust by the service provider until remitted to the town. The service provider shall remit monthly to the town the amount of tax billed during the preceding month to consumers with a service address in the town.

(Code 1977, §§ 6-9-2; Ord. of 10-19-2000)

Sec. 54-185. Records to be kept.

Each service provider shall keep complete records showing all purchasers in the town, which records shall show the price charged against each purchaser with respect to each purchase, the date thereof and the date of payment thereof, and the amount of tax imposed hereunder and such records shall be kept open for inspection by the duly authorized agents of the town during regular business hours on business days, and the duly authorized agents of the town shall have the right, power and authority to make such transcripts thereof during such times as they may desire.

(Code 1977, § 6-13)

Sec. 54-186. Penalty for violation.

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Any violation hereof by the service provider shall constitute a misdemeanor and be punishable as provided for in Sec. 1-9 (b) of this code.

Secs. 54-187–54-200. Reserved.

DIVISION 2. ELECTRIC SERVICE.

Sec. 54-201. Definitions.

The following words and terms, when used in this article in relation to utility taxes, shall, for the purpose of this article, have the following respective meanings except where the context clearly indicates a different meaning:

Consumer means every person who, individually or through agents, employees, officers, representatives or permittees, makes a purchase of electricity in the town.

Kilowatt hours (kWh) delivered means 1000 watts of electricity delivered in a one-hour period by an electric provider to an actual consumer, except that in the case of eligible customer-generators (sometimes called cogenerators) as defined in Virginia Code §56-594, it means kWh supplied from the electric grid to such customer-generators, minus the kWh generated and fed back to the electric grid by such customer-generators.

Non-residential consumer means the owner or tenant of property used primarily for commercial or industrial purposes.

Person Individuals, firms, partnerships, associations, corporations and combinations of individuals of whatever form and character.

Residential consumer means the owner or tenant of property used primarily for residential purposes, including but not limited to, apartment house and other multiple-family dwellings.

Service provider means a person who delivers electricity to a consumer.

Used primarily relates to the larger portion of the use for which electric service is furnished.

Sec. 54-202. Rate, levy, procedure as to payment.

In accordance with Virginia Code §58.1-3814, effective January 1, 2001, there is hereby imposed and levied a monthly tax on each purchase of electricity delivered to consumers by a service provider, classified as determined by such provider, as follows:

(a) *Residential consumers:* such tax shall be \$1.50 for 0 to 5 kWh plus the rate of \$0.0015 on each kWh thereafter delivered monthly to residential consumers by a service provider

(b) *Non-residential consumers:* such tax on non-residential consumers shall be at the rates per month for the classes of non-residential consumers as set forth below:

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- (1) *Commercial and Industrial consumers* – such tax shall be \$3.50 for 0 to 5 kWh plus the rate of \$0.0015 on each kWh thereafter delivered monthly to commercial consumers.

(c) The conversion of tax pursuant to this ordinance to monthly kWh delivered shall not be effective before the first meter reading after December 31, 2000, prior to which time the tax previously imposed by this jurisdiction shall be in effect.
(Code 1977, § 6-10; Ord. of 10-19-2000)

Sec. 54-203. Exemptions.

The following consumers of electricity are exempt from the tax imposed by this section.

- (a) Any public safety agency as defined in Virginia Code §58.1-3813.
- (b) Any church or religious body entitled to exemption pursuant to Article 4 of Chapter 36 of Tit. 58.1 of the Code of Virginia (§58.1-3650 et seq.).
- (c) The United States of America, the Commonwealth and the political subdivisions thereof, including this jurisdiction.
(Code 1977, §§ 6-10-1; Ord. of 10-19-2000)

Sec. 54-204. Billing, collection and remittance.

The service provider shall bill the electricity consumer tax to all users who are subject to the tax and to whom it delivers electricity and shall remit the same to this jurisdiction in accordance with Virginia Code §58.1-3814, paragraph F. and G., and Virginia Code §58.1-2901. If any consumer receives and pays for electricity but refuses to pay the tax imposed by this section, the service provider shall notify the town of the name and address of such consumer. If any consumer fails to pay a bill issued by a service provider, including the tax imposed by this section, the service provider must follow its normal collection procedures and upon collection of the bill or any part thereof must apportion the net amount collected between the charge for electric service and the tax and remit the tax portion to this jurisdiction.

Any tax paid by the consumer to the service provider shall be deemed to be held in trust by such provider until remitted to this jurisdiction.
(Code 1977, §§ 6-10-2; Ord. of 10-19-2000)

Sec. 54-205. Computation of bills not on a monthly basis.

Bills shall be considered as monthly bills for the purpose of this ordinance if submitted 12 times per year of approximately one month each. Accordingly, the tax for a bi-monthly bill (approximately 60 days) shall be determined as follows:

- (a) the kWh will be divided by 2;
- (b) a monthly tax will be calculated using the rates set forth above;
- (c) the tax determined by (b) shall be multiplied by 2;
- (d) the tax in (c) may not exceed twice the monthly "maximum tax".

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(Code 1977, §§ 6-10-3; Ord. of 10-19-2000)

Sec. 54-206. Records to be kept.

Each service provider shall keep complete records showing all purchasers in the town, which records shall show the price charged against each purchaser with respect to each purchase, the date thereof and the date of payment thereof, and the amount of tax imposed hereunder and such records shall be kept open for inspection by the duly authorized agents of the town during regular business hours on business days, and the duly authorized agents of the town shall have the right, power and authority to make such transcripts thereof during such times as they may desire.

Sec. 54-207. Penalty for violation.

Any violation hereof by the service provider shall constitute a misdemeanor and be punishable as provided for in Sec. 1-8 (b) of this code.

Secs. 54-208—54-250. Reserved.

DIVISION 3. Repealed 11/14/2013

ARTICLE IV. EXCISE TAX (TRANSIENT OCCUPANCY)*

Sec. 54-251. 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:

Hotel includes but is not limited to any public or private hotel, inn, apartment, hotel, hostelry, tourist home or house, motel, rooming house or other lodging place within the town offering lodging to any transient, as defined in this section, for compensation.

Lodging includes but is not limited to any space or room furnished any transient.

Person includes but is not limited to any individual, firm, partnership, association, corporation, or any group of individuals acting as a unit, or any corporate or partnership officer or employee who is under a duty on behalf of such entity to collect, report, and/or remit under this article.

Room rental means the total charge, exclusive of any tax imposed on such charge, made by any hotel for lodging furnished any transient. If the charge made by any hotel to a transient includes any charge for services or accommodations in addition to that of lodging and/or use of space, such portion of the total charge as represents only lodging and/or space rental shall be distinctly set out and billed to such transient by such hotel as a separate item.

*State law reference—Tax on transient room rentals, Code of Virginia, § 58.1-3840.

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Transient means the same individual or same group of individuals who, for a period of not more than 29 consecutive days, either at his own expense or at the expense of another, obtains lodging or use of space in any hotel or travel campground, as defined in this section, for which lodging or use of space a charge is made.

Town manager means the town manager or the executive empowered to collect taxes.

Travel campground means any area, site, lot, field or tract of land offering spaces for recreational vehicles or campsites for transient dwelling purposes or temporary dwelling during travel, recreational or vacation uses.

(Code 1977, § 6-19; Ord. of 7-1-1996)

Cross reference—Definitions generally, § 1-2.

Sec. 54-252. Levied and rate.

There is levied and imposed, in addition to all other taxes and fees of every kind imposed by law, on each and every transient a tax at a rate established by council set each year at the time of establishing the annual budget on the total amount paid for room rental by or for any such transient to any hotel or travel campground.

(Code 1977, § 6-20) (*Amended 6-4-07*)

Sec. 54-253. Exceptions.

(a) No tax shall be payable under this article on room rental paid to any hospital, medical clinic, convalescent home or home for the aged.

(b) No tax shall be payable under this article as to any lodging or room rental which is exempt from taxation under the Virginia Retail Sales and Use Tax Act (Code of Virginia, § 58.1-600 et seq.).

(Code 1977, § 6-21; Ord. of 7-1-1996)

Sec. 54-254. Enforcement.

This article, in addition to enforcement as otherwise permitted by law, may also be enforced by way of injunctive relief to enjoin a violation by the circuit court of county or any other court of competent jurisdiction on complaint by the town acting by and through the town manager.

(Code 1977, § 6-34; Ord. of 7-1-1996)

Sec. 54-255. Penalty for violation.

Any corporate or partnership officer who is under a duty on behalf of such entity to collect, report, and/or remit the tax under this article or any other person required to collect, account for and pay over such tax who willfully fails to collect or truthfully account for and pay over such tax and any such officer or person who willfully evades or attempts to evade any such tax or the payment thereof shall, in addition to any other penalties provided by law, be guilty of a misdemeanor.

(Code 1977, § 6-28; Ord. of 7-1-1996)

Sec. 54-256. Collection procedure.

Every person receiving any payment for room rental with respect to which a tax is levied

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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. The taxes required to be collected under this section shall be deemed to be held in trust for the town by the person required to collect such taxes until remitted as required in this article.

(Code 1977, § 6-22; Ord. of 7-1-1996)

Sec. 54-257. Reports and remittance.

(a) The person responsible for collecting, reporting, and remitting the tax levied under this article shall make a report upon such forms and setting forth such information as the town manager may prescribe and require. Such report shall show the amount of room rental charges collected and the tax required to be collected and shall be signed and delivered to the town manager with a remittance of such tax. Such reports and remittances shall be made monthly on or before the 20th day of each month and shall cover the amount of tax collected during the month immediately preceding the month in which such reports and remittances are required. If the remittance is by check or money order, the check or money order shall be payable to the town.

(b) Every corporation, partnership, firm, association, or group of individuals acting as a unit shall designate in writing to the town an officer or employee of such corporation, partnership, firm, association, or group whose duty it is to collect, report, and remit such tax. Upon the failure of such entity or group to so designate, each officer of any such entity or group shall be deemed to have such duty to collect, report, and remit.

(Code 1977, § 6-23; Ord. of 7-1-1996)

Sec. 54-258. Interest and penalties.

If any person shall fail or refuse to remit to the town the tax required to be collected and paid under this article within the time and in the amount specified in this article, there shall be added to such tax by the town manager a penalty in the amount of ten percent thereof and interest thereon at the rate of ten percent per annum, which shall be computed upon the taxes and penalty from the date such taxes are due and payable.

(Code 1977, § 6-24; Ord. of 5-6-1991)

Sec. 54-259. Failure or refusal to collect and report.

(a) If any person shall fail or refuse to collect the tax imposed under this article and shall fail or refuse to make, within the time provided for in this article, the reports and remittances required, the town manager shall cause to be prepared a notice thereof to such person, giving such person ten days in which to make the necessary reports and remit the appropriate tax, plus any applicable penalty and interest. The notice shall be posted to such person by registered or certified mail, return receipt requested, to the address on file with the town or to the last known address of such person and/or shall be delivered by the police department.

Failure to report and/or remit the appropriate tax, plus any applicable penalty and interest within the ten-day period after posting and/or delivery of such notice shall result in the immediate suspension of the business license of such person or the entity for which such person is charged for the collecting, reporting, and remitting of taxes, as well as the right of such business to operate within the town.

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(b) Upon the failure or refusal of any such person to thereafter report and remit the appropriate tax, plus any applicable penalty and interest as required under this article, the town manager shall then proceed in such a manner as he may deem best to obtain facts and information on what to base his estimate of the proper amount of such tax due, plus penalty and interest. The town manager shall then proceed, based on the best information then available to him, to assess the amount of such tax, penalty and interest and shall cause such person to be notified thereof by registered or certified mail, return receipt requested, at the address on record with the town or the last known address of such person and/or delivery by the police department.

(c) Upon the submission of any necessary report and the remitting of the appropriate tax, plus any applicable penalty and interest, or the payment of the tax if assessed by the town manager, plus any applicable penalty and interest, such business license of the person or entity for which such person is charged for the collection, reporting, and remitting of such taxes shall be deemed to be reinstated.

(Code 1977, § 6-25; Ord. of 7-1-1996)

Sec. 54-260. Records required.

It shall be the duty of every person liable for the collection and payment to the town of any tax imposed by this article to keep and to preserve for a period of four years such suitable records as may be necessary to determine and show accurately the amount of such tax as he may have been responsible for collecting and paying to the town. The town manager may inspect such records at all reasonable times.

(Code 1977, § 6-26)

Sec. 54-261. Duty upon cessation of business.

Whenever any person required to collect and remit to the town any imposed tax by this article shall cease to operate or otherwise dispose of his business, the tax shall become due and payable and the person shall make to the town manager a report and remittance thereof within 30 days following the month in which such business was terminated or disposition made thereof.

(Code 1977, § 6-27)

Sec. 54-262. Allocation of funds.

(a) Beginning July 1, 2007, subject to annual appropriation, an amount established by council each year on all revenues collected by the Town in accordance with this article shall be distributed to the Chincoteague Recreation and Convention Center Authority for the operation and maintenance of a community center as long as it functions as such.

(Code 1977, § 6-29; Ord. of 10-19-2000) (*Amended 6-4-07*)

(b) Beginning July 1, 2013, subject to annual appropriation, twenty five percent (25%) of the total amount collected shall be set aside for expenses and/or reserve for recreation or tourism purposes.

(*Amended 5/6/13*)

Sec. 54-263. Responsibility for tax funds dedication.

The Chincoteague Recreation and Convention Center Authority pursuant to the Public Recreational Facilities Authorities Act, Chapter 29 of Tit. 15.1 of the Code of Virginia of

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1950, as amended, is created for the purpose of the improvement, operation and maintenance of such facility.

(Code 1977, § 6-30; Ord. of 10-19-2000)

Sec. 54-264. County tax permitted.

Any tax by the county permitted by law on transient room rentals and travel campgrounds as defined in this article shall apply after July 1, 1989 within the limits of the town as expanded by a boundary line adjustment effective July 1, 1989.

(Code 1977, § 6-33)

Secs. 54-265—54-290. Reserved.

ARTICLE V. EXCISE TAX (MEALS)*

Sec. 54-291. 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:

Cater: The furnishing of food, beverages, or both on the premises of another, for compensation.

Collector: The Town Manager of the Town of Chincoteague or designee.

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

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

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

***State law reference**—Excise tax on meals, Code of Virginia, § 58.1-3840.

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Purchaser: Any person who purchases food.
(Code 1977, § 6-35; Ord of 10-19-2000)

Cross reference—Definitions generally, § 1-2.

Sec. 54-292. Regulations for administration and enforcement.

The town manager may issue regulations for the administration and enforcement of this article.

(Code 1977, § 6-50(A); Ord. of 4-1-1990)

Sec. 54-293. Enforcement.

This article, in addition to enforcement as otherwise permitted by law, may also be enforced by way of injunctive relief to enjoin a violation by the circuit court of the county or any other court of competent jurisdictions on complaint by the town acting by and through the town manager.

(Code 1977, § 6-47; Ord. of 7-1-1996)

Sec. 54-294. Penalty for violation.

(a) Any person who willfully fails or refuses to file a return as required under this ordinance shall, upon conviction thereof, be guilty of a class 1 misdemeanor except that any person failing to file such a return shall be guilty of a class 3 misdemeanor if the amount of tax lawfully assessed in connection with the return is \$1,000.00 or less. Any person violating or failing to comply with any other provision of this ordinance shall be guilty of a class 1 misdemeanor

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

(c) Each violation of or failure to comply with this ordinance shall constitute a separate offense. Conviction of any such violation shall not relieve any person from the payment, collection or remittance of the tax as provided in this ordinance.

(Code 1977, § 6-48; Ord. of 10-19-2000)

Sec. 54-295. Levied and rate.

There is hereby imposed and levied by the town on each person a tax at the rate of five (5%) percent on the amount paid for meals purchased from any food establishment, whether prepared in such food establishment or not, and whether consumed on the premises or not. There shall be no tax if the total amount paid is twenty-five cents (\$0.25) or less; on larger amounts a fractional cent of tax due shall be rounded to the next higher cent.

(Code 1977, § 6-36; Ord. of 10-19-2000) (*Amended 6/17/10*)

Sec. 54-296. Exemptions.

The following classes of transactions involving meals shall not be subject to tax under this article:

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- (1) Food and beverages sold through vending machines.
 - (2) Factory-prepackaged candy, gum, nuts and other items of essentially the same nature.
 - (3) Food sold in bulk. For the purposes of this provision, a bulk sale shall mean the sale of any item that would exceed the normal, customary and usual portion sold for on premises consumption (e.g. a whole cake, a gallon of ice cream); a bulk sale shall not include any food or beverage that is catered or delivered by a food establishment for off-premises consumption.
 - (4) Meals furnished by a blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Visually Handicapped and located on property acquired and used by the United States for any military or navel purpose.
 - (5) Alcoholic and non-alcoholic beverages sold in factory sealed containers.
 - (6) Any food or food product purchased with food coupons issued by the United States Department of Agriculture under the Food Stamp Program or drafts issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children.
 - (8) A grocery store, supermarket, or convenience store shall not be subject to the tax except for any portion or section therein designated as a delicatessen or designated for the sale of prepared food and beverages.
 - (9) Food and beverages furnished by food establishments to employees as part of their compensation when no charge is made to the employee.
 - (10) Food and beverages sold by day care centers, public or private elementary or secondary schools or food sold by any college or university to its students or employees.
 - (11) Food and beverages for use or consumption and which are paid for directly by the Commonwealth, any political subdivision of the Commonwealth or the United States.
 - (12) Food and beverages furnished by a hospital, medical clinic, convalescent home, nursing home, home for the aged, infirm, handicapped, battered women, narcotic addicts or alcoholics, or other extended care facility to patients or residents thereof.
 - (13) Food and beverages furnished by a public or private local non-profit charitable organization or establishment or a private establishment that contracts with the appropriate agency of the Commonwealth to offer meals at concession prices to elderly, infirm, blind, handicapped or needy persons in their homes or at central locations.
 - (14) Food and beverages sold on occasional basis, by a local non-profit education, charitable or benevolent organization, church, or religious body as a fundraising activity, the gross proceeds of which are to be used by such organization exclusively for non-profit educational, charitable, benevolent, or religious purposes.
- (Code 1977, § 6-46; Ord. of 10-19-2000)

Sec. 54-297. Payment and collection.

Every person receiving any payment for food with respect to which a tax is levied hereunder shall collect and remit the amount of the tax imposed by this ordinance from the

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person on whom the same is levied or from the person paying for such food at the time payment for such food is made; provided, however, no blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Visually Handicapped and located on property acquired and used by the United States for any military or naval purpose shall be required to collect or remit such taxes.
(Code 1977, § 6-37; Ord. of 10-19-2000)

Sec. 54-298. Collections in trust for town.

All amounts collected as taxes under this article shall be deemed to be held in trust for the town by the seller collecting them, until remitted to the town as provided by this article.
(Code 1977, § 6-38; Ord. of 10-19-2000)

Sec. 54-299. Reports and remittances.

It shall be the duty of every person required by this ordinance to pay to the town the taxes imposed by this ordinance. Every corporation, partnership, firm, association, or group of individuals acting as a unit shall designate in writing to the town an officer or employee of such corporation, partnership, firm, association, or group whose duty it is to collect, report, and remit. The person or entity collecting the tax levied under this article shall make a report upon such forms as may be prescribed by the town manager, which report in any event shall show the amount of charges collected for meals and the amount of tax required to be collected for the designated reporting and collection period. Such report shall be signed and delivered to the Town Manager with the full remittance of such tax due. Such reports and remittances shall be made monthly on or before the 20th day of each said month and shall cover the amount of charges for meals and the tax collected during the month immediately preceding the month in which such report and remittance is required. If the remittance is by check or money order, the same shall be payable to the Town of Chincoteague. Such records shall be kept and preserved for a period of five (5) years. The town manager or his duly authorized agents shall have the power to examine such records at reasonable time and without unreasonable interference with the business of such person, for the purpose of administering and enforcing the provisions of this ordinance, and to make transcripts of all or any parts thereof.
(Code 1977, § 6-39; Ord. of 10-19-2000)

Sec. 54-300. 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 under this article, there shall be added to the tax by the town manager a penalty in the amount often percent of the tax and interest thereon at the rate often percent per annum, which shall be computed upon the tax and penalty from the date such were due and payable.
(Code 1977, § 6-40)

Sec. 54-301. Procedure when tax not reported or collected.

(a) If any person shall fail or refuse to collect the tax imposed under this article and to make, within the time provided for in this article, the reports and remittances required, the town manager shall cause to be prepared a notice thereof to such person, giving such person ten days in which to make the necessary reports and remit the appropriate tax, plus any applicable penalty and interest. The notice shall be posted to such person by registered or

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certified mail, return receipt requested, to the address on file with the town or the last known address of such person and/or shall be delivered by the police department. Failure to report and/or remit the appropriate tax, plus any applicable penalty and interest, within the ten-day period after posting and/or delivery of such notice, shall result in the immediate suspension of the business license of such person or the entity for which such person is charged for the collecting, reporting, and remitting of taxes, as well as the right of such business to operate within the town.

(b) Upon the failure or refusal of any such person to thereafter report and remit the appropriate tax, plus any applicable penalty and interest as required under this article, the town manager shall then proceed in such a manner as he may deem best to obtain facts and information on what to base his estimate of the proper amount of such tax due, plus penalty and interest. The town manager shall then proceed, based on the best information then available to him, to assess the amount of such tax, penalty and interest and shall cause such person to be notified thereof by registered or certified mail, return receipt requested, at the address on record with the town or the last known address of such person and/or delivery by the police department.

(c) Upon the submission of any necessary report and the remitting of the appropriate tax, plus any applicable penalty and interest, or the payment of the tax if assessed by the town manager, plus any applicable penalty and interest, such business license of the person or entity for which such person is charged for the collection, reporting, and remitting of such taxes shall be deemed to be reinstated.

(Code 1977, § 6-41; Ord. of 7-1-1996)

Sec. 54-302. Preservation of records.

(a) *Generally.* 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 four 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 town manager shall have the authority and 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 this article and to make transcripts of all or any parts thereof.

(b) *Inspection of records by town manager:* The town manager shall have the authority to inspect the records of any restaurant after notifying the town attorney in writing prior to each examination of the records of any establishment. Such examination shall be for the purpose of administering and enforcing this article and transcripts may be made of any parts thereof or all of such records. Further, such inspections shall be made at reasonable times and without unreasonable interference with the business of such person.

(Code 1977, § 6-42)

Sec. 54-303. Duty upon cessation 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 become due and payable, and the person shall make to the town manager a report and remittance thereof within 30 days following which the business was terminated or disposition made thereof.

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(Code 1977, § 6-43)

Sec. 54-304. 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.

(Code 1977, § 6-44)

Sec. 54-305. Tips and service charges.

Where a purchaser provides a tip for an employee of a seller, 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. Tips, gratuities and service charges on meals which are left on the table or where added to the bill and otherwise turned over in their entirety by the employer to the employee shall not be subject to this tax.

(Code 1977, § 6-45; Ord. of 7-1-1996)

Sec. 54-306. Disposition of revenue.

(a) A minimum of ten percent of the tax levied under this article shall be used to promote tourism. The mayor will create a committee composed of island residents, one each from a restaurant, Chincoteague Chamber of Commerce and town council to recommend disposition of revenues collected to the town council.

(b) A minimum of 5 percent shall be used for drainage or park and recreation-related projects, determined by council each year.

(Code 1977, § 6-49; Ord. of 10-19-2000)

(Amended 06/03/14)

Secs. 54-307—54-350. Reserved.

Article VI. Motor Vehicle License Tax.

Sec. 54-351. Tax levied.

There is hereby levied an annual license tax at a rate established by council each year upon motor vehicles, motorcycles and low-speed vehicles licensed within the town, except as may be provided in this article or the Code of Virginia.

(Amended 10/1/18.)

Sec. 54-352. License year.

The license year under the provisions of this article shall begin on January 1 and shall expire on December 31 of the same calendar year. Assessment of this tax will be billed on the town's personal property tax bill on motor vehicles, motorcycles and low-speed vehicles.

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There will be no refunds or proration of months owned.

(Amended 10/1/18.)

Sec. 54-353. Payment of vehicle personal property taxes prerequisite to licensing.

No vehicle shall be licensed under this article unless and until the applicant shall have produced to the town satisfactory evidence that all personal property taxes on the motor vehicle, motorcycle or low speed vehicle to be licensed or that any delinquent personal property taxes owing have been paid which have been assessed or are assessable against the applicant.

(Amended 10/1/18.)

Sec. 54-354. Exemptions.

No license tax may be levied for any one motor vehicle owned by individuals or organizations as listed herein. This exemption is applicable to the license tax only; all other provisions of this article shall be enforced. Exemptions and bill adjustment will be considered upon presentation of satisfactory evidence of payment of taxes to the town.

- (1) Any veterans who holds a current state motor vehicle license, which was issued free of charge by the state.
- (2) The Chincoteague Volunteer Fire Company and Rescue Squad.
- (3) An active or life member of the Chincoteague Volunteer Fire Company and Rescue Squad. The Chincoteague Volunteer Fire Company and Rescue Squad shall provide the town by October 15th of each year a written list of active and life members signed by the president and fire chief towards the application of the exemption.

(Code 1977, § 11-28; Ord. of 9-5-2000)

(Amended 10/1/18.)

Chapters 55—57

RESERVED

Chapter 58

TRAFFIC AND VEHICLES*

Article I. In General

- Sec. 58-1. Compliance with chapter; violations and penalties generally.
- Sec. 58-2. Adoption of state law; former provisions.
- Sec. 58-3. Display of state license plate with current decal.
- Sec. 58-4. State inspection sticker required.
- Sec. 58-5. Speed limit.
- Sec. 58-6. Persons riding bicycles or riding or driving animals.
- Sec. 58-7. Authority of fire department officials to direct traffic.
- Sec. 58-8. Washing, polishing, greasing, vehicle on street or sidewalk.
- Sec. 58-9. Boarding or alighting from moving vehicle.
- Sec. 58-10. Unlawful riding.
- Sec. 58-11. Noise in the operation of motor vehicles.
- Sec. 58-12. Tailgates on vehicles.
- Sec. 58-13. Backing.
- Sec. 58-14. Blocking intersection.
- Sec. 58-15. Allowing escape of load material.
- Sec. 58-16. Temporary removal and disposition of vehicles involved in accidents.
- Sec. 58-17. Riding bicycles on certain designated sidewalks.
- Sec. 58-18. Pedestrians' use of roadways; keeping to left; soliciting rides.
- Secs. 58-19—58-45. Reserved.

Article II. Town Vehicle License

- Sec. 58-46. Fee levied; amount and exemption from fee.

***Charter references**—Local vehicle license, ch. 2, § 1(13); regulation of traffic, ch. 2, § 1(15), (21), (32).

Cross references—Any ordinance pertaining to traffic or parking regulations applicable to specific locations saved from repeal, § 1-6(a)(11); law enforcement, ch. 34; offenses and miscellaneous provisions, ch. 38; personal property tax on motor vehicles, trailers, semi-trailers and boats, § 54-151 et seq.

State law references—Parking facilities, Code of Virginia, § 15.2-967; limited access streets, Code of Virginia, § 15.2-2026; regulation of traffic, Code of Virginia, § 15.2-2028; regulation of transportation of certain materials, Code of Virginia, § 15.2-2029; identification of disabled parking spaces by above grade signage, Code of Virginia, § 36-99.11; motor vehicles, Code of Virginia, § 46.2-100 et seq.; licensure of drivers, Code of Virginia, § 46.2-300 et seq.; local vehicle license, Code of Virginia, § 46.2-752 et seq.; abandoned vehicles, Code of Virginia, § 46.2-1200 et seq.; removal of vehicles involved in accidents, Code of Virginia, § 46.2-1212; removal or immobilization of motor vehicles against which there are outstanding parking violations, Code of Virginia, § 46.2-1216; regulation of traffic on certain parking lots, Code of Virginia, § 46.2-1219; parking regulations in cities, towns and certain counties, Code of Virginia, § 46.2-1220; general powers of local governments as to motor vehicles, Code of Virginia, § 46.2-1300 et seq.

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Sec. 58-47. Payment of personal property taxes prerequisite to obtaining.
Sec. 58-48. Penalties for failure to purchase.
Sec. 58-49. Term.
Sec. 58-50. Application, transferability; display; place of sale.
Secs. 58-51—58-75. Reserved.

Article III. Traffic Control Devices

Sec. 58-76. Placement.
Sec. 58-77. Compliance.
Secs. 58-78—58-105. Reserved.

Article IV. Minimum Sight Distance at Intersections

Sec. 58-106. Authority.
Sec. 58-107. Erection of obstructions.
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TRAFFIC AND VEHICLES
ARTICLE I. IN GENERAL

Sec. 58-1. Compliance with chapter; violations and penalties generally.

(a) It shall be unlawful for any person to violate or fail to comply with any of the sections of this chapter or of any rule or regulation promulgated pursuant to this chapter.

(b) Every person convicted of a violation of any of the sections of this chapter for which no other penalty is provided shall be punished by a fine of not more than \$200.00.
(Code 1977, § 11-21)

State law references—Penalties for motor vehicle violations, Code of Virginia, § 46.2-113; town prohibited from imposing a penalty for violation of motor vehicle ordinance in excess of that imposed by state for a similar offense, Code of Virginia, § 46.2-1300.

Sec. 58-2. Adoption of state law; former provisions.

(a) Pursuant to the authority of Code of Virginia, § 46.2-1313, as amended, all of the provisions and requirements of the laws of the Commonwealth of Virginia contained in Title 46.2 of the Code of Virginia of 1950, as amended; Article 9 (§16.1-278 *et seq.*) of Chapter 11 of Title 16.1 of the Code of Virginia of 1950, as amended; and Article 2 (§18.2-266 *et seq.*) of Chapter 7 of Title 18.2 of the Code of Virginia of 1950, as amended, in effect on July 1, 2018, except those provisions and requirements the violation of which constitute a felony and except those provisions and requirements which by their very nature can have no application to or within the Town, are adopted and incorporated herein by reference and made applicable within the Town. References to “highways of the state” contained in such provisions and requirements hereby adopted shall be deemed to refer to the streets, highways, and other public ways within the town. Such provisions and requirements hereby adopted, *mutatis mutandis*, are made a part of this section as fully as though set forth at length herein, and it shall be unlawful for any person within the town to violate or fail, neglect, or refuse to comply with the provisions of Title 46.2 of the Code of Virginia of 1950, as amended; Article 9 (§16.1-278 *et seq.*) of Chapter 11 of Title 16.1 of the Code of Virginia of 1950, as amended; and Article 2 (§18.2-266 *et seq.*) of Chapter 7 of Title 18.2 of the Code of Virginia of 1950, as amended, which are adopted by this section, provided that in no event shall the penalty imposed for violation of any provision or requirement hereby adopted exceed the penalty imposed for a similar offense under Title 46.2 of the Code of Virginia of 1950, as amended; (§16.1-278 *et seq.*) of Chapter 11 of Title 16.1 of the Code of Virginia of 1950, as amended; and Article 2 (§18.2-266 *et seq.*) of Chapter 7 of Title 18.2 of the Code of Virginia of 1950, as amended. Amendments to the above provisions of the laws of the Commonwealth of Virginia hereafter adopted shall be incorporated herein on their respective effective dates unless specifically rejected by the governing body of the town.

(Code 1977, § 11-1; Ord. of 6-21-2001; Readopted 6-3-02, 6-2-03, 7-6-04, 6-16-05, 6-15-06, 6-4-07, 6-2-08, 7-1-09, 6-17-10, 6-6-11, 6-4-12, 6-3-13, 6-19-14, 6-18-15, 6-16-16, 6-15-17, 6-15-18)

(b) The provisions of this section, as readopted, shall be effective as 12:01 am July 1, 2018. As of such effective date, such readoption shall replace former section 58-2 as it existed prior to the effective date of readoption, provided that such repeal shall not affect any act or offense done or committed or any penalty or forfeiture incurred or any right established or suit or action pending on that day. Except as otherwise provided, neither the repeal of

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section 58-2 nor the enactment of this readoption shall apply to offenses committed prior to the effective date of this section, and prosecution for such offense shall be governed by pitot law, which is continued in effect for that purpose.

(Code 1977, § 11-1; Ord. Of 6-21-2001' Readopted 6-3-02, 6-2-03, 7-6-04, 6-16-05, 6-15-06, 6-4-07, 6-2-08, 7-1-09, 6-17-10, 6-19-14, 6-18-15, 6-16-16, 6-15-17, 6-15-18)

Sec. 58-3. Display of state license plate with current decal.

It shall be unlawful for any person to operate or for the owner or person in control thereof to knowingly permit the operation of, upon a street or highway of the town, any motor vehicle, trailer or semi-trailer without having displayed thereon the license plate assigned thereto by the state department of motor vehicles for the current registration year, with license plate decals designating the current registration year, whenever such license plate is required by Code of Virginia, § 46.2-711 et seq.

(Code 1977, § 11-17)

Sec. 58-4. State inspection sticker required.

Except as otherwise expressly provided by state law, it shall be unlawful for any person to operate or cause or permit the operation of a motor vehicle, trailer or semi-trailer upon the town streets or highways unless there is properly displayed thereon a valid state inspection sticker showing that such vehicle, trailer or semi-trailer has been inspected and approved under the provisions of Code of Virginia, §§ 46.2-1157-46.2-1175.1.

(Code 1977, § 11-18)

Sec. 58-5. Speed limit.

Except as provided by state law with respect to drivers of specified emergency vehicles, no person shall drive or propel a vehicle upon any town street or public way at a speed in excess of the speed posted on authorized traffic control signs upon such street or public way or, in the absence of any such signs, at a speed in excess of 25 miles per hour.

(Code 1977, § 11-4)

State law references—Speed, Code of Virginia, § 46.2-870; authority of council to increase or decrease speed limits, Code of Virginia, § 46.2-1300.

Sec. 58-6. Persons riding bicycles or riding or driving animals.

Every person riding a bicycle or an animal upon a roadway and every person driving any animal thereon shall be subject to the sections of this chapter applicable to the driver of a vehicle, except those sections which by their very nature can have no application.

(Code 1977, § 11-5)

Cross reference—Animals, ch. 10.

State law reference—Similar provisions, Code of Virginia, § 46.2-800.

Sec. 58-7. Authority of fire department officials to direct traffic.

Members of the fire department may direct or assist the police in directing traffic at or in the immediate vicinity of a fire and, while so acting, shall have all the authority of police officers.

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(Code 1977, § 11-6)

State law reference—Authority of council to adopt ordinances relative to powers and duties of fire departments, etc., Code of Virginia, § 27-14.

Sec. 58-8. Washing, polishing, greasing, vehicle on street or sidewalk.

No person shall wash, polish or grease a vehicle upon a public street or sidewalk, nor shall the owner of a vehicle permit it to be washed, polished or greased upon a public street or sidewalk.

(Code 1977, § 11-7)

Cross reference—Streets, sidewalks and other public places, ch. 50.

Sec. 58-9. Boarding or alighting from moving vehicle.

No person shall board or alight from any vehicle while such vehicle is in motion.

(Code 1977, § 11-11)

Sec. 58-10. Unlawful riding.

No person shall ride on any vehicle upon any portion thereof not designed or intended for the use of passengers. This section shall not apply to an employee engaged in the necessary discharge of a duty or to a person riding within a truck body in space intended for merchandise.

(Code 1977, § 11-12)

Sec. 58-11. Noise in the operation of motor vehicles.

(a) No vehicle shall be loaded with materials likely to create loud noises by striking together, without using every reasonable effort to deaden the noise.

(b) The use in, upon or attached to any motor vehicle operating on any town street of any radio, phonograph, musical instrument, bell, whistle, loudspeaker, amplifier or device of any kind whatsoever whereby sound therefrom is cast upon any street to promote or advertise the sale of goods, wares or merchandise or for the purpose of advertising auction sales, sporting events or other businesses or things advertised thereby is prohibited. This subsection shall not apply to motor vehicles driven in a duly authorized parade. The use of a loudspeaker on a motor vehicle for making auction sales in streets directly in front of the property then being sold, and entirely outside of the town business districts, shall not be construed as a violation of this subsection when such use is limited strictly to the selling at auction of such property.

(c) It shall be unlawful for any person in operating a motorcycle or other motor vehicle within the town to create in the operation thereof any unreasonably loud, disturbing or unnecessary noise.

(d) In operating a motorcycle or other motor vehicle, the following acts, among others, are declared to create loud, disturbing and unnecessary noises in violation of this section, but such enumeration shall not be deemed to be exclusive:

(1) The use of a motorcycle or other motor vehicle so out of repair as to cause thereby

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loud and unnecessary grating, grinding, rattling or any of such noises or any other unnecessary noise.

- (2) The practice of unnecessarily racing the motor of a motorcycle or other motor vehicle while standing or moving thereby causing unnecessary noise from such motor.
- (3) The practice of unnecessarily retarding the spark to the motor of a motorcycle and thereby causing unnecessary, loud and explosive noise from the motor.
- (4) In starting a motorcycle or other motor vehicle from a standing position, the practice of gaining speed unnecessarily quickly and thereby causing unnecessary and loud noise from the motor and the screeching of tires or either of such noises.
- (5) The practice of coming to an unreasonably quick stop with a motorcycle or other motor vehicle and thereby causing unnecessary grinding of brakes and screeching of tires or either of such noises.

(Code 1977, § 11-13)

State law reference—Prohibition against muffler cutouts, etc., Code of Virginia, § 46.2-1047.

Sec. 58-12. Tailgates on vehicles.

It shall be unlawful for the operator of any truck, trailer or other vehicle equipped with a tailgate to lower or open the tailgate thereon or to suffer or permit such tailgate to be lowered or opened, except during the time the vehicle is being loaded or unloaded, and except during the time the load on the vehicle necessitates a lowered or opened tailgate as a support for the load. It shall be the duty of the operator of any such vehicle to see that the tailgate on such vehicle is kept closed or raised, except during the times specified in this section. Any person who shall violate this section shall be punished by a fine of not less than \$25.00 and not more than \$50.00 for each offense.

(Code 1977, § 11-14; Ord. of 6-21-2001)

Sec. 58-13. Backing.

The operator of a vehicle in the town shall not back such vehicle unless such movement can be made with safety and without interfering with other traffic.

(Code 1977, § 11-15)

Sec. 58-14. Blocking intersection.

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

(Code 1977, § 11-16)

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Sec. 58-15. Allowing escape of load material.

Every motor vehicle, truck, wagon or other conveyance used for the purpose of transporting manure, dirt, coal or other material liable to escape shall be provided with close-fitting tailboards and other necessary fittings to prevent the spilling of the contents of such vehicle. If such material so conveyed by such vehicle is wasted or spread or allowed to escape in any manner from such vehicle, the driver, owner and contractor using such vehicle shall be jointly and severally liable to a fine of not less than \$50.00 for each offense. (Code 1977, § 14-3)

Sec. 58-16. Temporary removal and disposition of vehicles involved in accidents.

Whenever a motor vehicle, trailer or semi-trailer 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 the expense of the owner or operator, remove such motor vehicle, trailer or semi-trailer from the highway or street to some point in the vicinity where such motor vehicle, trailer or semi-trailer will not impede the flow of traffic. (Code 1977, § 11-19)

State law reference—Authority for above section, Code of Virginia, § 46.2-1212.

Sec. 58-17. Riding bicycles on certain designated sidewalks.

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

Bicycle means a device propelled solely by human power, having pedals, two or more wheels, and a seat height of more than 25 inches from the ground when adjusted to its maximum height.

Person means any natural person.

(b) It shall be unlawful for any person to ride a bicycle on the following designated sidewalks within the town:

- (1) That portion of the sidewalks adjacent and parallel to Main Street, bounded on the north by Maddox Boulevard or the prolongation thereof and bounded on the south by Jester Street or the prolongation thereof.
- (2) That portion of the sidewalks adjacent and parallel to Maddox Boulevard, bounded on the west by Main Street and bounded on the east by Deep Hole Road.

(c) Any person violating this section shall, upon conviction, be guilty of a class 4 misdemeanor.

(d) This section is adopted pursuant to the provisions of Code of Virginia, § 46.2-904. (Code 1977, § 14-7(a)-(d), (f); Ord. of 12-2-1991)

Cross reference—Streets, sidewalks and other public places, ch. 50.

Sec. 58-18. Pedestrians' use of roadways; keeping to left; soliciting rides.

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(a) Pedestrians shall not use the roadways or streets, other than the sidewalk thereof, for travel, except when necessary to do so because of the absence of sidewalks that are reasonably suitable and passable for their use. If pedestrians walk upon the hard surface or the main-traveled portion of the roadway, they shall keep to the extreme left side or edge thereof or, where the shoulders of the highway are of sufficient width to permit, they may walk on either shoulder thereof.

(b) Pedestrians shall not stand or stop in any roadway or street for the purpose of soliciting rides.

(Code 1977, § 11-20)

State law reference—Similar provisions, Code of Virginia, §§ 46.2-928, 46.2-929.

Secs. 58-19—58-45. Reserved.

ARTICLE II. TOWN VEHICLE LICENSE*

Sec. 58-46. Fee levied; amount and exemption from fee.

(a) There is hereby levied an annual license fee at a rate established by council each year upon trailers and semitrailers licensed within the town.

(Amended 6-4-07, 10-1-18)

Sec. 58-47. Payment of personal property taxes prerequisite to obtaining.

(a) No vehicle required to be licensed under this article shall be issued a town license unless and until the applicant shall have produced satisfactory evidence that all personal property taxes on the trailer or semi-trailer to be licensed or that any delinquent personal property taxes owing have been paid which have been assessed or are assessable against the applicant.

(Amended 10-1-18)

Sec. 58-48. Penalties for failure to purchase.

Any person failing to purchase such license tags or failing to display them as required by this article shall be fined not less than \$50.00 for each offense.

(Code 1977, § 11-32)

(Amended 10-1-18)

Sec. 58-49. Term.

For the purpose of this article, the license year shall extend from March 15 to March 14 of the next succeeding calendar year, and the license fee levied under this article shall be paid not later than April 15 in each license year.

(Amended 10-1-18)

Sec. 58-50. Application, transferability; display; place of sale.

*State law reference—Local vehicle licenses, Code of Virginia, § 46.2-752 et seq.

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(a) No trailer required to be licensed under the provisions of this article shall be issued a town license unless and until the applicant shall have produced a valid registration card issued to the applicant for the trailer to be licensed.

(b) Every trailer or semi-trailer license decal shall be securely affixed to such trailer or semi-trailer.

(c) Town licenses shall be sold at the town office or at such other place as may be designated by the council.

(Code 1977, § 11-30; Ord. of 1-2-2001) (*Amended 10-1-18*)

Secs. 58-51—58-75. Reserved.

ARTICLE III. TRAFFIC CONTROL DEVICES

Sec. 58-76. Placement.

When the town council designates an intersection as one at which the driver of a vehicle is required to stop or to yield the right-of-way before entering such intersection or designates a street upon which traffic is to proceed only in one direction or designates a place at which U-turns are prohibited or at which turning movements are otherwise prohibited or restricted or imposes any other regulation of traffic for which a traffic control sign, signal, marking or device is required by state law to be in place to give notice to drivers of vehicles or pedestrians, the council shall cause such traffic control sign, signal, marking or device to be installed and maintained as required by law.

(Code 1977, § 11-2)

State law reference—Uniform marking and signing of highways, drivers to obey signs, Code of Virginia, § 46.2-830.

Sec. 58-77. Compliance.

All traffic control signs, signals, markings and devices which are in place anywhere within the town pursuant to authority of state law, this Code or other ordinance shall be complied with, and it shall be unlawful for the driver of any vehicle or for any pedestrian to violate or fail to comply with any requirement, prohibition or directive contained in any such traffic control sign, signal, marking or device except by directive of a police officer.

(Code 1977, § 11-3)

Secs. 58-78—58-105. Reserved.

ARTICLE IV. MINIMUM SIGHT DISTANCE AT INTERSECTIONS

Sec. 58-106. Authority.

This article is adopted pursuant to, among other things, the authority of Code of Virginia, § 15.2-1102 and chapter 2, section 1(21), (22), (27), (48) and (49) of the Charter.

(Code 1977, § 11-40; Ord. of 1-3-2000)

Sec. 58-107. Erection of obstructions.

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No person, firm, or entity owning, leasing or otherwise in possession of real estate in the town, which real estate is situated adjacent to any highway, street, or public right-of-way, including any sidewalk adjoining thereto, shall erect, place, construct, grow, or otherwise maintain on such real estate or the sidewalk adjacent thereto any improvement, permanent or temporary; any structure; any sign; any banner; any tree, shrubbery, or vine; or any other object or thing which prohibits, restricts, or impedes the operator of any motor vehicle utilizing any highway, street, or public way which intersects with the highway, street or public way adjacent to such real estate from having an unobstructed line of sight of at least 250 feet from the intersection of such highway, street, or public way to observe approaching motor vehicles traveling on the highway, street, or public way adjacent to such real estate. The line of sight will be measured at a point fifteen feet back from the intersecting street.

(Code 1977, § 11-36; Ord. of 1-3-2000)

(Amended 9/4/07)

Sec. 58-108. Exceptions

(a) This article shall not apply to any signs, signals or other highway devices erected by any governmental authority.

(b) This article shall not apply to any permanent building existing as of the effective date of the ordinance from which this section derives.

(Code 1977, § 11-37; Ord. of 1-3-2000)

Sec. 58-109. Penalties.

(a) Any person violating this article shall, upon conviction, be guilty of a class 4 misdemeanor.

(b) In addition to any criminal penalty for the violation of this article, the town manager is further authorized on behalf of the town to initiate and seek injunctive relief in the circuit court of the county to prohibit any such violation as provided for in this article.

(Code 1977, § 11-38; Ord. of 1-3-2000)

Secs. 58-110—58-135. Reserved.

ARTICLE V. PARADES AND PROCESSIONS*

Sec. 58-136. Permit required.

No procession or parade, excepting funeral processions and processions or convoys of the armed forces of the United States or of the state and the forces of the police and fire departments of the county or town, shall occupy, march or proceed along any street, except in accordance with a permit issued by the town council or its duly authorized agent and such

***Cross reference**—Streets, sidewalks and other public places, ch. 50.

State law reference—Equine Activity Liability Act, Code of Virginia, §3.1-796.130 et seq.

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other regulations as are set forth in this chapter which may apply.
(Code 1977, § 11-8)

State law reference—Right-of-way of United States forces, troops, national guard, etc., Code of Virginia, § 46.2-827.

Sec. 58-137. Driving through processions; driving in funeral processions.

(a) No operator of a vehicle shall drive between the vehicles, persons or animals comprising a funeral or other authorized procession, except when otherwise directed by a police officer. This subsection shall not apply to emergency vehicles as defined in Code of Virginia, § 46.2-920.

(b) Each driver in a funeral procession shall drive as near to the right hand edge of the roadway as is practicable and shall follow the vehicle ahead as close as is practicable and safe. (Code 1977, § 11-9)

State law reference—Funeral processions, Code of Virginia, § 46.2-828.

Sec. 58-138. Identification of vehicles in funeral processions; right-of-way.

(a) All motor vehicles participating in a funeral procession, when proceeding to any place of burial, shall display illuminated headlamps thereon and such other identification as the chief of police may prescribe.

(b) All motor vehicles so designated shall have the right-of-way over all other vehicles, except fire apparatus, ambulances and police vehicles, at any street or highway intersection within the town and may proceed through a stop sign or signalized intersection with proper caution and safety.
(Code 1977, § 11-10)

Secs. 58-139—58-165. Reserved.

ARTICLE VI. STOPPING, STANDING AND PARKING*

Sec. 58-166. Parking prohibited in specified places.

(a) No person shall park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control device, in any of the following places:

- (1) On a sidewalk.
- (2) In front of a public or private driveway.
- (3) Within an intersection.
- (4) Within 15 feet of a fire hydrant.

***Cross references**—off-street parking area, app. A, § 2.115; general provisions for parking, app. A, § 6.6 et seq.

State law references—Authority of town to provide public parking facilities, Code of Virginia, § 15.2-967; authority of town to regulate parking, Code of Virginia, §§ 46.2-1220, 46.2-1305.

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- (5) On a crosswalk.
- (6) Within 30 feet upon the approach of any flashing beacon, stop sign or traffic control signal located at the side of a roadway.
- (7) Between a safety zone and the adjacent curb or within 30 feet of points on the curb immediately opposite the ends of a safety zone, unless a different length is indicated by official signs or markings.
- (8) Within 50 feet of the nearest rail of a railroad grade crossing.
- (9) Within 15 feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within 75 feet of the entrance when properly signposted.
- (10) Alongside or opposite any street excavation or obstruction when such parking would obstruct traffic.
- (11) On the roadway side of any vehicle parked at the edge or curb of a street.
- (12) Upon any bridge or other elevated structure upon a street or highway or within a tunnel.
- (13) At any place where official signs prohibit parking.
- (14) On all public streets to allow them to be plowed or cleared with heavy equipment and street parking would hinder such operation, whenever the town manager on the basis of flooding, falling snow, sleet or freezing rain or a forecast of such by the National Weather Service,

(Amended 05/07/18)

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

(Code 1977, § 11-22)

State law reference—Prohibited parking in certain locations, Code of Virginia, § 46.2- 1239.

Sec. 58-167. Parking on and driving over sidewalks.

It shall be unlawful, except in an emergency, for any automobile, truck, cart or vehicle to be driven from a public street across an adjoining hard-surface sidewalk or from private property across a hard-surface sidewalk adjoining a public street at any place other than a place designed for such crossing.

Cross reference—Streets, sidewalks and other public places, ch. 50.

(Amended 05/07/18)

Sec. 58-168. Parking on west side of Main Street.

No person shall park a motor vehicle on the west side of Main Street within the corporate limits except that this section shall not apply to those operating service vehicles delivering

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goods and services to customers or utility trucks in their regular work of installations and repairs.

(Code 1977, § 11-24; Ord. of 6-4-1979)

Sec. 58-169. Parking of certain trucks for more than one hour.

It shall be unlawful for any person to park a truck having a licensed carrying capacity of more than 2,000 pounds for more than one hour, without being moved, on any public street in the town.

(Code 1977, § 11-25)

Sec. 58-170. Removal and disposition of unattended vehicles.

(a) Whenever any vehicle, trailer or semi-trailer is found on the public streets or public grounds unattended by the owner or operator and constitutes a hazard to traffic or is parked in such manner as to be in violation of law or whenever any vehicle, trailer or semi-trailer is left unattended for more than ten days upon any privately owned property other than the property of the owner of such vehicle, trailer or semi-trailer, within the town, or is abandoned upon such privately owned property, without the permission of the owner, lessee or occupant

thereof, such vehicle, trailer or semi-trailer may be removed for safekeeping by or under the direction of a police officer to a storage garage or area. However, no such vehicle shall be so removed from privately owned premises without the written request of the owner, lessee or occupant thereof.

(Amended 7/5/16)

(b) The owner of such vehicle, trailer or semi-trailer, before obtaining possession thereof, shall pay to the towing company all reasonable costs incidental to the removal, storage and locating the owner of such vehicle, trailer or semi-trailer. Should such owner fail or refuse to pay the cost or should the identity or whereabouts of such owner be unknown and unascertainable after a diligent search has been made and after notice to him at his last known address and to the holder of any lien of record in the office of the state department of motor vehicles against the vehicle, trailer or semi-trailer.

(Amended 7/5/16)

State law references—Abandoned vehicles, Code of Virginia, § 46.2-1200 et seq.; immobilized and unattended vehicles, Code of Virginia, § 46.2-1209 et seq.; authority of council to provide by ordinance for the removal and disposition of unattended or immobile vehicles, Code of Virginia, § 46.2-1213.

Sec. 58-171. Violations.

Violation of this section shall be punishable by a fine of not less than \$25.00 and not more than \$100.00 for each offense. Nothing contained in this section shall prevent recovery in a civil action for any damages occasioned by violation of this section.

(Code 1977, § 11-23; Ord. of 6-21-2001)

Sec. 58-172. Parking in handicapped only designated areas.

It shall be unlawful for any automobile, truck, cart or vehicle to be parked in a designated

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handicapped zone unless the vehicle displays a valid handicapped license place or parking tag issued by the appropriate department of motor vehicles and is occupied by the handicapped person or persons.

Violation of this section shall be punishable by a fine of not less than one hundred dollars and not more than five hundred dollars for each offense.
(Code 1977, § 11-26; Ord. of 6-21-2001)

Secs. 58-173—58-195. Reserved.

ARTICLE VII. INOPERABLE VEHICLES*

Sec. 58-196. 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:

Inoperable motor vehicle, trailer or semi-trailer means any motor vehicle, trailer or semi-trailer which is not in operating condition; or which for a period of sixty (60) days or longer has been partially or totally disassembled by the removal of tires and wheels, the engine, if applicable, or other essential parts required for operation of the vehicle; or, if applicable, on which there are displayed neither valid license plates nor a valid inspection sticker.

Motor vehicle means every vehicle as defined in § 46.2-100 of the Code of Virginia, which is self-propelled or designed for self-propulsion except as otherwise provided in Title 46.2. Any structure designed, used or maintained primarily to be loaded on or affixed to a motor vehicle to provide a mobile dwelling, sleeping place, office, or commercial space, shall be considered a part of a motor vehicle. For the purposes of this article any device defined under § 46.2-100 as a bicycle or a moped shall be deemed not to be a motor vehicle.

Person means any person, firm, partnership, association, corporation, company or entity of any kind, and being the owner, tenant, lessee or otherwise in possession or control of any private or public real property.

Private real property means any area which is not owned by the federal, state or local government or any instrumentality, agency or political subdivision thereof.

Shielded or screened means completely precluding visibility of the subject motor vehicle, trailer, or semi-trailer, from view by a solid, rigid, opaque fence or by a landscaped arrangement of nondeciduous plantings, sufficient in height, spacing, density and circumference. Non-rigid covers specifically manufactured and designed for use on a particular make and model of a motor vehicle, trailer or semi-trailer are permitted for use as a screen. Such fitted covers shall be in non-deteriorated or otherwise acceptable state.

***State law reference**—Authority of town to restrict keeping of inoperable motor vehicles, etc., on residential or commercial property, Code of Virginia, § 15.2-904.

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Draped tarpaulins, or other non-fitted, non-rigid type covers are specifically prohibited as methods of screening inoperable vehicles. All fencing shall comply with current town zoning.

Semi-trailer means every vehicle of the trailer type so designed and used in conjunction with a motor vehicle that some part of its own weight and that of its own load rests on or is carried by another vehicle.

Trailer means every vehicle without motor power designed for carrying property or passengers only on its own structure and for being drawn by a motor vehicle. This definition does not include any mobile home for which there exists a valid zoning permit.

(Amended 09-02-03)

Sec. 58-197. Purpose.

(a) The purpose of this article is to prevent the accumulation of inoperable motor vehicles or parts thereof, in unapproved and inappropriate locations throughout the incorporated territory of the town, inasmuch as they constitute an unsightly, obnoxious and unsanitary condition within such territory. The presence of such inoperable motor vehicles increases the danger of the spread of certain communicable diseases by providing a breeding place for rats, mice and other known disease carriers and otherwise constitutes a condition detrimental to the mental and general well-being of the town citizens and is declared a public nuisance.

(b) It is, therefore, determined and council so finds, that it is imperative for the preservation of health, safety, peace and the general public welfare that these provisions concerning inoperable motor vehicles be adopted requiring property owners, tenants, lessees or persons otherwise in control or possession of real estate to remove such inoperable motor vehicles from their premises.

(Code 1977, § 11-33; Ord. of 6-2-1980 (a)) **(Amended 09-02-03)**

Sec. 58-198. Restrictions; exemptions; removal and cost.

(a) It shall be unlawful for any person, except as expressly provided herein, to keep on any real property within the town zoned for residential, commercial or agricultural purposes, any inoperable motor vehicle. A person may keep any number of inoperable motor vehicles within a fully enclosed building or structure, or may keep up to a maximum of two (2) motor vehicles outside a fully enclosed building or structure, but which are shielded or screened from view as provided for herein.

(b) The keeping and/or use of inoperable trailers or semi-trailers shall be regulated by applicable provisions of the town zoning provisions and inoperable trailers or semi-trailers are not regulated hereunder.

(c) Any such person shall have ten (10) days to remove any such inoperable motor vehicle after it becomes inoperable as provided for herein.

(d) This article VII shall not apply to a lawfully licensed and zoned business which is regularly engaged in business as an automotive dealer, salvage dealer, scrap processor, or commercial garage.

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(e) The owner of any such real property on which any such inoperable motor vehicle is located contrary to the provisions of this article, shall be notified of such violation by registered or certified mail, return receipt requested, mailed to the last known address of such owner as shown on the current real estate tax books of the town. If, after fifteen (15) days from the date of actual receipt of such notice by the owner of said real property, or twenty (20) days after the date of mailing, whichever shall first occur, the owner of such real property has failed to remove said inoperable motor vehicle, the town, acting through its agents or employees, may enter onto such real property and remove such inoperable motor vehicle and dispose of same as hereinafter provided.

(f) After removal of any such inoperable motor vehicle pursuant to subsection (e) hereof, the town through its agents or employees may dispose of such inoperable motor vehicle, after giving a further notice as provided in subsection (e) hereof to the owner of such inoperable motor vehicle, and the failure of the owner to pay all costs attributable to such removal within five (5) days of the completion of such notice. If the owner of the inoperable motor vehicle cannot be determined by investigation through the State Department of Motor Vehicles or the comparable state agency in which said inoperable motor vehicle is registered, or such cannot be reasonably ascertained from the inoperable motor vehicle, or from the owner of said property from which it was removed, no such additional notice to the owner of the inoperable motor vehicle shall be required.

(g) The cost of any such removal and disposal shall be chargeable to the owner of the real property from which removed, and/or the owner of the inoperable motor vehicle, and may be collected by the town as taxes and levies are collected. Any amount which may be realized by the town from the sale of any such inoperable motor vehicle shall be applied to such costs.

(h) Every cost authorized by this section with which the owner of the premises from which an inoperable motor vehicle is removed shall be assessed, shall constitute a lien against the property from which the inoperable motor vehicle was removed, such lien to continue until actual payment of such costs have been made to the town.
(Code 1977, § 11-35; Ord. of 4-19-2001) (*Amended 09-02-03*)

Sec. 58-199. Penalty.

Any person violating the provisions of this article shall, upon conviction, be guilty of a class 4 misdemeanor and be punished by a fine of not more than Two Hundred and Fifty Dollars (\$250.00). Each day in violation shall constitute a separate offense.
(Code 1977, § 11-35; Ord. of 4-19-2001) (*Amended 09-02-03*)

Sec. 58-200. Enabling authority.

This article is enacted pursuant to the provisions of § 15.2-904 of the Code of Virginia of 1950, as amended. In the event of any conflict between the terms and provisions hereof and § 15.2-904, the provisions of § 15.2-904 shall control. (*Adopted 09-02-03*)

Secs 58-201—58-235. Reserved.

Chapters 59—61

RESERVED

Chapter 62

UTILITIES *

Article I. In General

Secs. 62-1—62-25. Reserved.

Article II. Water

Division 1. Generally

Sec. 62-26. Authority.

Sec. 62-27. Penalties for unauthorized operation.

Secs. 62-28—62-55. Reserved.

Division 2. Rates, Charges and Billing

Sec. 62-56. Rates.

Sec. 62-57. Connection fees and availability fees.

Sec. 62-58. Billing and other charges.

Sec. 62-59. Water bill adjustments.

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Division 3. Service Connections and Extensions

Sec. 62-86. Service connection categories.

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Sec. 62-89. Reimbursement of extension costs.

Secs. 62-90—62-115. Reserved.

***Charter references**—Town water supply, ch. 2, § 1(8); sewage disposal, ch. 2, § 1(10); public improvements, ch. 2, § 1(14), (67); sewers and drains, ch. 2, § 1(15); utility charges and deposits, ch. 2, § 1(17), (18); franchises, ch. 2, § 1(19); exemptions from charges, ch. 2, § 1(33); town plan, ch. 3.

Cross references—Administration, ch. 2; buildings and building regulations, ch. 14; businesses, ch. 18; environment, ch. 22; floods, ch. 30; design criteria for utilities and facilities in floodplain management areas, § 30-43; solid waste, ch. 46; consumer utility taxes, § 54-181 et seq.; public utility, app. A, § 2.131; public water and sewer systems, app. A, § 2.132.

State law references—Regulation of lakes, waters and pools, Code of Virginia, § 15.2-1110; general provisions for public utilities, Code of Virginia, § 15.2-2109 et seq.; sewage disposal systems generally, Code of Virginia, § 15.2-2122 et seq.; water supply systems generally, Code of Virginia, § 15.2-2134 et seq.; health regulations pertaining to sewage disposal, Code of Virginia, § 32.1-163 et seq.; health regulations pertaining to public water supplies, Code of Virginia, § 32.1-167 et seq.; State Water Control Law, Code of Virginia, § 62.1-44.2 et seq.

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Division 4. Water Usage Plan

- Sec. 62-116. Normal operation.
- Sec. 62-117. Water shortages.
- Sec. 62-118. Public announcements.
- Sec. 62-119. Enforcement.
- Secs. 62-120—62-129. Reserved.

Division 5. Water Conservation

- Sec. 62-130. Definitions.
- Sec. 62-131. Water waste prohibited.
- Sec. 62-132. Penalties.
- Sec. 62-133. Recycling.
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Division 6. Cross Connection Control and Backflow Prevention

- Sec. 62-146. Definitions.
- Sec. 62-147. Scope.
- Sec. 62-148. Program description.
- Sec. 62-149. Violation.

UTILITIES
ARTICLE I. IN GENERAL

Secs. 62-1—62-25. Reserved.

ARTICLE II. WATER

DIVISION 1. GENERALLY

Sec. 62-26. Authority.

(a) No person except authorized public works department employees shall tap or make any connection or disconnection with water mains or distribution pipes or in any way tamper with the water meters or meter boxes of the town's water system.

(b) No person except public works department employees shall turn water meters on or off. Requests from customers to turn water on or off shall be in writing. Meters will only be turned on or off during normal working hours as described in subsection 62-58(b), except for a water leak or other such justifiable emergency.
(Code 1977, § 15-2-1; Ord. of 4-5-1999, § 15-2-1)

Sec. 62-27. Penalties for unauthorized operation.

(a) If the town's water meters, components of the water distribution system, or other such property is found to be tampered or interfered with, the plumber, contractor, service person or other party responsible for the tampering, interference, or illegal work shall be financially responsible for any repairs or replacements which may be required. A customer being supplied water through tampering, interference, or illegal installation, connection or equipment shall pay the amount which the town may estimate is due for water used but not registered on the town's meter and the cost of all such changes in the customer's installation as may be required by the town to correct any such illegal connection.

(b) Anyone found guilty of violating section 62-26 shall be guilty of a class 4 misdemeanor. (Code 1977, § 15-2-2; Ord. of 4-5-1999, § 15-2-2)

Secs. 62-28—62-55. Reserved.

DIVISION 2. RATES, CHARGES AND BILLING

Sec. 62-56. Rates.

(a) A water rate schedule shall be established and adopted each year by majority vote of the council.

(Amended 4/19/07)

(b) A minimum rate applies to all accounts after the minimum allowed usage and an additional dollar amount is applied per 1000 gallons.

(Amended 4/2/06, 4/19/07)

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(c) Water rates shall not be applied to connections for fire suppression systems described in section 62-57, except when water provided through such connections has been used for other than fire suppression. In such wrongful use, penalties described under section 62-27 shall apply.

(d) Water rates shall not be applied to nonprofit tax exempt organizations except in cases where water usage exceeds forty thousand (40,000) gallons per quarter. In such cases, the nonprofit tax exempt organization shall be charged at the commercial rate for the water used in excess of forty thousand (40,000) gallons.

(Code 1977, § 15-1-1; Ord. of 4-5-1999, § 15-1-1)

(Amended 09-08-09)

Sec. 62-57. Connection fees and availability fees.

(a) New connections to the water system shall be charged at the rate established by the town council plus all additional related costs incurred by the town..

(Amended 3/16/06, 4/19/07)

(b) The cost of service connections which are made to the system to provide for fire suppression systems shall be determined on a case-by-case basis as dictated by the requirements of individual fire suppression systems. Connection and meter sizes for fire suppression systems shall be determined by the size of the suppression system. Availability fees for fire suppression systems for nonprofit tax exempt organizations shall not be assessed unless such connection is used for purposes in addition to fire suppression. Connections for fire suppression systems shall be made only by the town.

(Amended 09-08-09)

(c) Although water usage rates are not applied to nonprofit tax exempt organizations as provided herein, service connection fees and availability fees shall be charged in accordance with this article..

(Code 1977, § 15-1-2; Ord. of 4-5-1999, § 15-1-2)

(Amended 4/20/06, 4/19/07, 09-08-09)

(d) An availability fee for new connections which increase the demand on the water system shall be charged according to the rate schedule established by the town council, as contained in the annual budget. The amount shall be collected prior to the installation of the meter and issuance of the building permit. Existing structures where a new connection is required, the fee shall be waived provided that no additional demand is placed on the system. If the water service entry branch size is increased, charges shall be calculated based on the difference of fees for the existing size and the new size.

(Amended 4/20/06, 4/19/07, 11/2/09)

(e) New multiple units such as condominiums, town homes, apartments, duplex, vacation rental cottages, or each multi business establishment, located on the same parcel are to be charged an availability fee as established by the town council per unit but supplied by a master meter with the minimum billing based on the size of the meter.

(Amended 4/20/06, 4/19/07, 11/2/09)

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Sec. 62-58. Billing and other charges.

(a) All water bills for residences, hotels, motels, rooming houses, cottages, trailer parks and all rental dwellings or rental property shall be charged to the property owner and not to the tenant.

(b) Water meters shall be read quarterly, and water bills shall be delinquent 30 days after the end of the quarter. A customer shall receive a second notice granting ten days to either pay the delinquent bill or to appear before the town manager to present reasons why service should not be terminated. If the town manager makes the decision to terminate service, the customer may appeal such decision to the public works committee of the town council by filing the appeal, in writing, at least 24 hours prior to the date of termination. If such appeal is filed, service will not be terminated until after a hearing and decision by the public works committee. No service shall be reconnected without payment of all delinquent charges plus a reconnection charge as established by the town council. Services shall only be reconnected during regular town business hours between 8:00 a.m. and 5:00 p.m., with such business hours occurring from Monday through Friday, except on certain days observed as holidays by the town.

(Amended 4/19/07)

(c) Any person having service disconnected by the town shall be charged a fee as established by the town council for each reconnection. Reconstructions shall be made only during regular business hours described in subsection (b) of this section.

(Amended 4/19/07)

(d) Any service disconnected on a seasonal basis shall be billed at the minimum quarterly rate or at an amount commensurate to the usage, during the period of disconnection.

(e) A change of ownership fee as established by the town council shall be charged to a water account transferred due to such a change.

(Code 1977, § 15-1-3; Ord. of 4-5-1999, § 15-1-3)

(Amended 4/19/07)

(f) The property owner shall be liable for the cost of replacing damaged radio real meter components. Such charges shall be established by the town council.

(Amended 5/7/18)

Sec. 62-59. Water bill adjustments.

(a) *Adjustments to correct inaccurate readings.* Adjustments to water bills to correct inaccurate readings shall be made in accordance with the following:

(1) Adjustments to water bills may be applied by the town to correct inaccurate reading of meters or incorrect readings caused by faulty meters. During the reading cycle, the town will automatically check anomalous readings to ensure accuracy.

(2) If a property owner wishes to contest the accuracy of a meter reading and subsequent water bill, he may request that the meter be checked or tested to verify the accuracy

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of the reading or the meter. If, after checking or testing the meter, the reading is found to be correct, the account will be charged a fee as established by the town council. If the meter or reading is found to be faulty or incorrect, the water bill will be adjusted accordingly.

(Amended 4/19/07)

(b) *Adjustments for water leaks.* Adjustments for water leaks may be made in accordance with the following:

- (1) In some cases, adjustments to a water bill may be granted for leaks in a property owner's water lines. The following minimum requirements shall be met to qualify for consideration of adjustment:
 - a. Underground pipe shall be buried a minimum of 18 inches in suitable material. Plastic pipe materials shall not be buried in shells, aggregate, or debris which may be abrasive to the pipe.
 - b. Generally, adjustments shall be granted for all plumbing systems and material types. Leaks which occur as the result of ruptured pipes at unoccupied properties with pressurized water systems shall not qualify for adjustment. Unoccupied for purposes of this provision shall be defined as having had no person present for greater than seventy-two hours.

(Amended 04/06/15)

- c. Water bills must be paid in full, prior to being considered for an adjustment.
- (2) To qualify for adjustment, the property owner shall contact the town upon discovery of the leak and request an inspection of the leak and subsequent repair work by water department personnel. In lieu of such inspection, the property owner shall submit a repair bill from a qualified plumber with a notarized statement describing the repair.
- (3) The property owner's request and supporting documentation shall be provided to the public works director for a decision, no later than the current billing cycle payment due date..

(Amended 06/06/11, 04/03/17)

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- (4) The property owner will be notified in writing of the decision. If an adjustment is granted, the owner will be given a refund or credit on the next bill. The pending decision in no way relieves the owner of full payment of the current bill.

(Amended 06/06/11)

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- (5) Adjustments are made through the date that the repairs are made and inspected by the town to that of the corresponding quarter of the previous year.
- (6) Once an adjustment has been made, no further adjustment shall be considered for the same system for a period of five years. A system is defined as one meter or account number.

(Code 1977, § 15-3; Ord. of 4-5-1999, § 15-3) ***(Amended 02/01/10)***

Secs. 62-60—62-85. Reserved.

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DIVISION 3. SERVICE CONNECTIONS AND EXTENSIONS

Sec. 62-86. Service connection categories.

(a) Each single-family dwelling or single business structure on a single parcel shall be served with one water meter and service connection. The meter shall be placed on the parcel of the structure being served.

(b) Multiple, single-family connected dwellings, connected rental unit structures, or connected business structures on a single parcel under singular ownership, such as apartment complexes, motels, hotels, shopping plazas and condominiums, shall be served by a single meter and service connection. The term "condominiums" as used in this section shall be defined as connected multiple-unit structures on a single parcel with the structure and parcel being jointly owned through an association or other legal vehicle. The meter shall be placed on the parcel of the structure being served.

(c) Multiple, single-family detached dwellings or detached rental units on a single parcel and under singular ownership and without property division, such as rental trailer parks and campgrounds, shall be served with one meter and service connection on the same single parcel of the structures being served.

(d) Multiple, single-family connected dwellings on individual and separate parcels and under individual ownership, such as town homes, duplexes, and triplexes, shall have individual meters and service connections serving and located on each of the parcels.

(e) Parcels which are leased for a period in excess of one year shall be considered under ownership of the lessee and, therefore, shall comply with the requirements of subsection (a) of this section.

(Code 1977, § 15-4-1; Ord. of 4-5-1999, § 15-4-1)

Sec. 62-87. Service connection requirements.

(a) Each parcel requiring a service connection to the water system shall be adjacent to a water main. Where properties are not adjacent to a water main, the following shall apply:

- (1) The water system (nearest main) shall be extended at the expense of the property owner and in accordance with the requirements of section 62-88.
- (2) A parcel may be served from a meter and connection located on the property of others, provided that the parcel owner has a recorded perpetual easement granted by the other property owner which provides for the installation and maintenance of the water meter and service line between the town's water main and the parcel to be served. The minimum width of such easement shall be five feet. The use of easements as described in this subsection shall not apply to any legal division of property occurring after November 7, 1991.
- (3) A parcel may be served from a connection, meter and service line located in an existing older easement and/or right-of-way, provided the use of such is not specifically described. The town will interpret such easements and rights-of-way to

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allow for total usage, which would include the right to install and maintain water utilities. Such easements and rights-of-way as described in this subsection must be adjacent to a water main and be contiguous to the involved parcel. The term "older," as used in this section, shall refer to property or divisions of property legally recorded prior to December 6, 1971.

(b) The use of nonspecific older easements and rights-of-way and perpetual easements shall only be permitted when there is no other practicable avenue available to provide water to the requiring parcel.

(c) The town is responsible for the service connection up to and inclusive of a meter serving a particular property and is not responsible for any piping or connection on the owner's property beyond the meter.

(d) Every property owner served by the water system through a service connection is required to install a valve to control the flow of water from the meter to his property. Meter valves, which are the property of the town, are not intended for such use.
(Code 1977, § 15-4-2; Ord. of 4-5-1999, § 15-4-2)

Sec. 62-88. Water main extensions.

(a) The owner and/or developer of a parcel requiring a water main extension by virtue of the requirements of subsection 62-87(a) shall request such extension from the town in writing. With the written request, the owner and/or developer shall also submit recorded drawings, plats or surveys depicting the parcel to be served by the requested extension. Such drawings shall include the delineation of the utility easements to be used by the town for the placement and maintenance of the requested water main. Delineated easements on recorded drawings shall include the finished grade elevation of the easement area. In the absence of utility easements being included in recorded drawings, easements and certification of elevation may be conveyed through separate perpetual deed of easement or agreement to the town. Utility easements shall be a minimum of ten feet in width. Pavement for roadways shall not be installed over utility easements.

(b) Upon review of the request and within 30 days of the request, the town shall design and size the appropriate extension to the water system and calculate the cost of installation of the extension. Costs shall include an administrative fee percentage, set by the town council. The requester will be notified of the cost of the installation and allowed 30 calendar days to initiate the installation by paying the provided cost. If payment is not made within the allotted time, the requester shall submit subsequent requests as necessary to allow the town to calculate the new cost. The town shall have the right to recover costs incurred from repeated design and calculation in subsequent cost calculations.

(Amended 4/19/07)

(c) Once payment for an extension is made, the town shall schedule and implement the work within 60 calendar days.

(d) Water main extensions shall be designed and sized on a case-by-case basis, but in no

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case will pipe with inside diameter sizes of less than six inches be used for mains, nor will required fire hydrants be deleted from a potential extension.

(e) Property owners assume all responsibility for delineation of property to be served by water mains and the delineation of utility easements to be used for the installation of water mains. All property markers relevant to water main installation shall be in place in the field and located prior to the town's installation work.

(f) All obstructions to the path of the water main and service connections shall be cleared by the property owner prior to installation work.

(Code 1977, § 15-4-3; Ord. of 4-5-1999, § 15-4-3)

Sec. 62-89. Reimbursement of extension costs.

(a) When a water main is extended across the frontage of unimproved parcels for the purpose of providing service to another parcel, the owner of the parcel being served shall be entitled to recover some of the costs of the water main extension. In no case shall this entitle owners or developers of subdivisions to reimbursements.

(b) The original cost of the water main extension shall be divided equally by linear foot to apply to the frontage of property across which the main is being extended. When lots adjoin the water main on two sides, the apportioned cost will further be factored as half of the linear-foot cost. When lots along the main are improved with structures requiring service, the town shall collect the apportioned amount of the original cost of the installation with connection fees from the newly requiring parcels. The parcel owner originally initiating and paying for the extension shall then be reimbursed by the town.

(Code 1977, § 15-4-4; Ord. of 4-5-1999, § 15-4-4)

Secs. 62-90—62-115. Reserved.

DIVISION 4. WATER USAGE PLAN

Sec. 62-116. Normal operation.

The town's water supply and distribution system shall be operated by a qualified operator and division supervisor under the purview of the director of public works and town manager. The supervisor/operator shall report routine operations and daily water usage to the director of public works and town manager. The town manager shall further advise the public works committee of the town council and the mayor.

(Code 1977, § 15-5-1; Ord. of 4-5-1999, § 15-5-1)

Sec. 62-117. Water shortages.

For the purposes of this division, categories of water shortages shall be as follows:

- (1) *Category I: major water leaks or mechanical failures.* If a major leak or mechanical failure occurs, repairs shall be immediately initiated by the department, and the town manager shall immediately be notified of such. In conjunction with the town manager and public works committee chair, the waterworks supervisor and the director of public works shall determine if a water shortage will occur as a result of the leak or mechanical failure.

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- (2) *Category II: serious water shortage.* If, through department review, a serious water shortage will occur, the town manager shall be immediately notified. After consultation with the mayor and public works committee chair, a public announcement shall be made to curtail car washing, lawn watering, garden watering, and usage by swimming pools and other recreational facilities, all on a voluntary basis.
- (3) *Category III: critical water shortage.* In critical water shortages the public announcement shall curtail the water usage as provided in subsection (2) of this section and additionally restrict the use by motels, hotels, tourist homes, campgrounds, trailer parks and all commercial establishments. Such establishments shall be required to notify their customers and restrict water usage for bathing and other purposes to a bare minimum. Restaurants and food service establishments will provide water to customers only when requested. All curtailments during the critical water shortage will be mandatory. During critical water shortages a moratorium shall be placed on all new water service connections.
- (Code 1977, § 15-5-2; Ord. of 4-5-1999, § 15-5-2)

Sec. 62-118. Public announcements.

All announcements of water shortage shall be made through local radio stations or through the town's EOC established procedures. Announcements shall establish restrictions and assign an effective date for restrictions. Restrictions shall not be removed until so announced by radio.

(Code 1977, § 15-5-3; Ord. of 4-5-1999, § 15-5-3)

Sec. 62-119. Enforcement.

The town police and/or special police shall issue tickets to violators of subsection 62-117(3). Upon conviction, a violator shall be guilty of a class 4 misdemeanor, and each incident shall be considered a separate offense.

(Code 1977, § 15-5-4; Ord. of 4-5-1999, § 15-5-4)

Secs. 62-120—62-129. Reserved.

DIVISION 5. WATER CONSERVATION

Sec. 62-130. Definitions.

The following terms, when used in this section, shall have the meanings ascribed herein:

Impervious surface means any artificially created surface which cannot be penetrated by water or which causes water to run off the surface, including streets, driveways, sidewalks and rooftops.

Person means any individual, partnership, firm, corporation, limited liability company, or other legal entity in whose name water is provided and billed by the town.

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Repeated or flagrant wasting of water means and includes those situations where persons who have received notice that they are wasting water continue to do so in the same manner. It does not mean those persons who waste water on solitary or isolated occasions.

Town water means all water that passes through the town's water distribution system. This term does not include town water that is sold by the town to other governmental entities.

Water waste means any of the following:

- (1) Using town water so that it falls directly onto impervious surfaces to the extent that running water leaves the property and enters gutters, storm drains, ditches and other conveyances; or
- (2) Using town water to the extent that it is allowed to accumulate on the surface of the ground and leave the property and enter gutters, storm drains, ditches and other conveyances.
- (3) Knowingly allowing town water to escape through leaks, breaks, or malfunctions within the water user's plumbing or distribution system for any period of time beyond which such a leak or break should reasonably have been repaired or corrected.
- (4) Willfully or negligently wasting water in any other manner.

Sec. 62-131. Water waste prohibited.

(a) The governing body affirmatively finds that a water supply emergency is reasonably likely to occur within the town given the limited supply of public water available to the town and the high demand for such water especially during certain periods of the year if water conservation measures are not taken or imposed as provided herein.

(b) The public works director or designee shall identify persons who waste water.

(c) Whenever the director finds that any person wastes water, the director shall give such person oral or written notice of that fact.

(d) Whenever the director finds that any person repeatedly or flagrantly wastes water, the director shall serve upon such person a written notice ("notice of water waste" or "notice"). Such notice shall identify the person and the location at which water is being wasted, shall identify the manner in which the water is being wasted, and shall specify a time within which the wasting of water shall cease. The notice shall also warn that more severe measures (such as imposition of civil penalties or restriction or termination of water service) may be assessed or brought against the person unless the wasting of water ceases within the time provided. The time given to cease wasting water may range from a requirement for immediate compliance to 30 days, depending upon the facts and circumstances of each case.

(e) Any person who continues to waste water after the period of time specified in the notice for ceasing such activity shall be issued a citation and shall be subject to the civil penalty and enforcement procedures specified in Sec. 62-133 below. The civil penalty shall be paid within 30 days of receipt of the citation.

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(f) This ordinance is adopted pursuant to the provisions of §15.2-923 and §15.2-924 of the Code of Virginia of 1950, as amended.

Sec. 62-132, Penalties.

(a) *Civil penalties.* Violations of this section shall subject the offender to a civil penalty as set forth in the town budget fee schedule, to be recovered by the town in a civil action in the nature of debt if the offender does not pay the penalty within the prescribed period of time after he or she has been cited. A violation shall be deemed continuing if the same wasting of water takes place on one or more days at the same location described in the notice and citation.

(b) *Other enforcement action.* Additionally, the director may restrict or terminate water service in accordance with law.

Sec. 62-133. Recycling.

(a) *Carwashes.* All new carwash installations shall be equipped with an approved water recycling system.

(b) *Continuous flow equipment.* All new construction, or repair/replacement, of continuous flow devices requiring a continuous water flow of five gallons per minute or more, not elsewhere covered by this section, shall be equipped with an approved water recycling system.

(Adopted 12/06/10)

Secs. 62-134—62-145. Reserved

DIVISION 6. CROSS CONNECTION CONTROL AND BACKFLOW PREVENTION

Sec. 62-146. 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:

Backflow means the flow of water, liquids, mixtures, gases or other substances into the distribution piping of a potable supply of water from any source.

Connection means the terminal end or a service line from the waterworks. If a meter is installed at the end of the service connection, the connection means the downstream end of the meter.

Consumer: The owner or person in control of any premises supplied by or any manner connected to the waterworks.

Consumer's water system: any water system located on the consumer's premises, supplied

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by or in any manner connected to a waterworks.

Cross connection: any unprotected connection between any part of a water system used or intended to supply water for drinking purposes and any source or system containing water or substances that are not or cannot be approved as safe, wholesome and potable for human consumption.

Water purveyor: An individual, group of individuals, partnership, firm, association, institution, corporation, municipal corporation, county, or authority which supplies water to any person within this state from or by means of any waterworks.

Waterworks means a system that serves piped water for drinking or domestic use to (i) the public, (ii) at least 15 connections or (iii) an average of 25 individuals for at least 60 days out of the year. The term "waterworks" includes 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, as set forth in Code of Virginia, § 32.1-167.

(Code 1977, § 15-6-2; Ord. of 4-5-1999, § 15-6-2)

Cross reference—Definitions generally, § 1-2.

Sec. 62-147. Scope.

(a) The town council adopted on May 4, 1987, by reference, OR 355-18-006, article 3, Cross-connection Control and Backflow Prevention in Waterworks, of the Commonwealth Department of Health.

(b) Also made part of this division by reference is the Manual of Cross Connection Policies, as approved by the commonwealth department of health, on May 13, 1987, and by the town council on May 4, 1987. Such manual authorizes and establishes rules and regulations for the control of cross connections.

(c) This division is a supplement to any applicable plumbing codes.
(Code 1977, § 15-6-1; Ord. of 4-5-1999, § 15-6-1)

Sec. 62-148. Program description.

(a) The water purveyor or its representative shall have the right to enter, at any reasonable time, properties served by a connection to any waterworks operated by the town for the purpose of inspecting the consumer's water system for cross connections. Upon request, the owner or occupant or property served shall furnish to the inspection agency pertinent information regarding the piping system on such property. The refusal of such information or refusal of access when requested shall be deemed evidence of the presence of cross connections.

(b) After inspection, the water purveyor shall have the right to require that a consumer's water system be modified through installation of backflow prevention devices or other means to eliminate cited cross connections.

(c) The water purveyor may deny or discontinue the water service to a customer for

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failure to comply with any requirements of the cross connection control program. Water service to such premises shall not be restored until the deficiencies have been corrected or eliminated in accordance with the requirements of the program.

(Code 1977, § 15-6-3; Ord. of 4-5-1999, § 15-6-3)

Sec. 62-149. Violation.

Any person or consumer found guilty of violating any of the provisions of the cross connection program or this division shall be deemed guilty of a misdemeanor and, upon conviction, shall be punished by the corresponding penalty.

(Code 1977, § 15-6-4(a); Ord. of 4-5-1999, § 15-6-4(a))

Chapters 63—65

RESERVED

Chapter 66

VEGETATION*

Article I. In General

Secs. 66-1—66-25. Reserved.

Article II. Weeds

Division 1. Generally

Secs. 66-26—66-50. Reserved.

Division 2. Johnson Grass

Sec. 66-51. Control committee.

Sec. 66-52. Nuisance declared.

Sec. 66-53. Unlawful acts.

Sec. 66-54. Acceptance of aid, gifts, grants, loans; billing for services; disposition of funds.

Sec. 66-55. Penalties.

***Charter references**—Shade trees, ch. 2, § 1(15); weeds, ch. 2, § 1(21).

Cross references—Buildings and building regulations, ch. 14; environment, ch. 22; parks and recreation, ch. 42; waterways, ch. 70; zoning, app. A.

State law references—Tree conservation ordinance, civil penalties, Code of Virginia, § 10.1-1127.1; control of certain noxious weeds, Code of Virginia, § 15.2-902; destruction of trees, shrubs, etc., Code of Virginia, § 18.2-139 et seq.

VEGETATION
ARTICLE I. IN GENERAL

Secs. 66-1—66-25. Reserved.

ARTICLE II. WEEDS

DIVISION 1. GENERALLY

Secs. 66-26—66-50. Reserved.

DIVISION 2. JOHNSON GRASS

Sec. 66-51. Control committee.

(a) There is established a Johnson grass control committee composed of four members, each to serve at the pleasure of the town council. Such committee shall appoint all individuals responsible for a Johnson grass control program, approve all expenditures of funds, and administer the Johnson grass control program.

(b) The Johnson grass control committee or its representatives shall conduct surveys to determine the location and amount of infestations of Johnson grass within the town; shall provide the necessary technical and other assistance to landowners in a cooperative control or eradication program; and may effect a program of spraying or other control practices on road rights-of-way, drainage ditch banks, parks, playgrounds, utility rights-of-way and other public or private lands.

(Code 1977, § 12-15; Ord. of 3-3-1980)

Cross reference—Boards and commissions, § 2-106 et seq.

Sec. 66-52. Nuisance declared.

The existence of growth of a specie of grass, *Sorghum halepense*, commonly known as Johnson grass, as well as other sorghum species with perennial rhizomes, including perennial sweet Sudan grass, *Sorghum alnum* and hybrids derived therefrom, is declared to be a public nuisance.

(Code 1977, § 12-13; Ord. of 3-3-1980)

Cross reference—Nuisances, § 22-61 et seq.

Sec. 66-53. Unlawful acts.

(a) It shall be unlawful to knowingly allow Johnson grass to set seed on any land, and it shall be the duty of each landowner to mow, fallow, treat with herbicides, or use such other practices as may be approved by the town council as effective in preventing seed to set on all Johnson grass or other perennial sorghum species on his property. However, a landowner or lessee may enter into a written compliance agreement with the town council or its designee specifying terms and conditions of a control program, and so long as all the terms and conditions are being complied with, there is no violation of this article.

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(b) It shall be unlawful to import Johnson grass into this town or to transport Johnson grass within the town in any form capable of growth or to knowingly contaminate any uninfested land with Johnson grass through the movement of root stocks, plant parts, seed, soil, mulch, nursery stock, farm machinery or other media.

(Code 1977, § 12-14; Ord. of 3-3-1980)

Sec. 66-54. Acceptance of aid, gifts, grants, loans; billing for services; disposition of funds

(a) The town council may accept, use, or expend such aid, gifts, grants or loans as may from time to time be made available from any source, public or private, for the purposes of carrying out the purposes of this article.

(b) Services rendered for actual Johnson grass control practices may be billed to the landowner and collected. All reimbursements shall be promptly deposited in the town's general fund.

(Code 1977, § 12-16; Ord. of 3-3-1980)

Sec. 66-55. Penalties.

Any person who fails or refuses to comply with this article shall be deemed guilty of a class 4 misdemeanor.

(Code 1977, § 12-17; Ord. of 3-3-1980)

Chapters 67—69

RESERVED

Chapter 70

WATER ACCESS FACILITIES*

Article I. In General

Secs. 70-1—70-25. Reserved.

Article II. CURTIS MERRITT HARBOR OF REFUGE

Division 1. Generally

Sec. 70-26. Definitions.
Sec. 70-27. Purpose.
Sec. 70-28. Penalties.
Sec. 70-29. Damage to docks, wharves or launching ramps.
Sec. 70-30. Nondiscrimination.
Secs. 70-31—70-55. Reserved.

Division 2. Committee

Sec. 70-56. Established; general authority.
Sec. 70-57. Membership.
Sec. 70-58. Meetings.
Sec. 70-59. Quorum; majority rule.
Sec. 70-60. Vacancies.
Sec. 70-61. Removal of members.
Sec. 70-62. Repealed.
Sec. 70-63. General authority.
Secs. 70-64—70-90. Reserved.

Division 3. Use of Harbors, Wharves, Boat Slips, Land

Sec. 70-91. Mooring permits required for use or occupancy.
Sec. 70-92. Permits required for erection of structures.
Sec. 70-93. Damage to docks, wharves or launching ramps.
Sec. 70-94. Dumping; disposal of wrecks.
Sec. 70-95. Boat ramp and land area usage.
Sec. 70-96. Designated loading and unloading areas.
Sec. 70-97. Use of harbor for anchoring or mooring.
Sec. 70-98. Speed limit.

***Charter reference**—Public wharves, harbors, etc., ch. 2, § 1(9).

Cross references—Buildings and building regulations, ch. 14; environment, ch. 22; floods, ch. 30; parks and recreation, ch. 42; vegetation, ch. 66; zoning, app. A; marina, commercial or club type, app. A, § 2.96; marina, private noncommercial, app. A, § 2.97.

State law references—Removal, repair, etc., of wharves, piers, etc., Code of Virginia, § 15.2-909; regulation of lakes, pools, etc., Code of Virginia, § 15.2-1110; local regulation of vessels, Code of Virginia, § 29.1-744 et seq.; port management, Code of Virginia, § 62.1-163.

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- Sec. 70-99. Dock boxes.
- Sec. 70-100. Storage.
- Sec. 70-101. Fuel.
- Sec. 70-102. Oversized vessels.
- Sec. 70-103. Trespassing.
- Sec. 70-104. Prohibited conduct.
- Sec. 70-105. Other rules and regulations.
- Sec. 70-106. Abusive language.
- Secs. 70-107—70-109. Reserved.

Article III. Use of Other Town Water Related Facilities

Division 1. Generally

- Sec. 70-110. Definitions.
- Sec. 70-111. Purpose and authority.
- Sec. 70-112. Penalties.
- Sec. 70-113. Nondiscrimination.
- Sec. 70-114. Reserved.

Division 2. Provisions Regulating the Use of Such Other Facilities

- Sec. 70-115. General Authority.
- Sec. 70-116. General.
- Sec. 70-117. Required license.
- Sec. 70-118. Damage to docks, wharves or launching ramps.
- Sec. 70-119. Boat ramp and land area usage.
- Sec. 70-120. Dumping; disposal of wrecks.
- Sec. 70-121. Use of facility for anchoring or mooring.
- Sec. 70-122. Prohibited conduct.
- Sec. 70-123. Other rules and regulations.
- Sec. 70-124. Provisions regulating boat wakes in and adjacent to any such facility.
- Sec. 70-125. Abusive language.
- Sec. 70-126. Special provisions applicable to the town dock.

WATER ACCESS FACILITIES

ARTICLE I. IN GENERAL

Secs. 70-1—70-25. Reserved.

ARTICLE II. CURTIS MERRITT HARBOR OF REFUGE

DIVISION 1. GENERALLY

Sec. 70-26. 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:

Boat means any motor boat, vessel, watercraft, or personal watercraft of any kind, however propelled.

Committee means the Curtis Merritt Harbor of Refuge Committee.

Federal project means a project for improvement of the harbor and the modification of harbor lines by the Department of the Army and in proximity thereto.

Harbor or Curtis Merritt Harbor means the Curtis Merritt Harbor of Refuge.

Working waterman means anyone that earns fifty-one percent (51%) of their gross annual income working on the water.

(Code 1977, §§ 9-2, 9-3)

Cross reference—Definitions generally, § 1-2.
(*Amended 08/07/06, 03/04/13*)

Sec. 70-27. Purpose.

The purpose of this article is to establish an advisory committee for the Curtis Merritt Harbor of Refuge and establish provisions for the operation and maintenance of the harbor.
(Code 1977, § 9-1) (*Amended 05/05/03, 08/07/06, 03/04/13*)

Sec. 70-28. Penalties.

Any person violating any of the sections of this article shall, upon conviction, be guilty of a Class 2 misdemeanor.

(Code 1977, § 9-7)

(*Amended 08/07/06*)

Sec. 70-29. Damage to docks, wharves or launching ramps.

It shall be unlawful for anyone, intentionally or negligently, to damage the public docks, wharves or launching ramps owned by the town.

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(Code 1977, § 9-4)
(*Amended 08/07/06*)

Sec. 70-30. Nondiscrimination.

There shall be no discrimination in the use of an access to the benefits of all the harbor regardless of race, age, creed, handicapping conditions, color, national origin, religion, sex, political affiliation or beliefs.

(Code 1977, § 9-6)
(*Amended 08/07/06*)

Secs. 70-31—70-55. Reserved.

DIVISION 2. COMMITTEE*

Sec. 70-56. Established; general authority.

There is hereby established a committee to be known as the Curtis Merritt Harbor of Refuge Committee to act as an advisory committee of the town council as to the operation and maintenance of the harbor and recommending rules, regulations, future projects, and other matters relative to the harbor to the town council from time to time.

(Code 1977, § 9-2(1)) (*Amended 05/05/03, 08/07/06, 03/04/13*)

Sec. 70-57. Membership.

(a) The committee shall consist of four members, and four members shall be residents of the town. The members shall be as follows:

- (1) Two shall be members of the town council.
- (2) One shall be a member of the working waterman's association.
- (3) One shall be a recreational fisherman.

(*Amended 08/07/06, 03/04/13*)

(b) All members shall be appointed by the council. All members shall be appointed for a term of two years or until replaced by the town as herein provided. All members of the committee shall serve as such without compensation.

(*Amended 08/07/06, 03/04/13*)

(c) The harbor master shall be secretary of the committee. Council shall elect a chairman every other year following council elections.

(Code 1977, § 9-2(2); Ord. of 10-21-1993) (*Amended 05/05/03, 08/07/06, 03/04/13*)

Sec. 70-58. Meetings.

The committee shall meet at least four times a year at a time and place of its choosing and shall maintain accurate records of the meeting.

(Code 1977, § 9-2(3)) (*Amended 05/05/03, 08/07/06, 03/04/13*)

***Cross reference**—Boards and commissions, § 2-106 et seq.

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Sec. 70-59. Quorum; majority rule.

Three voting members of the committee shall constitute a quorum for all meetings. All matters shall be decided by majority vote of those present and voting.

(Code 1977, § 9-2(4))

(Amended 08/07/06)

Sec. 70-60. Vacancies.

If a vacancy occurs in the term of any committee member, the town shall have the right to appoint a person to fill such vacancy, as described in this division, for the remainder of such unexpired term.

(Code 1977, § 9-2(5))

Sec. 70-61. Removal of members.

The town reserves the right to remove any committee member with or without cause.

(Code 1977, § 9-2(6))

(Amended 08/07/06)

Sec. 70-62. Repealed. 03/04/13

Sec. 70-63. General authority.

(a) The harbor master is the town's designated agent in the supervision of the harbor and the enforcement of this article and has the authority to direct and control the movement and stoppage of all boats, vehicles and trailers using the harbor facilities, including the parking area, ramp, dock, boat slips and water within the confines of the harbor. The harbor master shall have the further authority to restrict or prohibit any activities within the facility that in any way adversely affect the intended uses of the facility. The failure of any person to reasonably submit to such direction and control shall constitute a violation hereof.

(Amended 08/07/06, 03/04/13)

(b) Nothing contained in this section is intended to preclude the town police department or other police officers from enforcing federal, as applicable, state and local statutes, ordinances and regulations, including the provisions of this article within the harbor.

(Code 1977, § 9-5)

(Amended 08/07/06)

Secs. 70-64—70-90. Reserved.

DIVISION 3. USE OF HARBORS, WHARVES, BOAT SLIPS, LAND

Sec. 70-91. Mooring permit required for use or occupancy.

(a) It shall be unlawful for any person to use, occupy or moor a boat to any part of the Curtis Merritt Harbor of Refuge without first having obtained a mooring permit, or the authority of the harbor master as provided in this article, for such use, occupation docking, or mooring.

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(Amended 08/07/06, 03/04/13)

(b) All mooring permits for the use or occupancy of boat slips, wharfage or land within the harbor shall be in writing on forms authorized by the town and submitted to and approved by the harbor master or his designated representative.

(Amended 08/07/06, 03/04/13)

(c) All fees for mooring permits shall become due and payable on each June 1st at the town office. All fees are non-refundable, except as may be provided for in the mooring permit.

(Amended 08/07/06, 03/04/13)

(d) No mooring permit (holder) shall assign the mooring permit to another person and any such assignment shall immediately terminate said mooring permit, without refund of any portion of the mooring permit payment. Fees for such mooring permits shall be established by the town council from time to time

(Amended 08/07/06, 03/04/13)

(e) No boat shall be moored in any slip for a period in excess of 24 hours by any holder except such boat that is listed on the holder agreement when executed or subsequently added thereto. No more than one (1) boat shall be so listed at any given time. The presence of any unlisted boat in any such slip for a period of ten (10) days shall result in a determination that such slip holder has been assigned or unauthorized assignment exists and such mooring permit holder shall terminate immediately, absent proof to the reasonable satisfaction of the harbor master that such assignment has not occurred.

(Amended 08/07/06, 03/04/13)

(f) All fees charged for use and occupancy of boat slips, wharfage, and other uses of the harbor facilities shall be established by the town council from time to time and shall be posted in the office of the harbor master, unless otherwise expressly provided for herein.

(Code 1977, § 9-3(A)) *(Amended 05/05/03, 08/07/06, 03/04/13)*

(g) All fees and charges collected by the town from the use of the harbor shall be segregated or earmarked from the general fund and used for improvements, repairs and upkeep of the harbor and its facilities, upon recommendations made to the council by the committee.

(Amended 08/07/06, 03/04/13)

(h) The following priorities shall control the issuance of the mooring permit of slips at the harbor:

(1) Present mooring permit holders that requested smaller slips and holds a larger slips have the first opportunity to change to a smaller slip if available.

(2) Working watermen (100%) of the Islands District.

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- (3) Other boat owners of the Islands District.
- (4) Working watermen (100%) of Accomack County.
- (5) Accomack County residents.
- (6) All others.

(Amended 08/07/06, 03/04/13)

Sec. 70-92. Permits required for erection of structures.

It shall be unlawful to erect any type of structure including mooring poles in the waters of the harbor or on the property within the harbor facility without first securing a permit from the harbor master. All buildings, structures, docks, poles, walkways or projections in the harbor waters or facility, in conflict with and not conforming to specifications and requirements of the harbor master, shall be removed at the permit holder's expense. Any authorized structure or appurtenance shall be installed at the expense of the person causing the construction thereof. The structure or appurtenance shall, at the option of the permit holder, become the property of the town at the expiration of the permit holder's mooring permit, or the harbor master may require that any such structure be removed.

(Code 1977, § 9-3(B)) (Amended 08/07/06, 03/04/13)

Sec. 70-93. Damage to docks, wharves or launching ramps.

It shall be unlawful for anyone intentionally or negligently, to damage the public docks, wharves, bulkheads, or launching ramps owned by the town situated at the harbor.

(Adopted 08/07/06)

Sec. 70-94. Dumping; disposal of wrecks.

(a) It shall be unlawful to deposit or cause or permit to be deposited, in any of the waters of the harbor, or along the shores thereof or in any of the streams or ditches emptying therein or on any of the land adjacent or contiguous to the harbor, etc., any refuse, offal, waste matter or other substance or material, whether earth, oil, liquid, animal, fish or vegetable matter, or other matter that may adversely affect the sanitary, clean and safe condition of the water in the harbor or that may diminish the depth thereof.

(Amended 08/07/06)

(b) It shall be unlawful to intentionally or negligently permit or cause to be sunk any boat in the waters of the harbor, or to intentionally or negligently permit or cause any loose timber or log to be set adrift in the harbor. Whenever a boat is wrecked and/or sunk in any of the waters of the harbor, accidentally or otherwise, it shall be the duty of the owner or person then in possession of such wrecked or sunken boat to immediately mark it with buoys and lights at night and to maintain such warning devices until the wrecked or sunken boat is removed which shall be done within the time frame designated by the harbor master. The neglect or failure of the owner person then in possession to so mark the wrecked or sunken boat shall constitute a violation hereof. It shall be the duty of the owner or person then in possession of such wrecked or sunken boat to commence the immediate removal of the boat and remove same within the harbor master's designated removal period. Failure to do so shall constitute a violation hereof. Further, the failure of the owner or person then in possession

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to mark with required warning devices and/or remove such wrecked or sunken boat within the period prescribed by the harbor master shall constitute a material breach of any mooring permit with such person and authorize the harbor master to cancel such mooring permit. In the event any such owner or person in possession does not timely remove such wrecked or sunken boat, the committee may proceed to do so after five (5) days written notice to such owner or person in possession, and at the owner's and/or person in possession's cost.
(Code 1977, § 9-3(C)) (*Amended 08/07/06, 03/04/13*)

Sec. 70-95. Boat ramp and land area usage.

(a) The use of the boat ramps and adjacent parking areas of the harbor facility are for the pleasure of all users. No unloading, loading or storage of seafood products or byproducts, nets, poles, dredges or culling of products is permitted except in designated loading and unloading areas as hereinafter provided. At the discretion of the harbor master, a temporary variance may be granted when an emergency exists or there is other just cause therefore.
(*Amended 08/07/06*)

(b) Overnight habitation of vessels, boats, parked vans, automobiles, trucks, mobile homes, camper trailers or other recreational vehicles or apparatus, including tents, at the harbor facility, is prohibited except by special authority given by the harbor master for critical emergency situations.
(Code 1977, § 9-3(D)) (*Amended 05/05/03, 08/07/06*)

(c) Persons utilizing a boat ramp at the harbor shall launch or recover any boat as promptly as possible giving consideration to the safety of persons and property, and shall not unnecessarily impede the use of such ramp by other users.
(*Adopted 08/07/06*)

Sec. 70-96. Designated loading and unloading areas.

(a) The harbor master shall designate a specified wharfage area for the loading and unloading of both commercial and pleasure boats which areas shall be designated and with appropriate signage.
(*Amended 08/07/06, 03/04/13*)

(b) Except in an emergency, it shall be unlawful to use the loading and unloading wharfage area for the mooring of boats. In an emergency, the mooring shall be as approved by the harbor master or his designated agent.
(*Amended 10/03/05, 08/07/06, 03/04/13*)

(c) Wharfage for inbound or outbound cargo placed on the loading and unloading area shall be limited to 24 hours without charge. Wharfage for all boats shall be limited to eight hours without charge.
(*Amended 05/05/03, 10/03/05, 08/07/06*)

(d) Under no circumstances shall any cargo remain on the loading and unloading area in excess of the free time, except on the express authorization of the harbor committee or

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harbor master. The loading and unloading area or any other upland area of the harbor facility shall not be utilized for storage purposes. Cargo equipment of whatever kind placed thereon shall remain thereon at the risk of the consignee or owner and shall be removed within a reasonable length of time, which shall not exceed 24 hours except on the express authorization of the harbor committee or harbor master.

(Code 1977, § 9-3(E)) (*Amended 08/07/06*)

Sec. 70-97. Use of harbor for anchoring or mooring.

(a) No boat shall be moored or anchored inside the harbor without the permission of the harbor master, at such points as shall be designated.

(*Amended 08/07/06, 03/04/13*)

(b) No boat shall operate or be moored or anchored in such a manner as to obstruct the passage, approaches, berthing offloading, or loading, or use of the launching ramp by other boats at the harbor.

(*Amended 08/07/06*)

(c) No person operating any boat shall utilize in any way any bulkhead, dock or slip space within the harbor except that portion which is permitted by the harbor master.

(*Amended 08/07/06, 03/04/13*)

Sec. 70-98. Speed limit.

All boats entering, leaving, or navigating in the harbor shall be operated in such a manner so as not to create a swell sufficient to cause damage to the other boats moored, anchored, offloading, loading or utilizing the boat ramps at the harbor.

(Code 1977, § 9-3(G)) (*Amended 08/07/06*)

Sec. 70-99. Dock boxes.

Dock boxes may be provided and utilized by each mooring permit holder at the harbor, provided that the design, materials, colors, and location are approved in writing by the harbor master.

(Code 1977, § 9-3(H)) (*Amended 08/07/06, 03/04/13*)

Sec. 70-100. Storage.

Crab traps, lobster pots, fish nets, baskets, fish boxes and all other types of gear shall not be stored on the docks or upland areas except area that may be designated by the harbor master. Boats shall not be stored on the docks, adjacent waterways or upland areas of the harbor.

(Code 1977, § 9-3(I)) (*Amended 08/07/06, 03/04/13*)

Sec. 70-101. Fuel.

No fuel, either diesel or gasoline, shall be stored on the docks or upland areas of the harbor. Fuels shall only be sold at the harbor by licensed fuel dealers. Transportation of fuels by a mooring permit holder is permitted, providing the containers are safe and properly secured on the lessee's vehicle. All such containers and vehicles must be approved by the

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harbor master.

(Code 1977, § 9-3(J)) (*Amended 08/07/06, 03/04/13*)

Sec. 70-102. Oversized vessels.

Boats longer than 15 percent of the length of the harbor slip requested will not be permitted unless special permission is granted by the committee.

(Code 1977, § 9-3(K)) (*Amended 08/07/06*)

Sec. 70-103. Trespassing.

No person shall enter the harbor between the hours of 10:00 p.m. and 6:00 a.m., except for mooring permit holders and their guests and other duly authorized persons. Any such entry shall constitute a criminal trespass.

(Code 1977, § 9-3(L)) (*Amended 08/07/06, 03/04/13*)

Sec. 70-104. Prohibited conduct.

Within the harbor, the upland area adjacent thereto, and the spoil site, The following conduct is expressly prohibited:

- (a) crabbing
- (b) swimming
- (c) fishing
- (d) camping
- (e) bathing
- (f) overhaul or repair of boats
- (h) discharge of fire arms
- (i) parking, except as expressly permitted by appropriate signage or the harbor master.

(Code 1977, § 9-3(M)) (*Amended 08/07/06, 03/04/13*)

Sec. 70-105. Other rules and regulations.

In addition to all other rules or regulations pertaining to the use of the harbor, the following additional rules and regulations shall be in effect:

- a. Overnight parking is prohibited without a current ramp user fee sticker and then only if the vessel is underway.
- b. Two (2) hour parking if not under way on boat or vessel.

(*Adopted 08/07/06, 03/04/13*)

Sec. 70-106. Abusive language.

While utilizing the harbor, including while on any boat moored thereto or while in the act of mooring, embarking, disembarking, launching or recovering any boat any person shall refrain from making any loud and disturbing noises not reasonably necessary for utilizing

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said facility, and further shall not use any abusive and/or obscene language that reasonably disturbs the peace and tranquility of others on or near said facility.

(Adopted 08/07/06)

Sec. 70-107 to 109. Reserved.

ARTICLE III. USE OF OTHER TOWN WATER RELATED FACILITIES

DIVISION 1. GENERALLY

Sec. 70-110. 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:

Boat means any motor boat, vessel, watercraft, or personal watercraft of any kind, however propelled.

Person means any natural person, corporation, partnership, limited liability company, or other legal entity.

Town or Town Council means the governing body of the Town of Chincoteague.
(Adopted 08/07/06)

Sec. 70-111. Purpose and authority.

The purpose of this article is to provide for the operation of all other water related facilities owned or controlled by the Town of Chincoteague, specifically including but not limited to the town dock (excluding any leased portion thereof), Chincoteague Veterans Memorial Park, eastside boating facility, Fir Landing, and Robert N. Reed, Sr. Downtown Waterfront Park.

(Adopted 08/07/06)

Sec. 70-112. Penalties.

Any person violating any of the provisions of this article shall, upon conviction, be guilty of a Class 2 misdemeanor.

(Adopted 08/07/06)

Sec. 70-113. Nondiscrimination.

There shall be no discrimination in the use of or access to the benefits of any such facility, regardless of race, age, creed, handicapping conditions, color, national origin, religion, sex, political affiliation or beliefs.

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(Adopted 08/07/06)

Sec. 70-114. Reserved.

DIVISION 2. PROVISIONS REGULATING THE USE OF SUCH OTHER FACILITIES

Sec. 70-115 General authority.

(a) The harbor master and his duly designated agents, in the supervision of the other town water related facilities and the enforcement of this article, shall have the authority to direct and control the movement and stoppage of all boats, vehicles and trailers using the other town water related facilities, including the parking area, ramp, dock, boat slips and waters within the confines of the other town water related facilities. The harbor master shall have the further authority to restrict or prohibit any activities within the facility that in any way adversely affect the intended uses of the facility. The failure of any person to reasonably submit to such directions and control shall constitute a violation hereof.

(Adopted 08/07/06)

(b) Nothing contained in this section is intended to preclude the police department or other police officers from enforcing federal, state and local statutes, ordinances and regulations, including the provisions of this article within the other town water related facilities.

(Adopted 08/07/06)

Sec. 70-116. General.

It shall be unlawful for any person to use, occupy, moor, load, offload, launch, or recover any boat except as permitted herein.

(Adopted 08/07/06)

Sec. 70-117. Required license.

No person shall use for the launching and/or recovery of any boat any ramp constituting a part of any such facility without having paid any required license fee as established by the town council from time to time.

(Adopted 08/07/06)

Sec. 70-118. Damage to docks, wharves or launching ramps.

It shall be unlawful for any person to intentionally or negligently damage any public dock, wharf, bulkhead, or launching ramp constituting a part of any such facility.

(Adopted 08/07/06)

WATER ACCESS FACILITIES

Sec. 70-119. Boat ramp and land area usage.

(a) The use of the boat ramp and adjacent parking areas of any such facility, are for the pleasure of all users. No unloading, loading or storage of seafood products or byproducts, nets, poles, dredges or culling of products is permitted except in designated loading and unloading areas as hereinafter provided. At the discretion of the harbor master, a temporary variance may be granted when an emergency exists or there is other just cause therefore.

(Adopted 08/07/06)

(b) Overnight habitation of boats, parked vans, automobiles, trucks, mobile homes, camper trailers or other recreational vehicles or apparatus, including tents, at any such facility, is prohibited except that slip holders and their guests may utilize overnight accommodations on boats designed for such overnight use, after obtaining the lease from the town.

(Adopted 08/07/06)

(c) Persons utilizing a boat ramp at any such facility shall launch or recover any boat as promptly as possible giving consideration to the safety of persons and property, and shall not unnecessarily impede the use of any such ramp by other users.

(Adopted 08/07/06)

Sec. 70-120. Dumping disposal of wrecks.

(a) It shall be unlawful to deposit or cause or permit to be deposited, in any of the waters of any such facility, or along the shores thereof or in any of the streams or ditches emptying therein or on any of the land adjacent or contiguous to any such facility, any refuse, offal, waste matter or other substance or material, whether earth, oil, liquid, animal, fish or vegetable matter, or other matter that may adversely affect the sanitary, clean and safe condition of the waters in any such facility or that may diminish the depth thereof.

(Adopted 08/07/06)

(b) It shall be unlawful to intentionally or negligently permit or cause to be sunk any boat in the waters of any such facility, or to intentionally or negligently permit or cause any loose timber or log to be set adrift in any such facility. Whenever a boat is wrecked and/or sunk in any of the waters of any such facility, accidentally or otherwise, it shall be the duty of the owner or person then in possession of such wrecked or sunken boat to immediately mark it with buoys and a lights at night and to maintain such warning devices until the wrecked or sunken boat is removed which shall be done within the time frame designated by the harbor master. The neglect or failure of the owner or person then in possession to so mark the wrecked or sunken boat shall constitute a violation hereof. It shall be the duty of the owner or person then in possession of such wrecked or sunken boat to commence the immediate removal of the boat and remove same within the harbor master's designated removal period. Failure to do so shall constitute a violation hereof. Further the failure of the owner or person then in possession to mark with required warning devices and/or remove such wrecked or sunken boat within the period prescribed by the harbor master shall constitute a material breach of any lease, with such person and authorize the harbor master to cancel such license. In the event any such owner or person in possession does not timely remove such wrecked

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or sunken boat, the harbor master may proceed to do so after five (5) days written notice to such owner or person in possession, and at the owner's and/or person in possession's cost.
(Adopted 08/07/06)

Sec. 70-121. Use of facility for anchoring or mooring.

(a) No boat shall be moored to or anchored inside any such facility without the permission of the harbor master and at such points as may be designated, or unless otherwise permitted.

(Adopted 08/07/06)

(b) No boat shall be operated or moored or anchored in such a manner as to obstruct the passage, approach, berthing, offloading, loading, launching or recovery of other boats at any such facility.

(Adopted 08/07/06)

(c) No person operating any boat shall utilize in any way any bulkhead, dock, or slip space within any such facility except that portion which is leased by such person from the town, where applicable, or without the express permission of the harbor master, or as otherwise permitted.

(Adopted 08/07/06)

Sec. 70-122. Prohibited conduct.

Within any such facility, and/or the upland area adjacent thereto, the following conduct is expressly prohibited:

- (a) swimming
- (b) camping
- (c) fireworks
- (d) overhaul of boats except for the expressed written authority of the harbor master
- (e) discharge of firearms
- (f) parking, except as expressly permitted by appropriate signage..

In addition to any other rule or regulation pertaining to the use of the other town water related facilities, the following additional rules and regulations shall be in effect:

(a) Overnight parking is prohibited without a current ramp user fee sticker and then only if the vessel is underway..

(b) Two (2) hour parking if not underway on boat or vessel.

(Adopted 08/07/06, 03/04/13)

Sec. 70-123. Other rules and regulations.

WATER ACCESS FACILITIES

In addition to all other rules or regulations pertaining to the use of the other town water related facilities, excepting the town dock, the following additional rules and regulations shall be in effect:

- (a) The loading dock area may be used up to four (4) hours free of charge.
- (b) Beyond four (4) hours, boats may remain at the dock for reasons of mechanical failures, inclement weather or any other situation as deemed appropriate by the harbor master or his duly appointed agent.
- (c) The fee for said mooring shall be set by council each year.
(Adopted 08/07/06, 03/04/13)

Sec. 70-124. Provisions regulating boat wakes in and adjacent to any such facility.

All boats entering, leaving, or navigating in or within 100 feet of any such facility shall be operated in such a manner so as not to create a swell sufficient to cause damage to the other boats moored, anchored, offloading, loading, or utilizing the boat ramps at such facility.
(Adopted 08/07/06)

Sec. 70-125. Abusive language.

While utilizing any such facility, including while on any boat moored thereto or while in the act of mooring, embarking, disembarking, launching or recovering any boat any person shall refrain from making any loud and disturbing noises not reasonably necessary for utilizing said facility, and further shall not use any abusive and/or obscene language that reasonably disturbs the peace and tranquility of others on or near said facility.
(Adopted 08/07/06)

Sec. 70-126. Special provisions applicable to the town dock.

- (a) No commercial boat shall offload any cargo except that a boat less than 24 feet in length may offload seafood products providing that said offloading does not exceed ½ hour daily.
(Adopted 08/07/06)
- (b) A boat may moor at the town dock between the hours of 8:00 a.m. to 12:00 noon to take on fuel and secure stores for a period not to exceed 1 hour daily and provided that there are no more than two such boats so moored at a time.
(Adopted 08/07/06)
- (c) In the case of an emergency the United States Coast Guard may moor a boat at the town dock during the course of said emergency after contacting and securing the approval of the harbor master.
(Adopted 08/07/06)
- (d) The harbor master may permit a boat to moor for an appropriate period of time to

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correct any mechanical problems.

(Adopted 08/07/06)

(e) In the case of inclement weather, the harbor master may moor up to two boats at the town dock during the period of such weather conditions.

(Adopted 08/07/06)

(f) Under no circumstances shall the use of the boat ramp at the town dock be impeded.

(Adopted 08/07/06)