OFFICIALS

of the

TOWN OF

SMITHFIELD, VIRGINIA

AT THE TIME OF THIS REPUBLICATION

James B. Chapman
Mayor

Daniel L. Smith
Vice-Mayor

Kaye H. Brown
Harry G. Dashiell, Jr.
Wendy B. Dean
David M. Hare
Tom R. Ivy
Town Council

Peter M. Stephenson, AICP, ICMA-CM
Town Manager

William H. Riddick, III
Town Attorney

Sharon L. Thomas, CMC
Town Clerk

PART I

CODE

Chapter 1

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GENERAL PROVISIONS

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

The ordinances embraced in this and the following chapters and sections shall constitute and be designated the "Code of the Town of Smithfield, Virginia," and may be so cited. Such Code may also be cited as the "Smithfield Town Code."
(Code 1982, § 1-1)
State law references: Authority of town to codify and recodify its ordinances, Code of Virginia, § 15.1-37.3.

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

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

And, or. "And" may be read "or," and "or" may be read "and" if the sense requires it.

Bond. When a bond is required, an undertaking in writing shall be sufficient.

Charter. The word "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 Smithfield, Virginia, as designated in section 1-1.

Computation of time. When a notice is required 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. When a notice is required to be given or any other act to be done within a certain time after any event, that time shall be allowed in addition to the day on which the event occurred.
State law references: Similar provisions, Code of Virginia, § 1-13.3.

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

County. The word "county" shall mean the County of Isle of Wight 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 references: Similar provisions, Code of Virginia, § 1-13.7.

In the town. The words "in the town" or "within the town" shall mean any territory, jurisdiction of which, for the exercise of its regulatory power, has been conferred upon the town by public or private law.

Joint authority. Words purporting to give authority to three or more public officers or other persons shall be construed as giving such authority to a majority of such officers or other persons.
State law references: Similar provisions, Code of Virginia, § 1-13.1.

May. The word "may" shall be permissive.

Month. The word "month" shall mean a calendar month.
State law references: Similar provisions, Code of Virginia, § 1-13.13.

Number. A word importing the singular number only may extend and be applied to several persons and 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 references: Similar provisions, Code of Virginia, § 1-13.15.

Oath. The word "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: Similar provisions, Code of Virginia, § 1-13.16; when affirmation may be made, Code of Virginia, § 49-9.

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

Officers, boards, agencies. Whenever reference is made to a particular officer, employee, department, board, commission or other agency, without further qualification, such reference shall be construed as if followed by the words "of the Town of Smithfield, Virginia." A reference to a specific officer shall include that officer's duly authorized deputies and agents.
State law references: Employment of certain deputies and assistants, delegation of powers and duties by certain officers of local government, Code of Virginia, § 15.2-102.

Official time standard. Whenever particular hours are referred to, the time applicable shall be official standard time or daylight saving time, whichever may be in current use in the town.
State law references: Standard Eastern time implied in laws, etc., Code of Virginia, § 1-15.

Owner. The word "owner," applied to a building or land, shall include any part owner, joint owner, tenant in common, tenant in partnership, joint tenant or tenant by the entirety, of the whole or a part of such building or land.

Person. The word "person" shall include any individual, firm, business trust, society, institution, corporation, partnership, association, company, business, trust, joint venture or other legal entity.
State law references: "Person" defined, Code of Virginia, § 1-13.19.

Preceding; following. The words "preceding" and "following" mean next before and next after, respectively.
State law references: Similar provisions, Code of Virginia, §§ 1-13.6, 1-13.23.

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

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

Signature or *subscription.* The terms "signature" and "subscription" shall include a mark when a person cannot write.

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

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

Street. The word "street" shall include public avenues, boulevards, highways, roads, alleys, lanes, viaducts, bridges and the approaches thereto and all other public thoroughfares in the town, and shall mean the entire width thereof between abutting property lines. It shall be construed to include a sidewalk or footpath, unless the contrary is expressed or unless such construction would be inconsistent with the manifest intent of the town council.
State law references: "Highway" defined, Code of Virginia, § 46.2-100.

Swear; sworn. The word "swear" or "sworn" shall be equivalent to the word "affirm" or "affirmed" in all cases in which, by law, an affirmation may be substituted for an oath.
State law 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 include the future, as well as the past and present.

Town. The word "town" shall mean the Town of Smithfield in the State of Virginia.

Writing; writings; in writing. The words "written", “writing”, and "in writing" include any representation of words, letters, symbols, numbers, or figures, whether:

(1) Printed or inscribed on a tangible medium; or

(2) Stored in an electronic or other medium and retrievable in a perceivable form and whether an electronic signature authorized by Chapter 42.

State law references: Similar provisions, Code of Virginia, § 1-13.32.

Year. The word "year" shall be construed to mean a calendar year; and the word "year" alone shall be equivalent to the expression "year of our Lord."
State law references: Similar provisions, Code of Virginia, § 1-13.33.

Other words. The rules of construction given in Code of Virginia, §§ 1-13.1--1-15, shall govern, so far as applicable, the construction of all other words not defined in this section. (Code 1982, § 1-2)
Cross references: Definitions generally, § 1-2.

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

The catchlines of the several sections of this Code printed in boldface type are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be titles of

such sections, nor as any part of the section; nor, unless expressly so provided, shall they be so deemed when any of such sections, including the catchlines, are amended or reenacted. 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 1982, § 1-3)

State law references: Similar provisions as to sections of 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. Editor's notes and references.

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

Sec. 1-6. Severability of parts of Code.

It is hereby declared to be the intention of the town council that the clauses, phrases, sentences, subsections and sections of this Code are severable; and if any such clause, phrase, sentence, subsection, or section, or its application to any persons or circumstances, is declared unconstitutional or otherwise invalid by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining clauses, phrases, sentences, subsections and sections of this Code or their application.
(Code 1982, § 1-4)

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

The provisions appearing in this Code, so far as they are the same as those of the Smithfield Town Code that became effective on April 1, 1997, and ordinances adopted subsequent to such Code and included herein, shall be considered as continuations thereof and not as new enactments.
(Code 1982, § 1-5)

Sec. 1-8. Miscellaneous ordinances not affected by Code.

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

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

(2) Any ordinance granting any franchise or right;

(3) Any ordinance appropriating funds, levying or imposing taxes or relating to an annual budget;

(4) Any ordinance annexing territory to the town;

(5) Any ordinance authorizing, providing for or otherwise relating to any public

improvement or assessments for such improvements;

(6) The comprehensive plan adopted for the town, or any amendment thereto;

(7) The zoning ordinance in effect on the date of adoption of this Code, or any amendment thereto, including amendments to the zoning map and ordinances zoning or rezoning specific property;

(8) The subdivision ordinance or any amendment thereto or any ordinances dedicating or accepting any plat or subdivision in the town;

(9) Any ordinance adopted for purposes which have been consummated;

10) Any ordinance which is temporary, although general in effect, or special, although permanent in effect;

and all such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this Code.
(Code 1982, § 1-6)

Cross references: Administration, ch. 2; streets, sidewalks and other public places, ch. 70; taxation, ch. 74; utilities, ch. 82; zoning, app. A; subdivisions, app. B.

Sec. 1-9. Code does not affect prior offenses, rights, or other actions.

Nothing in this Code or the ordinance adopting this Code shall affect any offense or act committed or done, or any penalty or forfeiture incurred, or any contract or right established or accruing, or any prosecution, suit or proceeding pending or any judgment rendered, on or before the effective date of this Code.
(Code 1982, § 1-7)

Sec. 1-10. Amendments to Code; effect of new ordinances; amendatory language.

(a) All ordinances passed subsequent to this Code that amend, repeal or in any way affect this Code may be numbered in accordance with the numbering system of this Code and printed for inclusion herein. In the case of repeal of chapters, sections and subsections or any part thereof, by subsequent ordinances, such repealed portions may be excluded from the Code by omission from reprinted pages affected thereby. Any and all additions and amendments to this Code, when passed in such form as to indicate the intention of the council to make the same a part hereof, shall be deemed to be incorporated herein, so that a reference to the Code shall be understood and intended to include such additions and amendments.

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

(c) In the event a new section not heretofore existing in the Code is to be added, the following language may be used: "That the Code of the Town of Smithfield, Virginia, is hereby amended by adding a section, to be numbered _____, which section reads as follows: . . . ." The new section shall then be set out in full as enacted.

(d) All sections, articles, chapters or provisions desired to be repealed shall be specifically repealed by section, 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 town council. A supplement to the Code shall include all substantive permanent and general parts of ordinances adopted during the period covered by the supplement and all changes made thereby in the Code. The pages of a supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages 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 preparing 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, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:

(1) Organize the ordinance material into appropriate subdivisions;

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

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

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

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

(Code 1982, § 1-8)

State law references: Authority of town to supplement Code, Code of Virginia, § 15.2-1433.

Sec. 1-12. Copies of Code and supplements to be available for public inspection.

At least three copies of this Code and every supplement thereto shall be kept in the office of the town clerk and shall there be available for public inspection, during normal business hours.
(Code 1982, § 1-9)

State law references: Similar provisions, Code of Virginia, § 15.2-1433.

Sec. 1-13. Classification of and penalties for violations; continuing violations.

(a) Whenever in this Code or any other ordinance of the town or any rule or regulation promulgated by any officer or agency of the town, under authority duly vested in such officer or agency, it is provided that a violation of any provision thereof shall constitute a class 1, 2, 3 or 4 misdemeanor, such violation shall be punished as follows:

(1) *Class 1 misdemeanor:* By a fine of not more than $2,500.00, or by confinement in jail for not more than 12 months, or by both such fine and confinement.

(2) *Class 2 misdemeanor:* By a fine of not more than $1,000.00, or by confinement in jail for not more than six months, or by both such fine and confinement.

(3) *Class 3 misdemeanor:* By a fine of not more than $500.00.

(4) *Class 4 misdemeanor:* By a fine of not more than $250.00.

(b) Wherever in any provision of this Code or in any other ordinance of the town or any rule or regulation promulgated by an officer or agency of the town, under authority duly vested in such officer or agency, any act is prohibited or is made or declared to be unlawful or an offense or misdemeanor, or the doing of any act is required, or the failure to do any act is declared to be unlawful or an offense or a misdemeanor, where no specific penalty is provided for the violation of such provision and such violation is not described as being of a particular class of misdemeanor, such violation shall constitute a class 1 misdemeanor and be punished as prescribed in subsection (a)(1) above.

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

(d) Each day any violation of this Code or any other ordinance, rule or regulation referred to in this section shall continue shall constitute a separate offense, except where otherwise provided. (Code 1982, § 1-10; Ord. of 5-7-91)

Charter references: Authority to prescribe penalty for ordinance violations, § 21.

State law references: Penalties for violations of municipal ordinances, Code of Virginia, § 15.2-1429; bond of persons convicted to prevent additional violations, Code of Virginia, § 15.2-1430; injunctive relief against continuing violation of ordinance, Code of Virginia, § 15.2-1432; classification of criminal offenses, Code of Virginia, § 18.2-9; punishment for conviction of misdemeanor, Code of Virginia, § 18.2-11; punishment for misdemeanor where no penalty prescribed, Code of Virginia, §§ 18.2-12, 18.2-13; extraterritorial jurisdiction in state criminal cases, Code of Virginia, § 19.2-250.

Chapter 2

ADMINISTRATION*

***Cross references:** Miscellaneous ordinances not affected by Code, § 1-8; animal warden, § 18-2; buildings and building regulations, ch. 22; civil emergencies, ch. 30; courts, ch. 34; fire prevention and protection, ch. 42; law enforcement, ch. 46; personnel, ch. 58; streets, sidewalks and other public places, ch. 70; taxation, ch. 74; utilities, ch. 82; waterways, ch. 90.

State law references: The Virginia Freedom of Information Act, Code of Virginia, § 2.2-3700 et seq.; State and Local Government Conflict of Interests Act, Code of Virginia, § 2.2-3100 et seq.; Virginia Public Procurement Act, Code of Virginia, § 2.2-4300 et seq.; counties, cities and towns, Code of Virginia, tit. 15.2; liability insurance or self-insurance for officers, employees, etc., Code of Virginia, § 15.2-1518; photographing, recording, etc., of records, Code of Virginia, § 15.2-1412; purchase of recycled paper, Code of Virginia, § 15.2-938; municipal ordinances generally, Code of Virginia, § 15.2-1427; fiscal year for certain local governments, Code of Virginia, §§ 15.2-2500, 15.2-2503; creation of service districts, Code of Virginia, §§ 15.2-2400 et seq.; fee for bad checks, Code of Virginia, § 15.2-106; oath of local officers, Code of Virginia, §§ 15.2-1522, 49-1; budget procedures, Code of Virginia, § 15.2-2500 et seq.; Public Finance Act of 1991, Code of Virginia, § 15.2-2600 et seq.; Virginia Public Records Act, Code of Virginia, § 42.1-76 et seq.

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ADMINISTRATION

ARTICLE I. IN GENERAL

Sec. 2-1. Corporate seal.

The corporate seal of the town shall be a design within a circle 1 3 / 4 inches in diameter with the word "seal" therein. Around the edge shall be this inscription: "Smithfield, Virginia, Chartered 1752." No other seal shall be used for the town; and no paper issued by municipal authority, which requires the seal of the town, shall be valid unless the seal prescribed above is duly affixed thereto.
(Code 1982, § 2-1)

Charter references: Authority of town to have common seal, § 5(a); clerk to be custodian of seal, § 40.

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

ARTICLE II. TOWN COUNCIL*

DIVISION 1. GENERALLY

Sec. 2-36. Appointment of committees generally.

The mayor shall appoint all committees of the town council.
(Code 1982, § 2-17)

Sec. 2-37. Appointment of standing committees.

The mayor, as soon as practicable after the qualification of the newly elected members of each council, shall appoint the following standing committees:

(1) Finance.

(2) Water and sewer.

(3) Fire and rescue.

(4) Police.

(5) Public buildings and welfare.

(6) Public works.

(Code 1982, § 2-18)

Cross references: Buildings and building regulations, ch. 22; fire prevention and protection, ch. 42; law enforcement, ch. 46; streets, sidewalks and other public places, ch. 70; utilities, ch. 82.

***Charter references:** Council generally, §§ 26, 27.

Sec. 2-38. Committee meetings.

The members of a council committee shall meet on the call of the chairman, who shall be the first named person on the committee. A majority of the committee shall constitute a quorum to do business.
(Code 1982, § 2-19)

Sec. 2-39. Committee reports.

Every committee of the council shall, unless otherwise directed, report at the next succeeding regular council meeting upon the subject matter referred to it, or shall show good cause why such report is not made. It shall have authority to report on any matter proper for its consideration, though not specially referred to it.
(Code 1982, § 2-20)

Sec. 2-40. Witnesses before council and committees.

The council, or any committee thereof when especially authorized, shall have the power to require the attendance of any person as a witness and the production by any person of all proper books and papers when, in the opinion of such body, such attendance or such production is necessary and proper. A summons to attend as a witness or to produce books or papers shall be in writing, signed by the presiding officer of the council or committee thereof, and shall be served by the chief of police in the same manner as a process to commence an action at law. Such witnesses shall be sworn by the officer presiding at such investigation and shall be liable for perjury or false testimony given at any such investigation. A right of appeal shall lie to the circuit court of the county as in the case of a misdemeanor.
(Code 1982, § 2-21)

State law references: Perjury, Code of Virginia, § 18.2-434 et seq.

Secs. 2-41--2-70. Reserved.

DIVISION 2. MEETINGS*

***Charter references:** Council meetings, §§ 31, 32.

Cross references: Disrupting meeting of governing body, § 50-7.

Sec. 2-71. Date and place of regular meetings; special meetings.

The town council shall hold its regular meetings in the council chamber on the first Tuesday of every month. The council may be convened at any time upon the call of the mayor or any three council members. No business shall be transacted at a called meeting, except that for which it was called, unless the council is unanimous.
(Code 1982, § 2-27)

State law references: How council convened, Code of Virginia, § 15.1-832.

Sec. 2-72. Rules of procedure; preservation of order and decorum.

The proceedings of the council, except as its own rules may otherwise provide, shall be governed by the rules of the house of delegates, as adopted by the house of delegates of the commonwealth. No rule adopted by the council shall be suspended, nor shall any binding interpretation of any rule be made, without the concurrence of two thirds of the members elected to the council.

The mayor, as the presiding officer, shall enforce the rules of procedure and preserve order and decorum at all council meetings.
(Code 1982, § 2-28)
Charter references: Council to adopt rules of procedure, § 31(c); mayor to preside at council meetings, § 32.

Sec. 2-73. Decisions on questions of order.

The mayor shall decide questions of order at council meetings and may, without vacating the chair, give his reasons for his decision. From any such decision of the chair, an appeal may be made to the council in session, the question being "Shall the decision of the chair be sustained?" Upon such appeal, no debate shall be allowed, if it refers to a question of decorum, but if it relates to the priority of business or to the relevancy or applicability of propositions, the appeal may be debated.
(Code 1982, § 2-29)

Sec. 2-74. Stating the question and declaring result of vote; recorded votes.

At council meetings, the mayor shall state the question and shall declare the result of the vote. He may direct, or any councilmember may demand, a recorded vote, which shall be taken by a call of the roll.
(Code 1982, § 2-30)

Sec. 2-75. Member leaving after being recorded as present.

After a member of the council has been recorded as present at a meeting, he shall not, without permission of the mayor or other presiding officer, absent himself from such meeting until its adjournment.
(Code 1982, § 2-31)

Sec. 2-76. Speaking by members.

(a) Every member of the council shall address the presiding officer before speaking, confine himself to the question before the body, and avoid all personal or indecorous language. No member shall interrupt another while speaking except to rise to a point of order, the point to be briefly stated to the presiding officer.

(b) The member first to address the chair shall speak first at a council meeting. When two or more members speak at the same time, the presiding officer shall name the one to speak.
(Code 1982, § 2-32)

Sec. 2-77. Acting on claims against town.

No claims against the town shall be acted upon at any council meeting, except by unanimous consent, unless the same has been considered and laid on the table for one meeting.
(Code 1982, § 2-33)
Charter references: Actions and injunctive proceedings against town, § 34.
State law references: Notice to be given towns of claims for damages for negligence, Code of Virginia, § 8.01-222.

Sec. 2-78. Town manager may call certain public hearings.

The town manager is hereby given the authority to call, in his discretion, public hearings of the town council and order lawful advertisement of the same for any purpose required under the zoning or subdivision ordinance.
(Code 1982, § 2-34)
Cross references: Zoning, app. A; subdivisions, app. B.

Secs. 2-79--2-110. Reserved.

DIVISION 3. COMPENSATION

Sec. 2-111. Compensation of mayor and members of town council.

(a) The mayor shall receive as compensation for service the sum of $400.00 per month.

(b) The vice-mayor shall receive as compensation for service the sum of $350.00 per month.

(c) The members of the town council shall receive as compensation for service the sum of $300.00 per month.
(Ord. of 1-5-93, art. II, § 2-40; Ord. of 5-7-2002, § 1; Ord. of 12-7-2004)
State law references: Salaries of town council members and mayors, Code of Virginia, § 15.2-1414.7.

Secs. 2-112--2-140. Reserved.

ARTICLE III. OFFICERS*

***Charter references:** Town officers, §§ 29, 30.

DIVISION 1. GENERALLY

Sec. 2-141. False entries in, or alteration, destruction of town records.

(a) No officer of the town shall fraudulently make a false entry in, or erase, alter,

secrete or destroy, any record, including a microphotographic copy, in his keeping and belonging to his office.

(b) A violation of this section shall constitute a class 1 misdemeanor.

(c) A person who violates this section shall forfeit his office and be forever incapable of holding any office of honor, profit or trust under the state constitution.
(Code 1982, § 2-5)
Cross references: Damaging or defacing property generally, § 50-18.
State law references: Similar provisions, Code of Virginia, § 18.2-472.

Secs. 2-142--2-170. Reserved.

DIVISION 2. TOWN ATTORNEY*

***State law references:** Employment of counsel to defend town, Code of Virginia, § 15.2-1520.

Sec. 2-171. Appointment; qualification.

The town council may appoint an attorney for the town to serve at the pleasure of the council. Such attorney shall have been admitted to practice law in the courts of the commonwealth.
(Code 1982, § 2-44)

Sec. 2-172. Duties generally.

The town attorney shall have charge, management and control of all legal matters affecting the town and, in regard to all municipal affairs, shall be the legal advisor of the mayor and the town council, or any committees thereof; and when requested, he shall furnish written or verbal opinions upon any subject involving questions of law in which the town is interested. He shall perform such other duties as are or may be required of him by any ordinance or resolution of the council.
(Code 1982, § 2-45)

Sec. 2-173. Drafting of legal instruments.

It shall be the duty of the town attorney to draft all bonds, deeds, obligations, contracts, leases, conveyances, agreements and other legal instruments of whatever nature, which may be required of him by any ordinance or order of the council, or which, by law, usage or agreement, should be drawn by the town.
(Code 1982, § 2-46)

Sec. 2-174. Duties with respect to legal proceedings.

It shall be the duty of the town attorney to commence and prosecute all actions and suits to be brought by the town before any tribunal in this commonwealth and to appear, defend and advocate the rights and interests of the town, or any officer of the town in any suit or prosecution for any act in the discharge of his official duties, wherein any estate, right, privilege, ordinance or act of the town government may be brought in question.
(Code 1982, § 2-47)

Secs. 2-175--2-205. Reserved.

ARTICLE IV. BOARDS AND COMMISSIONS

DIVISION 1. GENERALLY

Secs. 2-206--2-235. Reserved.

DIVISION 2. PLANNING COMMISSION*

***Charter references:** Duty of council to appoint planning commission, § 38-a.
Cross references: Zoning ordinance, app. A; subdivision ordinance, app. B.

Sec. 2-236. Created; composition.

A planning commission is hereby created for the town. Such commission shall consist of seven members, one of whom may be a member of the town council and the remaining six of whom, hereinafter referred to as "appointed members," shall be residents of the town and qualified by knowledge and experience to make decisions on questions of community growth and development. At least half of the members shall be owners of real property.
(Code 1982, § 2-58)
State law references: Duty of town to create planning commission, Code of Virginia, § 15.2-2210; composition of commission, Code of Virginia, § 15.2-2212.

Sec. 2-237. Appointment and terms of members; filling of vacancies.

The members of the planning commission shall be appointed by the town council. The term of the councilmanic member shall correspond with his tenure of office, unless the town council, at its first regular meeting each year, appoints another to serve as its representative. The other members shall be appointed for staggered terms of four years. Any vacancy in membership shall be filled by appointment by the town council; and such appointment, in the case of an appointed member, shall be for the unexpired term.
(Code 1982, § 2-59)
State law references: Similar provisions, Code of Virginia, § 15.2-2212.

Sec. 2-238. Compensation of members.

Members of the planning commission shall receive as compensation for service the sum of $60.00 per meeting.
(Code 1982, § 2-60; Ord. of 1-5-93, art. IV, § 2-60; Ord. of 12-7-2004)
State law references: Authority of town to compensate planning commission members, Code of Virginia, § 15.2-2212.

Sec. 2-239. Removal of members.

Any appointed member of the planning commission may be removed by the town council

for malfeasance in office; provided, that such removal may be made only after a public hearing at which such member is given an opportunity to appear and be heard on the charges against him.
(Code 1982, § 2-61)

State law references: Similar provisions, Code of Virginia, § 15.2-2212.

Sec. 2-240. Functions, powers and duties.

The planning commission shall have the functions, powers and duties which are prescribed by law.
(Code 1982, § 2-62)

State law references: Local planning commissions, Code of Virginia, § 15.2-2212 et seq.; duties of commissions, Code of Virginia, § 15.2-2221.

Secs. 2-241--2-270. Reserved.

DIVISION 3. BOARD OF ZONING APPEALS*

***Cross references:** Zoning, app. A.

State law references: Board of zoning appeals, Code of Virginia, § 15.2-2308 et seq.

Sec. 2-271. Created; composition.

A board of zoning appeals is hereby established, as provided by the zoning ordinance of the town.
(Ord. of 1-5-93, art. V, § 2-63)

Sec. 2-272. Compensation of members.

Members of the board of zoning appeals shall be compensated for their service in the amount of $25.00 per meeting.
(Ord. of 1-5-93, art. V, § 2-64)

Sec. 2-273. Removal of members.

Any member of the board of zoning appeals may be recommended by the town council for removal on the grounds of malfeasance, misfeasance or nonfeasance in office, or for other just cause.
(Ord. of 1-5-93, art. V, § 2-65)

Sec. 2-274. Functions, powers and duties.

The board of zoning appeals shall have the functions, powers and duties which are prescribed by law and by the zoning ordinance of the town.
(Ord. of 1-5-93, art. V, § 2-66)

Secs. 2-275--2-305. Reserved.

DIVISION 4. BOARD OF HISTORIC AND ARCHITECTURAL REVIEW*

***State law references:** Preservation of historical sites and architectural areas, Code of Virginia, § 15.2-2306.

Sec. 2-306. Created; composition.

A board of historic and architectural review is hereby established, as provided by the zoning ordinance of the town.
(Ord. of 1-5-93, art. VI, § 2-68)

Sec. 2-307. Compensation of members.

Members of the board of historic and architectural review shall be compensated for their service in the amount of $40.00 per meeting, provided that the same is permitted by state law.
(Ord. of 1-5-93, art. VI, § 2-69; Ord. of 12-7-2004)

Sec. 2-308. Removal of members.

Any member of the board of historic and architectural review may be removed by the town council for inefficiency, neglect of duty or malfeasance in office.
(Ord. of 1-5-93, art. VI, § 2-70)

Sec. 2-309. Functions, powers and duties.

The board of historic and architectural review shall have the functions, powers and duties which are prescribed by law and by the zoning ordinance of the town.
(Ord. of 1-5-93, art. VI, § 2-71)

Secs. 2-310--2-340. Reserved.

ARTICLE V. FINANCE*

***Charter references:** Fiscal year, § 4.
Cross references –Any ordinance promising or guaranteeing the payment of money by or for the town or authorizing the issuance of any bonds of the town or any evidence of the town's indebtedness or any contract or obligation assumed by the town saved from repeal, § 1-8(1); taxation, ch. 74.
State law references: Uniform fiscal year, Code of Virginia, § 15.2-2500.

Sec. 2-341. Deposit of town funds.

The town treasurer shall deposit the funds of the town in commercial banks in the Commonwealth of Virginia.
(Code 1982, § 2-3; Ord. of 7-5-00(1), § 1)

Sec. 2-342. Purchases.

(a) The town manager is authorized to pay recurring monthly utility expenses and the salaries and benefits of town employees. The town manager is further authorized to purchase supplies, as needed, at a cost not to exceed $5,000.00, and to authorize payment for such purchases.

(b) All bills or invoices in excess of $5,000.00 shall be submitted to the town council for approval prior to payment.

(c) No capital equipment and/or improvements shall be purchased or contracted for by the town manager prior to approval by the town council except in situations where the immediate purchases of capital equipment are necessary to ensure and provide for the continued, uninterrupted operation of the town's water and sewerage systems or other essential services. In such instances, the town manager shall consult with the mayor and/or vice-mayor and shall notify the council members of such capital purchases as soon as may be practicable.

(d) For information purposes, the town manager shall provide each councilmember, at least three days before each regular council meeting, an itemized list of the expenditures and items purchased during the 30-day period ending on the 25th day of each month, salaries excluded.

(e) Purchases and procurement by the town shall be made in compliance with the provisions of the Virginia Public Procurement Act, Code of Virginia, § 2.2-4300 et seq., as amended.
(Code 1982, § 2-4; Ord. of 8-6-96, § 1; Ord. of 3-6-01(1))
Charter references: Town manager to act as purchasing agent, § 38-b.

Secs. 2-343--2-350. Reserved.

ARTICLE VI. RECORDS MANAGEMENT PROGRAM

Sec. 2-351. Definition of town records.

(a) [Town records shall include] all written books, papers, letters, documents, photographs, tapes, microfiche, photostats, sound recordings, maps, other documentary materials or information in any recording medium regardless of physical form or characteristics, including data processing devices and computers, made or received in pursuance of law or in connection with the transaction of public business by office or department of the town government.

(b) Nonrecord materials, meaning reference books and exhibit materials made or acquired and preserved solely for reference use or exhibition purposes, extra copies of documents preserved only for convenience or reference, and stocks of publications shall not be included within the definition of town records as used in this article.
(Ord. of 7-05-01, § 1)
Cross reference—Definitions generally, § 1-2.

Sec. 2-352. Town records declared public property.

All town records as defined in section 2-351 are hereby declared to be the property of the Town of Smithfield. No town officials or employees have, by virtue of their position, any personal or

property right to such records. Any custodian of any public records shall, at the expiration of the term of office, appointment or employment, deliver to a successor, or if there be none, to the town records manager, all books, writings, letters, documents, public records, or other information, recorded on any medium kept or received in the transaction of official business.
(Ord. of 7-05-01, § 2)

Sec. 2-353. Custody and preservation of the records of the governing body.

The clerk to the local governing body shall retain the records of such body. The minutes of the meetings of the governing body shall be microfilmed for security purposes and the master microfilm copy shall be stored with the Library of Virginia.
(Ord. of 7-05-01, § 3)

Sec. 2-354. Position of records officer established; duties.

The town manager has named the town clerk to serve as town designated records officer. The records officer shall be responsible for developing a comprehensive records management program establishing procedures for the management of records from their creation to their ultimate disposition, to provide for the efficient and economical creation, distribution, maintenance, use, preservation and disposition of the town records. The records officer shall also be responsible for implementing the records management program of the town. The records officer shall implement the policies and procedures for a comprehensive records management program as approved by the town manager.
(Ord. of 7-05-01, § 4)

Sec. 2-355. Responsibilities of department heads.

It shall be the duty of all department heads to cooperate with the records officer in implementing the provision of the records management article. Nothing in this article shall be construed to compel the removal of records from the custody of the department head when such records are deemed necessary in the performance of statutory duties.
(Ord. of 7-05-01, § 5)

Sec. 2-356. Program objectives.

The objectives of the records management program will include but not be limited to:

(a) Developing policies and procedures for managing records and information;

(b) Conducting a survey or inventory of records (in all formats);

(c) Establishing and following retention schedules (all Library of Virginia general schedules will be followed unless department heads specify a longer retention schedule is necessary to provide better public service);

(d) Identifying and using technology appropriately to create, store and retrieve materials;

(e) Destroying obsolete records in a timely and systematic manner and documenting their destruction;

(f) Storing inactive records in a cost-effective and secure location;

(g) Identifying and preserving vital records;

(h) Identifying and preserving archival (historic, permanent) records;

(i) Developing a disaster preparedness plan to protect and recover records in the event of a disaster;

(j) Implementing filing and indexing systems and tools;

(k) Developing forms to maintain efficient operations;

(l) Reducing the volume of records stored;

(m) Increasing efficiency of office operations;

(n) Reducing costs for equipment, supplies, and space;

(o) Improving customer service;

(p) Improving accountability of public funds;

(q) Reducing liability risks by keeping records according to an authorized retention schedule.

(Ord. of 7-05-01, § 6)

Chapters 3—5

RESERVED

Chapter 6

ADVERTISING*

***Charter references:** Regulation of billboards, § 20(b).

Cross references: Alcoholic beverages, ch. 10; amusements and entertainments, ch. 14; businesses, ch. 26; license tax on advertising agencies, § 26-223; peddlers and solicitors, ch. 54; secondhand goods, ch. 62; streets, sidewalks and other public places, ch. 70; permit to operate sound truck, § 78-97; zoning, app. A.

State law references: Outdoor advertising in sight of public highways, Code of Virginia, § 33.1-351 et seq.

Sec. 6-1. Violations of chapter.
Sec. 6-2. Permit to display advertising matter on utility poles or across street.
Sec. 6-3. Posting advertising matter on property of another.
Sec. 6-4. Untrue, deceptive or misleading advertising, inducements, writing or document.

ARTICLE I. IN GENERAL

Sec. 6-1. Violations of chapter.

Unless otherwise specifically provided, a violation of any provision of this chapter shall constitute a class 1 misdemeanor.
(Code 1982, § 3-1)

Sec. 6-2. Permit to display advertising matter on utility poles or across street.

(a) It shall be unlawful for any person to display any sign, billboard, poster or other advertising matter on any utility pole or supporting device on any of the streets of this town or to hang or suspend any banner, emblem or other advertising matter across any street without first obtaining a permit so to do from the town manager.

(b) All permits provided for in this section shall be obtained only upon written application to the town manager accompanied by a fee of $5.00 for each such permit. Such application shall contain such information as the town manager may require and shall be signed by a resident of the town or an official of a firm or corporation having a fixed place of business within the town.

(c) In the case of a permit to display advertising matter on a utility pole or supporting device, the application shall be accompanied by a $50.00 cash bond conditioned upon removal of the advertising matter within 48 hours after the expiration of the period for which the permit is effective.
(Code 1982, § 3-2)
Cross references: Streets, sidewalks and other public places, ch. 70; utilities, ch. 82.

Sec. 6-3. Posting advertising matter on property of another.

No person shall post any showbill, notice or advertisement or brand, or write, mark or paint any sign, letter or character upon the building, wall, fence or other property of another without first obtaining the consent of the owner of such property.
(Code 1982, § 3-3)
Cross references: Damaging or defacing property, generally, § 50-18.

Sec. 6-4. Untrue, deceptive or misleading advertising, inducements, writing or document.

(a) Any person who, with intent to sell or in anywise dispose of merchandise, securities, service or anything offered by such person directly or indirectly to the public for sale or distribution or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, or to acquire title thereto, or any interest therein, makes, publishes, disseminates, circulates or places before the public, or causes, directly or indirectly to be made, published, disseminated, circulated or placed before the public, in a newspaper or other publications, or in the form of a book, notice, handbill, poster, blueprint, map, bill, tag, label, circular, pamphlet or letter or in any other way, an advertisement of any sort regarding merchandise, securities, service, land, lot or anything so offered to the public, which advertisement contains any promise, assertion, representation or statement of fact which is untrue,

deceptive or misleading, or uses any other method, device or practice which is fraudulent, deceptive or misleading to induce the public to enter into any obligation, shall be guilty of a class 1 misdemeanor.

(b) The words "untrue, deceptive and misleading," as used in this section, shall be construed as including the advertising in any manner by any person of any goods, wares or merchandise as a bankrupt stock, receiver's stock or trustee's stock, if such stock contains any goods, wares or merchandise put therein subsequent to the date of the purchase by such advertiser of such stock, and if such advertisement of any such stock fails to set forth the fact that such stock contains other goods, wares or merchandise put therein, subsequent to the date of the purchase by such advertiser of such stock in type as large as the type used in any other part of such advertisement, including the caption of the same, it shall be a violation of this section; and the use of any writing or document which appears to be, but is not in fact a negotiable check, negotiable draft or other negotiable instrument notwithstanding the fact that its non-negotiability is indicated on the writing or document.
(Code 1982, § 3-4)

State law references: Similar provisions, Code of Virginia, § 18.2-216.

Chapters 7—9

RESERVED

Chapter 10

ALCOHOLIC BEVERAGES*

***Cross references:** Advertising, ch. 6; businesses, ch. 26; taxation, ch. 74; traffic and vehicles, ch. 78; driving motor vehicle while under the influence of alcohol or certain drugs, § 78-93; drinking while operating a motor vehicle; penalty, § 78-98; zoning, app. A.

State law references: Alcoholic Beverage Control Act, Code of Virginia, tit. 4.1; local regulations, Code of Virginia, § 4.1-128.

Article I. In General

Sec. 10-1. License taxes.
Sec. 10-2. Restrictions on sale of alcoholic beverages.

ARTICLE I. IN GENERAL

Sec. 10-1. License taxes.

(a) Every person engaged in selling or dispensing alcoholic beverages shall pay the following license taxes:

(1) For each retail mixed alcoholic beverage restaurant license, including restaurants located on the premises of and operated by hotels or motels, or other persons:

a. With a seating capacity at tables for up to 100 persons, $200.00;

b. With a seating capacity at tables for more than 100 but not more than 150 persons, $350.00; and

c. With a seating capacity at tables for more than 150 persons, $500.00.

(2) For each retail on-premises beer license for a hotel, restaurant or club. . . $25.00

(3) For each retail off-premises beer license 25.00

(4) For each retail off-premises wine and beer license, including each gift shop, gourmet shop and convenience grocery store license 37.50

(5) For each retail on- and off-premises wine and beer license 75.00

(b) No license shall be issued under this section to any person unless such person shall hold, or shall secure simultaneously therewith, the proper state license required by state law, which state license shall be exhibited to the town treasurer.

(c) Each license issued under this section shall be in lieu of a merchant's or restaurant's license on that portion of the business of the licensee covered thereby, but no such license shall relieve any licensee of any other town license required by this Code or other ordinance.

(d) No license required under this section shall be transferable from one person to another, but may be amended to show a change in the place of business within the town.
(Code 1982, § 10-18)

Charter references: Authority to license and tax sale, distribution, etc., of alcoholic beverages, § 10(c).

Cross reference—Taxation, ch. 74.

State law references: Authority for above tax, Code of Virginia, §§ 4.1-205, 4.1-233.

Sec. 10-2. Restrictions on sale of alcoholic beverages.

It shall be unlawful and a class 1 misdemeanor for any person to sell beer or wine in the town between the hours of 12:00 midnight Saturday and 6:00 a.m. Sunday, and between the hours of 12:00 midnight Sunday and 6:00 a.m. Monday.
(Code 1982, § 12-3)

State law references: Local ordinances regulating time of sale of wine and beer, Code of Virginia, § 4.1-129.

Chapters 11—13

RESERVED

Chapter 14

AMUSEMENTS AND ENTERTAINMENTS*

***Charter references:** Licensing of amusements, § 9(c); authority to regulate shows, carnivals and similar amusements, § 10(a).

Cross references: Advertising, ch. 6; animals, ch. 18; businesses, ch. 26; license tax on carnivals, § 26-44; environment, ch. 38; streets, sidewalks and other public places, ch. 70; parades, § 70-81 et seq.; taxation, ch. 74; zoning, app. A.

State law references: Authority of council to protect property and preserve peace and good order, Code of Virginia, § 15.2-1700; 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.

Article I. In General

Sec. 14-1. Definitions.
Sec. 14-2. Closing hours for pool rooms.
Sec. 14-3. Minors prohibited in pool rooms.
Secs. 14-4--14-40. Reserved.

Article II. Dance Halls

Sec. 14-41. Definition.
Sec. 14-42. Permit.
Sec. 14-43. License tax.
Sec. 14-44. Hours of operation.
Sec. 14-45. Penalties.

ARTICLE I. IN GENERAL

Sec. 14-1. 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:

Billiard parlor and/or Public pool room shall not be construed to include an establishment in which not more than three pool tables that operate on the coin-in-the-slot principle are exclusively kept or played.
(Code 1982, § 4-2(c))
Cross references: Definitions generally, § 1-2.

Sec. 14-2. Closing hours for pool rooms.

(a) Billiard parlors and pool rooms in the town shall close at 12:00 midnight and remain closed until 7:00 a.m. the following day.

(b) Any owner, manager or other person in charge of any establishment mentioned in subsection (a) hereof who violates the provisions of such subsection shall be guilty of a class 1 misdemeanor. For a second such violation involving the same establishment, the license for such establishment shall be subject to revocation, in addition to any other penalty provided for such violation.
(Code 1982, § 4-1)
State law references: Certain premises deemed common nuisance, penalty, injunction, Code of Virginia, § 18.2-258 et seq.

Sec. 14-3. Minors prohibited in pool rooms.

(a) No minor shall frequent, play in or loiter in any public pool room or billiard parlor; nor shall the proprietor of any public pool room or billiard parlor or his agent permit any minor to frequent, play in or loiter in any such place in violation of the foregoing provisions of this section.

(b) Any person who violates this section shall be guilty of a class 3 misdemeanor.
(Code 1982, § 4-2)
Cross references: Curfew for minors, § 50-1.
State law references: Authority of town to regulate presence of minors in places of amusement, Code of Virginia, § 18.2-432.

Secs. 14-4--14-40. Reserved.

ARTICLE II. DANCE HALLS

Sec. 14-41. Definition.

For purposes of this article, a "public dance hall" shall be construed to mean any place open to the general public where dancing is permitted and:

(1) To which an admission fee is charged; or

(2) For which compensation is in any manner received either directly or indirectly by cover charge or otherwise; or

(3) Where beverages, food, refreshments or any form of merchandise are served for compensation before, during or after dancing.

The sale of beverages, food, refreshments or any form of merchandise at any such place shall be deemed direct compensation as provided in this section.
(Code 1982, § 4-50)
Cross references: Definitions generally, § 1-2.

Sec. 14-42. Permit.

(a) No person shall operate or conduct a public dance hall in the town without having first obtained an annual permit from the town treasurer and having paid a license tax in the amount provided in section 14-43, as provided for in Code of Virginia, § 18.2-433, and on the form provided by the town. For purposes of this section, the owner of any building or structure utilized at any time, in whole or in part, as a public dance hall, or the lessee of the premises, if any, shall be deemed to be the operator or conductor of the public dance hall.

(b) Except in the case of restaurants, as provided in subsection (c) of this section, any such operator or conductor of a public dance hall shall, not less than one week prior to any public dance, notify the chief of police of the town, in writing, of the date, time and place of the dance, the sponsor, if different from the operator or conductor to whom the permit provided for herein has been granted, the number of persons expected to be in attendance, and whether alcoholic beverages will be allowed or served.

(c) In the case of a restaurant having a dance floor and where the owner or lessee of the business is the operator or conductor of the public dance hall, the notification provided for in subsection (b) above shall be waived, provided that the permit application correctly states the regular schedule of dancing on the premises, and further provided that the notification provided for in subsection (b) shall be given for all dances not regularly scheduled.

(d) No permit shall be granted under this article without full compliance with the provisions of the town zoning ordinance.
(Code 1982, § 4-51)

Sec. 14-43. License tax.

(a) In addition to the requirements of the town business, professional and occupational license tax, any person obtaining a permit for a public dance hall shall pay an annual nonrefundable

license tax of $600.00, the annual tax being due and payable on January 1 of each year and for which a ten percent penalty will be payable for any such tax not paid before March 1 of such year.

(b) In the event of a permit being issued after May 1 of any such year, for a public dance hall not in operation prior to that date, the license tax shall be prorated as follows:

Permit Issued	*Amount of Tax*
May 1 through August 31.	$400.00
September 1 and after	$200.00

(c) The license tax provided for in this section shall not apply to any operator or conductor of a public dance hall operated or used exclusively for benevolent or charitable purposes, or conducted under the auspices of religious, educational, civic or military organizations unless a fee of $25.00 for each public dance is first paid to the town at such time as the notification provided for in section 14-42(b) is given.
(Code 1982, § 4-52)

Cross references: Businesses, ch. 26; taxation, ch. 74.

Sec. 14-44. Hours of operation.

No public dance hall shall be operated or conducted or allowed to remain open in the town between the hours of 2:00 a.m. and 6:00 a.m.
(Code 1982, § 4-53)

Sec. 14-45. Penalties.

Any violation of this article shall constitute a class 3 misdemeanor and subject the permittee to suspension and/or revocation of any permit granted herein as follows:

(1) Upon the permittee's being charged on a criminal warrant for a violation of this article, the permit shall be forthwith suspended by the town treasurer by written notice to the permittee, and shall remain suspended until such time as a final order is entered in any criminal proceeding brought under this article; and
(2) Upon a final order of dismissal of any such criminal charges, the permit shall be immediately reinstated; and
(3) Upon a final order of conviction of any such criminal charges, the permit shall be revoked and the permittee shall not be eligible to reapply for such permit, either in his own name or in the name of any other entity in which he has a personal interest, as defined in the State and Local Government Conflict of Interests Act (Code of Virginia, § 2.2-3100 et seq.), for a period of one year following such conviction.

(Code 1982, § 4-54)

Chapters 15—17

RESERVED

Chapter 18

ANIMALS*

***Charter references:** Collection and disposal of dead animals, § 16(b); authority to regulate the keeping of animals and fowl, § 20(b).

Cross references: Amusements and entertainments, ch. 14; businesses, ch. 26; environment, ch. 38; definitions generally, § 1-2.; disposal of dead animal or fowl, § 66-39; use of disposal of dead animal or fowl or liquids prohibited, § 66-39; taxation, ch. 74; traffic and vehicles, ch. 78; zoning, app. A.

State law references: Comprehensive animal laws, Code of Virginia, § 3.1-796.66 et seq.; offenses involving animals, Code of Virginia, §§ 3.1-796.128, 18.2-403.1 et seq.; cruelty to animals, Code of Virginia, § 3.1-796.94:1; regulation of animals by municipalities, Code of Virginia, § 3.1-796.94:1; diseased animals, dead animals, etc., Code of Virginia, §§ 18.2-323, 18.2-510; hunting near public schools and public parks, Code of Virginia, § 29.1-527; estrays, Code of Virginia, § 55-202 et seq.

Article I. In General

Sec. 18-1. Definitions.
Sec. 18-2. Penalty.
Sec. 18-3. Animal Control Officer.
Sec. 18-4. Disposition of dead animals, fowl or poultry.
Sec. 18-5. Slaughtering of livestock.
Sec. 18-6. Abandoning domesticated animal in public place or on property of another.
Sec. 18-7. Burial or cremation of dead animals or fowl.
Sec. 18-8. Cruelty to animals.
Sec. 18-9. Beekeeping in residential districts.
Sec. 18-10. Allowing animals to urinate or defecate on public property or property of another.
Sec. 18-11. Animals causing unsanitary conditions or odor.
Sec. 18-12. Permitting animals to trespass.
Sec. 18-13. Nuisance Animals and Hybrid Canines.
Sec. 18-14 –18-40. Reserved.

Article II. Dogs; Cats; Companion Animals

Division 1. Generally

Sec. 18-41. Dogs and cats deemed personal property; rights relating thereto.
Sec. 18-42. Dogs killing, injuring or chasing livestock or poultry.
Sec. 18-43. Penalties for violations of article.
Sec. 18-44. Limitation on number of dogs and cats kept per dwelling unit; sanitary conditions required.
Secs. 18-45--18-75. Reserved.

Division 2. Licensing

Sec. 18-76. License required; amount of tax.
Sec. 18-77. How to obtain license.
Sec. 18-78. Evidence of rabies inoculation prerequisite to issuance.
Sec. 18-79. When tax due.
Sec. 18-80. What license consists of.
Sec. 18-81. Duplicate license tags.
Sec. 18-82. Displaying receipts; dogs or cats to wear tags.
Secs. 18-83 —18-115.

Division 3. Running at Large

Sec. 18-116. Running at large prohibited.
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Article IV. Wild or Exotic Animals

Sec. 18-218. Keeping.

ARTICLE I. IN GENERAL

Sec. 18-1. 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:

Animal includes any vertebrate creature, domestic or wild, and any poisonous invertebrate, such as a tarantula.

Animal control officer means the animal control officer of the county.

Apiary means any place where one or more colonies of bees are kept.

Bees means any living stage of the honeybee, Apis mellifera and genetic variations thereof; and may also include those hymenopterous insects which depend on pollen and nectar for food.

Board of supervisors means the board of supervisors of Isle of Wight County.

Cat means every cat regardless of sex or age.

Colony means a queenright assemblage of social bees capable of reproducing.

Companion animal means any domestic or feral dog, domestic or feral cat, nonhuman primate, guinea pig, hamster, rabbit not raised for human food or fiber, exotic or native animal, reptile, or exotic or native bird, or any feral animal or animal under the care, custody or ownership of a person or animal which is bought, sold, traded or bartered by any person. Agricultural animals, game species or any animals regulated under federal law as research animals shall not be considered companion animals.

Cremation means the disposal of dead animals or fowl performed in an incinerator by a licensed business under the direction of all state regulations.

Dog means every dog regardless of sex or age, including canine crossbreeds.

Domesticated fowl means any chicken, turkey, duck, goose, pheasant or peacock.

Endangered or threatened species means any creature so designated under federal law (16 USC ch.35; 50 CFR 17.1 et.. seq.)

Hearing dog means a dog trained to alert its owner by touch to sounds of danger and sounds to which the owner should respond.

Humane Society, when referring to an organization without the commonwealth, means any nonprofit organization for the purpose of preventing cruelty to animals and promoting humane care and treatment or adoption of animals.

Kennel means any establishment in which five or more canines, felines, or hybrids of either are kept for the purpose of breeding, hunting, training, renting, buying, boarding, selling, or showing.

Livestock means any live horse, mule, cow, swine, (includes potbelly pigs), domesticated fowl, sheep or goat, which also includes pigmy goats

Other officer includes all other persons employed or elected by the people of the commonwealth, or by any municipality, county or incorporated town thereof, whose duty it is to preserve the peace, to make arrests or to enforce the law.

Owner means any person who:

(1) has a right of property in an animal;

(2) Keeps or harbors an animal;

(3) Has an animal in his care; or

(4) Acts as custodian of an animal.

Poultry includes all domestic fowl, and game birds raised in captivity.

Service dog means a dog trained to accompany its owner for the purpose of carrying items, retrieving objects, pulling a wheelchair or other such activities of service or support.

Sterilize and sterilization mean a surgical or chemical procedure performed by a licensed veterinarian that renders a dog or cat permanently incapable of reproducing.

To run at large, running at large, to go at large and going at large mean to roam, run or self-hunt off the property of the owner or custodian without being caged, physically carried or held by a leash and under the control of a person capable of both physically and mentally controlling the animal.

Wild or exotic animal means any animal except a dog, cat, hamster, gerbil, guinea pig, mouse, ferret, turtle, nonpoisonous snake, nonpoisonous lizards and iguanas less than seven feet in length, domesticated rabbit, laboratory rat, bird, fish, horse, mule, cow, swine, sheep or goat.
(Code 1982, §§ 5-1, 5-21)
Cross references: Definitions generally, § 1-2.

Sec. 18-2. Penalty.

A violation of any of the provisions of this chapter for which a specific penalty is not provided shall be a class 4 misdemeanor.

Sec. 18-3. Animal control officer.

In accordance with Code of Virginia, § 3.1-796.104, there is hereby created the position of animal control officer. The duties of the animal control officer shall be those provided for in Code of Virginia, § 3.1-796.104 et seq., and such other duties as may be provided for by the board of supervisors. The animal control officer may employ assistants as shall be provided for by the board of supervisors. The animal control officer shall enforce the provisions of this chapter in the town.
(Code 1982, § 5-2)
Cross references: Administration, ch. 2; officers, § 2-141 et seq.

Sec. 18-4. Disposition of dead animals, fowl or poultry.

(a) The owner of any animal, fowl or poultry which has died, when such owner knows of such death, shall forthwith cremate, bury or dispose of by disposal equipment, or cause to be cremated, buried or disposed of by disposal equipment, the body and solid wastes thereof; and, if such owner fails to forthwith do so, the animal control officer, after written notice to the owner thereof to so dispose of such dead animal, fowl or poultry and the solid wastes thereof as aforesaid, if such owner can be ascertained, shall bury or cremate such dead animal, fowl or poultry and the solid wastes thereof, and the animal control officer shall be entitled to recover from the owner of every such animal and the solid wastes thereof so disposed of on behalf of the county the reasonable costs thereof, free from all exemptions of such owner; provided, that if such owner cannot be ascertained, then the animal control officer shall nevertheless cause such dead animal, fowl or poultry and the solid wastes thereof to be disposed of as herein provided for.

(b) Any violation of the provisions of this section shall constitute a class 4 misdemeanor.
(Code 1982, § 5-3)

Cross reference—Solid waste, ch.66.

State law references: Disposition of dead animals, Code of Virginia, §§ 18.2-323, 18.2-510.

Sec. 18-5. Slaughtering of livestock.

(a) No person shall keep, store, maintain and slaughter within the town any livestock except where such storing, penning, maintaining and slaughtering is done by a regularly established livestock processing plant subject to inspection by the meat inspection division of the United States Department of Agriculture or by the appropriate authorities of the state department of agriculture and consumer services.

(b) A violation of this section shall constitute a class 1 misdemeanor.
(Code 1982, § 5-4)

Sec. 18-6. Abandoning domesticated animal in public place or on property of another.

Any person who shall abandon any dog, cat or other domesticated animal in any public place, including the right-of-way of any public highway, road or street, or on the property of another shall be guilty of a class 3 misdemeanor.

Cross reference—Streets, sidewalks and other public places, ch. 70.

State law reference—Similar provision, Code of Virginia, § 3.1-796.122.

Sec. 18-7. Burial or cremation of dead animals or fowl.

(a) When the owner of any animal or grown fowl which has died knows of such death, such owner shall forthwith have its body cremated or buried, and if he fails to do so, any judge of the general district court, after notice to the owner if he can be ascertained, shall cause any such dead animal or follow to be cremated or buried by an officer or other person designated for the purpose. Such officer or other person shall be entitled to recover of the owner of every such animal so cremated or buried the actual cost of the cremation or burial, not to exceed $75.00, and of the owner of every such fowl so cremated the actual cost of the cremation or burial, not to exceed $5.00, to be recovered in the same manner as officers' fees are recovered, free from all exemptions in favor of such owner. Any person violating the provisions of this section shall be guilty of a class 4 misdemeanor.

(b) Nothing in this section shall be deemed to require the burial or cremation of the whole or portions of any animal fowl which is to be used for food or in any commercial manner.

Sec. 18-8. Cruelty to animals.

(a) Any person who:

(1) Overrides, overdrives, overloads, tortures, ill-treats, abandons, willfully inflicts inhumane injury or pain not connected with bona fide scientific or medical experimentation, or cruelly or unnecessarily beats, maims, mutilates, or kills any animal, whether belonging to himself or another;

(2) Deprives any animal of necessary food, drink, shelter, or emergency veterinary treatment;

(3) Willfully sets on foot, instigates, engages in, or in any way furthers any act of cruelty to any animal;

(4) Carries or causes to be carried in or upon any vehicle, vessel or otherwise any animal in a cruel, brutal, or inhumane manner, so as to produce torture or unnecessary suffering; or

(5) Causes any of the above things, or being the owner of such animal permits such acts to be done by another;

Shall be guilty of a class 1 misdemeanor.

(b) Nothing in this section shall be construed to prohibit the dehorning of cattle.

(c) For the purposes of this section, the word “animal” shall be construed to include birds and fowl.

(d) In addition to the penalties provided in subsection (a) of this section, the court may, in its discretion, require any person convicted of a violation of subsection (a) of this section to attend an anger management or other appropriate treatment program or obtain psychiatric or psychological counseling. The court may impose the costs of such a program or counseling upon the person convicted.

(e) It is unlawful for any person to kill a domestic dog or cat for the purpose of obtaining the hide, fur or pelt of the dog or cat. The first violation of this subsection by any person shall constitute a class 1 misdemeanor.

Sec. 18-9. Beekeeping in residential districts.

(a) No person owning, leasing, occupying or having charge of any premises within a residential district, shall maintain an apiary of keep bees or hives thereon, unless the location of such bees or hive of bees shall be more than 20 feet from the closest adjoining property line, building, street, road or way or property line of any public park or any public outdoor recreational area, and no less than 50 feet from the nearest dwelling or other place of habitation, other than that of the owner or keeper of such bees or hive of bees.

(b) A violation of this section shall constitute a class 4 misdemeanor.

Sec. 18-10. Allowing animals to urinate or defecate on public property or property of another.

It shall be unlawful for any person knowingly or willingly to allow any animal belonging to that person to urinate or defecate on any public property, or the property of another without the consent of the owner of the property or his agent, provided that it shall not be unlawful to allow urination or defecation by such animal within the curb or gutter area of a public street or roadway, and provided that defecation by an animal on public property shall not be unlawful if the owner of the animal removes the animal's excrement immediately and disposes of it in a public trash receptacle or in a public sanitary sewer, or on the owner's own property in a lawful manner.

Sec. 18-11. Animals causing unsanitary conditions or odor.

It shall be unlawful for any person who owns, keeps or controls any animals to keep that animal in such a manner as to cause unsanitary conditions, or in such manner as to cause offensive odors beyond the boundary of that person's own property.

Sec. 18-12. Permitting animals to trespass.

It shall be a class 4 misdemeanor for any person owns, keeps or controls any animal to allow any such animal to go upon the premises of another person after being requested by the owner or tenant of any premises not permit the animal to trespass upon such premises. The defendant may enter a written appearance, waiver of court hearing and plea of guilty and pay a fine of $20.00 plus court costs. A court hearing may not be waived if the animal did more than $10.00 worth of damage.

Sec. 18-13. Nuisance Animals.

(a) All animals owners shall exercise proper care and control of their animals to prevent them from becoming a public nuisance. Excessive, continuous or untimely barking, harassing passersby, biting or attacking any person without provocation on one or more occasions, chasing vehicles, habitually attacking other domestic animals, trespassing upon school grounds or trespassing upon private property in such manner as to damage or destroy or create an unsanitary condition on such property shall be deemed a nuisance. Repeated running at large after citation of the owner by any animal control officer shall also be deemed a nuisance.

(b) Any such person owning any animal constituting a nuisance shall be summoned before the general district court to show cause why such animal should not be confined, destroyed, removed or the nuisance otherwise abated and upon proof of the general district court, either be confined, destroyed, removed or the nuisance otherwise be abated as such court shall order; the court may also impose a fine up to one hundred dollars to be paid by the owner or custodian of such animal. It shall be unlawful and shall constitute contempt of court for any person to harbor or conceal any animal which has been ordered destroyed or removed by the general district court or to fail to confine or restrain an animal when such an order has been entered by the court.

(c) If the animal control officer or his duly authorized agent has reason to believe that any animal has, without provocation, attacked or bitten any person, such animal may be taken into custody and confined by the animal warden pending determination of the courts pursuant to this section.

(d) Any person who owns any dog, cat or other animal that has been adjudged a nuisance pursuant to this section by the general district court and who appeals that decision to the circuit court shall be responsible for the fees connected with the impounding of the animal by the animal control officer. The animal control officer or owner shall confine such dog, cat or other animal during pendency of the appeal to prevent a reoccurrence of the nuisance. If on appeal, the circuit court determines that the dog, cat or other animal is not a nuisance, no such fees for the impounding of the animal shall be imposed.

Secs. 18-14—18-40. Reserved.

ARTICLE II. DOGS; CATS; COMPANION ANIMALS

DIVISION 1. GENERALLY

Sec. 18-41. Dogs and cats deemed personal property; rights relating thereto.

(a) All dogs and cats shall be deemed personal property and may be the subject of larceny and malicious or unlawful trespass. Owners may maintain any action for the killing of any such animals, or injury thereto, or unlawful detention or use thereof as in the case of other personal property. The owner of any dog or cat which is injured or killed contrary to the provisions of this article by any person shall be entitled to recover the value thereof or the damage done thereto in an appropriate action at law from such person.

(b) An animal control officer or other officer finding a stolen dog or cat, or a dog or cat held or detained contrary to law, shall have authority to seize and hold such animal pending action before a general district court or other court. If no such action is instituted within seven days, the animal control officer or other officer shall deliver the dog or cat to its owner.

(c) The presence of a dog or cat on the premises of a person other than its legal owner shall raise no presumption of theft against the owner, and the animal control officer may take such animal in charge and notify its legal owner to remove it. The legal owner of the animal shall pay a reasonable charge as the board of supervisors by ordinance shall establish for the keep of such animal while in the possession of the animal control officer.
(Code 1982, § 5-8)

State law references: Similar provisions, Code of Virginia, § 3.1-796.127.

Sec. 18-42. Dogs killing, injuring or chasing livestock or poultry.

(a) It shall be the duty of any animal control officer or other officer who may find a dog in the act of killing or injuring livestock or poultry to kill such dog forthwith whether such dog bears a tag or not. Any person finding a dog committing any of the depredations mentioned in this section shall have the right to kill such dog on sight as shall any owner of livestock or his agent finding a dog chasing livestock on land utilized by the livestock when the circumstances show that such chasing is harmful to the livestock. Any court shall have the power to order the animal control officer or other officer to kill any dog known to be a confirmed livestock or poultry killer, and any dog killing poultry for the third time shall be considered a confirmed poultry killer. The court, through its contempt powers, may compel the owner, custodian or harborer of the dog to produce the dog.

(b) Any animal control officer who has reason to believe that any dog is killing livestock or poultry shall be empowered to seize such dog solely for the purpose of examining such dog in order to determine whether it committed any of the depredations mentioned in this section. Any animal control officer or other person who has reason to believe that any dog is killing livestock, or committing any of the depredations mentioned in this section, shall apply to a magistrate of the county or of the town, who shall issue a warrant requiring the owner or custodian, if known, to appear before a general district court at a time and place named therein, at which time evidence shall be heard. If it shall appear that the dog is a livestock killer, or has committed any of the depredations mentioned in this section, the district court shall order that the dog be killed immediately by the animal control officer or other officer designated by the court or removed to another state which does not border on the commonwealth and prohibited from returning to the commonwealth. Any dog ordered removed from the commonwealth which is later found in the commonwealth shall be ordered by a court to be killed immediately.
(Code 1982, § 5-9)

State law references: Similar provisions, Code of Virginia, § 3.1-796.116.

Sec. 18-43. Penalties for violations of article.

(a) The following shall be unlawful acts and constitute class 4 misdemeanors:

(1) *License application.* For any person to make a false statement in order to secure a dog or cat license to which he is not entitled.

(2) *License tax.* For any dog owner to fail to pay the license tax required by this chapter before February 1 for the year in which it is due. In addition, the court may order confiscation and the proper disposition of the dog or cat.

(3) *Leash ordinance.* For any dog owner to allow a dog to run at large in violation of this article.

(4) *Rabies regulations.* For any person to fail to comply with division 4 or 5 of this article.

(5) *Dead companion animals.* For any owner to fail to dispose of the body of his companion animal in compliance with section 18-4.

(6) *Diseased dogs and cats.* For the owner of any dog or cat with a contagious or infectious disease to permit such dog or cat to stray from his premises if such disease is known to the owner.

(7) *Removing collar and tag.* For any person, except the owner or custodian, to remove a legally acquired license tag from a dog or cat without the permission of the owner or custodian.

(8) *Concealing a dog or cat.* For any person to conceal or harbor any dog or cat on which the license tax has not been paid, or to conceal a mad dog to keep the same from being killed.

(9) *Others.* Any other violation of this chapter for which specific penalty is not provided.

(b) Payment of the license tax subsequent to a summons to appear before a court for failure to do so within the time required shall not operate to relieve such owner from the penalties provided.

(c) It shall be a class 1 misdemeanor for any person to present a false claim or to receive any money on a false claim under the provisions of Code of Virginia, § 3.1-796.118.
(Code 1982, § 5-11)
State law reference: Code of Virginia § 3.1-796.128

Sec. 18-44. Limitations on number of dogs and cats kept per dwelling unit; sanitary conditions required.

(a) It shall be unlawful for any person to keep more than four dogs over four months of age or four cats over four months of age, or any combination of dogs and cats over four months of age, not to exceed four, in any dwelling unit in the town unless authorized by the animal control officer for emergency rescue or foster care.

(b) This section shall not apply to any person authorized to operate a kennel.

(c) The structure or building in which any dogs and cats are confined and the lot, compound or enclosure in which they are penned shall be kept in such sanitary condition as not to cause offensive odors or attract flies or other insects.

Sec. 18-45. Chaining and enclosures.

(a) It shall be unlawful for any person owning and/or controlling dogs whether vaccinated or unvaccinated, licensed or unlicensed, to allow said animal to be tied or chained to dog houses, or other stationary objects for a period of time longer than 8 hours in a 24 hour period and shall be prohibited from 11:00 p.m. through 6:00 a.m.

(b) Any dogs confined within a fenced yard must have an adequate area for exercise of not less than 150 square feet per dog. Where dogs are kept or housed on property without a fenced yard, the owner of such dogs or persons have control of such dogs shall provide an enclosure for such dogs containing an area of not less than 150 square feet per dog. Such enclosure shall be constructed of chain link fencing or similar type materials with all four sides enclosed. The enclosure shall be of sufficient height to prevent the dog from escaping from such enclosure.

(c) Nothing in this ordinance shall be construed to prohibit owners or others from walking dogs with a hand held leash.

(d) Nothing in this ordinance shall be construed to prohibit owners from allowing dogs to be attached to overhead runs (i.e. leash or chain attached to an overhead wire at least 10 feet in length, that allows the dog to move unheeded).

Secs. 18-46--18-75. Reserved.

DIVISION 2. LICENSING

Sec. 18-76. License required; amount of tax.

(a) It shall be unlawful for any person to own a dog four months or over in the town unless such dog or cat is licensed, as required by the provisions of this division.

(b) The amount of the license tax shall be as established by the board of supervisors.

(c) No license tax shall be levied on any dog that is trained and serves as a guide dog for a blind person, that is trained and serves as a hearing dog for a deaf or hearing impaired person or that is trained and serves as a service dog for a mobility-impaired person.
(Code 1982, § 5-12)
State law references: Dog license required, Code of Virginia, § 3.1-796.85; amount of license tax, Code of Virginia, § 3.1-796.87.

Sec. 18-77. How to obtain license.

Any person may obtain a dog or cat license by making oral or written application to the treasurer of the county in which such person resides, accompanied by the amount of license tax and current certificate of vaccination as required by this division. The treasurer or other officer charged with the duty of issuing dog and cat licenses shall only have authority to license dogs of resident owners or custodians who reside within the boundary limits of his county and may require information to this effect from any applicant. Upon receipt of proper application and current certificate of vaccination as required by this division, the treasurer or other officer charged with the duty of issuing dog and cat licenses shall issue a license receipt for the amount on which he shall record the name and address of the owner or custodian, the date of payment, the year for which issued, the serial number of the tag, the word "dog or cat," whether male, unsexed female, female or kennel, and deliver the metal license tags or plates provided for in this division. The information thus received shall be retained by the treasurer, open to public inspection, during the period for which such license is valid. The treasurer may establish substations in convenient locations in the county and appoint agents for the collection of the license tax and issuance of such licenses.
(Code 1982, § 5-13)
State law references: Similar provisions, Code of Virginia, § 3.1-796.86.

Sec. 18-78. Evidence of rabies inoculation prerequisite to issuance.

No license tag shall be issued for any dog or cat unless there is presented to the treasurer, at the time application for license is made, evidence satisfactory to him showing that such dog or cat has been inoculated or vaccinated against rabies by a currently licensed veterinarian or currently licensed veterinary technician who was under the immediate and direct supervision of a licensed veterinarian on the premises.
(Code 1982, § 5-14)
State law references: Similar provisions, Code of Virginia, § 3.1-796.97.

Sec. 18-79. When tax due.

(a) On January 1 and not later than January 31 of each year, the owner of any dog or cat four months old or older shall pay a license tax as prescribed in section 18-76.

(b) If a dog or cat shall become four months of age or come into the possession of any person between January 1 and November 1 of any year, the license tax for the current calendar year shall be paid forthwith by the owner.

(c) If a dog or cat shall become four months of age or come into the possession of any person between October 31 and December 31 of any year, the license tax for the succeeding calendar year shall be paid forthwith by the owner and such license shall be valid from the date of purchase.
(Code 1982, § 5-15)
State law references: Similar provisions, Code of Virginia, § 3.1-796.88.

Sec. 18-80. What license consists of.

A dog license shall consist of a license receipt and a metal tag. The tag shall be stamped or otherwise permanently marked to show the jurisdiction issuing the license, the sex of the dog or cat and the calendar year for which issued and bear a serial number.
(Code 1982, § 5-16)
State law references: Similar provisions, Code of Virginia, § 3.1-796.90.

Sec. 18-81. Duplicate license tags.

If a dog or cat license tag is lost, destroyed or stolen, the owner or custodian shall at once apply to the treasurer or his agent who issued the original license for a duplicate license tag, presenting the original license receipt. Upon affidavit of the owner or custodian before the treasurer or his agent that the original license tag has been lost, destroyed or stolen, he shall issue a duplicate license tag, which the owner or custodian shall immediately affix to the collar of the dog or cat. The treasurer or his agent shall endorse the number of the duplicate and the date issued on the face of the original license receipt. The fee for a duplicate tag for any dog or cat shall be $1.00.
State law references: Similar provisions, Code of Virginia, § 3.1-796.91.

Sec. 18-82. Displaying receipts; dogs or cats to wear tags.

Dog and cat license receipts shall be carefully preserved by the licensees and exhibited promptly on request for inspection by any animal control officer or other officer. Dog license tags shall be securely fastened to a substantial collar by the owner or custodian and worn by such dog, and it shall be unlawful for the owner to permit any licensed dog four months old or over to run or roam at large at any time without a license tag. The owner of the dog may remove the collar and license tag required by this section when the dog is engaged in lawful hunting, when the dog is competing in a dog show, when the dog has a skin condition which would be exacerbated by the wearing of a collar, when the dog is confined, or when the dog is under the immediate control of its owner.
(Code 1982, § 5-18)
State law references: Similar provisions, Code of Virginia, § 3.1-796.92.

Secs. 18-83 --18-115. Reserved.

DIVISION 3. RUNNING AT LARGE*

***State law references:** Authority of town to prohibit dogs from running at large, Code of Virginia, § 3.1-796.93; authority of town to regulate and control the running at large of vicious or destructive dogs, Code of Virginia, § 3.1-796.100.

Sec. 18-116. Running at large prohibited.

It shall be unlawful for the owner of any dog or cat to allow such dog or cat to run at large within the town, even though the dog or cat is both lawfully licensed and vaccinated.
(Code 1982, § 5-22)

Sec. 18-117. Duty to impound; reclaimable with proof of ownership and fee payment.

Any dog or cat found running at large as defined in this chapter shall be apprehended and placed in the county ~~dog~~ pound for safekeeping and may be reclaimed by the owner or custodian upon showing satisfactory proof that he is the owner or custodian of such dog or cat and upon payment of such impoundment board fees as may be established by the board of supervisors.
(Code 1982, § 5-24)

Sec. 18-118. Confinement and disposition of animals.

(a) Any animal which has been confined in the county animal pound pursuant to this section shall be kept for a period not less than five days, such period to commence on the day immediately following the day the animal is initially confined in the facility, unless sooner claimed by the rightful owner thereof.

(b) The operator or custodian of the pound shall make a reasonable effort to ascertain if the animal has a collar, tag, license, tattoo, or other form of identification. If such identification is found on the animal, the animal shall be held for an additional five days, unless sooner claimed by the rightful owner. If the rightful owner of the animal can be readily identified, the operator or custodian of the pound shall make a reasonable effort to notify the owner of the animal's confinement within the next twenty-four hours following its confinement. If any companion animal confined pursuant to this section is claimed by its rightful owner, such owner will be charged an impound/pickup fee of fifteen dollars and a kennel fee of five dollars per day. If any other animal confined pursuant to this section is claimed by its rightful owner, such owner may be charged with the actual expenses incurred in keeping the animal impounded. The owner of any animal confined pursuant to this section may also be charged with the actual expenses of any veterinary care rendered while the animal was in the custody of Isle of Wight County.

(c) If an animal confined pursuant to this section has not been claimed upon expiration of the appropriate holding period as provided by subsection (a) or (b) herein, it shall be deemed abandoned and become the property of the pound. Such animal may be humanely destroyed or disposed of by the methods set forth in subsections (1) through (5). No pound shall release more than two animals or a family of animals during any thirty-day period to any one person under subsections (2), (3), or (4).

(1) Release of any humane society, animal shelter, or other releasing agency within the Commonwealth, provided that each humane society, animal shelter, or other releasing

agency obtains a signed statement from each of its directors, operators, staff, or animal caregivers specifying that each individual has never been convicted of animal cruelty, neglect, or abandonment and updates such statements as changes occur.

(2) Adoption by a resident of Isle of Wight County and who will pay the required license fee on such animal, agree to have the animal sterilized in accordance with the provisions of section 3.1-796.126:1 of the Code of Virginia (1950), as amended, and provided that such resident has read and signed a statement specifying that he has never been convicted of animal cruelty, neglect, or abandonment.

(3) Adoption by a resident of an adjacent political subdivision of the Commonwealth and who will agree to have the animal sterilized in accordance with the provisions of section 3.1-796.126:1 of the Code of Virginia (1950), as amended, and provided that such resident has read and signed a statement specifying that he has never been convicted of animal cruelty, neglect, or abandonment.

(4) Adoption by any other person, provided that such person has read and signed a statement specifying that he has never been convicted of animal cruelty, neglect, or abandonment, and provided that no animal may be adopted by any person who is not a resident of the county or of an adjacent political subdivision, unless the animal is first sterilized, and the pound may require that the sterilization be done at the expense of the person adopting the animal.

(5) Release for the purpose of adoption or euthanasia only, to an animal shelter, or any other releasing agency located in and lawfully operating under the laws of another state, provided that such animal shelter, or other releasing agency: (i) maintains records that would comply with section 3.1-796.105 of the Code of Virginia (1950), as amended; (ii) requires that adopted dogs and cats be sterilized; (iii) obtains a signed statement from each of its directors, operators, staff, and animal caregivers specifying that each individual has never been convicted of animal cruelty, neglect, or abandonment, and updates such statement as changes occur; and (iv) has provided to the pound, animal shelter, or other releasing agency with in the Commonwealth a statement signed by an authorized representative specifying the entity's compliance with clauses (i) through (iii), and the provisions of adequate care and performance of humane euthanasia, as necessary, are in accordance with the sections 3.1-796.68 and 3.1-796.96 of the Code of Virginia (1950), as amended.

(d) For purposes of recordkeeping, release of an animal by a pound to a pound, animal shelter or other releasing agency shall be considered a transfer and not an adoption. If the animal is not first sterilized, the responsibility for sterilizing the animal transfers to the receiving entity.

(e) No provision herein shall prohibit the immediate euthanasia of a critically injured, critically ill, or unweaned animal for humane purposes. Any animal euthanized pursuant to the provisions of this chapter shall be euthanized by one of the methods prescribed or approved by the state veterinarian.

(f) Nothing in this section shall be construed to prohibit confinement of other companion animals in such a pound.

For the purposes of this section, the term "animal" shall not include agriculture animals.

State law reference: § 3.1-796.96 of the Code of Virginia (1950), as amended.

Sec. 18-119. Liability of owner subsequent to payment of impoundment fee.

The payment of the impoundment fee and board bill shall not relieve the owner or custodian of his liability for failing to comply with the terms of this division.
(Code 1982, § 5-27)

Sec. 18-120. Enforcement of division.

It shall be the duty of the animal control officer and other law enforcement officers of the town to enforce the provisions of this division.
(Code 1982, § 5-28)

Secs. 18-121--18-150. Reserved.

DIVISION 4. VICIOUS OR DANGEROUS DOGS*

Cross reference—Environment, ch. 38.
***State law references:** Dangerous or vicious dogs, Code of Virginia, § 3.1-796.93:1.

Sec. 18-151. Control of dangerous or vicious dogs.

(a) As used in this section, "dangerous dog" means a canine or canine crossbreed that has bitten, attacked, or inflicted injury on a person or companion animal or killed a companion animal; however, when a dog attacks or bites another dog, the attacking or biting dog shall not be deemed dangerous: (i) if no serious physical injury as determined by a licensed veterinarian has occurred to the other dog as a result of the attack or bite; or (ii) both dogs are owned by the same person. No dog shall be found to be a dangerous dog as a result of biting, attacking or inflicting injury on another dog while engaged with an owner or custodian as part of lawful hunting or participating in an organized, lawful dog handling event. "Vicious dog" means a canine or canine crossbreed that has: (i) killed a person; (ii) inflicted serious injury to a person, including multiple bites, serious disfigurement, serious impairment of health, or serious impairment of a bodily function; or (iii) continued to exhibit the behavior which resulted in a previous finding by a court or an animal control officer pursuant to the provisions of subsection (k), that it is a dangerous dog, provided that its owner has been given notice of that finding.

(b) Any animal control officer who has reason to believe that a canine or canine crossbreed within his jurisdiction is a dangerous dog or vicious dog may file a suit in General District Court in Isle of Wight County. The petition shall advise the owner of the nature of the proceeding and the matters at issue. The animal control officer shall confine the animal until such time as evidence shall be heard and a verdict rendered. If the animal control officer determines that the owner or custodian can confine the animal in a manner that protects the public safety, he may permit the owner or custodian to confine the animal until such time as evidence shall be heard and a verdict rendered. The court, through its contempt powers, may compel the owner, custodian or harborer of the animal to produce the animal. If, after hearing the evidence, the court finds that the animal is a dangerous dog, the court shall order the animal's owner to comply with the provisions of this chapter. If, after hearing the evidence, the court finds that the animal is a vicious dog, the court shall order the animal euthanized in accordance with the provisions of section 3.1-796.119 of the Code of Virginia (1950), as amended.

(c) No canine or canine crossbreed shall be found to be a dangerous dog or vicious dog solely because it is a particular breed, nor shall ownership of a particular breed of canine or canine crossbreed be prohibited. No animal shall be found to be a dangerous dog or vicious dog if the threat, injury or damage was sustained by a person who was: (i) committing, at the time, a crime upon the premises occupied by the animal's owner or custodian; (ii) committee, at the time, a willful trespass or other tort upon the premises occupied by the animal's owner or custodian; or (iii) provoking, tormenting, or physically abusing the animal, or can be shown to have repeatedly provoked, tormented, abused, or assaulted the animal at other times. No police dog that was engaged in the performance of its duties as such at the time of the acts complained of shall be found to be a dangerous dog or a vicious dog. No animal which, at the time of the acts complained of, was responding to pain or injury, or was protecting itself, its kennel, its offspring, or its owner or owner's property, shall be found to be a dangerous or a vicious dog.

(d) The owner of any animal found to be a dangerous dog shall, within ten days of such finding, obtain a dangerous dog registration certificate from the local animal control officer for a fee of fifty dollars, in addition to other fees that may be authorized by law. The local animal control officer shall also provide the owner with a uniformly designed tag that identifies the animal as a dangerous dog. The owner shall affix the tag to the animal's collar and ensure that the animal wears the collar and tag at all times. All certificates obtained pursuant to this subsection shall be renewed annually for the same fee and in the same manner as the initial certificate was obtained.

(e) All certificates or renewals thereof required to be obtained under this section shall only be issued to persons eighteen years of age or older who present satisfactory evidence: (i) of the animal's current rabies vaccination, if applicable; (ii) that the animal has been neutered or spayed; (iii) that the owner has liability insurance coverage, to the value of at least one hundred thousand dollars, that covers animal bites; and (iv) that the animal is and will be confined in a proper enclosure or is and will be confined inside the owner's residence or is and will be muzzled and confined in the owner's fenced-in yard until the proper enclosure is constructed. In addition, owners who apply for certificates or renewals thereof under this section shall not be issued a certificate or renewal thereof unless they present satisfactory evidence that: (i) their residence is and will continue to be posted with clearly visible signs warning both minors and adults of the presence of a dangerous dog on the property; and (ii) the animal has been permanently identified by means of a tattoo on the inside thigh or by electronic implantation.

(f) While on the property of its owner, an animal found to be a dangerous dog shall be confined indoors or in a securely enclosed and locked structure of sufficient height and design to prevent its escape or direct contact with or entry by minors, adults, or other animals. The structure shall be designed to provide the animal with shelter from the elements of nature. When off its owner's property, an animal found to be a dangerous dog shall be kept on a leash and muzzled in such a manner as not to cause injury to the animal or interfere with the animal's vision or respiration, but so as to prevent it from biting a person or another animal.

(g) If the owner of an animal found to be a dangerous dog is a minor, the custodial parent or legal guardian shall be responsible for complying with all requirements of this section.

(h) After an animal has been found to be a dangerous dog, the animal's owner shall immediately, upon learning of same, notify the local animal control authority if the animal: (i) is loose or unconfined; (ii) bites a person or attacks another animal; (iii) is sold, given away, or dies; or (iv) has been moved to a different address.

(i) The owner of any animal which has been found to be a dangerous dog who willfully fails to comply with the requirements of this section shall be guilty of a class 1 misdemeanor.

(j) All fees collected pursuant to this section, less the costs incurred by the animal control authority in producing and distributing the certificates and tags required by this chapter, shall be paid into a special dedicated fund in the Isle of Wight County treasury for the purpose of paying the expenses of any animal control officer training required under section 3.1-796.104:1 of the Code of Virginia (1950), as amended.

(k) Notwithstanding the provisions of subsection (c) of this section, any animal control officer may determine, after investigation, whether a dog is a dangerous dog. If the animal control officer determines that a dog is a dangerous dog, he may order the animal's owner to comply with the provisions of this chapter. If the animal's owner disagrees with the animal control officer's determination, he may appeal the determination to the general district court for a trial on the merits.

State law reference—Sec. 3.1-796.93:1 of the Code of Virginia (1950), as amended.

Sec. 18-152. 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:

Dangerous domestic animal means a companion animal which has bitten, attacked or inflicted injury on a person or companion animal or killed a companion animal. It shall also include any animal designated as such by the animal designated as such by the animal control officer on the basis of the animal's propensity to attack.

Vicious domestic animal means a companion animal which has:

(1) Killed a person;

(2) Inflicted a severe injury to a person, including multiple bites, serious disfigurement, serious impairment of health, or serious impairment of a bodily function; or

(3) Continued to exhibit the behavior which resulted in a previous finding by court that it is a dangerous domestic animal, provided that its owner has been given notice of that finding.

Cross reference—Definitions generally, § 1-2.

Sec. 18-153. Penalty.

The owner or custodian of any animal which has been found by a court to be vicious domestic animal, or the owner or custodian of a dangerous domestic animal who willfully fails to comply with the requirements of this article, shall be guilty of a class 1 misdemeanor.

Sec. 18-154. Fees.

All fees collected pursuant to this division, less the costs incurred by any person while producing and disturbing the certificates and tags required by this division, shall be paid into a special dedicated fund in the treasury of the county for the purposes of paying the expenses of any training course required of animal control officers.

Sec. 18-155. Allowing animal to run at large.

No person shall allow any dangerous or vicious domestic animal to run at large, as that term is defined in section 18-1. The owner or keeper of a dangerous or vicious dog which runs at large shall be deemed to have allowed it to run at large unless he proves that the animal escaped confinement by an act of God or an act of a third party, and that defendant took all possible precautions against its escape.

State law reference—Prohibiting the running at large of animals, Code of Virginia, § 3.1-796.94:1.

Sec. 18-156. Procedure for determination that animal is dangerous or vicious.

Whenever the animal control officer or any police officer has reason to believe that a companion animal within the town is a dangerous domestic animal or vicious animal, the animal control officer shall issue a summons requiring the owner or custodian, if known, to appear before a general district court at a specified time. The summons shall advise the owner of the nature of the proceeding and the matter at issue. The animal control officer shall seize and confine the animal until such time as evidence shall be heard and a verdict rendered, ~~it~~ if the animal does not pose such a risk or if the owner can adequately confine the animal without risk of its escape, the animal control officer shall order the owner or custodian to keep the animal confined inside a dwelling or animal pen; failure to comply with such an order shall be a violation of this section. The court, through its contempt powers, may compel the owner, custodian or harborer of the animal to produce the animal. If, after hearing the evidence, the court finds that the animal is a dangerous domestic animal, the court shall order the animal's owner and/or custodian to comply with the provisions of subsection 18-167. If, after hearing the evidence, the court finds that the animal is a vicious domestic animal, the court shall order the animal euthanized in a humane manner by the animal control officer, in accordance with the law of the commonwealth.

State law references –Similar provision, Code of Virginia, § 3.1-796.94; issuance of summons, Code of Virginia, § 16.1-69.25.

Sec. 18-157 Criteria for determination that animal is dangerous or vicious.

No animal shall be found to be a dangerous domestic animal or vicious animal solely because it is a particular breed. No animal shall be found to be a dangerous domestic animal or vicious domestic animal if the threat, injury or damage was sustained by a person who was:

(1) Committing, at the time, a crime upon the premises occupied by the animal's owner or custodian; or
(2) Provoking, tormenting, abusing or assaulting the animal or can be shown to have repeatedly provoked, tormented, abused or assaulted the animal at other times.

No animal which, at the time of the acts complained of, was responding to pain or injury, or was protecting itself, its kennel, its offspring, or its owner or owner's property, shall be found to be a dangerous domestic animal or a vicious domestic animal.

Sec. 18-158 Registration certificate and tag; responsibilities of owner.

(a) *Registration certificate required; fee; tag.* The owner of any animal found to be a dangerous domestic animal shall, within ten days of such finding, obtain a dangerous domestic animal registration certificate from the animal control officer for a fee in accordance with a fee

schedule established by an uncodified ordinance enacted by the town council, in addition to other fees that may be authorized by law. The animal control officer shall also provide the owner with a uniformly designed tag which identifies the animal as dangerous domestic animal. The owner shall affix the tag to the animal's collar and ensure that the animal wears the collar and tag at all times. All certificates obtained pursuant to this subsection shall be renewed annually for the same fee and in the same manner as the initial certificate was obtained. If the owner fails to obtain such a certificate within the time allotted, the animal control officer shall have the animal euthanized in a humane manner.

(b) *Prerequisites for issuance of certificate.* Certificates shall only be issued to persons 18 years of age or older who present satisfactory evidence:

(1) of the animal's current rabies vaccination, if a vaccine exists for the species;

(2) that the animal is and will be confined in a proper enclosure or is and will be confined in the owner's fenced-in yard until the proper enclosure is constructed;

(3) that the animal has been sterilized:

(4) that the owner has liability insurance coverage, to the value of at least $50,000.00, which covers animal bites.

In addition, owners who apply for certificates or renewals thereof under this section shall not be issued a certificate or renewal thereof unless they present satisfactory evidence that their residence is and will continue to be posted with a clearly visible signs warning both minors and adults of the presence of a dangerous domestic animal of the property, and the animal has been permanently identified by means of a tattoo on the inside thigh or by electronic implantation.

(c) *Confinement of animal.* While on the property of its owner, an animal found by the court to be a dangerous animal shall be confined indoors or in a securely enclosed and locked structure of sufficient height and design to prevent its escape and to prevent direct contact with or entry by minors, adults or animals. The structure shall be designed to provide the animal with shelter from the elements of nature. The domestic animal shall be caged or kept on a leash and muzzled in such a manner as not to cause injury to the animal or interfere with the animal's vision or respiration, but so as to prevent it from biting a person or another animal.

(d) *Responsibility for animals owned by minors.* If the owner of a dangerous domestic animal is un-emancipated minor, the custodial parent or legal guardian shall be responsible for complying with all requirements of this article.

(e) *Required notifications to animal control officer*. After an animal has been found by a court to be a dangerous domestic animal, the animal's owner shall notify the animal control officer if the animal:

(1) is loose or confined;

(2) bites a person or attacks another animal;

(3) is sold, given away or dies, or

(4) has been moved to a different address.

The owner shall make the notification immediately upon learning of any such events.

Secs. 18-159--18-190. Reserved.

DIVISION 5. RABIES CONTROL

Sec. 18-191. Declaration of rabies emergencies; disposition of dogs suspected as rabid.

(a) When there is sufficient reason to believe that a rabid animal is at large and notwithstanding any other ordinance requiring restraint of animals by their owners and/or custodians, the town council shall have the power to pass an emergency ordinance that shall become effective immediately upon passage, requiring the owners of all dogs and cats therein to keep the same confined on their premises unless leashed under restraint of the owner in such a manner that persons or animals will not be subject to the danger of being bitten thereby. Any such emergency ordinance enacted pursuant to the provisions of this section shall be operative for a period not to exceed 30 days unless renewed by the town council. The town council shall also have the power and authority to pass ordinances restricting the running at large of dogs and cats that have not been inoculated or vaccinated against rabies and to provide penalties for the violation thereof.

(b) Dogs or cats showing active signs of rabies or suspected of having rabies shall be confined under competent observation for such a time as may be necessary to determine a diagnosis. If confinement is impossible or impracticable, such dog or cat shall be euthanized by one of the methods approved by the state veterinarian as provided in Code of Virginia, § 3.1-796.96.

(c) Every person having knowledge of the existence of an animal apparently afflicted with rabies shall report immediately to the county health department the existence of such animal, the place where seen, the owner's name, if known, and the symptoms suggesting rabies.

(d) Any dog or cat, for which no proof of current rabies vaccination is available, and which is exposed to rabies through a bite, or through saliva or central nervous system tissue, in a fresh open wound or mucous membrane, by an animal believed to be afflicted with rabies, shall be confined in a pound, kennel or enclosure approved by the health department for a period not to exceed six months at the expense of the owner; however, if this is not feasible, the dog or cat shall be euthanized by one of the methods approved by the state veterinarian as provided in Code of Virginia, § 3.1-796.96. A rabies vaccination shall be administered prior to release. Inactivated rabies vaccine may be administered at the beginning of confinement. Any dog or cat so bitten, or exposed to rabies through saliva or central nervous system tissue, in a fresh open wound or mucous membrane with proof of a valid rabies vaccination, shall be revaccinated immediately following the bite and shall be confined to the premises of the owner, or other site as may be approved by the local health department, for a period of 90 days.

(e) At the discretion of the director of the county health department, any animal that has bitten a person shall be confined under competent observation for ten days unless the animal develops active symptoms of rabies or expires before that time. A seriously injured or sick animal may be humanely euthanized as provided in Code of Virginia, § 3.1-796.96, and its head sent to the

division of consolidated laboratory services of the state department of general services, or the county health department, for evaluation.
(Code 1982, §§ 5-31, 5-35)

Cross reference—Environment, ch. 38.

State law references: Similar provisions, Code of Virginia, § 3.1-796.98.

Sec. 18-192. Vaccination or inoculation of dogs and cats for rabies.

(a) It shall be unlawful for an owner to keep, harbor or have in his care, custody or control any dog or cat four months old or older unless such dog or cat has been vaccinated or inoculated against rabies by a licensed veterinarian, or by a licensed veterinary technician who is under the immediate and direct supervision of a licensed veterinarian on the premises, annually or tri-annually, depending upon the initial vaccine utilized as approved by the state department of health.

(b) The vaccination or inoculation referred to in subsection (a) above shall be by a vaccine approved by the state department of health and shall be certified to by a licensed veterinarian. Such certificate shall state that the dog or cat has been properly vaccinated or inoculated in accord with the provisions of this section, shall be dated as of the date of inoculation or vaccination, shall show the rabies tag number, the sex and breed of the dog or cat and the name of the owner thereof, and shall state whether the initial vaccine utilized was for a one-year or three-year period, together with such information as may reasonably be required by the director of public health or the veterinarian administering the vaccine.

(c) Should any person who owns, keeps or harbors any dog or cat fail or refuse to comply with any of the provisions of this section or with any instructions given by the animal control officer, a veterinarian, a health district representative or other appropriate official, pursuant to this section, the dog warden or any other animal control officer may immediately take such dog or cat into custody and confine it in the county pound; and the person owning, keeping or harboring such dog or cat shall then be summoned forthwith by the animal warden or any other animal control officer to appear in the county general district court where the matter shall be heard as all other matters are heard on criminal warrants. Upon finding that such person either owns, keeps or harbors a dog or cat and has failed or refused to comply with any provision of this section or with instructions properly given pursuant to this section, the judge, in addition to any sentence which he may impose for violation of this section, shall order any confinement of the animal appropriate under the circumstances and pursuant to this section, and shall order the convicted person to pay for any required vaccination, and confinement related expenses.
(Code 1982, § 5-37(a)--(c))

Secs. 18-193—18-200. Reserved

ARTICLE III. LIVESTOCK

Sec. 18-201. Definitions.

Domesticated fowl means any chicken, turkey, duck, goose, pheasant or peacock.

Cross reference—Definitions generally, § 1-2.

Sec. 18-202. Unlawful to keep livestock outside community conservation (CC) zoning district.

Except in areas zoned community conservation (CC) it shall be unlawful for any person to keep or maintain any live, horse, mule, cow, swine, domesticated fowl, sheep or goat within the corporate limits of the town. Article 3.A, I.10 of the zoning ordinance allows private stables for keeping of horses, ponies or other livestock for personal enjoyment and not as a business are allowed right, provided that the lot shall be three acres or greater. Any building used for the keeping of such animals shall be located in the rear yard of the lot and shall conform to the side and rear minimum lot requirements established for non-accessory structures and uses in the CC district. No more than one such animal shall be kept per each acre of land on the lot.

Sec. 18-203. Maintenance of livestock enclosures.

An enclosure in which horses, mules, cows, swine, domesticated fowl, sheep or goats are kept or maintained within the town shall be kept in a clean and sanitary condition to the satisfaction of the chief of police. Whenever, in the opinion of the chief of police, any such enclosure shall become a nuisance, he shall order it to be abated after such reasonable notice as the town or the animal control officer shall prescribe.

Sec. 18-204. Running at large prohibited; grazing in or obstructing streets.

(a) It shall be unlawful for any person to permit horse, mule, cow, swine, domesticated fowl, sheep or goat to run at large in the town or to graze in the streets or to obstruct the streets in any manner.

Sec. 18-205. Impoundment and sale of livestock running at large.

(a) Any horse, mule, cow, swine, domestic fowl, sheep or goat which is permitted to run at large by its owner or the agent of the owner within the corporate limits of the town shall be impounded by the chief of police or the animal control officer.

(b) The owner or agent of the owner of an animal impounded under this section shall have three days from the date impoundment in which to claim such animal and to pay the town the cost incurred by it in impounding the animal. If the animal is not claimed by the owner or the agent of the owner within such three-day period, the sale of such animal shall be advertised in a newspaper having a circulation within the town, for one week and , unless redeemed prior thereto, such animal shall be sold on the third day following such advertisement.

(c) The proceeds of a sale conducted under subsection (b) of this section shall, after the payment of the fine and all expenses, be held by the town treasurer for the benefit of the owner of the animal which was sold. If such proceeds are not claimed within one year after the date of such sale, such proceeds shall be paid into the treasury of the town.

State law reference—Authority to provide for the impounding and confiscation of animal or fowl found at large, Code of Virginia, § 3.1-796.94:1.

Secs. 18-206 — 18-217 Reserved.

ARTICLE IV. WILD OR EXOTIC ANIMALS

Sec. 18-218. Keeping.

(a) *Prohibited; exceptions.* No person shall keep or permit to be kept on his premises any live wild or exotic animal. This section shall not be construed to apply to zoological parks, performing animal exhibitions, circuses or veterinary clinics which are properly licensed by the federal government or the commonwealth. In no case, however, shall such wild or exotic animals be exhibited or displayed in such a manner that persons other than their handlers can pet, fondle, otherwise come in a direct physical contact with such animals.

(b) *Endangered or threatened animals.* No person shall keep any endangered or threatened animal, live or dead, or any part thereof, except pursuant to an exemption or permit provided for in 16 USC ch. 35, or in regulation under that chapter.

(c) *Disposition of illegal animals.* Any person who keeps a wild or exotic animal in contracention of this article shall dispose of the animal by removal of the animal from the town by giving or selling the animal to a zoological park or by releasing the animal to the wild animal control officer. The animal control officer is authorized to release the animal to the wild, to a zoological park or to a responsible adult who shall remove the animal from the town or dispose of the animal in some humane manner. The animal control officer is not authorized to release the animal to any person who intends to use the animal for research purposes.

Chapters 19—21

RESERVED

Chapter 22

BUILDINGS AND BUILDING REGULATIONS*

***Charter references:** Powers of town as to building regulations, § 17.

Cross references: Administration, ch. 2; standing committees of council, § 2-37; businesses, ch. 26; license tax on contractors, § 26-81; environment, ch. 38; fire prevention and protection, ch. 42; establishment of fire zones; entering fire zone or fired or burned building, § 42-2; damaging public buildings, etc.; penalty, § 50-19; personnel, ch. 58; solid waste, ch. 66; streets, sidewalks and other public places, ch. 70; erection or placement of structure at public assembly site, § 70-162; taxation, ch. 74; utilities, ch. 82; building sewers and connections, § 82-75; vegetation, ch. 86; zoning, app. A; subdivisions, app. B.

State law references: Access to and use of buildings by handicapped, Code of Virginia, § 2.2-1159; dangerous buildings and other structures, Code of Virginia, §§ 15.2-906, 15.2-1115; regulations concerning the building of houses, Code of Virginia, § 15.1-15(1); fences around swimming pools, Code of Virginia, § 15.2-921; display of numbers on buildings, Code of Virginia, § 15.2-2024; courthouses, Code of Virginia, § 15.2-1638 et seq.; buildings, monuments and lands of local governments, Code of Virginia, § 15.1- 257 et seq.; buildings for municipal functions, purposes, etc., Code of Virginia, § 15.1-846; light, ventilation and sanitation of buildings and premises, Code of Virginia, § 15.2-1117; Virginia Industrialized Building Safety Law, Code of Virginia, § 36-70 et seq.; Uniform Statewide Building Code, Code of Virginia, § 36-97 et seq.; local licensing of certain contractors, Code of Virginia, § 54.1-1117.

Article I. In General

Sec. 22-1. Building numbers.
Sec. 22-2. Removal or repair of dangerous buildings.
Secs. 22-3--22-35. Reserved.

Article II. Building Code

Sec. 22-36. Adopted.
Sec. 22-37. Violation a misdemeanor; civil penalty.

ARTICLE I. IN GENERAL

Sec. 22-1. Building numbers.

(a) The principal structure that fronts on a right-of-way on each parcel of real estate in the town, together with each other structure on any such parcel that is used for any purpose not ancillary to that of the principal structure, shall be assigned a building number by the town manager or his agent, who shall have the sole authority for assigning such numbers.

(b) All building numbers shall be installed or affixed to the side of the structure facing the principal street on which the structure fronts, in such a manner and in such a location as to make the number easily readable from such street. For single-family residential buildings, the building numbers shall be not less than three inches in height. For single structure businesses, duplexes, and multiunit residential structures containing up to six residential units, building numbers shall be not less than four inches in height. For industrial facilities, shopping centers, buildings containing three or more stories, and all other structures, building numbers shall be not less than ten inches in height. In any event, the building numbers shall be of durable material contrasting in color to the building color or the background color to which the numbers are affixed.

(c) Variances from the minimum size requirement for building numbers may be granted in writing by the town manager, upon application by the owner.

(d) It shall be unlawful and a class 4 misdemeanor for the owner of any real estate to fail or refuse to comply with this section.
(Code 1982, § 6-1; Ord. of 12-4-90(1), § 6-1)

Sec. 22-2. Removal or repair of dangerous buildings.

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

(b) Upon the town council's finding, by a majority vote, that, in its opinion, a particular building or structure within the town constitutes a hazard or menace from any standpoint, the town manager shall immediately advise the record owner of the property, as provided in this section, of the findings of the council and give to the owner 60 days from the date of the notice to either remove the building or structure or place it in a safe condition both from a physical and health standpoint.

(c) Upon the owner's refusing or failing to comply with the terms of a notice given pursuant to subsection (b) above, the town manager shall select a disinterested person having experience in the erection and maintaining of buildings and other structures, who, after giving the owner ten days' notice, as provided in this section, of the place, date and time, shall go upon the premises and make such an examination thereof as he shall deem necessary. The person so acting shall make a written report to the town manager, together with his recommendations; and the town manager shall in turn make a written report to the town council, with recommendations. A copy of such written report by the town manager shall be simultaneously mailed to the owner.

(d) Upon receipt of the recommendation of the town manager, the town council shall proceed forthwith to make final disposition of the case. If the hazard is found to still exist, notice by the

town manager to the owner shall be given as provided in this section, advising that the town will remove the hazard or menace at the cost of the record property owner.

(e) The town through its own agents or employees ~~my~~ may remove, repair or secure any building, wall or any other structure which might endanger the public health or safety of other residents of the town, 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 the building to prevent deterioration of the building or adjacent buildings. For the purposes of this section, reasonable notice includes a written notice:

(1) Mailed by certified or registered mail, return receipt requested, sent to the last known address of the property owner; and

(2) Published once a week for two successive weeks in a newspaper having general circulation in the town.

No action shall be taken by the locality 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;

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

(g) 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 Articles 3 (Code of Virginia, § 58.1-3940 et seq.) and 4 (Code of Virginia, § 58.1-3965 et seq.) of chapter 39 of title 58.1 of the Code of Virginia. The town may waive such liens in order to facilitate the sale of the property. Such liens may be waived only as to a purchaser who is unrelated by blood or marriage to the owner and who has no business association with the owner. All such liens shall remain a personal obligation of the owner of the property at the time the liens are imposed.

(h) Such costs shall be placed by the town treasurer on the list of unpaid real estate taxes filed in the clerk's office of the circuit court for the county. The collection thereof shall be in the same manner as provided by statute for the collection of unpaid real estate taxes due and payable to the town.

(i) In the event the owner removes the hazard or menace in accordance with the provisions of this section, he shall so notify the town manager, in writing; and the latter shall inspect the premises and report his findings to the town council with his recommendations. In the event the town council is of the opinion that the hazard or menace has not been completely removed, it shall have the right to invoke such of the provisions of this section as it deems necessary and convenient in order to remove such hazard or menace.

(j) Any person who violates this section shall be subject to a civil penalty of not more than $1,000.00
(Code 1982, § 6-2; Ord. of 12-4-90(2), § 6-2(a)--(d))

Charter references: Authority of town with respect to dangerous buildings, § 17.
Cross reference—Environment, ch. 38.
State law references: Authority of town with respect to removal or repair of dangerous buildings, Code of Virginia, §§ 15.2-906, 15.2-1115.

Secs. 22-3--22-35. Reserved.

ARTICLE II. BUILDING CODE

Sec. 22-36. Adopted.

There are hereby adopted by reference for the town the provisions of the Virginia Uniform Statewide Building Code, as adopted and promulgated by the state board of housing and community development. Such code shall control all matters concerning the construction, alteration, addition, repair, removal, demolition, use, location, occupancy and maintenance of all buildings and structures, except as otherwise provided in this Code or other ordinances of the town, and all other functions which pertain to the installation of systems vital to all buildings and structures and their service equipment, as defined by such code, and shall apply to existing and proposed buildings and structures in the town.
(Code 1982, § 6-13)
State law references: Virginia Uniform Statewide Building Code, Code of Virginia, § 36-97 et seq.

Sec. 22-37. Violation a misdemeanor; civil penalty.

(a) It shall be unlawful for any owner or any other person, firm or corporation to violate any provisions of the code adopted in section 22.36. Any such violation shall be deemed a misdemeanor and any owner or any other person, firm or corporation convicted of such a violation shall be punished by a fine of not more than $2,500.00. In addition, each day the violation continues after conviction or the court-ordered abatement period has expired shall constitute, a separate offense. If the violation remains uncorrected at the time of the conviction, the court shall order the violator to abate or remedy the violation in order to comply with the code. Except as otherwise provided by the court for good cause shown, any such violator shall abate or remedy the violation within six months of the date of conviction. Each day during which the violation continues after the court-ordered abatement period has ended shall consist a separate offense. Any person convicted of a second offense committed within, less than five years after a first offense under this article shall be punished by a fine of not less than $1,000.00 nor more than $2,500.00. Any person convicted of a second offense committed within a period of five to ten years of a first offense under this article shall be punished by a fine of not less than $500.00 nor more than $2,500.00. Any person convicted of a third or subsequent offense involving the same property committed within ten years of an offense under this chapter after having been at least twice previously convicted shall be punished by confinement in jail for not more than ten days and a fine of $2,500.00, either or both. No portion of the fine imposed for such third or subsequent offense committed within ten years of an offense under this article shall be suspended.

(b) The town may adopt an ordinance which establishes a uniform schedule of civil penalties for violations of specified provisions of the Code which are not abated or remedied promptly after receipt of notice of violation from the local enforcement officer.

(1) This schedule of civil penalties shall be uniform for each type of specified violation, and the penalty for any one violation shall be a civil penalty of not more than $100.00 for the initial summons and not more than $150.00 for each additional summons. Each day during which the violation is found to have existed shall constitute a separate offense. However, specified violations arising from the same operative set of facts shall not be charged more frequently than once in any ten-day period, and a series of specified violations arising from the same operative set of facts shall not result in civil penalties which exceed a total of $3,000.00. Designation of a particular code violation for a civil penalty pursuant to this section shall be in lieu of criminal sanctions, and except for any violation resulting in injury to persons, such designation shall preclude the prosecution of a violation as a misdemeanor.

(2) Any person summoned or issued a ticket for a scheduled violation may make an appearance in person or in writing by mail to the department of finance or the treasurer of the town prior to the date fixed for trial in court. Any person so appearing may enter a waiver of trial, admit liability, and pay the civil penalty established for the offense charged. Such persons shall be informed of their right to stand trial and that a signature to an admission of liability will have the same force and effect as a judgment of court. As a condition of waiver of trial, admission of liability, and payment of a civil penalty, the violator shall agree in writing to abate or remedy the violation within six months after the date of payment of the civil penalty.

(3) If a person charged with a scheduled violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided for the law. In any trial for a scheduled violation authorized by this section, it shall be the burden of the town to show the liability of the violator by a preponderance of the evidence. An admission of liability or finding of liability shall not be a criminal conviction for any purpose.

(4) If the violation concerns a residential unit, and if the violation remains uncorrected at the time of assessment of the civil penalty, the court shall order the violator to abate or remedy the violation in order to comply with the code. Except as otherwise provided by the court for good cause shown, any such violator shall abate or remedy the violation within six months of the date of the assessment of the civil penalty.

(c) Any owner or any other person, firm or corporation violating any code provisions relating to the removal or the covering of lead-base paint which poses a hazard to the health of pregnant women and children under the age of six years who occupy the premises shall upon conviction, be guilty of a misdemeanor and shall by subject to a fine of not more than $2,500.00. If the court convicts pursuant to this subsection and sets a time by which such hazard must be abated, each day the hazard remains unabated after the time set for the abatement has expired shall constitute a separate violation of the Uniform Statewide Building Code. Upon a reasonable showing to the court by a landlord as defined in Code of Virginia, § 55-248.4, that such landlord is financially unable to abate the lead-base paint hazard, the court shall order any rental agreement related to the affected premises terminated effective 30 days from the entry of the court order. For the purposes of the preceding sentence, termination of the rental agreement shall not be deemed noncompliance by the landlord pursuant to Code of Virginia, § 55-248.21.

(d) Any prosecution under this section shall be commenced within two years as provided in Code of Virginia, § 19.2-8.
(Code 1982, § 6-14)

State law references: Penalty for violation of Uniform Statewide Building Code, Code of Virginia, § 36-106.

Chapters 23—25

RESERVED

Chapter 26

BUSINESSES*

***Charter references:** General authority of town as to licenses, §§ 9(c), 24; offensive businesses, § 20(b); town treasurer, § 38.

Cross references: Advertising, ch. 6; alcoholic beverages, ch. 10; amusements and entertainments, ch. 14; license tax on dancehalls, § 14-43; animals, ch. 18; buildings and building regulations, ch. 22; offenses and miscellaneous provisions, ch. 50; peddlers and solicitors, ch. 54; secondhand goods, ch. 62; taxation, ch. 74; vehicle license, § 78-46 et seq.; taxicab service, § 78-200; utilities, ch. 82; zoning, app. A.

State law references: Sale of ice cream and similar products, state preemption, Code of Virginia, § 3.1-562.4; certification to operate or maintain boiler or pressure vessel, Code of Virginia, § 15.2-910; sanitation in tattoo parlors and body piercing salons, Code of Virginia, § 15.2-912; door-to-door vendors, Code of Virginia, §§ 15.1-37.3:1, 15.1-37.3:2; funding the construction or repair of rental property, Code of Virginia, § 15.2-958; municipal franchises, Code of Virginia, § 15.2-2100 et seq.; dangerous, offensive or unhealthful business in municipality, Code of Virginia, § 15.2-1113; regulation of auctions, peddlers, weights and measures, Code of Virginia, § 15.2-1114; licenses, permits and fees, Code of Virginia, § 15.2-1125; 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; 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.

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ARTICLE I. IN GENERAL

Sec. 26-1. Violations of chapter.

Unless otherwise specifically provided, a violation of any provision of this chapter shall constitute a class 3 misdemeanor.
(Code 1982, § 10-1)

Sec. 26-2. Uniform ordinance provisions adopted.

Code of Virginia, §§ 58,1-3700.1 and 58.1-3703.1, is hereby adopted as if set out at length in this section.

Sec. 26-3. License required.

License requirement. Every person shall apply for a license for each business or profession when engaging in a business in this jurisdiction if (i) the person has a definite place of business in this jurisdiction; (ii) there is no definite place of business anywhere and the person resides in this jurisdiction; or (iii) 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, contractor subject to § 58.1-3715, or public service corporation. A separate license shall be required for each definite place of business and for each business. A person engaged in two or more businesses or professions carried on at the same place of business may elect to obtain one license for all such businesses and professions if all of the following criteria are satisfied: (a) each business or profession is subject to licensure at the location and has satisfied any requirements imposed by state law or other provisions of the ordinances of this jurisdiction; (b) all of the businesses or professions are subject to the same tax rate, or, if subject to different tax rates, the licensee agrees to be taxed on all businesses and professions at the highest rate; and (c) the taxpayer agrees to supply such information as the assessor may require concerning the nature of the several businesses and their gross receipts.

State law reference—Uniform ordinance provisions, Code of Virginia, § 58.1-3703.1.
(Code 1982, § 10-2)

Sec. 26-4. Interrogatories propounded to applicant.

As a means of ascertaining the amount of any license tax, the town treasurer or any duly sworn deputy may propound interrogatories to an applicant for a license under this chapter and use such other evidence as he may procure, including but not limited to gross receipts and / or cost estimate sheet. Such interrogatories shall be answered under oath. It shall be unlawful for any applicant to refuse to answer such interrogatories under oath.
(Code 1982, § 10-3)

Sec. 26-5. General assessment of taxes.

There are hereby assessed against the various trades, occupations, services, professions, businesses, business transactions and other activities enumerated in article II of this chapter, for revenue purposes, the specific license taxes set forth in article II of this chapter. Unless otherwise specifically provided, such taxes are assessed on an annual basis.
(Code 1982, § 10-4)

Charter references: Authority to impose license taxes, § 9(c).

State law references: General authority of council to levy license taxes, Code of Virginia, § 58.1-3700.

Sec. 26-6. When tax due and payable; penalty and interest on delinquencies.

(a) All license taxes prescribed by this chapter shall be due and payable by April 15 of the year for which assessed, a penalty of ten percent of the amount of the tax shall be imposed, provided the trade, occupation, profession, employment, business, business transaction or other activity is one which is being engaged in or conducted on January 1 of that year. If, after January 1 of any year, such trade, occupation, profession, employment, business, business transaction or other activity is begun, the person beginning the same shall obtain his license and pay the tax at the time of such beginning and, if the tax remains unpaid for 30 days after it is assessable, a penalty of ten percent of the tax shall be imposed.

(b) On all license taxes payable under this chapter which are not paid within 30 days after the due date, interest in the amount of ten percent per annum on the unpaid balance of the tax shall be charged and shall begin to accrue 30 days after the due date of the tax.
(Code 1982, § 10-5)

Sec. 26-7. Estimates for determining tax for beginners and persons previously licensed for less than a year.

(a) For the purpose of ascertaining the license tax to be paid by any person beginning a new business, employment or profession, and whose license tax is based on gross receipts or purchases, the licensee shall estimate the basis for measuring the license tax between the date of issuance of the license and December 31 following.

(b) The license tax of every person who was licensed at a definite place of business for only a part of the next preceding license year shall be computed for the then current license year on the basis of an estimate of the amount of gross receipts or purchases which the licensee will receive or make throughout the then current license year.

(c) Every underestimate under this section shall be subject to correction by the town treasurer, whose duty it shall be to assess such licensee with such additional taxes as may be found to be due after the close of the license year on the basis of gross receipts or purchases. In case of an overestimate, the town treasurer shall refund the amount of the overpaid tax.
(Code 1982, § 10-6)

Sec. 26-8. Keeping and exhibiting license.

Every person issued a license under this chapter shall keep the same in a convenient place and, whenever requested to do so, shall exhibit the same to the town treasurer or any police officer or any other officer of the town authorized by the town manager to inspect such license.
(Code 1982, § 10-7)

Sec. 26-9. Proration.

In the event a person issued a license under this chapter shall cease to engage in the business, trade, profession or calling for which he was licensed during the year for which the license was issued, he shall be entitled upon application to a refund for that portion of the license tax paid,

over and above the minimum flat tax, prorated on a monthly basis so as to ensure that the licensed privilege is taxed only for that fraction of the year during which it is exercised.
(Code 1982, § 10-8)
State law references: Proration of license taxes, Code of Virginia, § 58.1-3710.

Sec. 26-10. Dealers in precious metals and gems.

The chief of police is hereby authorized to issue permits for dealers in precious metals and gems, as defined in Code of Virginia, § 54.1-4100, under the conditions and terms, and for the fees set forth in Code of Virginia, §§ 54.1-4100--54.1-4111.
(Code 1982, § 7-1)

Secs. 26-11--26-40. Reserved.

ARTICLE II. LICENSE TAX SCHEDULE

DIVISION 1. GENERALLY

Sec. 26-41. Telephone and telegraph companies.

The license tax on each telephone or telegraph company shall be 0.5 percent of gross receipts accruing from sales to the ultimate consumer, except that charges for long distance telephone calls shall not be considered as a part of such gross receipts.
(Code 1982, § 10-19)
Cross references: Tax on purchasers of utility services, § 74-86 et seq.
State law references: Authority for above tax, Code of Virginia, § 58.1-3731.

Sec. 26-42. Water and heat, light and power companies.

There is hereby imposed a license tax, in addition to any tax levied under Code of Virginia, § 58.1-2600 et seq., on:

(1) Telephone and telegraph companies;

(2) Water companies; and

(3) Heat, light and power companies (except electric suppliers, gas utilities and gas suppliers as defined in Code of Virginia, § 58.1-400.2 and pipeline distribution companies as defined in Code of Virginia, § 58.1-2600)

At a rate of one-half of one percent of the gross receipts of such company accruing from sales to the ultimate consumer in the town. However, in the case of telephone companies, charges for long distance telephone calls shall not be included in grow receipts for purposes of license taxation. The license tax levied by this section shall not be imposed on pipeline distribution companies as defined in Code of Virginia, § 58.1-2600 or on gas suppliers, gas utilities or electric suppliers as defined in Code of Virginia § 58.1-400.2.
(Code 1982, § 10-20)
Cross references: Tax on purchasers of utility services, § 74-86 et seq.

State law references: Authority for above tax, Code of Virginia, § 58.1-3731.

Sec. 26-43. Coin machine operators.

(a) As used in this section, the term "operator" means any person leasing, renting or otherwise furnishing or providing a coin-operated machine or device operated on the coin-in-the-slot principle; however, the term "operator" shall not include a person owning less than three coin machines and operating such machines on property owned or leased by such person.

(b) The license tax on each operator shall be $200.00 for the operation of ten or more machines or devices referred to in subsection (a) above. For the operation of three to nine such machines or devices, the license tax shall be $190.00.

(c) Notwithstanding the situs requirements of Code of Virginia, § 58.1-3708(A), the tax prescribed by this section shall apply to an operator, when any coin-operated machine or device operated on the coin-in-the-slot principle of such operator is located within the town.

(d) The operator's license tax prescribed by this section shall not be applicable to operators of weighing machines, automatic baggage or parcel checking machines or receptacles, nor to operators of vending machines which are so constructed as to do nothing but vend goods, wares and merchandise or postage stamps or provide service only, nor to operators of viewing machines or photomat machines, nor to operators of devices or machines affording rides to children or for the delivery of newspapers.
(Code 1982, § 10-21)
State law references: Authority for above tax, Code of Virginia, § 58.1-3720; provisions similar to subsection (d) above, Code of Virginia, § 58.1-3721.

Sec. 26-44. Carnivals.

(a) The license tax on each carnival shall be $100.00 per day.

(b) For the purpose of this section a "carnival" shall mean an aggregation of shows, amusements, concessions, eating places and riding devices or any of them, operated together on one lot or street or on contiguous lots or streets, moving from place to place, whether or not the same are owned and actually operated by separate persons, firms or corporations. The term includes but is not limited to sideshows, dog and pony shows, trained animal shows, circuses and menageries.
(Code 1982, § 10-22)
Charter references: Authority to license carnivals, circuses, etc., § 10(a).
Cross references: Amusements and entertainments, ch. 14.
State law references: Carnivals, Code of Virginia, § 58.1-3728.

Sec. 26-45. Fortunetellers.

(a) The license tax on each fortuneteller shall be $200.00 per day or $1,000.00 per year.

(b) As used in this section, the term "fortuneteller" shall include a clairvoyant, a practitioner of palmistry, a phrenologist, a faith healer, a star analyst, a handwriting analyst, who attempts to predict the future, or any other person who attempts to predict the future.

(c) Any person who engages in business as a fortuneteller without the license required shall be guilty of a class 3 misdemeanor.
(Code 1982, § 10-23)
State law references: Fortunetellers, Code of Virginia, § 58.1-3726.

Sec. 26-46. Massage parlors.

(a) The license tax on each massage parlor shall be $1,000.00 per day.

(b) As used in this section, the term "massage parlor" means any establishment having a fixed place of business where massages are administered. A "massage" is a method of treating the external parts of the human body for comfort or the general wellbeing of the body, consisting of rubbing, stroking, kneading, tapping or vibrating with the hand or any instrument.

(c) The definition of "massage parlor" contained in subsection (b) of this section shall not include, and the tax prescribed in subsection (a) of this section shall not apply to, a hospital, nursing home, medical clinic or the office of a duly licensed physician, surgeon, physical therapist, chiropractor or osteopath, or to barbershops or beauty salons in which massages are administered only to the scalp, the face, the neck or the shoulders.
(Code 1982, § 10-24)
State law references: Massage parlors, Code of Virginia, § 58.1-3706(A)(v).

Sec. 26-47. Savings institutions and credit unions.

The license tax levied by the town on savings institutions and on state-chartered credit unions shall be $50.00 and shall be levied only where the main office of such savings institution or credit union is located.
State law references: Similar provisions, Code of Virginia, § 58.1-3730.

Secs. 26-48--26-80. Reserved.

DIVISION 2. CONTRACTORS*

***State law references:** Maximum license tax for contracting, Code of Virginia, § 58.1-3706(A) (1); "contractor" defined, Code of Virginia, § 58.1-3714.

Sec. 26-81. Amount of tax.

(a) The license tax on each contractor or person engaged in contracting shall be either $30.00 or $0.10 per $100.00 of gross receipts up to $1,500,000.00, and $0.0667 per $100.00 of gross receipts over $1,500,000.00, whichever is greater.

(b) When a contractor has paid any local license tax required by the county, city or town in which his principal office and any branch office or offices may be located, no further license or license tax shall be required by any other county, city or town for conducting any such business within the confines of this commonwealth. However, when the amount of business done by any such contractor in any other county, city or town exceeds the sum of $25,000 in any year, such other county, city or town may require of such contractor a local license, and the amount of

business done in such other county, city or town in which the principal office or any branch office of the contractor is located.

(c) The governing body of any county, city or town shall not issue or reissue a business license under this chapter to any contractor who (i) has not obtained or is not maintaining workers' compensation coverage for his employees and (ii) at the time of application for such issuance or re-issuance, is required to obtain or maintain such coverage pursuant to Chapter 8 (§ 65.2-800 et seq) of Title 65.2 of the Virginia State Code.
(Code 1982, § 10-30)

Cross references: Buildings and building regulations, ch. 22.

State law reference: Code of Virginia § 58.1-3715. license requirements for contractors; § 58.1-3714. contractors; credits against tax; effect upon authority of towns; workers' compensation requirements; penalty.

Sec. 26-82. "Contractor" defined.

A contractor, for purposes of this division, is any person who engages in the business of plumbing and steam fitting, or who accepts or offers to accept:

(1) 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) 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) 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) An order or contract to construct any sewer of stone, brick, terracotta or other material.

(5) Orders or contracts for doing any work on or in any building or premises involving the erecting, installing, altering, repairing, servicing or maintaining of 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.

(6) In order to qualify as a contractor, evidence of either a Class A, B, or C state contractors license must be shown.

(7) Contractor means any person, that for a fixed price, commission, fee, or percentage undertakes to bid upon, or accepts, or offers to accept, orders or contracts for performing, managing, or superintending in whole or in part, the construction, removal, repair or improvement of any building or structure permanently annexed to real property owned, controlled, or leased by him or another person or any other improvements to such real property.

(Code 1982, § 10-31)

Cross references: Definitions generally, § 1-2.

State law reference: § 54-1100. contractors; § 54.1-1100. definitions.

Sec. 26-83. Persons included in contracting classification--Generally.

The contracting classification taxed under this division generally includes but is not limited to persons engaged in the following occupations, businesses or trades:

(1) Air conditioning,

(2) Brick contracting and other masonry.

(3) Building.

(4) Cementing.

(5) Dredging.

(6) Electrical contracting.

(7) Elevator installation.

(8) Erecting signs which are assessed as realty.

(9) Floor scraping or finishing.

(10) Foundations.

(11) House moving.

(12) Paint and paper decorating.

(13) Plastering.

(14) Plumbing, heating or steam fitting.

(15) Refrigeration.

(16) Road, street, bridge, sidewalk or curb and gutter construction.

(17) Roofing and tinning.

(18) Sewer drilling and well digging.

(19) Sign painting, where the sign is painted on the side of a building or structure assessed as realty.

(20) Structural metal work.

(21) Tile, glass, flooring and floor covering installation.

(22) Wrecking, moving or excavating.

(Code 1982, § 10-32)

Sec. 26-84. Same--Speculative builders.

Persons constructing for their own account for sale shall be included in the contracting category and subject to the tax prescribed by this division, and this category shall include speculative builders.

(1) Building for self, family member, or other individual requires a license.
(Code 1982, § 10-33)

Sec. 26-85. Contractors Responsibility

(a) It shall be the responsibility of each contractor to submit a list of all sub-contractors upon the completion of each project to the Town Treasurer or his/her designee before the Certificate of Occupancy will be issued. This is to ensure all contractors are in compliance with Code Section 26-81.

State law reference: § 58.1-610 Contractors;

Secs. 26-85--26-115. Reserved.

DIVISION 3. RETAIL SALES*

***State law references:** Maximum license tax for retail sales, Code of Virginia, § 58.1-3706(A)(2).

Sec. 26-116. 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:

Itinerant merchant means any person who engages in, does or transacts any temporary or transient business in the town and who, for the purpose of carrying on such business occupies any location for a period of less than one year.

Peddler means any person who carries from place to place any goods, wares or merchandise and offers to sell or barter the same or actually sells or barters the same.

Retail merchant means any person who makes retail sales.

Retail sale means the sale of goods, wares and merchandise for any purpose other than resale, but not including sales at wholesale to institutional, commercial and industrial users.
(Code 1982, § 10-39)

Cross references: Definitions generally, § 1-2.

Sec. 26-117. Amount of tax.

The license tax on each retail merchant or other person engaged in retail sales shall be either $30.00 or $0.12 per $100.00 of gross receipts up to $1,500,000.00 and $0.08 per $100.00 of gross receipts over $1,500,000.00, whichever is greater.
(Code 1982, § 10-40)

Sec. 26-118. Application of tax to peddlers and itinerant merchants.

(a) Peddlers and itinerant merchants who sell goods, wares or merchandise at retail are engaged in retail sales and are subject to the tax prescribed by this division.

(1) No license tax shall be imposed on any peddler whose activities are conducted or sponsored by any department of the town government.

(2) A license tax of $50.00 for the tax year shall be imposed on any peddler who sells or offers for sale Christmas trees or Christmas greens not grown or produced by him.

(3) A peddler whose activities are conducted solely for charitable purposes and who is not paid for his services shall not be required to pay any license tax hereunder.

(b) The license tax on each peddler or itinerant merchant shall be either ~~$30.00~~ $50.00 per day or $500.00 per year. Before issuance of license, each peddler and itinerant merchant shall provide written permission of property owner.

(c) Any tax imposed pursuant to Code of Virginia, § 58.1-3703 on peddlers and itinerant merchants shall not exceed $500.00 per year. Dealers in precious metals shall be taxed at rated provided in Code of Virginia, § 58.1-3706.

(d) Any license tax imposed on peddlers or itinerant merchants shall not apply to:

(1) A licensed wholesale dealer who sells and, at the time of such sale, delivers merchandise to retail merchants;

(2) A distributor of vendor of motor fuels and petroleum products;

(3) A distributor or vendor of seafood who catches seafood and sells only the seafood caught by him;

(4) A farmer or producer of agricultural products who sells only the farm or agricultural products produced or grown by him;

(5) A farmer's cooperative association;

(6) A manufacturer who is subject to Virginia tax on intangible personal property who peddles at wholesale, only the goods, wares or merchandise manufactured by him at a plant, whose intangible personal property is taxed by this commonwealth.

(Code 1982, § 10-41; Ord. of 4-3-84; Ord. of 10-3-00(1), § 1)

Cross reference—Peddlers and solicitors, ch. 54.

State law reference—Similar provisions, Code of Virginia, § 58.1-3719.

Sec. 26-119. Merchants conducting both wholesale and retail business.

When a merchant conducts both a wholesale and a retail business, the merchant shall pay the retail sales license tax prescribed by this division on that portion of the business derived from retail sales. The merchant may, at his election, pay the license tax as a retail merchant on both the retail and wholesale portions of the business.

(Code 1982, § 10-42)

Secs. 26-120--26-150. Reserved.

DIVISION 4. WHOLESALERS*

***State law references:** Wholesale merchants, Code of Virginia, § 58.1-3716.

Sec. 26-151. 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:

Wholesaler means any person who sells to others for resale or who sells at wholesale to institutional, commercial or industrial users.
(Code 1982, § 10-48)
Cross references: Definitions generally, § 1-2.

Sec. 26-152. Amount of tax.

The license tax on each wholesaler shall be $30.00 or $0.05 per $100.00 of purchases, whichever is greater.
(Code 1982, § 10-49(a))

Sec. 26-153. Application of tax to peddlers.

(a) Peddlers, as defined in section 26-116, who sell to licensed dealers or retailers are wholesalers and subject to the tax prescribed in this division.

(b) This section shall not apply to:

(1) A licensed wholesale dealer who sells and, at the time of such sale, delivers merchandise to retail merchants.

(2) A distributor or vendor of motor fuels and petroleum products.

(3) A distributor or vendor of seafood who catches seafood and sells only the seafood caught by him.

(4) A farmer or producer of agricultural products who sells only the farm or agricultural products produced or grown by him.

(5) A farmers' cooperative association.

(6) A manufacturer who is subject to commonwealth tax on intangible personal property who peddles at wholesale only the goods, wares or merchandise manufactured by him at a plant, whose intangible personal property is taxed by this commonwealth.

(7) A dealer in forest products.

(c) The exemption granted by subsection (b) above to a distributor or vendor of motor vehicle fuels and petroleum products and a dealer in forest products is restricted to such peddling of motor vehicle fuels and petroleum products or forest products. In the case of a farmer, a producer of agricultural products or a manufacturer taxable by the commonwealth, such exemption is restricted to the peddling of goods, wares or merchandise actually manufactured, produced or grown by the seller.

(d) Every person claiming an exemption under subsection (b) of this section shall, upon request of any police, tax or revenue officer of the town, furnish evidence of his claim, other than his mere statement that he is exempt from the provisions of this division; and failure to furnish such evidence shall be sufficient ground for charging the person operating the vehicle involved in the sale or delivery with a violation of this chapter.

(e) Every person claiming exemption from the provisions of this section on the ground that he is delivering goods, wares or merchandise previously sold to the customer shall, upon request of any police, tax or revenue officer of the town, furnish evidence of his claim, other than his mere statement. The evidence may be an invoice or signed order describing the goods, wares or merchandise involved and the amount and price thereof. Failure to furnish such evidence shall be sufficient ground for charging the person operating the vehicle involved in the delivery with a violation of this chapter.
(Code 1982, § 10-50)

Secs. 26-154--26-185. Reserved.

DIVISION 5. FINANCIAL, REAL ESTATE AND PROFESSIONAL SERVICES*

***State law references:** Maximum license tax for financial, real estate and professional services, Code of Virginia, § 58.1-3706(A)(3).

Sec. 26-186. Amount of tax.

The license tax on each person engaged in financial, real estate or professional services shall be either $30.00 or $0.35 per $100.00 of gross receipts up to $1,500,000.00 and $0.2333 per $100.00 of gross receipts over $1,500,000.00, whichever is greater.
(Code 1982, § 10-56)

Sec. 26-187. Application of tax to financial services.

(a) Any person buying, selling, handling, managing, investing, and providing advice regarding money, credit, securities or other investments is providing a financial service and is subject to the tax prescribed in this division unless such service is specifically provided for under another section of this article.

(b) For the purposes of this division, those engaged in rendering financial services include but are not limited to the following:

(1) Buying installment receivables.

(2) Chattel mortgage financing.

(3) Consumer financing.

(4) Credit card services.

(5) Factors.

(6) Financing accounts receivable.

(7) Industrial loan companies.

(8) Installment financing.

(9) Inventory financing.

(10) Loan or mortgage brokers.

(11) Loan or mortgage companies.

(12) Safety deposit box companies.

(13) Security and commodity brokers and services.

(14) Stockbrokers.

(15) Working capital financing.

(c) For the purposes of this section, any person, other than a national bank or bank or trust company organized under the laws of this state or a duly licensed and practicing attorney at law, who engages in the business of buying or selling for others, on commission or for other compensation, shares in any corporation, bonds, notes or other evidences of debt, is a stockbroker. The fact that orders are taken subject to approval by a main office does not relieve any broker from local license taxation under this division. Also, an insurance company engaged in selling mutual funds is a broker as to that portion of its business.
(Code 1982, § 10-57)

Sec. 26-188. Application of tax to real estate services.

(a) Any person providing a service with respect to the purchase, sale, lease, rental, or appraisal of real property is providing a real estate service and is subject to the tax prescribed in this division unless such service is specifically provided for under another section of this article.

(b) For the purposes of this division, those rendering real estate services include but are not limited to the following:

(1) Appraisers of real estate.

(2) Escrow agents, real estate.

(3) Fiduciaries, real estate.

(4) Lessors of real property.

(5) Owner-operators and lessors of hotels, motels, motor lodges, auto courts, tourist courts, transient trailer parks, lodging houses, rooming houses and boardinghouses.

(6) Real estate agents (Real estate agents must have individual licenses), brokers and managers.

(7) Real estate selling agents.

(8) Rental agents for real estate.

(c) The tax prescribed in this division shall not apply to any person engaging in the business of renting real property, as the owner of such property, other than hotels, motels, motor lodges, auto courts, tourist courts, transient trailer parks, lodging houses, rooming houses and boardinghouses. (Code 1982, § 10-58)

Sec. 26-189. Application of tax to professional services.

(a) A person is engaged in providing a professional service and is subject to the tax prescribed in this division if he is engaged in rendering any service specifically enumerated in subsection (b) below or in any occupation or vocation in which a professed knowledge of some department of science or learning, gained by a prolonged course of specialized instruction and study, is used by its practical application to the affairs of others, either advising, guiding or teaching them, and in serving their interests or welfare in the practice of an art or science founded on it. The word "profession" implies attainments in professional knowledge, as distinguished from mere skill, and the application of knowledge to uses for others rather than for personal profit.

(b) For the purposes of this division, those engaged in rendering a professional service include but are not limited to the following:

(1) Architects.

(2) Attorneys at law.

(3) Certified public accountants.

(4) Dentists.

(5) Engineers.

(6) Land surveyors.

(7) Surgeons.

(8) Veterinarians.

(9) Practitioners of the healing arts (the arts and sciences dealing with the prevention, diagnosis, treatment and cure or alleviation of human physical or mental ailments, conditions, diseases, pain or infirmities).

(10) Such occupations, and no others, as the state department of taxation may list in the BPOL guidelines promulgated pursuant to Code of Virginia, § 58.1- 3701.

(Code 1982, § 10-59)

Secs. 26-190--26-220. Reserved.

DIVISION 6. REPAIR, PERSONAL, BUSINESS AND OTHER SERVICES*

***State law references:** Maximum license tax for repair, personal and business services, Code of Virginia, § 58.1-3706(A)(4).

Sec. 26-221. 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:

Business service means any service rendered for compensation to any business, trade, occupation or governmental agency unless such service is taxed under another division of this article. Any person buying or selling any kind of goods, wares or merchandise for another on commission is a commission merchant and is engaged in a business service.

Personal service means any service rendered for compensation either upon or for persons, animals or personal effects unless such service is taxed under another division of this article.

Repair service means the repairing, renovating, cleaning or servicing of some article or item of personal property for compensation unless such service is taxed under another division of this article.

(Code 1982, § 10-65)

Cross references: Definitions generally, § 1-2.

Sec. 26-222. Amount of tax.

The license tax on each person engaged in any repair, personal or business service or any other business occupation or service not taxed under any other division of this chapter shall be either $30.00 or $0.20 per $100.00 of gross receipts up to $1,500,000.00 and $0.1333 per $100.00 of gross receipts over $1,500,000.00, whichever is greater.

(Code 1982, § 10-66)

Sec. 26-223. Services included in classification.

Those rendering a repair, personal or business service or other service subject to the tax prescribed in this division include but are not limited to the following:

(1) Advertising agencies.

(2) Airports.

(3) Ambulance services.

(4) Amusements and recreation services, all types, except those taxed under other divisions of this article.

(5) Animal hospitals, grooming services, kennels or stables.

(6) Auctioneers and common criers.

(7) Automobile driving schools.

(8) Barbershops, beauty parlors and hairdressing establishments, schools and services.

(9) Bid or building reporting service.

(10) Billiard or pool establishments or parlors.

(11) Blacksmith or wheelwright.

(12) Bondsman.

(13) Booking agents or concert managers.

(14) Bottle exchanges.

(15) Bowling alleys.

(16) Brokers, other than real estate or financial brokers.

(17) Business research and consulting services.

(18) Chartered clubs.

(19) Child care attendants or schools.

(20) Collection agents or agencies.

(21) Commercial photography, art and graphics.

(22) Commercial sports.

(23) Commission merchants.

(24) Dance halls, studios and schools.

(25) Data processing; computer and systems development services.

(26) Developing or enlarging photographs.

(27) Detective agency and protective services.

(28) Drafting services.

(29) Engraving.

(30) Erecting, installing, removing or storing awnings.

(31) Extermination services, except those constituting contracting under division 2 of this article.

(32) Freight traffic bureaus.

(33) Fumigating or disinfecting.

(34) Funeral services and crematories.

(35) Golf courses, driving ranges and miniature golf courses.

(36) Hauling of sand, gravel or dirt.

(37) Hotels, motels, tourist courts, boardinghouses and rooming houses and transient trailer parks and campsites.

(38) House cleaning services.

(39) Impounding lots.

(40) Information bureaus.

(41) Instructors, tutors, schools and studios of music, ceramics, art, sewing, sports and the like.

(42) Interior decorating.

(43) Janitorial services.

(44) Laundry, cleaning and garment services, including laundries, dry cleaners, linen supply, diaper service, coin-operated laundries, and carpet and upholstery cleaning.

(45) Mailing, messenger and correspondent services.

(46) Marinas and boat landings.

(47) Movie theaters and drive-in theaters.

(48) Nickel plating, chromizing and electroplating.

(49) Nurse and physician registries.

(50) Nursing and personal care facilities, including nursing homes, convalescent homes, homes for the retarded, old-age homes and rest homes.

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

(52) Parcel delivery services.

(53) Parking lots, public garages and valet parking.

(54) Pawnbrokers.

(55) Personnel services, labor agents and employment bureaus.

(56) Photographers and photographic services.

(57) Piano tuning.

(58) Picture framing and gilding.

(59) Porter services.

(60) Press clipping services.

(61) Printers.

(62) Private hospitals.

(63) Promotional agents or agencies.

(64) Public relations services.

(65) Renting or leasing any items of tangible personal property.

(66) Reproduction services.

(67) Secretarial services.

(68) Septic tank cleaning.

(69) Shoe repair, shoeshine and hat repair shops.

(70) Sign painting, except as taxed under section 26-83(19).

(71) Storage, all types.

(72) Subdividers and developers.

(73) Swimming pool maintenance and management.

(74) Tabulation services.

(75) Taxidermist.

(76) Telephone answering services.

(77) Theaters.

(78) Theatrical performers, bands and orchestras.

(79) Towing services.

(80) Transportation services, including buses and taxicabs.

(81) Travel bureaus.

(82) Tree surgeons, trimmers and removal services.

(83) Turkish, Roman or other like baths or parlors, but not including a massage parlor taxed under section 26-46.

(84) Wake-up services.

(85) Washing, cleaning or polishing automobiles, coin-operated car washes.

(Code 1982, § 10-67)

Cross references: Advertising, ch. 6.

Secs. 26-224--26-255. Reserved.

DIVISION 7. DIRECT SELLERS*

***State law references:** Direct sellers, Code of Virginia, § 58.1-3719.1.

Sec. 26-256. Amount of tax; "direct seller" defined.

(a) The rate of tax levied on a direct seller who maintains his place of abode in the town and whose total sales exceed $4,000.00 per year shall be either $30.00, or $0.20 per $100.00 of retail sales or $0.05 per $100.00 of wholesale sales, whichever is greater.

(b) As used in this section, the term "direct seller" means any person who:

(1) Engages in the trade or business of selling or soliciting the sale of consumer products primarily in private residences and maintains no public location for the conduct of such business; and

(2) Receives remuneration for such activities, with substantially all of such remuneration being directly related to sales or other sales-oriented services, rather than to the number of hours worked; and

(3) Performs such activities pursuant to a written contract between such person and the person for whom the activities are performed and such contract provides that such person will not be treated as an employee with respect to such activities for federal tax purposes.

(Code 1982, § 10-75)

Cross references: Definitions generally, § 1-2.

Secs. 26-257--26-285. Reserved.

ARTICLE III. DINING ON PUBLIC SIDEWALKS*

***Cross reference—**Streets, sidewalks and other public places, ch. 70.

Sec. 26-286. 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:

Licensee means a business establishment that serves food to the general public.

Space means the area of the sidewalk to be used by a business for outdoor dining.

(Ord. of 9-7-93(1))

Cross references: Definitions generally, § 1-2.

Sec. 26-287. Authority of zoning administrator to issue license.

The zoning administrator is hereby authorized to issue licenses to business establishments that serve food to the general public to allow the licensee to use those areas located directly in front of the place of business on the sidewalks of the town subject to the conditions and restrictions provided by this article.

(Ord. of 9-7-93(1))

Sec. 26-288. Sketch of area required.

The area of the sidewalk to be used by the licensee shall be shown on a sketch or plat to be submitted to and approved by the zoning administrator.

(Ord. of 9-7-93(1))

Sec. 26-289. Use of space.

The space may be used for the sole purpose of outdoor dining for patrons and customers of the eating establishment operated by the licensee.

(Ord. of 9-7-93(1))

Sec. 26-290. Charges for space.

The licensee shall pay to the town for the use and occupancy of the space such charges as the town council may prescribe for such use of the space, which may be increased or decreased or otherwise modified from time to time by the council.

(Ord. of 9-7-93(1))

Sec. 26-291. Indemnification by licensee.

The licensee shall indemnify, keep and hold the town free and harmless from liability on account of injury or damage to persons and property arising from and out of the use of the space and the installation, construction, maintenance, repair, operation of fixtures, equipment or other structures located upon the space and used in connection with the licensee's business; and in the event that suit shall be brought against the town either independently or jointly with the licensee, the licensee shall pay any judgment resulting from the suit and all costs and shall hold the town harmless therefrom.

(Ord. of 9-7-93(1))

Sec. 26-292. Liability insurance required.

The licensee shall provide to the town evidence of liability insurance in connection with the use of the space providing indemnities of not less than $1,000,000.00 for bodily injuries and property damage resulting from the licensee's use of the space. The town shall be named as an additional insured under the licensee's insurance policy. The licensee shall keep the insurance in full force and effect at all times during the use of the space. The licensee shall provide to the town a certificate of insurance, which shall contain a statement that the insurance is provided to enable the licensee to perform its obligation under this agreement and that the insurance shall not lapse or otherwise expire prior to 60 days' written notice thereof given by the licensee's insurance carrier to the town manager, anything in such insurance contract to the contrary notwithstanding.
(Ord. of 9-7-93(1))

Sec. 26-293. Approval for improvements, fixtures required.

A licensee shall not erect or construct any improvements and/or fixtures upon the space without prior written approval of the zoning administrator.
(Ord. of 9-7-93(1))

Sec. 26-294. Minimum width of sidewalk.

A licensee shall keep the minimum width of sidewalk from the edge of the curb to the edge of any improvement, fixture or other such element limiting or defining public use area to seven feet.
(Ord. of 9-7-93(1))

Sec. 26-295. Overhangs prohibited.

The physical features located within the space (e.g., awnings, umbrellas, canopies, plants, planters, etc.) may not overhang the area to be kept open as a sidewalk.
(Ord. of 9-7-93(1))

Sec. 26-296. Height of structures, physical features.

Any structure or physical feature used or constructed adjacent to the public sidewalk shall not exceed 42 inches in height above the grade of the sidewalk.
(Ord. of 9-7-93(1))

Sec. 26-297. Food preparation.

All food shall be prepared indoors and not within the space.
(Ord. of 9-7-93(1))

Sec. 26-298. Compliance with laws of the commonwealth.

The licensee shall comply with all applicable provisions of those laws of the commonwealth with respect to alcoholic beverages.
(Ord. of 9-7-93(1))

State law references: Alcoholic Beverage Control Act, Code of Virginia, tit. 4.1.

Sec. 26-299. Rules and regulations.

The zoning administrator may promulgate such rules and regulations as may be deemed necessary for the regulation of the use of the space.
(Ord. of 9-7-93(1))

Sec. 26-300. Authority of council.

This article is adopted pursuant to the power granted by the Charter. It is not intended by the adoption of this article to offer or grant a franchise, and the permission granted by this article shall at all times be subject to revocation by the council, and the terms and conditions upon which it is granted shall be subject to modification at any time and from time to time by the council. Upon modification or revocation, the licensee shall immediately conform to the requirements, if any, prescribed by the council with respect thereto.
(Ord. of 9-7-93(1))

Sec. 26-301. Conditions on use of space.

Licensees shall not be permitted to occupy and use the space until they have provided the evidence of insurance as prescribed herein and have obtained written approval as required by subsection 26-293 above and not until licensees have filed a written statement with the clerk of the town council that it agrees to be bound by the terms and conditions of this article and agrees to fully comply therewith.
(Ord. of 9-7-93(1))

Sec. 26-302. Binding obligations.

The obligations specified in this article shall be binding upon a licensee, its successors and assigns.
(Ord. of 9-7-93(1))

Chapters 27—29

RESERVED

Chapter 30

CIVIL EMERGENCIES*

***Cross references:** Administration, ch. 2; fire prevention and protection, ch. 42; law enforcement, ch. 46; offenses and miscellaneous provisions, ch. 50; curfew for minors, § 50-1; weapons, § 50-101 et seq.; streets, sidewalks and other public places, ch. 70; public assemblies, § 70-161 et seq.; traffic and vehicles, ch. 78.

State law references: Commonwealth of Virginia Emergency Services and Disaster Law of 2000, Code of Virginia, § 44-146.13 et seq.

Sec. 30-1. Emergency proclamations of mayor.

ARTICLE I. IN GENERAL

Sec. 30-1. Emergency proclamations of mayor.

(a) Whenever the mayor, or in the event of his inability to act, the vice-mayor, determines that an emergency exists as a result of mob action or other civil disobedience, or other declared disasters that may cause danger of injury to or damage to persons or property, he shall have power to impose, by proclamation, any or all of the following regulations necessary to preserve the peace and order of the town to:

(1) impose a curfew upon all or any portion of the town, thereby requiring all persons in such designated curfew areas to forthwith remove themselves from the public streets, alleys, parks or other public places; provided, that physicians, nurses and ambulance operators performing medical service, utility personnel maintaining essential public services, firefighters and town-authorized or requested law enforcement officers and personnel may be exempted from such curfew.

(2) order the closing of any business establishments anywhere within the town for the period of the emergency, such businesses to include but not be limited to those selling intoxicating liquors, wine, beer, gasoline or firearms.

(3) designate any public street, thoroughfare or vehicle parking areas closed to motor vehicles and pedestrian traffic for the period of the emergency.

(4) call upon regular and auxiliary law enforcement agencies and organizations, within or without the town, to assist in preserving and keeping the peace within the town.

(b) The proclamation of emergency that the mayor is authorized to issue under this section shall become effective upon its issuance and dissemination to the public by appropriate news media.

(c) Any emergency proclaimed in accordance with the provisions of this section shall terminate after 72 hours from the issuance thereof, or upon the issuance of a proclamation by the mayor or in the event of his inability to act, the vice-mayor, determining that an emergency no longer exists, whichever occurs first; provided, that such emergency may be extended by proclamation of the mayor, or in the event of his inability to act, the vice-mayor, for such additional periods of time as determined necessary by resolution of the town council.

(d) It shall be unlawful and a class 1 misdemeanor for any person to violate, or fail, refuse or neglect to comply with, any proclamation made pursuant to this section.
(Code 1982, § 2-6)

Charter references: Powers and duties of mayor, § 37.

Chapters 31— 35

RESERVED

Chapter 36

ELECTIONS*

***Cross reference—**Administration, ch. 2.

Article I. In General

Sec. 36-1. Establishment of polling place.

ARTICLE I. IN GENERAL

Sec. 36-1. Establishment of polling place.

The location of the polling place for the precinct for the town for all elections provided for by the Charter and/or the Code shall be the Young Men's Christian Association (YMCA) gymnasium located in the old Smithfield high school building on James Street in the town. (Ord. of 6-1-99, § 1)

Chapter 37

RESERVED

Chapter 38

ENVIRONMENT*

***Charter references:** Abatement of nuisances, § 20(b).

Cross references: Amusements and entertainments, ch. 14; animals, ch. 18; vicious or dangerous dogs, § 18-151 et seq.; rabies control, § 18-191 et seq.; buildings and building regulations, ch. 22; removal or repair of dangerous buildings, § 22-2; fire prevention and protection, ch. 42; solid waste, ch. 66; streets, sidewalks and other public places, ch. 70; parades, § 70-81 et seq.; public assemblies, § 70-161 et seq.; traffic and vehicles, ch. 78; permit for operation of sound trucks, § 78-97; utilities, ch. 82; toxic materials, § 82-78; vegetation, ch. 86; waterways, ch. 90; zoning, app. A; subdivisions, 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, 15.2-2114; local air pollution ordinances, Code of Virginia, § 10.1-1321; action for abatement of nuisance or the costs thereof, Code of Virginia, § 15.2-900; extraterritorial powers in prevention of water pollution, Code of Virginia, § 15.2-2109; contracts relating to prevention of water pollution, Code of Virginia, § 15.2-2124; municipal power to have nuisances removed, collection of § 15.2-1115.costs, Code of Virginia,

Article I. In General

Sec. 38-1. Excessive, unreasonable or unnecessary sound or noise.
Sec. 38-2. Noise from motorcycles.
Sec. 38-3. Definitions.
Sec. 38-4. Measurement procedures.
Sec. 38-5. Maximum permissible sound levels generally.

ARTICLE I. IN GENERAL

Sec. 38-1. Excessive, unreasonable or unnecessary sound or noise.

(a) *Prohibited generally.* It is hereby declared to be the public policy of the town to protect its citizens against excessive noise which is detrimental to life, health and enjoyment of property. In or to promote the public health, safety, welfare and the peace and quiet of the inhabitants of the town, the measurement and standards in this article relating to noise are hereby adopted.

(b) *Acts enumerated.* The following acts are specifically declared to be in violation of this section when the commission thereof is such or is in such a manner as to disturb, injure or endanger the quiet, comfort, repose, health or safety of any other person; but such enumeration shall not be deemed to be exclusive:

(1) *Animals.*

(i) It shall be unlawful for any person to allow within the town prolonged or intense barking or other harsh or excessive noises to be made by any animal under such person's ownership or control, at any time, so as to disturb the quiet, comfort or repose of one or more members of the community.

(ii) For the purpose of this section, a harsh or excessive animal noise is one which disturbs the quiet, comfort or repose of a reasonable person with normal sensitivities.

(iii) For the purpose of this section a person shall be deemed to have allowed an animal to bark or create other harsh or excessive noises, if the person has once been put on notice by the town police department or the animal control officer, upon the complaint of any individual that the animal is disturbing one or more members of the community and the person thereafter fails to confine such animal inside the person's dwelling unit or other enclosed structure or take similar action calculated to terminate such disturbance. It shall not be necessary for the police department or animal control officer to issue a new notice for each repeated occurrence.

(2) *Exhausts.* The discharge into open air of the exhaust of any steam or diesel engine, stationary internal combustion engine, chain saw, power mower, motorboat or motor vehicle, except through a muffler or other device which will effectively prevent any noise or sound.

(3) *Defects in vehicle.* The use of any automobile, motorcycle or other vehicle so out of repair, or loaded in such a manner, as to create loud grating, grinding, rattling or other noise or sound.

(4) *Hawkers.* The shouting and crying of peddlers, hawkers and vendors.

(5) Sounding a horn or other signaling device on any motor vehicle except as an emergency of danger warning signal.

(6) Operating a motor vehicle, other than an authorized emergency vehicle or a vehicle moving under special permit, which creates noise disturbance.

(7) Operating, loading or unloading any vehicle including but not limited to trucks, or the opening and destruction of bales, boxes, creates and containers in the outdoors in zones other than industrial within 100 ~~years~~ yards of a lawfully occupied dwelling between the hours of 10:00 p.m. and 6:00 a.m.

(8) Operating or causing to be operated between the hours of 10:00 p.m. and 6:00 a.m. on weekdays and between the hours of 10:00 p.m. and 9:00 a.m. on Saturdays, Sundays and legal holidays observed by town government equipment used in the construction, repair, alteration or demolition work on buildings, structures, alleys or appurtenances thereto in the outdoors in any residential district within 100 yard of a lawfully occupied dwelling. This section shall not apply to construction of public projects, the repair or maintenance work performed on such projects or work performed by private or public utility companies for the repair of facilities or restoration of services.

(9) Using, operating or causing to be operated mechanical loudspeakers or other sound amplification devices on trucks or other moving vehicles or in commercial establishments for the purpose of commercial establishments for advertising or attracting the attention of the public during the nighttime. Sound shall be not clearly audible a greater distance than 50 feet distant from the vehicle or other enclosure in which it is contained or at least 50 feet from the source thereof, if not contained within any vehicle or other enclosure.

The use of such at all other times shall be subject to the following conditions:

(i) The only sounds permitted are music or human speech.

(ii) Sound shall not be issued or devices shall not be used within 100 yards of hospitals, schools, churches or courthouses.

(iii) Maximum sound pressure levels shall not exceed those established for the daytime in each zoning district classification listed in the chart in section 50-36.

(10) Operating or permitting to be operated any powered model aircraft in the outdoors during the nighttime.

(11) The playing of any radio, phonograph, television, tape or disc player, musical instrument or drum, sound amplifier or similar device which produces, reproduces or amplifies sound in such a manner as to create a noise disturbance.

(c) *Exemptions.* This section shall have no application to fire, rescue, police, ambulance or other emergency vehicles or aircraft or to any noise or sound created thereby or by any person to sound a warning or call attention to a bona fide emergency. Nor shall it apply to noise or sound which customarily accompanies; nor to noise or sound which customarily accompanies activities of churches and synagogues; nor to activities conducted in any gymnasium, arena, theater, amphitheater, swimming pool, stadium, rifle range, gun club, or any similar sporting facility; whether any such activity occurs indoors or outdoors, except to the extent that any such parade,

function, event or activity shall be prohibited or limited, either expressly or by necessary implication, by the terms or conditions of any required use permit issued in connection therewith, or to the extent that such parade, function, event or activity shall be conducted without a use permit when such permit is required by the terms of this Code. Exemptions from the provisions of this article may be granted in accordance with the following requirements:

(1) Any person responsible for any noise from the operating of any equipment used in construction, repair, alteration or demolition work on building structures, alleys or appurtenances thereto shall apply to the Director of Public Works for an exemption or partial exemption ~~form~~ from the provisions of this article. Any person with lawfully obtained permits, when required, who operates or performs such outdoor public entertainment activities as sports or athletic events, parades, festivals, concerts, and amusement rides, shall apply to the Director of Public Works for an exemption or partial exemption from the provisions of this article. All other requests for exemptions shall be directed to the Chief of Police. The exemption or partial exemption may be granted if it is determined that:

(i) The noise does not endanger the public health, safety or welfare; or

(ii) Compliance with the provisions of this article from which an exemption is sought would cause a serious hardship without producing equal or greater benefit to the public.

(2) In determining whether to grant such exemption the Director of Public Works shall consider the following:

(i) The time of day the noise will occur;

(ii) The duration of the noise;

(iii) The loudness of the noise in relation to the maximum permissible sound levels set forth in section 34-4;

(iv) Whether the noise is intermittent or continuous; and

(v) Such other matters as are reasonably related to the impact of the noise on the health, safety and welfare of the community and the degree of hardship which may result from the enforcement of the provisions of this article.

(3) Exemptions or partial exemptions issued pursuant to this section shall be granted for such period as the Director of Public Works deems reasonable. Any such exemption shall be reviewed if complaints are received and may be revoked if, when the foregoing standards are applied, circumstances no longer justify the exemption or partial exemption.

(d) *Violations.* Any person violating any of the provisions of this section shall be deemed guilty of a class 3 misdemeanor. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such under this section.
(Code 1982, § 12-15)

Charter references--Prevention of noise, § 20(b).

Cross reference—Noisy animals, § 18-13.

Sec. 38-2. Noise from motorcycles.

It shall be unlawful for any person, in operating a motorcycle within the city, to create any unreasonably loud or disturbing noise. In operating a motorcycle, the following acts, among others, are declared to create loud and disturbing noises in violation of this section, but such enumeration shall not be deemed to be exclusive:

(1) The use of a motorcycle so out of repair as to cause thereby loud grating, grinding, rattling or any of such noises or any other loud noise or without a properly muffled exhaust system.

(2) The practice of racing the motor of a motorcycle while standing or moving, thereby causing noise from such motor.

(3) The practice of retarding the spark to the motor and thereby causing loud and explosive noise from the motor.

(4) In starting a motorcycle from a standing position, the practice of quickly gaining speed and thereby causing loud noise from the motor.

(5) The practice of coming to an unreasonably quick stop with a motorcycle and thereby causing grinding of brakes and screeching of tires, or either of such noises.

(Code 1982, § 11-11)

Sec. 38-3. Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section.

A-weighted decibel means the sound level, in decibels, measured within a sound level meter using the A-weighting network or scale as specified in the ANSI S1.4-1983 (specifications for sound level meters). The level so read shall be postscripted dB(A) or dBA.

ANSI means the American National Standards Institute, Inc., New York, New York.

Daytime means the local time of day between the hours of 7:00 a.m. and 10:00 p.m. weekdays and from 9:00 a.m. to 10:00 p.m. on Saturdays, Sundays and legal holidays observed by town government unless otherwise specified.

Decibel means a unit that describes the sound pressure level or intensity of sound. The sound pressure level in decibels is 20 times the logarithm to the vase tem of the ration of the pressure of the sound in microbars to a reference pressure of 0.0002 microbar; abbreviated dB.

Nighttime means those times excluded for the definition of daytime.

Noise means any steady-rate or impulsive sound occurring on either a continuous or intermittent basis that disturbs humans or that causes or tends to cause an adverse psychological or physiological effect on humans.

Noise disturbance means any sound which:

(1) Endangers or injures the safety or health of humans;

(2) Disturbs a reasonable person of normal sensitivities;

(3) Endangers or injures personal or real property; or

(4) Exceeds the applicable maximum permissible sound levels as they appear in the table in section 38-4.

Sound pressure level means the intensity in decibels (dB) of sound.

Zoning district classification means the designation of land use classification contained in the zoning ordinance.

Sec. 38-4. Maximum permissible sounds generally.

Except as otherwise provided, any noise which emanates from any operation, activity or source and which exceeds the maximum permissible sound levels established in this section is hereby prohibited.

(a) When noise emanates from private property, such levels shall be measured at the property boundary of the sound source, at any point on public property, or at any point within any other property affected by the noise. When noise emanates from public property including street rights-of-way, such levels shall be measured at any point on public property or at any point within any other property affected by the noise. When a noise source can be identified and its noise measured in more than one zoning district classification, the limits of the most restrictive classification shall apply.

Zoning District	**Maximum dBA**	
Classification	**Daytime**	**Nighttime**
Agricultural	65	55
Residential	65	55
R / B	70	60
Planned Unit Development	70	60
Mixed Use District	75	65
Business	75	65
Industrial	79	72

(b) Heating and cooling systems, including, but not limited to, air conditioners and heat pumps, shall not be subject to the night levels enumerated in subsection (a) of this section.

(c) Any person, with lawfully obtained permits, who during the daytime operates or causes to be operated any equipment used in the construction, repair, alteration, or demolition work on buildings, structures, alleys or appurtenances thereto in the outdoors shall not be subject to the levels enumerated in subsection (a) of this section.

(d) Persons performing construction of public projects, repair or maintenance work for such projects or persons performing work for private or public utilities for the repair of facilities

or restoration of services shall not be subject to the levels enumerated in subsection (a) of this section.

Chapters 39—41

RESERVED

Chapter 42

FIRE PREVENTION AND PROTECTION*

***Charter references:** General authority of town with respect to fire prevention and protection, § 17.

Cross references: Administration, ch. 2; standing committees of council, § 2-37; buildings and building regulations, ch. 22; civil emergencies, ch. 30; environment, ch. 38; law enforcement, ch. 46; traffic and vehicles, ch. 78; utilities, ch. 82.

State law references: smoke detectors, Code of Virginia, § 15.2-922; explosive and inflammable substances, fireworks, Code of Virginia, § 15.2-1113; fuel-burning equipment, Code of Virginia, § 15.2-1116; municipal regulation of the making of fires, Code of Virginia, § 15.2-1118; local fire departments and fire C/EMC companies, Code of Virginia, § 27-6.1 et seq.; local fire marshals, Code of Virginia, § 27-30 et seq.; relief for firefighters and dependents, Code of Virginia, § 27-39 et seq.; effect of Statewide Fire Prevention Code, Code of Virginia, § 27-97; explosives, Code of Virginia, § 59.1-137 et seq.; fireworks, Code of Virginia, § 15.2-974, 27-95 et seq.

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ARTICLE I. IN GENERAL

Sec. 42-1. Violations of chapter.

Unless otherwise specifically provided, any person violating any provision of this chapter shall be guilty of a class 1 misdemeanor.
(Code 1982, § 8-1)

Sec. 42-2. Establishment of fire zones; entering fire zone or fired or burned building.

(a) An area of 75 yards distance around a fire or fire apparatus shall be established as a fire zone. No unauthorized person shall enter the fire zone except by special permission of the chief of the fire department or other person in charge at the scene.

(b) No person shall enter a fired building except by special permission and then only by observance of standard safety rules. Persons having no business therein shall not enter a burned building immediately following a fire.
(Code 1982, § 8-2)
Cross reference—Buildings and building regulations, ch. 22.

Sec. 42-3. Starting fires on streets, open lots.

No person shall start or build, or cause to be started or built, any fire on any street, alley or open lot, along any public street within the town, without a written permit from the town manager and the Chief of Smithfield Volunteer Fire Department.
(Code 1982, § 8-3)
Cross references: Streets, sidewalks and other public places, ch. 70.
State law references: Authority for above section, Code of Virginia, § 15.1-872.

Sec. 42-4. Fire hazards from trash, brush and burnable materials.

No trash, brush or other burnable material shall be placed or allowed to remain at any place within the town where it will constitute a fire hazard. For purposes of all articles within Chapter 42, the Chief of Smithfield Volunteer Fire Department has the authority to determine if a fire constitutes a fire hazard and/or a public health safety hazard.
(Code 1982, § 8-4)
Cross references: Solid waste, ch. 66.

Secs. 42-5--42-35. Reserved.

ARTICLE II. FIRE DEPARTMENT*

***Cross references:** Personnel, ch. 58; issuance of free vehicle license tags, § 78-54.

Sec. 42-36. Established; composition; bylaws.

A town fire department is hereby established, to consist of a fire chief and other officers and the members of the fire company organized pursuant to this article. The town council hereby

empowers the fire department to make such bylaws to promote its objects as may be consistent with the laws of the state, this Code and other ordinances of the town.
(Code 1982, § 8-15)

Charter references: Authority to establish a fire department, § 17.

Cross references: Personnel, ch. 58.

State law references: Authority for above section, Code of Virginia, §§ 27-6.1, 27-7.

Sec. 42-37. Formation and organization of volunteer fire company.

(a) Any number of persons, not less than 20, residing in the town, may form themselves into a volunteer company for extinguishing fires, with the approval of the town council.

(b) A writing stating the formation of a volunteer fire company, with the names of the members thereto subscribed, shall be recorded in the circuit court of the county, after which the members of the company may elect its officers and make regulations for effecting the objects of the company, consistent with the laws of the state, the ordinances of the town and the bylaws of the fire department. The principal officer shall be known as the chief.
(Code 1982, § 8-16)

State law references: Similar provisions, Code of Virginia, §§ 27-8, 27-9.

Sec. 42-38. Election of officers.

The members of the fire department shall elect the chief thereof and such other officers as are necessary. The names of officers so elected shall be reported to the town council at its first regular meeting following the election.
(Code 1982, § 8-17)

Sec. 42-39. Authority of chief or other officer in charge when answering alarm or operating at an emergency incident; penalty for refusal to obey orders.

(a) While any fire department or fire company is in the process of answering an alarm or operating at an emergency incident where there is imminent danger or the actual occurrence of fire or explosion or the uncontrolled release of hazardous materials which threaten life or property and returning to the station, the chief or other officer in charge of such fire department or company at that time shall have the authority to:

(1) Maintain order at such emergency incident or its vicinity.

(2) Direct the actions of the firefighters at the incident.

(3) Notwithstanding the provisions of Code of Virginia, §§ 46.2-888 through 46.2-891, keep bystanders or other persons at a safe distance from the incident and emergency equipment.

(4) Facilitate the speedy movement and operation of emergency equipment and firefighters.

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

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

The fire chief or other officer in charge shall display his firefighter's badge, or other proper means of identification.

(b) Notwithstanding any other provision of law, this authority shall extend to the activation of traffic control signals designed to facilitate the safe egress and ingress of emergency equipment at a fire station.

(c) Any person or persons refusing to obey the orders of the fire chief or his deputies or other officer in charge at that time shall be guilty of a class 4 misdemeanor. The chief or other officer in charge shall have the power to make arrests for violation of the provisions of this section.

(d) The authority granted under the provisions of this section may not be exercised to inhibit or obstruct members of law enforcement agencies or rescue squads from performing their normal duties when operating at such emergency incident, nor to conflict with or diminish the lawful authority, duties and responsibilities of forest wardens, including but not limited to the provisions of Code of Virginia, § 10.1-1100 et seq.

(e) Personnel from the news media, such as the press, radio and television, when gathering the news may enter at their own risk into the incident area only when the officer in charge has deemed the area safe and only into those areas of the incident that do not, in the opinion of the officer in charge, interfere with the fire department or rescue workers dealing with such emergencies, in which case the chief or other officer in charge may order such person from the scene of the emergency incident.
(Code 1982, § 8-18)
Cross references: Traffic and vehicles, ch. 78.
State law references: Similar provisions, Code of Virginia, § 27-15.1.

Sec. 42-40. Tampering or interfering with fire equipment or firefighters.

It shall be unlawful for any unauthorized person to tamper or in any way interfere with any fire equipment while the same is in storage or in use or to otherwise interfere with or obstruct the use or procedure of any fire apparatus to or from a fire or to interfere in any manner with any firefighter in the performance of his duties.
(Code 1982, § 8-19)
Cross references: Damaging or defacing property generally, § 50-18.

Sec. 42-41. Unauthorized removal of fire apparatus.

It shall be unlawful for any person to remove from its place of storage any fire hose or any other apparatus owned or used by the fire department without the consent of the chief of the fire department or his duly authorized deputy or assistant.
(Code 1982, § 8-20)

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

ARTICLE III. FIREWORKS

Sec. 42-71. When manufacture, transportation, sale, storage, use of fireworks unlawful.

(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 flammable compound or substance, and 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 the provisions of subsection (b) of this section.

(b) This section shall not apply to the use or the sale of sparklers, fountains, Pharoah's serpents, caps for pistols, or to pinwheels commonly known as whirligigs or spinning jennies; however, the fireworks listed in this sentence may only be used, ignited or exploded on private property with the consent of the owner of such property.

(c) This section shall have no application to any officer or member of the armed forces of this state or of the United States, while acting within the scope of his authority and duties as such, nor to any offer of sale or sale of fireworks to any authorized agent of such armed forces; nor shall it be applicable to the sale or use of materials or equipment otherwise prohibited by this section when such materials 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.
(Code 1982, § 8-31)

State law references: Similar provisions, Code of Virginia, § 27-96.2; authority of town to prohibit use, sale, etc., of fireworks, Code of Virginia, § 27-96.1.

Sec. 42-72. Permit for public displays.

The town manager may, upon special public occasions, issue permits to fair associations, amusement parks or any organization or group of individuals to set off and display fireworks upon the applicant therefore entering into a bond, in the penalty of not less than $1,000.00 with sufficient security, payable to the town and conditioned to pay for all damages to any person or property caused or resulting from the use of such fireworks. The terms and conditions of such a permit shall be as prescribed by the town manager and no person shall violate the same.
(Code 1982, § 8-32)

State law references: Authority for above section, Code of Virginia, § 15.2-974.

Sec. 42-73. Seizure and destruction of fireworks used in violation of article.

Any law enforcement officer arresting any person for a violation of this chapter related to fireworks shall seize any article~~s~~ of fireworks in the possession or under the control of the person so arrested and shall hold the same until final disposition of any criminal proceedings against such person. If a judgment of conviction is entered against such person in any such case, the court shall order destruction of such articles upon the expiration of the time allowed for appeal of such judgment of conviction.
(Code 1982, § 8-33)

State law references: Similar provisions, Code of Virginia, § 59.1-143.

Secs. 42-74—42-90. Reserved.

ARTICLE IV. OPEN BURNING

Sec. 42-91. Title.

This article shall be known as the "Town of Smithfield Ordinance for the Regulation of Open Burning".

Sec. 42-92. Purpose.

The purpose of this article is to protect public health, safety, and welfare by regulating open burning within the town to achieve and maintain, to the greatest extent practicable, a level of air quality that will provide comfort and convenience while promoting economic and social development. This article is intended to supplement the applicable regulations promulgated by the state air pollution control board and other applicable regulations and laws.

Sec. 42-93. Definitions.

For the purpose of this article and subsequent amendments or any orders issued by the town, the words or phrases shall have the meaning given them in this section:

Automobile graveyard means any lot or place which is exposed to the weather and upon which more than five motor vehicles of any kind, incapable of being operated, and which it would not be economically practical to make operative, are placed, located or found.

Clean burning waste means waste which does not produce dense smoke when burned and is not prohibited to be burned under this article.

Construction waste means solid waste which is produced or generated during construction of structures. Construction waste consists of lumber, wire, sheetrock, broken brick, shingles, glass, pipes, concrete, and metal and plastics if the metal or plastics are part of the materials of construction or empty containers for such materials. Paints, coatings, solvents, asbestos, any liquid, compressed gases or semi-liquids, and garbage are not construction wastes and the disposal of such materials must be in accordance with the regulation of the state waste management board.

Debris waste means stumps, wood, brush, and leaves from land clearing operations.

Demolition waste means that solid waste which is produced by the destruction of structures and their foundations and includes the same materials as construction waste.

Garbage means rotting animal and vegetable matter accumulated by a household in the course of ordinary day to day living.

Hazardous waste means refuse or combination of refuse which, because of its quantity, concentration or physical, chemical or infectious characteristics may:

(1) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating illness; or

(2) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed, or otherwise managed.

Household refuse means waste material and trash normally accumulated by a household in the course of ordinary day to day living.

Industrial waste means all waste generated on the premises of manufacturing and industrial operations such as, but not limited to, those carried on in factories, processing plants, refineries, slaughter house, and steel mills.

Junkyard means an establishment or place of business which is maintained, operated, or used for storing, keeping, buying, or selling junk, or for the maintenance or operation of an automobile graveyard, and the term shall include garbage dumps and sanitary fills.

Landfill means a sanitary landfill, an industrial waste landfill, or a construction/demolition/debris landfill. See solid waste management regulations (9VAC 20-80-10 et seq.) for further definitions of these terms.

Open burning means the burning of any matter in such a manner that the products resulting from combustion are emitted directly into the atmosphere without passing through a stack, duct or chimney.

Open pit incinerator means a device used to burn waste for the primary purpose of reducing the volume by removing combustible matter. Such devices function by directing a curtain of air at an angle across the top of a trench or similarly enclosed space, thus reducing the amount of combustion byproducts emitted into the atmosphere. The term also includes trench burners, air curtain destructors and over draft incinerators.

Refuse means trash, rubbish, garbage and other forms of solid or liquid waste, including, but not limited to, wastes resulting from residential, agricultural, commercial, industrial, institutional, trade, construction, land clearing, forest management and emergency operations.

Salvage operation means any operation consisting of a business, trade or industry participating in salvaging or reclaiming any product or material, such as, but not limited to, reprocessing of used motor oils, metals, chemicals, shipping containers or drums, and specifically including automobile graveyards and junkyards.

Sanitary landfill means an engineered land burial facility for the disposal of household waste which is so located, designed, constructed, and operated to contain and isolate the waste so that it does not pose a substantial present or potential hazard to human health or the environment. A sanitary landfill also may receive other types of solid wastes, such as commercial solid waste, non-hazardous sludge, hazardous waste from conditionally exempt small quantity generators, and non-hazardous industrial solid waste. See solid waste management regulations (9VAC 20-80-10 et seq.) for further definitions of these terms.

Smoke means small gas-borne particulate matter consisting mostly, but not exclusively, of carbon, ash and other material in concentrations sufficient to form a visible plume.

Special incineration device means a pit incinerator, conical or teepee burner, or any other device specifically designed to provide good combustion performance.

Cross reference—Definitions generally, § 1-2.

Sec. 42-94. Prohibitions on open burning.

(a) No owner or other person shall cause or permit open burning or the use of a special incineration device for disposal of refuse except as provided in this article.

(b) No owner or other person shall cause or permit open burning or the use of a special incineration device for disposal of rubber tires, asphaltic materials, crankcase oil, impregnated wood or other rubber or petroleum based materials except when conducting bona fide firefighting instruction at firefighting training schools having permanent facilities.

(c) No owner or other person shall cause or permit open burning or the use of a special incineration device for the purpose of a salvage operation or for the disposal of commercial/industrial waste.

(d) Open burning or the use of special incineration devices permitted under the provisions of this article does not exempt or excuse any owner or other person from the consequences, liability, damages or injuries which may result from such conduct; nor does it excuse or exempt any owner or other person from complying with other applicable laws, ordinances, regulations and orders of the governmental entities having jurisdiction, even though the open burning is conducted in compliance with this article. In this regard special attention should be directed to Code of Virginia, § 10.1-1142 of the Forest Fire Law of Virginia, the regulations of the state waste management board, and the state air pollution control board's regulations for the control and abatement of air pollution.

(e) Upon declaration of an alert, warning or emergency stage of an air pollution episode as described in 9 VAC 5 Chapter 70 (9VAC 5-70-10 et seq.) or when deemed advisable by the state air pollution control board to prevent a hazard to, or an unreasonable burden upon, public health or welfare, no owner or other person shall cause or permit open burning or use of a special incineration device; and any in process burning or use of special incineration devices shall be immediately terminated in the designated air quality control region.

Sec. 42-95. Exemptions.

The following activities are exempted to the extent covered by the state air pollution control board's regulations for the control and abatement of air pollution:

(1) Open burning for training and instruction of government and public fire fighters under the supervision of the designated official and industrial in-house fire fighting personnel;

(2) Open burning for campfires or other fires that are used solely for recreational purposes, for ceremonial occasions, for outdoor noncommercial preparation food, and for warming of outdoor workers;

(3) Open burning for the destruction of any combustible liquid or gaseous material by burning in a flare or flare stack;

(4) Open burning for forest management and agriculture practices approved by the state air pollution control board; and

(5) Open burning for the destruction of classified military documents.

Sec. 42-96. Permissible open burning.

(a) Open burning is permitted for the disposal of leaves and tree, yard and garden trimmings located on the premises of private property, provided that ~~the~~ these conditions are met:

(1) The burning takes place on the premises of the private property;

(2) The location of the burning is not less than 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; and

(b) Open burning is permitted for disposal of debris waste resulting from property maintenance, from the development or modification of roads and highways, parking areas, railroad tracks, pipelines, power and communication lines, buildings or building areas, sanitary landfills, or from any other clearing operations which may be approved by the designated local official, provided the following conditions are met:

(1) All reasonable effort shall be made to minimize the amount of material burned, with the number and size of the debris piles approved by the town manager and fire chief;

(2) The material to be burned shall consist of brush, stumps and similar debris waste and shall not include demolition material;

(3) The burning shall be at least 500 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted;

(4) The burning shall be conducted at the greatest distance practicable from highways and airfields;

(5) The burning shall be attended at all times and conducted to ensure the best possible combustion with the minimum of smoke being produced;

(6) The burning shall not be allowed to smolder beyond the minimum period of time necessary for the destruction of the materials; and

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

(c) Open burning is permitted for the disposal of debris on the site of local landfills provided that the burning does not take place on land that has been filled and covered so as to present an underground fire hazard due to the presence of methane gas provided that the following conditions are met:

(1) The burning shall take place on the premises of a local sanitary landfill which meets the provisions of the regulations of the state waste management board;

(2) The burning shall be attended at all times;

(3) The material to be burned shall consist only of brush, tree trimmings, yard and garden trimmings, clean burning construction waste, clean burning debris waste, or clean burning demolition waste;

(4) All reasonable effort shall be made to minimize the amount of material that is burned;

(5) No materials may be burned in violation of the regulations of the waste management board or the state air pollution control board. The exact site of the burning on a local landfill shall be established in coordination with the regional director and the town manager and the fire chief; no other site shall be used without the approval of these officials. The town manager and the fire chief shall be notified of the days during which the burning will occur.

(d) Subsections (a) – (d) notwithstanding, no owner or other person shall cause or permit open burning or the use of a special incineration device during June, July or August.

Sec. 42-97. Permits.

(a) When open burning of debris waste, section 42-96(c) or open burning or debris on the site of a local landfill, section 42-96(d) is to occur within the town, the person responsible for the burning shall obtain a permit from the town manager and fire chief prior to the burning. Such a permit may be granted only after confirmation by the town manager and the fire chief that the burning can and will comply with the provisions of this article and any other conditions which are deemed necessary to ensure that the burning will not endanger the public health and welfare or to ensure compliance with any applicable provisions of the state air pollution control board's regulations for the control and abatement of air pollution. The permit may be issued for each occasion of burning or for a specific period of time deemed appropriate by the town manager and the fire chief.

(b) Prior to the initial installation and operation of special incineration devices, the person responsible for the burning shall obtain a permit from the town manager, such permits to be granted only after confirmation by the town manager and the fire chief that the burning can and will comply with the applicable provisions in regulations for the control and abatement of air pollution and that any conditions are met which are deemed necessary by the town manager and the fire chief to ensure that the operation of the devices will not endanger the public health and welfare. Permits granted for the use of special incineration devices shall at a minimum contain the following conditions:

(1) All reasonable effort shall be made to minimize the amount of material that is burned. Such effort shall include, but are not limited to, the removal of pulpwood, sawlogs and firewood.

(2) The material to be burned shall consist of brush, stumps and similar debris waste and shall not include demolition material.

(3) The burning shall be at least 300 feet from any occupied building unless the occupants have given prior permission, other than a building located on the property on which the burning is conducted; burning shall be conducted at the greatest distance practicable from highways and air fields. If the town manager or the fire

chief determines that it is necessary to protect public health and welfare, he may direct that any of the above cited distances be increased.

(4) The burning shall be attended at all times and conducted to ensure the best possible combustion with a minimum of smoke being produced. Under no circumstances should the burning be allowed to smolder beyond the minimum period of time necessary for the destruction of the materials.

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

(6) The use of special incineration devices shall be allowed only for the disposal of debris waste, clean burning construction waste, and clean burning demolition waste.

(7) Permits issued under this subsection shall be limited to a specific period of time deemed appropriate by the town manager and the fire chief.

(c) An application for a permit under section 42-97(a) or (b) shall be accompanied by a processing fee as set by the Town Council.

Sec. 42-98. Penalties for Violation.

(a) Any violation of this article is punishable as a class 1 misdemeanor. See Code of Virginia, § 15.2-1429.

(b) Each separate incident may be considered a new violation.

Sec. 42-99. Waivers.

(a) A waiver from any provision of this article may be granted by the Town Council.

(b) Waivers under subsection (a) of this section shall be executed through a memorandum of understanding between the ~~board~~ Town Council and affected party and may include such terms and conditions as may be necessary to ensure that the objectives of this article are met by the waiver.

Chapters 43--45

RESERVED

Chapter 46

LAW ENFORCEMENT*

***Charter references:** Office of town sergeant not established, § 29(f); fees for making arrests, § 43.

Cross references: Administration, ch. 2; standing committees of council, § 2-37; civil emergencies, ch. 30; courts, ch. 34; fire prevention and protection, ch. 42; offenses and miscellaneous provisions, ch. 50; personnel, ch. 58; traffic and vehicles, ch. 78; issuance of free vehicle license tags, § 78-54.

State law references: Police and public order, Code of Virginia,.§ 15.2-1700 et seq.; disposal of unclaimed property, Code of Virginia, § 15.2-1719; destruction of unclaimed weapons, Code of Virginia, § 15.2-1721; city sheriffs, town sergeants, Code of Virginia, § 15.1-796; powers of governor as to law enforcement agencies in localities, Code of Virginia, § 18.2-410.

Article I. In General

Sec. 46-1. Establishment and composition of department; appointment, term, powers, duties of chief.
Sec. 46-2. Violations of chapter.
Sec. 46-3. Reserved.
Sec. 46-4. Refusal to aid officer in execution of his office.
Sec. 46-5. Impersonation generally.
Sec. 46-6. Unlawful wearing of officer’s uniform.
Sec. 46-7. Falsely summoning or giving false reports to law enforcement officials.

ARTICLE I. IN GENERAL

Sec. 46-1. Establishment and composition of department; appointment, term, powers, duties of chief.

There is hereby established a town police department to consist of a chief of police and such other officers as are authorized by the council. The chief of police shall be appointed by the town manager, subject to confirmation by the council, and shall serve at the pleasure of the town manager. The chief shall have general supervision of the department and shall have such powers and duties as are prescribed by the council and by state law.
(Code 1982, § 15-1)

Charter references: Authority to establish and maintain a police department, § 18; appointment of chief of police by town manager, § 38-b.

Sec. 46-2. Violations of chapter.

Unless otherwise specifically provided, a violation of any provision of this chapter shall constitute a class 1 misdemeanor.
(Code 1982, § 15-2)

Sec. 46-3. Reserved.

Sec. 46-4. Refusal aid officer in execution of his office.

If any person on being required by any sheriff or other officer refuse or neglect to assist him:

(1) In the execution of his office in a criminal case;

(2) In preservation of the peace;

(3) In the apprehending or securing of any person for a breach of the peace; or

(4) In any case of escape or rescue;

he shall be guilty of a class 2 misdemeanor.
(Code 1982, § 15-4)

State law references: Similar provisions, Code of Virginia, § 18.2-463.

Sec. 46-5. Impersonation generally.

No person shall falsely assume or exercise the functions, powers, duties and privileges incident to the office of sheriff, police officer, marshal or other peace officer or falsely assume or pretend to be any such officer.
(Code 1982, § 15-5)

State law references: Similar provisions, Code of Virginia, § 18.2-174.

Sec. 46-6. Unlawful wearing of officer's uniform.

No person, not a member of the police department of the town, shall wear any such uniform as is designated for the use of the members of such department.

(Code 1982, § 15-6)

State law references: Similar provisions, Code of Virginia, § 18.2-175.

Sec. 46-7. Falsely summoning or giving false reports to law enforcement officials.

It shall be unlawful for any person to knowingly give a false report as to the commission of any crime to any law enforcement official with intent to mislead, or without just cause and with intent to interfere with the operations of any law enforcement official, to call or summon any law enforcement official by telephone or other means, including engagement or activation of an automatic emergency alarm. Violation of the provisions of this section shall be punishable as a class 1 misdemeanor.

(Code 1982, § 15-7)

State law references: Similar provisions, Code of Virginia, § 18.2-461.

Chapters 47—49

RESERVED

Chapter 50

OFFENSES AND MISCELLANEOUS PROVISIONS*

***Charter references:** Police powers, §§ 18, 20(b), 23.

Cross references: Businesses, ch. 26; civil emergencies, ch. 30; law enforcement, ch. 46; traffic and vehicles, ch. 78.

State law references: Local control of firearms restricted, Code of Virginia, § 15.2-915; prohibiting loitering, curfew for minors, in towns, Code of Virginia, § 15.2-926; protection of property of municipality and its inhabitants and preserving peace and good order, Code of Virginia, § 15.2-1700; shooting compound bow or crossbow, Code of Virginia, § 15.2-916; crimes and offenses generally, Code of Virginia, tit. 18.2; local ordinances prohibiting obscenity, Code of Virginia, § 18.2-389.

Article I. In General

Sec. 50-1. Curfew for minors.
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Sec. 50-3. Obstructing justice.
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Sec. 50-7. Disorderly conduct in public places.
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Sec. 50-105. Throwing stones or other missiles in streets.
Sec. 50-106. Authorization from chief of police required for sale of pistol or revolver.
Sec. 50-107. Prohibiting the selling or having in possession blackjacks, other weapons.
Sec. 50-108. Sale, delivery, other disposal of toy firearms discharging blank or ball charges.
Sec. 50-109. Sale or delivery of weapons to minors.

ARTICLE I. IN GENERAL

Sec. 50-1. Curfew for minors.

(a) It shall be unlawful for any person under the age of 18 years to loiter, idle, play or otherwise be in or upon the public streets, highways, roads, alleys or other public ways, parks, playgrounds, wharves, docks, beaches, public places, public buildings, places of amusement and entertainment, vacant lots or other unsupervised places within the town, either on foot or in a vehicle, between the hours of 12:30 a.m. and 5:00 a.m. of any day.

(b) The provisions of this section shall not apply to a minor accompanied by his parent, guardian or other adult person having the care and custody of the minor or when the minor is upon an emergency errand or legitimate business directed by his parent, guardian or other adult person having the care and custody of the minor. Any minor violating the provisions of this subsection shall be dealt with in accordance with juvenile court law and procedure.

(c) A violation of this section by a minor shall be disposed of as provided in Code of Virginia, § 16.1-278.4 and 16.1-278.5.

(d) It shall be unlawful and a class 4 misdemeanor for the parent, guardian or other adult person having the care and custody of a minor to knowingly permit such minor to violate the provisions of subsection (a) of this section.
(Code 1982, § 12-1)

Cross references: Minors prohibited in pool rooms, § 14-3; civil emergencies, ch. 30.

Sec. 50-2. Prohibited trick or treat activities.

(a) If any person 13 years of age or older shall engage in the activity commonly known as "trick or treat" or any other activity of a similar nature or character under any name whatsoever, he shall be guilty of a misdemeanor and shall be punished by fine of not less than $10.00 nor more than $50.00; however, nothing contained in this section shall be construed as prohibiting any parent, guardian or other responsible person, having lawfully in his custody a child 12 years old or younger, from accompanying such child who is playing "trick or treat," for the purpose of caring for, looking after or protecting such child.

(b) If any person shall engage in the activity commonly known as "trick or treat" or any other activity of similar character or nature under any name whatsoever, between 8:30 p.m. and 9:00 a.m., he shall be guilty of a misdemeanor and shall be punished by fine of not less than $10.00 nor more than $50.00.
(Code 1982, § 12-2)

Sec. 50-3. Obstructing justice.

(a) If any person without just cause knowingly obstructs a judge, magistrate, justice, juror, attorney for the commonwealth, witness or any law enforcement officer in the performance of his duties as such or fails or refuses without just cause to cease such obstruction when requested to do so by such judge, magistrate, justice, juror, attorney for the commonwealth, witness, or law enforcement officer, he shall be guilty of a class 1 misdemeanor.

(b) If any person, by threats or force, knowingly attempts to intimidate or impede a judge, magistrate, justice, juror, attorney for the commonwealth, witness, or any law enforcement officer, lawfully engaged in his duties as such, or to obstruct or impede the administration of justice in any court, he shall be deemed to be guilty of a class 1 misdemeanor.

(c) Any person who knowingly and willfully makes any materially false statement or representation to a law enforcement officer who is in the course of conducting an investigation of a crime by another is guilty of a class 1 misdemeanor.
(Code 1982, § 12-4)

Cross references: Resisting or obstructing officer, § 46-3.

State law references: Similar provisions, Code of Virginia, § 18.2-460.

Sec. 50-4. Assault and battery.

(a) Any person who shall commit a simple assault or assault and battery shall be guilty of a class 1 misdemeanor. However, if a person intentionally selects the person against whom a simple assault is committed because of his race, religious conviction, color or national origin, the penalty upon conviction shall include a mandatory, minimum term of confinement of at least six months, 30 days of which shall not be suspended, in whole or in part.

(b) In addition, if any person commits a battery against another knowing or having reason to know that such other person is a fulltime or part-time teacher, principal, assistant principal, or guidance counselor of any public or private elementary or secondary school and is engaged in the performance of his duties as such, he shall be guilty of a class 1 misdemeanor and the sentence of such person upon conviction shall include a mandatory, minimum sentence of fifteen days in jail, two days of which shall not be suspended in whole or in part. However, if the offense is committed by use of a firearm or other weapon prohibited on school property pursuant to Code of Virginia, § 18.2-308.1, the person shall serve a mandatory, minimum sentence of confinement of six months which shall not be suspended in whole or in part.

(c) As used in this section:

School security officer means an individual who is employed by the local school board for the purpose of maintaining order and discipline, preventing crime, investigating violations of school board policies and detaining persons violating the law or school board policies on school property, a school bus or at a school-sponsored activity and who is responsible solely for ensuring the safety, security and welfare of all students, faculty and staff in the assigned school.

(d) “Simple assault” or “assault and battery” shall not be construed to include the use of, by any teacher, principal, assistant principal, guidance counselor, or school security officer, in the course and scope of his acting official capacity, any of the following:

(1) Incidental, minor or reasonable physical contact or other actions designated to maintain order and control;

(2) Reasonable and necessary force to quell a disturbance or remove a student from the scene of a disturbance that threatens physical injury to persons or damage to property;

(3) Reasonable and necessary force to prevent a student from inflicting physical harm on himself;

(4) Reasonable and necessary force for self-defense or the defense of others; or

(5) Reasonable and necessary force to obtain possession of weapons or other dangerous objects or controlled substances or associated paraphernalia that are upon the person of the student or within his control.

In determining whether a person was acting within the exceptions provided in this subsection, due deference shall be given to reasonable judgments that were made by a teacher, principal, assistant principal, guidance counselor, or school security officer at the time of the event.
(Code 1982, § 12-5)
State law references: Similar provisions, Code of Virginia, § 18.2-57.

Sec. 50-5. Abusive language.

No person shall, in the presence or hearing of another, curse or abuse such other person, or use any violent or abusive language to such person concerning himself or any of his relations, or otherwise use such language, under circumstances reasonably calculated to provoke a breach of the peace. A violation of this section shall constitute a class 3 misdemeanor.
(Code 1982, § 12-6)
State law references: Similar provisions, Code of Virginia, § 18.2-416.

Sec. 50-6. Libel and slander.

(a) Any person who shall falsely utter and speak, or falsely write and publish, of and concerning any female of chaste character, any words derogatory of such female's character for virtue and chastity, or imputing to such female acts not virtuous and chaste, or who shall falsely utter or speak, or falsely write and publish, of and concerning another person, any words which, from their usual construction and common acceptation, are construed as insults and tend to violence and breach of the peace, or who shall use grossly insulting language to any female of good character or reputation, shall be deemed guilty of a class 3 misdemeanor.

(b) A defendant charged with a violation of this section shall be entitled to prove, upon trial and in mitigation of the punishment, the provocation which induced the libelous or slanderous words or any other fact or circumstance tending to disprove malice, or lessen the criminality of the offense.
(Code 1982, § 12-7)
State law references: Similar provisions, Code of Virginia, § 18.2-417.

Sec. 50-7. Disorderly conduct in public places.

(a) A person is guilty of disorderly conduct if, with the intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he:

(1) In any street, highway, public building, or while in or on a public conveyance or public place engages in conduct having a direct tendency to cause acts of violence by the person or persons at whom, individually, such conduct is directed.

(2) Willfully or being intoxicated, whether willfully or not, and whether such intoxication results from self-administered alcohol or other drug of whatever nature, disrupts any meeting of the governing body of any political subdivision of this commonwealth or a division or agency thereof, or of any school, literary society or

place of religious worship, if the disruption prevents or interferes with the orderly conduct of the meeting or has a direct tendency to cause acts of violence by the person or persons at whom, individually, the disruption is directed.

(3) Willfully or while intoxicated, whether willfully or not, and whether such intoxication results from self-administered alcohol or other drug of whatever nature, disrupts the operation of any school or any activity conducted or sponsored by any school, if the disruption prevents or interferes with the orderly conduct of the operation or activity or has a direct tendency to cause acts of violence by the person or persons at whom, individually, the disruption is directed.

(b) The conduct prohibited under subsection (a)(1), (2) or (3) of this section shall not be deemed to include the utterance or display of any words or to include conduct otherwise made punishable under this chapter.

(c) The person in charge of any such building, place, conveyance, meeting, operation or activity may eject there from any person who violates any provision of this section, with the aid, if necessary, of any persons who may be called upon for such purpose.
(Code 1982, § 12-8)

Cross references: Meetings of council, § 2-71 et seq., streets, sidewalks and other public places, ch. 70.

State law references: Similar provisions and authority of town to adopt above section, Code of Virginia, § 18.2-415.

Sec. 50-8. Profane swearing and intoxication in public; penalty; transportation of public inebriates to detoxification center.

If any person profanely curses or swears or is intoxicated in public, whether such intoxication results from alcohol, narcotic drug or other intoxicant or drug of whatever nature, he shall be deemed guilty of a class 4 misdemeanor. In any area in which there is located a court approved detoxification center a law enforcement officer may authorize the transportation, by police or otherwise, of public inebriates to such detoxification center in lieu of arrest; however, no person shall be involuntarily detained in such center.
(Code 1982, § 12-9)

Cross references: Streets, sidewalks and other public places, ch. 70; driving motor vehicle while under the influence of alcohol or certain drugs, § 78-93.

State law references: Similar provisions, Code of Virginia, § 18.2-388; authority of town to adopt above section, Code of Virginia, § 18.2-389.

Sec. 50-9. Use of profane, threatening or indecent language over public airways.

If any person shall use obscene, vulgar, profane, lewd, lascivious, or indecent language, or make any suggestion or proposal of an obscene nature, or threaten any illegal or immoral act with the intent to coerce, intimidate, or harass any person, over any telephone or citizens band radio, in this town, he shall be guilty of a class 1 misdemeanor.
(Code 1982, § 12-10)

State law references: Similar provisions, Code of Virginia, § 18.2-427.

Sec. 50-10. Giving certain false information to another by telephone.

If any person maliciously advises or informs another, over any telephone in this town, of the death of, accident to, injury to, illness of or disappearance of some third party, knowing the same to be false, he shall be guilty of a class 1 misdemeanor.
(Code 1982, § 12-11)
State law references: Similar provisions, Code of Virginia, § 18.2-428.

Sec. 50-11. Causing telephone to ring with intent to annoy.

(a) Any person who, with or without intent to communicate but with intent to annoy any other person, causes any telephone or digital pager, not his own, to ring or to otherwise signal, and any person who permits or condones the use of any telephone under his control for such purpose, shall be guilty of a class 3 misdemeanor.

(b) Any person who, with or without intent to converse, but with intent to annoy, harass, hinder or delay emergency personnel in the performance of their duties as such, causes a telephone to ring, which is owned or leased for the purpose of receiving emergency calls by a public or private entity providing fire, police or emergency medical service, and any person who knowingly permits the use of a telephone under his control for such purpose, shall be guilty of a class 1 misdemeanor.

(c) As used in this section, "emergency personnel" means any persons, paid or volunteer, who receive calls for dispatch of police, fire, or emergency medical service personnel, and includes law enforcement officers, firefighters, and emergency medical service personnel.
(Code 1982, § 12-12)
State law references: Similar provisions, Code of Virginia, §§ 18.2-426, 18.2-429.

Sec. 50-12. Emergency telephone calls; relinquishing party line; requesting relinquishment on false pretext.

(a) Any person who fails to relinquish a telephone party line, after he has been requested to do so, to permit another to place an emergency call, shall be guilty of a class 4 misdemeanor; however, this subsection shall not apply to any person who is himself using the telephone party line for an emergency call.

(b) Any person who requests another to relinquish a telephone party line on the pretext that he must place an emergency call, knowing such pretext to be false, shall be guilty of a class 4 misdemeanor.

(c) As used in this section, "telephone party line" means a subscribers' line circuit consisting of two or more main telephone stations connected therewith, each station with a distinctive ring or telephone number, and "emergency call" means a call to report a fire or summon police, or for medical aid or ambulance service, in a situation where human life or property is in jeopardy and the prompt summoning of aid is essential.
(Code 1982, § 12-13)
State law references: Similar provisions, Code of Virginia, §§ 18.2-424--18.2-426.

Sec. 50-13. Obstructing free passage of others.

Any person or persons who in any public place or on any private property open to the public unreasonably or unnecessarily obstructs the free passage of other persons to and from or within such place or property and who shall fail or refuse to cease such obstruction or move on when requested to do so by the owner or lessee or agent or employee of such owner or lessee or by a duly authorized law enforcement officer shall be guilty of a class 1 misdemeanor. Nothing in this section shall be construed to prohibit lawful picketing.
(Code 1982, § 12-14)
Cross references: Streets, sidewalks and other public places, ch. 70.
State law references: Similar provisions, Code of Virginia, § 18.2-404.

Sec. 50-14. 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 class 1 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 1982, § 12-22)
State law references: Similar provisions, Code of Virginia, § 18.2-387; authority of town to adopt above section, Code of Virginia, § 18.2-389.

Sec. 50-15. Petit larceny defined; how punished.

Any person who:

(1) Commits larceny from the person of another of money or other thing of value of less than $5.00; or

(2) Commits simple larceny not from the person of another of goods and chattels of the value of less than $200.00, except as provided in Code of Virginia, § 18.2-95(iii);

shall be deemed guilty of petit larceny, which shall be punishable as a class 1 misdemeanor.
(Code 1982, § 12-23)
Cross references: Definitions generally, § 1-2.
State law references: Similar provisions, Code of Virginia, § 18.2-96.

Sec. 50-16. Shoplifting.

(a) Whoever, without authority, with the intention of converting goods or merchandise to his own or another's use without having paid the full purchase price thereof, or of defrauding the owner of the value of the goods or merchandise:

(1) Willfully conceals or takes possession of the goods or merchandise of any store or other mercantile establishment; or

(2) Alters the price tag or other price marking on such goods or merchandise, or transfers the goods from one container to another; or

(3) Counsels, assists, aids or abets another in the performance of any of the above acts; shall be deemed guilty of a misdemeanor if the value of the goods or merchandise is less than $200.00. The willful concealment of goods or merchandise of any store or other mercantile establishment, while still on the premises thereof, shall be prima facie evidence of an intent to convert and defraud the owner thereof out of the value of the goods or merchandise.

(b) Any person convicted for the first time of an offense under this section shall be punished as for a class 1 misdemeanor.

(c) When a person is convicted of an offense under this section and it is alleged in the warrant, indictment or information on which he is convicted, and admitted, or found by the jury or judge before whom he is tried, that he has been before convicted in the commonwealth or in another jurisdiction for any offense of larceny or any offense deemed or punishable as larceny, or of any substantially similar offense in any other jurisdiction, regardless of whether the prior convictions were misdemeanors, felonies or a combination thereof, he shall be confined in jail not less than 30 days nor more than 12 months.

(d) Any person convicted of violating the provisions of this section shall be civilly liable to the owner for the retail value of any goods and merchandise illegally converted and not recovered by the owner, and for all costs incurred in prosecuting such person under the provisions of this section. Such costs shall be limited to actual expenses, including the base wage of one employee acting as a witness for the prosecution and suit costs; however, the total amount of allowable costs granted hereunder shall not exceed $250.00 excluding the retail value of the goods and merchandise.

(e) A merchant, or agent or employee of the merchant, who has probable cause to believe that a person has shoplifted in violation of this section or section 50-15, on the premises of the merchant, may detain such person for a period not to exceed one hour pending arrival of a law enforcement officer.

(f) A merchant, agent or employee of the merchant, who causes the arrest or detention of any person pursuant to the provisions of this section or section 50-15, shall not be held civilly liable for unlawful detention, if such detention does not exceed one hour, slander, malicious prosecution, false imprisonment, false arrest, or assault and battery of the person so arrested or detained, whether such arrest or detention takes place on the premises of the merchant, or after close pursuit from such premises by such merchant, his agent or employee, provided that, in causing the arrest or detention of such person, the merchant, agent or employee of the merchant, had at the time of such arrest or detention probable cause to believe that the person had shoplifted or committed willful concealment of goods or merchandise. The activation of an electronic article surveillance device as a result of a person exiting the premises or an area within the premises of a merchant where an electronic article surveillance device is located shall constitute probable cause for the detention of such person by such merchant, his agent or employee, provided such person is detained only in a reasonable manner and only for such time as is necessary for an inquiry into the circumstances surrounding the activation of the device, and provided that clear and visible notice is posted at each exit and location within the premises where such a device is located indicating the presence of an anti-shoplifting or inventory control device. For purposes of this section, "electronic article surveillance device" means an electronic device designed and operated for the purpose of detecting the removal from the premises, or a protected area within such premises, of specially marked or tagged merchandise.

(g) As used in this section "agents of the merchant" shall include attendants at any parking lot owned or leased by the merchant or generally used by customers of the merchant through any contract or agreement between the owner of the parking lot and the merchant.
(Code 1982, § 12-24)
State law references: Similar provisions, Code of Virginia, §§ 18.2-103--18.2-106; punishment when there are prior convictions, Code of Virginia, § 18.2-104.

Sec. 50-17. Receiving or concealing stolen goods.

If any person buys or receives from another person or aids in concealing any stolen goods or other thing, knowing the same to have been stolen, he shall be deemed guilty of larceny thereof, and may be proceeded against, although the principal offender is not convicted.
(Code 1982, § 12-25)
State law references: Similar provisions, Code of Virginia, § 18.2-108.

Sec. 50-18. Damaging or defacing property generally.

If any person willfully or maliciously damages, injures or defaces any property not his own, real or personal, public or private, he shall be guilty of a class 1 misdemeanor.
(Code 1982, § 12-26)
Cross references: Destruction of town records, § 2-141; posting advertising matter on property of another, § 6-3; tampering or interfering with fire equipment, § 42-40.
State law references: Damaging property, Code of Virginia, § 18.2-137 et seq.

Sec. 50-19. Damaging public buildings, etc.; penalty.

Any person who willfully and maliciously:

(1) Breaks any window or door of any courthouse, house of public worship, college, school house, town hall, or other public building or library;

(2) Damages or defaces any public building or any statuary in or on any public buildings or public grounds; or

(3) Destroys any property in any of such buildings'

shall be guilty of a class 1 misdemeanor if the damage to the property is less than $1,000.00.

Any person who willfully and unlawfully injures or defaces any book, newspaper, pamphlet, map, picture, manuscript or other property belonging to any library, reading room, museum or other educational institution, or unlawfully removes the same therefrom, shall be guilty of a class 1 misdemeanor if the damage to the property is less than $1,000.00. If damage to the property is $1,000.00 or more the person shall be guilty of a Class 6 felony.
(Code 1982, § 12-27)
Cross reference – Buildings and building regulations, ch. 22.
State law references: Similar provisions, Code of Virginia, § 18.2-138.

Sec. 50-20. Injuring, tampering with vehicles, aircraft, boats.

(a) Any person who shall, individually or in association with one or more others, willfully break, injure, tamper with or remove any part of any vehicle, aircraft, boat or vessel for the

purpose of injuring, defacing or destroying such vehicle, aircraft, boat or vessel, or temporarily or permanently preventing its useful operation, or for any purpose against the will or without the consent of the owner of such vehicle, aircraft, boat or vessel, or who shall in any other manner willfully or maliciously interfere with or prevent the running or operation of such vehicle, aircraft, boat or vessel, shall be guilty of a class 1 misdemeanor.

(b) Any person who shall, without the consent of the owner or person in charge of a vehicle, aircraft, boat, vessel, locomotive or other rolling stock of a railroad, climb into or upon such vehicle, aircraft, boat, vessel, locomotive or other rolling stock of a railroad, with intent to commit any crime, malicious mischief or injury thereto, or who, while a vehicle, aircraft, boat, vessel, locomotive or other rolling stock of a railroad is at rest and unattended, shall attempt to manipulate any of the levers and starting crank or other device, brakes or mechanism thereof or to set into motion such vehicle, aircraft, boat, vessel, locomotive or other rolling stock of a railroad, with the intent to commit any crime, malicious mischief or injury thereto, shall be guilty of a class 1 misdemeanor. This subsection shall not apply when any such act is done in an emergency or in furtherance of public safety or by or under the direction of an officer in the regulation of traffic or performance of any other official duty.

(c) The provisions of this section shall not apply to a bona fide repossession of a vehicle, aircraft, boat or vessel by the holder of a lien on such vehicle, aircraft, boat or vessel, or by agents or employees of such lienholder.
(Code 1982, § 12-28)

Cross references: Traffic and vehicles, ch. 78.

State law references: Similar provisions, Code of Virginia, §§ 18.2-146--18.2-148.

Sec. 50-21. Trespass after having been forbidden to do so; Designation of police to enforce trespass violations.

(a) If any person without authority of law goes upon or remains upon the lands, buildings or premises of another, or any portion or area 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 by such persons or by the holder of any easement or other right-of-way authorized by the instrument creating such interest to post such signs on such lands, structures, premises or portion or area thereof at a place or places where it or they may be reasonably seen, or if any person, whether he is the owner, tenant or otherwise entitled to the use of such land, building or premises, goes upon, or remains upon such land, building or premises after having been prohibited from doing so by a court of competent jurisdiction by an order issued pursuant to Code of Virginia, §§ 16.1-253, 16.1-253.1, 16.1-278.2 through 16.1-278.6, 16.1-278.8, or an ex parte order issued pursuant to Code of Virginia, § 20-103, and after having been served with such order, he shall be guilty of a class 1 misdemeanor. This section shall not be construed to affect in any way the provisions of Code of Virginia, §§ 18.2-132 through 18.2-136.

(b) For the purposes of this section, “person lawfully in charge” shall include members of the police department when the owner, agent or manager of the property so authorizes in writing, according to procedures set out by the chief of police. Such authorization shall be kept on file with the chief of police in such location within the police department as the chief of police deems appropriate.
(Code 1982, § 12-29; Ord. of 9-2-2003, § 1)

State law references: Similar provisions, Code of Virginia, §§ 15.2-1717.1, 18.2-119.

Sec. 50-22. Instigating trespass by others; preventing service to persons not forbidden to trespass.

If any person shall solicit, urge, encourage, exhort, instigate or procure another or others to go upon or remain upon the lands, buildings or premises of another, or any part, portion or area thereof, knowing such other person or persons to have been forbidden, either orally or in writing, to do so by the owner, lessee, custodian or other person lawfully in charge thereof, or knowing such other person or persons to have 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 reasonably be seen; or if any person shall, on such lands, buildings, premises or part, portion or area thereof prevent or seek to prevent the owner, lessee, custodian, person in charge or any of his employees from rendering service to any person or persons not so forbidden, he shall be guilty of a class 1 misdemeanor.
(Code 1982, § 12-30)

State law references: Similar provisions, Code of Virginia, § 18.2-120.

Sec. 50-23. Peeping or spying into dwelling or enclosure.

(a) It shall be unlawful for any person to enter upon the property of another and secretly or furtively peep, spy or attempt to peep or spy into or through a window, door or other aperture of any building, structure, or other enclosure of any nature occupied or intended for occupancy as a dwelling, whether or not such building, structure or enclosure is permanently situated or transportable and whether or not such occupancy is permanent or temporary, or to do the same, without just cause, upon property owned by him and leased or rented to another under circumstances that would violate the occupant's reasonable expectation of privacy

(b) It shall be unlawful for any person to use a peephole or other aperture to secretly or furtively peep, spy or attempt to peep or spy into a restroom, dressing room, locker room, hotel room, motel room, tanning bed, tanning booth, bedroom or other location or enclosure for the purpose of viewing any non-consenting person who is totally nude, clad in undergarments, or in a state of undress exposing the genitals, pubic area, buttocks or female breast and the circumstances are such that the person would otherwise have a reasonable expectation of privacy.

(c) The provisions of this section shall not apply to a lawful criminal investigation or a correctional official or local or regional jail official conducting surveillance for security purposes or during an investigation of alleged misconduct involving a person committed to the department of corrections or to a local or regional jail.

(d) As used in this section, "peephole" means any hole, crack or other similar opening through which a person can see.

(e) A violation of this section is a class 1 misdemeanor.
(Code 1982, § 12-32)

State law references: Similar provisions, Code of Virginia, § 18.2-130.

Sec. 50-24. Trespass upon church or school property.

(a) Any person who, without the consent of some person authorized to give such consent, goes or enters upon, in the nighttime, the premises or property of any church or upon any school property for any purpose other than to attend a meeting or service held or conducted in such church or school property, shall be guilty of a class 3 misdemeanor.

(b) It shall be unlawful for any person, whether or not a church member or student, to enter upon or remain upon any church or school property in violation of:

(1) Any direction to vacate the property by a person authorized to give such direction; or

(2) Any posted notice which contains such information, posted at a place where it reasonably may be seen.

Each time such person enters upon or remains on the posted premises or after such direction that person refuses to vacate such property, it shall constitute a separate offense.

A violation of this subsection shall be punishable as a class 1 misdemeanor, except that any person, other than a parent, who violates this subsection on school property with the intent to abduct a student shall be guilty of a class 6 felony.

(c) For the purposes of this section:

(1) *School property* includes a school bus as defined in Code of Virginia, § 46.2-100; and

(2) *Church* means any place of worship and includes any educational building or community center owned or leased by a church.

(Code 1982, § 12-33)
State law references: Similar provisions, Code of Virginia, § 18.2-128.

Sec. 50-25. Entering property of another for purpose of damaging it or interfering with its use.

(a) It shall be unlawful for any person to enter the land, dwelling, outhouse or any other building of another for the purpose of damaging such property or any of the contents thereof or in any manner to interfere with the rights of the owner, user or the occupant thereof to use such property free from interference.

(b) Any person violating the provisions of this section shall be guilty of a class 1 misdemeanor. However, this section shall not apply if a person intentionally selects the property entered because of the race, religious conviction, color or national origin of the owner, user or occupant of the property.
(Code 1982, § 12-34)
State law references: Similar provisions, Code of Virginia, § 18.2-121.

Secs. 50-26. 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.
(Ord. of 9-2-1997, § 1)

Secs. 50-27--50-55. Reserved.

ARTICLE II. GAMBLING

Sec. 50-56. 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:

Gambling device includes:

(1) Any device, machine, paraphernalia, equipment or other thing, including books, records and other papers, which are actually used in an illegal gambling operation or activity; and

(2) Any machine, apparatus, implement, instrument, contrivance, board or other thing, including but not limited to those dependent upon the insertion of a coin or other object for their operation, which operates, either completely automatically or with the aid of some physical act by the player or operator, in such a manner that, depending upon elements of chance, it may eject something of value or determine the prize or other thing of value to which the player is entitled; however, the return to the user of nothing more than additional chances or the right to use such machine is not deemed something of value within the meaning of this subsection; and further, machines that only sell, or entitle the user to, items of merchandise of equivalent value that may differ from each other in composition, size, shape or color, shall not be deemed gambling devices within the meaning of this subsection. Such devices are no less gambling devices if they indicate beforehand the definite result of one or more operations but not all the operations. Nor are they any less a gambling device because, apart from their use or adaptability as such, they may also sell or deliver something of value on a basis other than chance.

Illegal gambling means the making, placing or receipt, of any bet or wager in this town of money or other thing of value, made in exchange for a chance to win a prize, stake or other consideration or thing of value, dependent upon the result of any game, contest or any other event the outcome of which is uncertain or a matter of chance, whether such game, contest or event occurs or is to occur inside or outside the limits of this town.

Interstate gambling means the conduct of an enterprise for profit which engages in the purchase or sale within the town of any interest in a lottery of another state or country whether or not such interest is an actual lottery ticket, receipt, contingent promise to pay, order to purchase, or other record of such interest.

Operator includes any person who conducts, finances, manages, supervises, directs or owns all or part of an illegal gambling enterprise, activity or operation.
(Code 1982, § 9-1)

Cross references: Definitions generally, § 1-2.

State law references: Similar provisions, Code of Virginia, § 18.2-325.

Sec. 50-57. Penalty for illegal gambling.

Except as otherwise provided in this article, any person who illegally gambles or engages in interstate gambling shall be guilty of a class 3 misdemeanor. If an association or pool of persons illegally gamble, each person therein shall be guilty of illegal gambling.
(Code 1982, § 9-2)

State law references: Similar provisions, Code of Virginia, § 18.2-326.

Sec. 50-58. Winning by fraud.

If any person, while gambling, cheats or by fraudulent means wins or acquires for himself or another money or any other valuable thing, he shall be fined not less than five nor more than ten times the value of such winnings. This penalty shall be in addition to any other penalty imposed under this article.
(Code 1982, § 9-3)
State law references: Similar provisions, Code of Virginia, § 18.2-327.

Sec. 50-59. Permitting gambling to continue in one's premises.

If the owner, lessee, tenant, occupant or other person in control of any place or conveyance knows, or reasonably should know, that it is being used for illegal gambling, and permits such gambling to continue without having notified a law enforcement officer of the presence of such illegal gambling activity, he shall be guilty of a class 1 misdemeanor.
(Code 1982, § 9-4)
State law references: Similar provisions, Code of Virginia, § 18.2-329.

Sec. 50-60. Accessories to gambling activity; penalty.

Any person, other than those persons specified in other sections of this article, who knowingly aids, abets or assists in the operation of an illegal gambling enterprise, activity or operation shall be guilty of a class 1 misdemeanor.
(Code 1982, § 9-5)
State law references: Similar provisions, Code of Virginia, § 18.2-330.

Sec. 50-61. Manufacture, sale, possession, other disposition of gambling devices.

It shall be unlawful for any person to manufacture, sell, transport, rent, give away, place or possess any gambling device or conduct or negotiate any transaction affecting or designed to affect ownership, custody or use of any gambling device, believing or having reason to believe that the same is to be used in the advancement of any illegal gambling activity. A violation of any provision of this section shall constitute a class 1 misdemeanor.
(Code 1982, § 9-6)
State law references: Similar provisions, Code of Virginia, § 18.2-331.

Sec. 50-62. Forfeiture of money, gambling devices, other property seized from illegal gambling enterprise.

All money, gambling devices, office equipment and other personal property used in connection with an illegal gambling enterprise or activity, and all money, stakes and things of value received or proposed to be received by a winner in any illegal gambling transaction, which are lawfully seized by any town police officer or which shall lawfully come into his custody, shall be forfeited to the town by order of the court in which a conviction under this article is obtained. Such court shall order all money so forfeited to be paid over to the town and, by order, shall make such disposition of other property so forfeited as the court deems proper, including award of such property to any town or state agency or charitable organization for lawful purposes, or in case of the sale thereof, the proceeds therefrom to be paid over to the town. Such forfeiture shall not extinguish the rights of any person without knowledge of the illegal use of such property who is the lawful owner or who has a lien on the same which has been perfected in the manner provided by law.

(Code 1982, § 9-7)
State law references: Similar provisions, Code of Virginia, § 18.2-336.

Sec. 50-63. Certain acts not deemed "consideration" in prosecution under article.

In any prosecution under this article, no consideration shall be deemed to have passed or been given because of any person's attendance upon the premises of another; his execution, mailing or delivery of an entry blank; his answering of questions, verbally or in writing; his witnessing of a demonstration or other proceeding; or any one or more thereof, where no charge is made to, paid by, or any purchase required of him in connection therewith.
(Code 1982, § 9-8)
State law references: Similar provisions, Code of Virginia, § 18.2-332.

Sec. 50-64. Exceptions from article--Contests of speed or skill.

(a) Nothing in this article shall be construed to prevent any contest of speed or skill between men, animals, fowl or vehicles, where participants may receive prizes or different percentages of a purse, stake or premium dependent upon whether they win or lose or dependent upon their position or score at the end of such contest.

(b) Any participant who, for the purpose of competing for any such purse, stake or premium offered in any such contest, knowingly and fraudulently enters any contestant, other than the contestant purported to be entered, or knowingly and fraudulently enters a contestant in a class in which he or it does not belong, shall be guilty of a class 3 misdemeanor.
(Code 1982, § 9-9)
State law references: Similar provisions, Code of Virginia, § 18.2-333.

Sec. 50-65. Same--Games of chance in private residences.

Nothing in this article shall be construed to make it illegal to participate in a game of chance conducted in a private residence, provided such private residence is not commonly used for such games of chance and there is no operator, as defined in section 50-56.
(Code 1982, § 9-10)
State law references: Similar provisions, Code of Virginia, § 18.2-334.

Sec. 50-66. Bingo games, raffles and duck races conducted by certain organizations.

Nothing in this article shall apply to any bingo game, instant bingo, raffle, or duck race conducted solely by organizations as defined in Code of Virginia, § 18.2-340.16, which have received a permit as set forth in Code of Virginia, § 18.2-340.25, or which are exempt from the permit requirement under Code of Virginia, § 18.2-340.23.
(Code 1982, § 9-11)
State law references: Similar provisions, Code of Virginia, § 18.2-334.2.

Secs. 50-67--50-100. Reserved.

ARTICLE III. WEAPONS*

***Cross references:** Civil emergencies, ch. 30.

Sec. 50-101. Carrying concealed weapon.

(a) If any person carries about his person, hidden from common observation:

(1) Any pistol, revolver, or other weapon designed or intended to propel a missile of any kind by action of an explosion of any combustible material;

(2) Any dirk, bowie knife, switchblade knife, ballistic knife, razor, slingshot, spring stick, metal knucks, or blackjack;

(3) Any flailing instrument consisting of two or mare rigid parts connected in such a manner as to allow them to swing freely, which may be known as a nun chahka, nun chuck, nunchaku, shruiken, or fighting chain;

(4) Any disc, of whatever configuration, having at least two points or pointed blades which is designed to be thrown or propelled and which may be known as a throwing star or oriental dart; or

(5) Any weapon of like kind as those enumerated in this subsection;

he shall be guilty of a class 1 misdemeanor. Any weapon used in commission of a violation of this section shall be forfeited to the commonwealth and may be seized by an officer as forfeited, and such as may be needed for police officers, conservators of the peace, and the division of forensic science shall be devoted to that purpose, subject to any registration requirements of federal law, and the remainder shall be disposed of as provided in Code of Virginia, § 18.2-310. For the purpose of this section, a weapon shall be deemed to be hidden from common observation when it is observable but is of such deceptive appearance as to disguise the weapon's true nature.

(b) This section shall not apply to any person while in his own place of abode or the curtilage thereof.

(c) Except as provided in Code of Virginia, § 18.2-308(J1), this section shall not apply to:

(1) Any person while in his own place of business;

(2) Any police officers, including capital police officers, sergeants, sheriffs, deputy sheriffs or regular game wardens appointed pursuant to Code of Virginia, § 29.1-200 et seq.;

(3) Any regularly enrolled member of a target shooting organization who is at, or going to or from, an established shooting range, provided that the weapons are unloaded and securely wrapped while being transported;

(4) Any regularly enrolled member of weapons collecting organization who is at, or going to or from, a bona fide weapons exhibition, provided that the weapons are unloaded and securely wrapped while being transported;

(5) Any person carrying such weapons between his place of abode and a place of purchase or repair, provided the weapons are unloaded and securely wrapped while being transported;

(6) Campus police officers appointed pursuant to Code of Virginia, § 23-232 et seq.;

(7) Any person actually engaged in lawful hunting, as authorized by the board of game and inland fisheries, under inclement weather conditions necessitating temporary protection of his firearm from those conditions; and

(8) Any state police officer retired from the department of state police, any local law endorsement officer retired from a police department or sheriff's office within the commonwealth and any special agent retired from the state corporation commission or the alcoholic beverage control board:

(i) With a service-related disability; or

(ii) Following at least 15 years of service with any such law enforcement agency, board or any combination thereof, other than a person terminated for cause, provided such officer carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law enforcement officer of the last such agency from which the officer retired or, in the case of special agents, issued by the state corporation commission or the alcoholic beverage control board.

A copy of the proof of consultation and favorable review shall be forwarded by the chief or the board to the department of state police for entry into the state criminal information network. The chief law enforcement officer shall not without cause withhold such written proof if the retired law enforcement officer otherwise meets the requirements of this section.

For the purposes of applying the reciprocity provisions of Code of Virginia, § 18.2-308(P), any person granted the privilege to carry a concealed handgun pursuant to this section, while carrying the proof of consultation and favorable review required, shall be deemed to have been issued a concealed handgun permit.

(d) This section shall also not apply to any of the following individuals while in the discharge of their official duties, or while in transit to or from such duties:

(1) Carriers of the United States mail.

(2) Officers or guards of any state correctional institution;

(3) Conservators of the peace, except that the following conservators of the peace shall not be permitted to carry a concealed weapon without obtaining a permit as provided in Code of Virginia, § 18.2-308(D):

(i) Notaries public.

(ii) Registrars.

(iii) Drivers, operators or other persons in charge of any motor vehicle carrier of passengers for hire; or

(iv) Commissioners in chancery;

(4) Noncustodial employees of the department of corrections designated to carry weapons by the director of the department of corrections pursuant to Code of Virginia, § 53.1-29;

(5) Law enforcement agents of the Armed Forces of the United States and federal agents who are otherwise authorized to carry weapons by federal law while engaged in the performance of their duties;

(6) Law enforcement agents of the United States Naval Criminal Investigative Service; and

(7) Harbormaster of the City of Hopewell.

(e) This section shall not apply to any person who has been granted permission to carry a concealed weapon in accord with state law.
(Code 1982, § 22-1)
State law references: Similar provisions and authority of circuit court to grant permission to carry concealed weapons, Code of Virginia, § 18.2-308.

Sec. 50-102. Carrying dangerous weapon to place of religious worship.

If any person shall carry any gun, pistol, Bowie knife, dagger or other dangerous weapon, without good and sufficient reason, to a place of worship while a meeting for religious purposes is being held at such place, he shall be guilty of a class 4 misdemeanor.
(Code 1982, § 22-2)
State law references: Similar provisions, Code of Virginia, § 18.2-283.

Sec. 50-103. Carrying loaded firearm in public place.

(a) It shall be unlawful for any person to carry any loaded firearm in any public place, except on legally open hunting grounds and at authorized target shooting ranges. Upon a conviction of a violation of this section, any such firearm, together with the ammunition intended for use therewith, may, in the discretion of the court trying the case, be forfeited to the town by order duly entered and may be seized by an officer as forfeited, and such as may be needed for police officers and conservators of the peace shall be devoted to that purpose and the remainder shall be destroyed by the officer having them in charge.

(b) This section shall not apply to any person excepted from the provisions of section 50-101.

(c) A violation of this section shall constitute a class 1 misdemeanor.
(Code 1982, § 22-3)
Cross reference—Streets, sidewalks and other public places, ch. 70.

Sec. 50-104. Discharging firearms, airguns or slingshots.

(a) No person shall shoot, fire or discharge any firearm, BB gun or air rifle, or any slingshot or other like device for the projection of missiles, within the town.

(b) If any person willfully discharges or causes to be discharged any firearm in any street in a town, or in any place of public business or place of public gathering, and such conduct results in bodily injury to another person, he shall be guilty of a Class 6 felony. If such conduct does not result in bodily injury to another person, he shall be guilty of a class 1 misdemeanor.

(c) If any person willfully discharges or causes to be discharged any firearm upon the buildings and grounds of any public, private or parochial elementary, middle or high school, he shall be guilty of a class 4 felony, unless he is engaged in a program or curriculum sponsored by or conducted with permission of a public, private or parochial school.

(d) If any person willfully discharges or causes to be discharged any firearm upon any public property within 1,000 feet of the property line of any public, private or parochial elementary, middle or high school property he shall be guilty of a class 4 felony, unless he is engaged in lawful hunting.

(e) This section shall not apply to any law enforcement officer in the performance of his official duties nor to any other person whose said willful act is otherwise ~~discharge of a weapon is~~ justifiable or excusable at law in the protection of his life or property or is otherwise specifically authorized by law.

(f) Nothing in this section shall preclude the town from electing to prosecute under any applicable provision of law instead of this section.

(g) This section shall not apply to a shooting gallery or shooting range within the town for which a license and a permit to operate have been obtained, nor shall it apply to a person lawfully hunting or skeet or trap shooting, with specific permission of the landowner, on lands on which hunting or skeet or trap shooting is permitted under the zoning ordinance.

(h) Except as otherwise provided in this section, a violation of this section shall constitute a class 1 misdemeanor.
(Code 1982, § 22-4)
Cross references: Zoning, app. A.
State law references: Authority of town to regulate or prohibit discharge of firearms, Code of Virginia, § 15.1-865; discharging firearms in streets or public places, Code of Virginia, §§ 18.2-280, 18.2-286.

Sec. 50-105. Throwing stones or other missiles in streets.

It shall be unlawful and a class 3 misdemeanor to throw a stone or other missile in any street within the town.
(Code 1982, § 22-5)
Cross references: Streets, sidewalks and other public places, ch. 70.

Sec. 50-106. Authorization from chief of police required for sale of pistol or revolver.

(a) Any person who offers for sale, within the town, any pistol or revolver, when requested by a prospective purchaser to sell him such a firearm, shall first send the purchaser to the chief of police or his authorized representative, who shall obtain from the prospective purchaser his full name and address and the number, make and caliber of the weapon to be sold. As soon as possible after receiving such information, the chief of police shall make appropriate inquiries of state officials to ascertain whether the prospective purchaser is prohibited from purchasing such a weapon by reason of his having been convicted of a felony or any other lawful reason. In no case shall the purchaser be required to wait longer than 72 hours before either being allowed to buy the weapon or told the reason why he is not able to purchase it.

(b) Following the inquiries referred to in subsection (a) above, the chief of police shall fill out a report, either authorizing or declining to authorize the purchase of the weapon, and the purchaser shall return to the seller with this report. Should the report authorize the sale, the seller may proceed to sell the weapon requested; but if the report does not authorize the sale, the seller shall not complete the sale.

(c) The chief of police shall keep a record of all information received and reports made pursuant to this section.

(d) A violation of any provision of this section shall constitute a class 1 misdemeanor.
(Code 1982, § 22-6)

Sec. 50-107. Prohibiting the selling or having in possession blackjacks, other weapons.

If any person sells or barters, or exhibits for sale or for barter, or gives or furnishes, or causes to be sold, bartered, given or furnished, or has in his possession, or under his control, with the intent of selling, bartering, giving or furnishing, any blackjack, brass or metal knucks, any disc of whatever configuration having at least two points or pointed blades which is designed to be thrown or propelled and which may be known as a throwing star or oriental dart, switchblade knife, ballistic knife, or like weapons, such person shall be guilty of a class 4 misdemeanor. The having in one's possession of any such weapon shall be prima facie evidence, except in the case of a conservator of the peace, of his intent to sell, barter, give or furnish the same.
(Code 1982, § 22-7)

State law references: Similar provisions, Code of Virginia, § 18.2-311.

Sec. 50-108. Sale, delivery, other disposal of toy firearms discharging blank or ball charges.

(a) No person shall sell, barter, exchange, furnish or dispose of, by purchase, gift or in any other manner, any toy gun, pistol, rifle or other toy firearm, if the same shall, by means of powder or other explosive, discharge blank or ball charges. Any person violating the provisions of this section shall be guilty of a class 4 misdemeanor. Each sale of any of the articles hereinbefore specified to any person shall constitute a separate offense.

(b) Nothing in this section shall be construed as preventing the sale of what are commonly known as cap pistols.
(Code 1982, § 22-8)

State law references: Similar provisions, Code of Virginia, § 18.2-284.

Sec. 50-109. Sale or delivery of weapons to minors.

If any person sells, barters, gives or furnishes, or causes to be sold, bartered, given or furnished, to any minor a dirk, switchblade knife or Bowie knife, having good cause to believe him to be a minor, such person shall be guilty of a class 1 misdemeanor.
(Code 1982, § 22-9)

State law references: Similar provisions, Code of Virginia, § 18.2-309.

Chapters 51—53

RESERVED

Chapter 54

PEDDLERS AND SOLICITORS*

***Cross references:** Advertising, ch. 6; businesses, ch. 26; application of tax to peddlers and itinerant merchants, § 26-118; secondhand goods, ch. 62; streets, sidewalks and other public places, ch. 70; taxation, ch. 74; transient occupancy tax, § 74-151 et seq.; traffic and vehicles, ch. 78; zoning, app. A.

State law references: Regulation of certain vendors, permit fee, Code of Virginia, § 15.2-913.

Article I. In General

Sec. 54-1. Peddlers, solicitors entering residential property without invitation.
Sec. 54-2. Peddlers with business licenses.

ARTICLE I. IN GENERAL

Sec. 54-1. Peddlers, solicitors entering residential property without invitation.

The practice of going in and upon private residential property in the town by solicitors, peddlers, hawkers, itinerant merchants and transient vendors of merchandise, not having been requested or invited to do so by the owner or occupant of such property, for the purpose of soliciting orders for the sale of goods, wares and merchandise, or for the purpose of disposing of, peddling or hawking the same, is hereby declared to be a nuisance, punishable as a class 1 misdemeanor.

Sec. 54-2. Peddlers with business licenses.

The following conditions apply to peddlers with valid business licenses:

(a) Peddlers set up on private property must have valid license and written property owners permission. Licenses must be displayed at all times together with his post office address as well as property owners address and phone number.

(b) Setback and off-street parking requirements: All peddlers, including those persons who sell or offer for sale in person or by their employees ice, wood, charcoal, meats, milk, butter, eggs, poultry, fish, oysters, game, vegetables, fruits or other family supplies of a perishable nature or farm products grown and produced by them, when conducting such sales or offering such merchandise to the general public at the side of the road, shall observe the requirements of setback for structures under the Zoning Ordinance of the town in business zones, whether such sales are conducted from a building, structure, motor vehicle or tent. In addition, adequate off-street parking shall be provided by such peddler, so that the vehicles of potential purchasers may be parked entirely off the highway right-of-way so as not to cause a hazard to the vehicular traffic on such right-of-way.

(Code 1982, § 12-31)

Chapters 55—57

RESERVED

Chapter 58

PERSONNEL*

***Cross references:** Administration, ch. 2; buildings and building regulations, ch. 22; fire department, § 42-36 et seq.; law enforcement, ch. 46; solid waste, ch. 66; streets, sidewalks and other public places, ch. 70; utilities, ch. 82.

State law references: Grievance procedure, personnel system and uniform pay plan for employees, Code of Virginia, § 15.2-1506 et seq.; pensions, benefits and retirement, Code of Virginia, tit. 51.1.

Article I. In General

Sec. 58-1. Policy manual and Classification and salary plan adopted.
Sec. 58-2. Compensation.
Sec. 58-3. Participation in state retirement system and group insurance program.
Secs. 58-4--58-35. Reserved.

ARTICLE I. IN GENERAL

Sec. 58-1. Classification and salary plan adopted.

The personnel classification and salary plan dated July 1, 2004,and as amended and supplemented, is hereby adopted as the personnel classification and salary plan for all employees of the town pursuant to Code of Virginia, § 15.1-7.1.

Town employees are eligible for vacation and sick leave as stated in the adopted personnel classification and salary plan dated July 1, 2004. Other benefits and regulations are outlined are also included in same document.
(Ord. of 3-2-93) (Ord. of 7-1-04)

Sec. 58-2. Compensation.

Except as provided in this Code, nothing in this Code or the ordinance adopting this Code shall affect any ordinance prescribing or otherwise relating to the salaries, wages or other compensation of the officers and employees of the town; and all such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this Code.
(Code 1982, § 14-1)

Sec. 58-3. Participation in state retirement system and group insurance program.

(a) The town does hereby elect to have such of its employees and officers who are regularly employed full-time on a salary basis, and whose tenure is not restricted to temporary or provisional appointment, to become eligible to participate in the Virginia Retirement System under conditions set forth in Code of Virginia, § 51.1-124.2 et seq., and the group life insurance program pursuant to Code of Virginia, § 51.1-500 et seq. The town may deduct from the employees' wages, and pay over in the manner prescribed, the respective amounts required by law.

(b) The mayor and the town clerk are hereby authorized and directed, in the name of the town, to execute any required contracts in order that the employees of this town may become entitled to benefits provided under the Virginia Retirement Act. In executing any such contract, the seal of the town shall be affixed and attested by the clerk and mayor or vice-mayor. They are hereby authorized and directed to do all things incident to and necessary in the lawful conclusion of this matter.

(c) The town treasurer is hereby authorized and directed to pay such sums as are due from time to time under the retirement and insurance contracts executed by the town for its employees.
(Code 1982, § 14-2)

Secs. 58-4--58-35. Reserved.

Chapter 59—61

RESERVED

Chapter 62

SECONDHAND GOODS*

***Cross references:** Advertising, ch. 6; businesses, ch. 26; peddlers and solicitors, ch. 54; zoning, app. A.

State law references: Local regulation of automobile graveyards and junkyards, Code of Virginia, § 15.2-903; municipal regulation of pawnshops and secondhand dealers, Code of Virginia, § 15.2-1114; junkyards, Code of Virginia, § 33.1-348; local limitations as to number of pawnshops, Code of Virginia, § 54.1-4002; permit for trading in secondhand building fixtures, Code of Virginia, §§ 59.1-117, 59.1-118; report by dealer in junk or secondhand personal property to chief of police or sheriff, Code of Virginia, § 59.1-121; sale or exchange of secondhand watches, Code of Virginia, § 59.1-131 et seq.

Article I. In General

Sec. 62-1. Yard, rummage and other outdoor sales of used household items.

ARTICLE I. IN GENERAL

Sec. 62-1. Yard, rummage and other outdoor sales of used household items.

(a) The term "yard sale" or "rummage sale," as used in this section, shall specifically mean an outdoor sale for disposal of used household items, provided such sale is not held more frequently than twice a year by the property owner upon the same property, is not to exceed more than two days each and includes only items assembled from households within the town. Written or verbal permission from the property owner must be verified by Town Treasurer or his/her designee before a second party is allowed to obtain the yard sale permit.

(b) A permit issued by the town manager or his agent shall be required for all yard or rummage sales and such permit shall be prominently displayed at the sale. The fee for such permit shall be $10.00.

(c) A permit from the town manager shall also be required for all yard or rummage sales conducted on any property in zoning districts where such sales are a permitted use. Such permit shall be subject to the provisions of subsection (b) above as to display and fee.

(d) Any person conducting a sale without the permit required by this section shall be guilty of a class 1 misdemeanor.

(e) Any outdoor sale of goods, whether casual or not, which does not come under the definition of "yard sale" or "rummage sale," as set out in this section, shall be subject to the gross receipts license tax as provided for in chapter 26 of this Code.

(f) There are no rain dates and only two yard or rummage sales are allowed per property per year within the town.
(Code 1982, § 12-35)

Chapters 63—65

RESERVED

Chapter 66

SOLID WASTE*

***Charter references:** Authority of town with respect to collection and disposal of garbage and refuse, § 16.

Cross references: Disposition of dead animals, fowl or poultry, § 18-4; buildings and building regulations, ch. 22; environment, ch. 38; fire hazards from trash, brush, burnable materials, § 42-4; personnel, ch. 58; utilities, ch. 82.

State law references: Local contracts for the supply of solid waste to resource recovery facilities, Code of Virginia, § 10.1-1412; removal of trash, garbage, weeds, etc., Code of Virginia, § 15.2-901; solid waste management facility siting approval, Code of Virginia, § 15.2-929; separation of solid waste, Code of Virginia, § 15.2-937; prohibiting placement of leaves or grass clippings in landfills, Code of Virginia, § 15.2-935; ordinances requiring recycling reports, Code of Virginia, § 15.2-939; local recycling and waste disposal, Code of Virginia, § 15.2-928; regulation of garbage and refuse pickup and disposal services, certain local contracts for such services, Code of Virginia, §§ 15.2-930—15.2-932; municipal garbage and refuse disposal, Code of Virginia, § 15.2-927.

Article I. In General

Sec. 66-1. Violations of chapter.
Sec. 66-2. "Garbage" defined.
Sec. 66-3. Dumping or depositing prohibited.
Secs. 66-4--66-35. Reserved.

Article II. Receptacles

Sec. 66-36. Required; specifications.
Sec. 66-37. To be kept covered.
Sec. 66-38. Maintenance; condemnation when defective.
Sec. 66-39. Use for disposal of dead animal or fowl or liquids prohibited.
Sec. 66-40. Placement for collection; removal after collection.
Sec. 66-41. Unlawful removal or interference with.
Secs. 66-42--66-70. Reserved.

Article III. Unlawful Accumulations

Sec. 66-71. Generally.
Sec. 66-72. Notice to remove.
Sec. 66-73. Removed by town.
Sec. 66-74. Lien; penalties.

ARTICLE I. IN GENERAL

Sec. 66-1. Violations of chapter.

Unless otherwise specifically provided, a violation of any provision of this chapter shall constitute a class 3 misdemeanor.
(Code 1982, § 17-1)

Sec. 66-2. "Garbage" defined.

For the purpose of this chapter, the term "garbage" shall mean the organic waste matter, both animal and vegetable, from houses, kitchens, restaurants, boardinghouses, hotels and other such establishments comprised chiefly of waste food. "Garbage" does not include liquid that may be drained into the sewer.
(Code 1982, § 17-2)
Cross references: Definitions generally, § 1-2.

Sec. 66-3. Dumping or depositing prohibited.

It shall be unlawful for any person to dump or deposit any garbage, trash, debris, waste materials, litter, discarded materials or offensive or diseased materials upon any public or private property within the town.
(Code 1982, § 17-3)
State law references: Litter control and recycling, Code of Virginia, § 10.1-1414 et seq.; dumping trash on highways, Code of Virginia, § 33.1-346.

Secs. 66-4--66-35. Reserved.

ARTICLE II. RECEPTACLES

Sec. 66-36. Required; specifications.

(a) All garbage and other offensive matter shall be kept in receptacles meeting the requirements of this section.

(b) All residential, commercial, business, municipal and governmental premises shall provide separate receptacles for all garbage, waste and refuse set out by them for removal.

(c) Commercial and/or business premises that generate high volumes of trash, garbage and/or refuse or which generate trash, garbage and/or refuse which does not closely approximate the composition and nature of trash, garbage and refuse generated by typical residential units shall be required to make arrangements for the private collection of such trash, garbage and/or refuse.

(d) The receptacles required by this section shall be of metal or plastic construction, with tight fitting covers. Garbage receptacles shall have a capacity of not more than ~~32~~ 44 gallons, unless provided by refuse collection contractor.
(Code 1982, § 17-21)

Sec. 66-37. To be kept covered.

The covers of all garbage receptacles shall be kept in place at all times except when being filled or emptied.
(Code 1982, § 17-22)

Sec. 66-38. Maintenance; condemnation when defective.

All receptacles required by this article shall be kept in good physical condition by the occupant or owner of the premises to prevent waste and leakage. A leaky, flimsy or defective receptacle will be identified by a decal placed on the receptacle by the town's collector, whereupon the owner will have seven days to repair or replace the receptacle. If the defective receptacle is not repaired or replaced within the seven days, the receptacle, along with its contents, will be removed and disposed of.
(Code 1982, § 17-23)

Sec. 66-39. Use for disposal of dead animal or fowl or liquids prohibited.

No dead animal or fowl, water, dishwater or other liquids shall be deposited in any garbage receptacle.
(Code 1982, § 17-24)
Cross references: Animals, ch. 18.

Sec. 66-40. Placement for collection; removal after collection.

(a) Receptacles containing garbage to be collected by the town or its agent shall be placed on the premises at the curb nearest to the rear or side entrance to such premises, if collection is to be made from the rear or side, or at some convenient place near the front entrance at the curb, if collection is to be made from the front. Receptacles shall be placed at pickup site after 6:00 p.m. the day prior to scheduled collection.

(b) All receptacles in which garbage is placed and set out for removal shall, after they have been emptied, be removed by the persons to whom they belong on the day on which they are emptied. No garbage receptacle shall be set out on the street, at the curb or sidewalk again until the evening prior to the next succeeding day on which garbage is to be removed.
(Code 1982, § 17-25)

Sec. 66-41. Unlawful removal or interference with.

No person shall remove or interfere with any receptacle, or its contents set out in accord with section 66-40, except the employees or agents of the town.
(Code 1982, § 17-26)

Secs. 66-42--66-70. Reserved.

ARTICLE III. UNLAWFUL ACCUMULATIONS

Sec. 66-71. Generally.

(a) It shall be unlawful for any owner, lessee or occupant, or agent, representative or employee of the owner, lessee or occupant, having control of any parcel of land in the town, to allow or permit trash, garbage, refuse, litter or other noxious or deleterious substances that might endanger the health or safety of other residents of the town to remain on such parcel of land.

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

(c) Any condition or use of any land or premises in the city which is offensive, unwholesome, unsanitary, unhealthy, is detrimental to the property of others, or which causes or tends to cause substantial diminution of value of the property in the neighborhood in which such land or premises is located is hereby declared a nuisance. This includes but is not limited to the keeping or the depositing on, or the scattering over the land or premises of any of the following:

(1) Lumber, junk, trash, or debris;

(2) Abandoned, discarded or unused objects or equipment such as motor vehicle parts, furniture, stoves, refrigerators, freezers, cans, containers or plumbing fixtures.

Whenever it shall come to the knowledge of a designated enforcement official that such a nuisance exists, it shall be his duty to give notice to the occupant of the premises or, if unoccupied, to the owner of the premises to cause such nuisance to be abated within ten days from the date of receipt of such notice.

(d) Any occupant or owner who shall fail to abate such nuisance within the time specified in a notice given pursuant to this section shall be guilty of a class 4 misdemeanor, and each day that such nuisance is permitted to remain upon such land or premises after the expiration of the time specified in such notice shall be deemed to constitute a separate offense under this section.

(e) If such nuisance is permitted to remain on any such land or premises after the expiration of the time specified in a notice given pursuant to this section, the designated enforcement official may cause such nuisance to be removed there from, and the town may collect the expense of so doing from the owner or occupant of the land or premises by distress and sale in the same manner in which taxies levied upon real estate for the benefit of the town are authorized to be collected. Every charge authorized by this section with which the owner of the property has been assessed and which remains unpaid shall constitute a lien against such property.

(f) All sworn police officers, health inspectors, building and housing inspectors, and the Zoning Administrator are hereby designated as enforcement officers for the purposes of this section.
(Code 1982, § 17-4)

State law reference—Authority for above section, Code of Virginia, § 15.2-901.

Sec. 66-72. Notice to remove.

(a) When any condition exists on any lot or parcel of land in the town in violation of section 66-71, the town manager shall give written notice to the owner, lessee or occupant of such lot or parcel, or to his agent, employee or representative having charge or control of such lot or parcel, requiring the removal of such trash, garbage, refuse, litter or other substances within ten days. Such substances shall be removed within ten days from the date of such notice.

(b) In a case where there is no owner, lessee or occupant, or agent or representative of such owner, lessee or occupant, within the town, the notice provided for in subsection (a) of this section may be served by mailing the same to the owner at the address shown on town real estate tax records.

(Code 1982, § 17-5)

State law references: Authority for above section, Code of Virginia, §§ 15.2-901, 15.2-1115.

Sec. 66-73. Removed by town.

When a notice given pursuant to section 66-72 is not complied with within the specified time, the town manager may have the trash, garbage, refuse, litter or other substances referred to in such notice removed. The expense of such work shall be charged to the property and billed to the owner of the property. If the charge is not paid within ten days, the amount due shall be collected in the same manner as fixed by state law for the collection of taxes and shall be subject to the same penalties for delinquency, costs and fees.

(Code 1982, § 17-6)

State law references: Authority for above section, Code of Virginia, §§ 15.2-901, 15.2-1115.

Sec. 66-74. Lien; penalties.

(a) Every charge authorized by this article with which the owner of any such property shall have been assessed and which remains unpaid shall constitute a lien against such property ranking on a parity with liens for unpaid local taxes and enforceable in the same manner as provided in Code of Virginia, §§ 58.1-3940 et seq. and 58.1-3965 et seq. The town may waive such liens in order to facilitate the sale of the property. Such liens may be waived only as to a purchaser who is unrelated by blood or marriage to the owner and who has no business association with the owner. All such liens shall remain a personal obligation of the owner of the property at the time the liens were imposed.

(b) Violations of this article shall be subject to a civil penalty, not to exceed $50 for the first violation, or violations arising from the same set of operative facts. The civil penalty for subsequent violations not arising from the same set of operative facts within 12 months of the first violation shall not exceed $200.00. Each business day during which the same violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same set of operative facts result in civil penalties that exceed a total of $3,000.00 in a 12-month period.

(c) Except as provided in this subsection, subsection (b) of this section shall be in lieu of criminal penalties and shall preclude prosecution of such violation as a misdemeanor. However, such violations shall be a Class 3 misdemeanor in the event three civil penalties have previously been imposed on the same defendant for the same or similar violation, not arising from the same set of operative facts, within a 24-month period. Classifying such subsequent violations as criminal offenses shall preclude the imposition of civil penalties for the same violation.

State law reference—Authority of above section, Code of Virginia, § 15.2-901.

Chapters 67—69

RESERVED

Chapter 70

STREETS, SIDEWALKS AND OTHER PUBLIC PLACES*

***Charter references:** General authority of town relative to streets, §§ 7, 20(b).

Cross references: Miscellaneous ordinances not affected by Code, § 1-8; any ordinance authorizing, providing for or otherwise relating to any public improvement or assessments for such improvements saved from repeal, § 1-8(5); administration, ch. 2; standing committees of council, § 2-37; advertising, ch. 6; permit to display advertising matter on utility poles or across street, § 6-2; amusements and entertainments, ch. 14; abandoning domesticated animal in public place or on property of another, § 18-6; buildings and building regulations, ch. 22; dining on public sidewalks, § 26-286 et seq.; civil emergencies, ch. 30; environment, ch. 38; starting fires on streets, open lots, § 42-3; disorderly conduct in public places, § 50-7; profane swearing and intoxication on public; penalty transportation of public inebriates to detoxification center, § 50-8; obstructing free passage of others, § 50-13; carrying loaded firearm in public place, § 50-103; throwing stones or other missiles in streets, § 50-105; peddlers and solicitors, ch. 54; personnel, ch. 58; traffic and vehicles, ch. 78; riding bicycles or skateboards on sidewalks, § 78-16; utilities, ch. 82; vegetation, ch. 86; clearance between sidewalk or street and overhanging shrubs or trees, § 86-3; waterways, ch. 90; zoning, app. A; subdivisions, app. B.

State law references: Streets, alleys, sidewalks, etc., generally, Code of Virginia, § 15.2-2000 et seq.; limited access streets in cities and towns, Code of Virginia, § 15.2-2026; official map, Code of Virginia, § 15.2-2233 et seq.; bicycle trails or paths, Code of Virginia, § 15.1-16.2; official map, Code of Virginia, § 15.1-458 et seq.; local authority over highways, Code of Virginia, § 33.1-224 et seq.; pipelines and other works in streets, roads, alleys, etc., Code of Virginia, § 56-257 et seq.

Article I. In General

Sec. 70-1. Certain ordinances relating to streets not affected by Code.
Sec. 70-2. Official names of streets and alleys.
Sec. 70-3. Prerequisites to maintenance of streets by town.
Sec. 70-4. Permit for work on streets.
Sec. 70-5. Throwing or depositing certain substances upon highway; removal of such substances.
Sec. 70-6. Barriers or signs on street or sidewalk.
Sec. 70-7. Surface drainage on sidewalks.
Secs. 70-8--70-40. Reserved.

Article II. Encroachments

Sec. 70-41. Definitions.
Sec. 70-42. Existing encroachments or obstructions.
Sec. 70-43. Permit required for construction of any obstruction or encroachment.
Sec. 70-44. Permit processing fee.
Sec. 70-45. Approval of town council.
Sec. 70-46. Violations; penalty.
Secs. 70-47--70-80. Reserved.

Article III. Parades

Division 1. Generally

Sec. 70-81. Defined.
Sec. 70-82. Interference.
Sec. 70-83. Parking along parade route.
Sec. 70-84. Violations of article.
Secs. 70-85--70-115. Reserved.

Division 2. Permit

Sec. 70-116. Required; exceptions.
Sec. 70-117. Application generally.
Sec. 70-118. Town manager to act on application within five days.
Sec. 70-119. Standards for issuance.
Sec. 70-120. Contents.
Sec. 70-121. Copy to be sent to certain officials.
Sec. 70-122. Duties of permittee; permit to be carried on person.
Sec. 70-123. Not transferable.
Sec. 70-124. Notice of denial.
Sec. 70-125. Appeal from denial.
Sec. 70-126. Alternate permit.
Sec. 70-127. Revocation.
Secs. 70-128--70-160. Reserved.

Article IV. Public Assemblies

Division 1. Generally

Sec. 70-161. Defined.
Sec. 70-162. Erection or placement of structures at site.
Sec. 70-163. Violations of article.
Secs. 70-164--70-195. Reserved.

Division 2. Permit

Sec. 70-196. Required.
Sec. 70-197. Application generally.
Sec. 70-198. Town manager to act on application within five days.
Sec. 70-199. Standards for issuance.
Sec. 70-200. Contents.
Sec. 70-201. Copy to be sent to certain officials.
Sec. 70-202. Duties of permittee; permit to be carried on person.
Sec. 70-203. Not transferable.
Sec. 70-204. Notice of denial.
Sec. 70-205. Appeal from denial.
Sec. 70-206. Alternate permit.
Sec. 70-207. Revocation.

ARTICLE I. IN GENERAL

Sec. 70-1. Certain ordinances relating to streets not affected by Code.

Nothing in this Code or the ordinance adopting this Code shall affect any ordinance opening, accepting, vacating, naming or renaming any street or alley in the town or providing for the improvement thereof; and all such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this Code.
(Code 1982, § 18-1)

Sec. 70-2. Official names of streets and alleys.

(a) The names of the streets and alleys, as shown on the official street name map approved by the town council on March 6, 1962, and as amended and supplemented, are hereby declared to be the official names of the public streets and alleys of this town unless changed by the town council. All streets and alleys not shown on such map shall be named in accord with the town's subdivision ordinance.

(b) Upon application to the town and after public hearings by the planning commission and the town council, with the same notice as required for zoning changes as provided for in Code of Virginia, § 15.2-2204, the town council may, in its discretion, change the official name of a street or alley.

(c) Any person or persons applying to the town to change the official name of a street or alley shall pay to the town treasurer, at the time the application is filed, an administrative fee in the sum of $200.00.
(Code 1982, § 18-2; Ord. of 9-4-90, § 18-2)
Cross references: Subdivisions, app. B.

Sec. 70-3. Prerequisites to maintenance of streets by town.

No street opened in this town shall be deemed a public street and subject to maintenance by the town unless it shall be established, opened and constructed in accordance with the following conditions:

(1) It must be dedicated for use as a public street without reservation or restrictions.

(2) It must conform to all statutory provisions in force governing the width of public streets in a town the size of Smithfield.

(3) It must be constructed in strict accordance with the regulations and specifications of the state department of transportation governing the construction of streets in subdivisions and the provisions of the town's subdivision ordinance.
(Code 1982, § 18-3)

Sec. 70-4. Permit for work on streets.

No person shall perform any work on a dedicated street within the town without a permit from the town manager. A violation of this section shall constitute a class 1 misdemeanor.
(Code 1982, § 18-4)

Sec. 70-5. Throwing or depositing certain substances upon highway; removal of such substances.

(a) No person shall throw or deposit or cause to be deposited upon any highway any glass bottle, glass, nail, tack, wire, can, or any other substance likely to injure any person or animal, or damage any vehicle upon such highway, nor shall any person throw or deposit or cause to be deposited upon any highway any soil, sand, mud, gravel or other substances so as to create a hazard to the traveling public.

(b) Any person who drops, or permits to be dropped or thrown, upon any highway any destructive, hazardous or injurious material shall immediately remove the same or cause it to be removed. Any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle.

(c) Any persons violating the provisions of this section shall be guilty of a class 1 misdemeanor.

(d) This section shall not apply to the use, by a law enforcement officer while in the discharge of official duties, of any device designated to deflate tires. The division of purchase and supply shall, pursuant to Code of Virginia, § 2.2-1112, set minimum standards for such devices and shall give notice of such standards to law enforcement offices in the commonwealth. No such device shall be used which does not meet or exceed the standards.
(Code 1982, § 18-5)

State law references: Similar provisions, Code of Virginia, § 18.2-324.

Sec. 70-6. Barriers or signs on street or sidewalk.

(a) No person, including agents or employees of public utilities and town departments, shall erect or place any barrier or sign on any street or sidewalk in the town unless first authorized by the chief of police or the town manager.

(b) It shall be unlawful for any person to disobey the instructions of any barrier or sign placed on any street or sidewalk, when the type of the barrier or sign has been approved by the town manager and the same has been erected pursuant to authority from the chief of police or the town manager.

(c) A violation of this section shall constitute a class 4 misdemeanor.
(Code 1982, § 18-6)

Sec. 70-7. Surface drainage on sidewalks.

(a) Whenever storm sewers, curbs and gutters, natural drainage or other sufficient means of providing for the drainage of surface water are available, it shall be unlawful for the owner of any real estate situate in the town to cause or permit any such surface water to discharge or drain over, across or upon the surface of any sidewalk in the town. In the case of new construction or reconstruction, the owner shall cause to be installed sufficient facilities to dispose of all surface water under any existing sidewalk. Plans and specifications for drainage shall be submitted for approval with the application for a building or zoning permit.

(b) Any violation of this section shall constitute a class 4 misdemeanor, and each day's violation shall constitute a separate offense.

(Code 1982, § 18-7)

Secs. 70-8--70-40. Reserved.

ARTICLE II. ENCROACHMENTS*

***State law references:** Existing encroachments, Code of Virginia, §§ 15.2-2011, 15.2-2012; prevention of encroachments, Code of Virginia, § 15.2-2009.

Sec. 70-41. 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:

Encroachment means an awning, fire escape, shutter, sign, cornice, gutter, downspout, bay window or other appendage to or part of a building existing or to be constructed in, upon or over a street or other property of the town.

Other property means any land owned by the town or on which the town has an exclusive easement.

Owner means the person or persons holding legal title to a building, construction or the land upon which it is situated, either or both.

Street means every public way or place of whatever nature in the town, including alley, road, highway or sidewalk.
(Code 1982, § 18-15)
Cross references: Definitions generally, § 1-2.

Sec. 70-42. Existing encroachments or obstructions.

Every encroachment or obstruction existing prior to November 7, 1989, is conclusively presumed to have been constructed under authority of a revocable permit, which may be revoked at the pleasure of the town council or the general assembly of the commonwealth. Nothing contained in this section shall be construed to relieve the owners of negligence on their part on account of any such encroachment.
(Code 1982, § 18-16)
State law reference—Similar provisions, Code of Virginia, § 15.2-2011.

Sec. 70-43. Permit required for construction of any obstruction or encroachment.

(a) The town manager may, with the approval of the town council, grant an encroachment permit, which encroachment permit shall be only for improvements and alterations to existing structures which will not materially or unreasonably interfere with the use of any street or other property of the town by the town or the public or constitute a hazard on such street or other property, upon the following conditions:

(1) The request for such permit shall be submitted in writing on a form approved by the town manager and signed by the applicant.

(2) The application shall have attached a copy of a plat showing the exact location and extent of the encroachment or obstruction.

(3) The application shall contain a statement that the owner for himself, his administrators, executors, heirs, devisees, successors and assigns shall keep and hold the town free and harmless from any and all liability on account of any injury to any person or persons or damage to any property or properties growing out of or directly or indirectly resulting from such encroachment or obstruction and the construction, maintenance, operation or removal thereof; and in the event that any suit or proceeding shall be brought against the town, at law or in equity, either independently or jointly with others on account thereof, the applicant will defend the town in any such suit or proceeding at the cost of the applicant; and in the event of a financial judgment or decree being obtained against the town either independently or jointly with others, then the owner will pay such judgment or expenses of whatsoever nature and hold the town harmless therefrom. The application shall also contain a statement that the encroachment or obstruction will be permitted subject to all provisions and conditions contained in the Code of Virginia, the Charter of the town or any ordinance or regulation of the town.

(b) The application shall also state that the applicant will accept the permit, if issued, with the knowledge that it is revocable at the pleasure of the town council or its designee and that, upon revocation, the encroachment or obstruction will be promptly removed by the owner of the property; and upon the owner's failure to do so, the town may remove the same without liability to the owner for damages and with the right to recover from the owner all costs incurred by the town in the removal of the same.
(Code 1982, § 18-17)

Sec. 70-44. Permit processing fee.

A non-refundable processing fee of $25.00 shall accompany each application under this article to cover the cost of processing the application.
(Code 1982, § 18-18)

Sec. 70-45. Approval of town council.

Whenever an application for a permit, as provided in this article, is received by the town manager, he shall determine whether or not the provisions of this article respecting the same have been complied with and shall make known his findings to the town council, along with his recommendation, whereupon the town council shall consider the same and whether or not the granting of the permit is in the public interest and direct the town manager to either issue the permit or deny the same.
(Code 1982, § 18-19)

Sec. 70-46. Violations; penalty.

It shall be unlawful and shall constitute a misdemeanor for any person to cause an encroachment or obstruction to exist on any street or other property of the town except as permitted by law. Any person violating this section shall be subject to a fine of not less than $50.00 nor more than $250.00, and each day of the existence of such encroachment or obstruction shall constitute a separate offense.

(Code 1982, § 18-20)

Secs. 70-47--70-80. Reserved.

ARTICLE III. PARADES*

***Cross references:** Amusements and entertainments, ch. 14; environment, ch. 38; traffic and vehicles, ch. 78; driving through or in parade, § 78-94.

State law references: Equine Activity Liability Act, Code of Virginia, § 3.1-796.130 et seq.

DIVISION 1. GENERALLY

Sec. 70-81. Defined.

For the purposes of this article, the word "parade" shall mean and include any line of persons, vehicles and/or animals or any march, ceremony, show, exhibition, pageant or demonstration constituting or being a procession of any kind, or any similar display in or upon any street or municipally operated parking lot in the town.
(Code 1982, § 13-12)

Cross references: Definitions generally, § 1-2.

Sec. 70-82. Interference.

No person shall unreasonably hamper, obstruct, impede or interfere with any parade, parade assembly or any person, vehicle or animal participating or used in a parade.
(Code 1982, § 13-13)

Sec. 70-83. Parking along parade route.

The town manager shall have the authority, when reasonably necessary, to prohibit or restrict the parking of vehicles along a street or part thereof constituting a part of the route of a parade. The town manager shall cause to be posted signs to such effect and it shall be unlawful for any person to park or leave unattended any vehicle in violation thereof.
(Code 1982, § 11-70)

Sec. 70-84. Violations of article.

Unless otherwise specifically provided, a violation of any provision of this article shall constitute a class 3 misdemeanor.
(Code 1982, § 13-1)

Secs. 70-85--70-115. Reserved.

DIVISION 2. PERMIT

Sec. 70-116. Required; exceptions.

No person shall engage in, participate in, aid, form or start any parade unless a parade permit has been obtained from the town manager. This section shall not apply to:

(1) Funeral processions.

(2) Students accompanied by and under the direction and supervision of adult school authorities going to and from school classes or participating in educational activities approved by school authorities; however, this exception shall not apply to a school band marching in formation.

(3) A governmental agency acting within the scope of its functions.

(Code 1982, § 13-19)

Sec. 70-117. Application generally.

A person seeking issuance of a parade permit shall file an application with the town manager on forms provided by such officer. The application shall be filed not less than seven days nor more than 60 days before the date on which it is proposed to conduct the parade. The application shall set forth the following information:

(1) The name, address and telephone number of the person seeking to conduct the parade.

(2) If the parade is proposed to be conducted for, on behalf of or by an organization, the name, address and telephone number of the headquarters of the organization and the authorized and responsible heads of such organization.

(3) The name, address and telephone number of the parade marshal who will be responsible for the parade's conduct.

(4) The date on which the parade is proposed to be conducted.

(5) The route to be traveled, the starting point and the termination point.

(6) The location, by streets, of any assembly areas for the parade.

(7) The hours when the parade will start and terminate.

(8) The time at which units of the parade will begin to assemble at any assembly area.

(9) The approximate number of persons, animals and vehicles constituting the parade and the type of animals and a description of the vehicles.

(10) The interval of space to be maintained between units of the parade.

(11) A statement as to whether the parade will occupy all or only a portion of the width of the streets, between the sidewalks, proposed to be traversed.

(12) A statement as to whether the parade will occupy any portion of the width of the sidewalks of the streets proposed to be traversed and, if so, what portion thereof.

(13) If the parade is designed to be held by, on behalf of or for any person other than the applicant, a communication in writing from the person proposing to hold the parade, authorizing the applicant to apply for the permit on his behalf.

(14) Any additional information which the town manager shall find reasonably necessary to a fair determination as to whether a permit should be issued.

(Code 1982, § 13-20)

Sec. 70-118. Town manager to act on application within five days.

The town manager shall act upon the application for a parade permit within five days after the filing thereof.

(Code 1982, § 13-21)

Sec. 70-119. Standards for issuance.

The town manager shall issue a parade permit when, from a consideration of the application and from such other information as may otherwise be obtained, he finds that:

(1) The conduct of the parade will not substantially interrupt the safe and orderly movement of other pedestrians and vehicular traffic contiguous to its route.

(2) The conduct of the parade will not require the diversion of so great a number of police officers of the town, to properly police the line of movement and areas contiguous thereto, as to prevent normal police protection to the remainder of the town.

(3) The conduct of the parade will not require the diversion of so great a number of ambulances as to prevent normal ambulance service to other portions of the town than those to be occupied by the proposed line of march and areas contiguous thereto.

(4) The concentration of persons, animals and vehicles at assembly and termination points of the parade will not unduly interfere with proper fire and police protection of, or ambulance service to, areas contiguous to such points.

(5) The conduct of the parade will not interfere with the movement of firefighting equipment en route to a fire.

(6) The conduct of the parade is not likely to cause physical injury to persons at the assembly areas or termination point or on the route to be traveled.

(7) The parade is scheduled to move from its point of origin to its termination point expeditiously and without unreasonable delays en route.

(8) The parade is not designed to be held purely for the private profit of the person holding the parade or for the sole purpose of advertising any product or goods of such person.

(Code 1982, § 13-22)

Sec. 70-120. Contents.

Each parade permit shall state the following information:

(1) Assembly time.

(2) Starting time.

(3) Minimum speed.

(4) Maximum speed.

(5) Maximum interval of space to be maintained between the units.

(6) The portions of the streets to be traversed that may be occupied by the parade.

(7) The maximum length, in miles or fractions thereof, of the parade.

(8) The assembly area.

(9) Termination area.

(10) Such other information as the town manager shall find necessary to the enforcement of this article.

(Code 1982, § 13-23)

Sec. 70-121. Copy to be sent to certain officials.

Immediately upon the issuance of a parade permit, the town manager shall send a copy thereof to the following:

(1) The mayor.

(2) The chief of police.

(3) The fire chief.

(4) The general manager or responsible head of each public transportation utility, the regular routes of whose vehicles will be affected by the route of the proposed parade.

(Code 1982, § 13-24)

Sec. 70-122. Duties of permittee; permit to be carried on person.

A permittee under this division shall comply with all permit directions and conditions and with all other applicable laws and ordinances. The parade marshal or other person heading or leading the parade shall carry the parade permit upon his person during the conduct of the parade.

(Code 1982, § 13-25)

Sec. 70-123. Not transferable.

No permit issued pursuant to this division shall be assigned or transferred to another person by the designated permittee.
(Code 1982, § 13-26)

Sec. 70-124. Notice of denial.

If the town manager disapproves an application for a parade permit, he shall mail to the applicant, within three days after the date upon which the application was filed, a notice of his action, stating the reasons for his denial of the permit.
(Code 1982, § 13-27)

Sec. 70-125. Appeal from denial.

If the town manager denies a parade permit, the applicant shall have the right, within ten days after the notice of denial given pursuant to section 70-124, to appeal the decision of the town manager to the town council. Such appeal shall be considered by the council at its next regular meeting to be held after notice of appeal is given, in writing, by the applicant. Any person desiring to appeal from the decision rendered by the council on the appeal from the decision of the town manager shall have the right to appeal the same to the circuit court of the county, provided notice of appeal is given within ten days after the decision of the council, in writing, is given to such person.
(Code 1982, § 13-28)

Sec. 70-126. Alternate permit.

The town manager, in denying an application for a parade permit, shall be empowered to authorize the conduct of the parade on a date, at a time or over a route different from that named by the applicant. An applicant desiring to accept an alternate permit shall, within one day after notice of the action of the town manager, file a written notice of acceptance with the town manager. An alternate parade permit shall conform to the requirements of and shall have the effect of a parade permit issued under this division.
(Code 1982, § 13-29)

Sec. 70-127. Revocation.

The town manager shall have the authority to revoke a parade permit issued pursuant to this division upon violation of the standards for issuance set forth in section 70-119.
(Code 1982, § 13-30)

Secs. 70-128--70-160. Reserved.

ARTICLE IV. PUBLIC ASSEMBLIES*

***Cross references:** Civil emergencies, ch. 30; environment, ch. 38.

DIVISION 1. GENERALLY

Sec. 70-161. Defined.

As used in this article, the term "public assembly" shall mean and include any public address, lecture or discourse or any public meeting, demonstration or other assembly upon any of the streets, sidewalks or public alleys of the town or within any of the parks, municipally operated parking lots or other public property in the town. Such term shall not include a parade conducted in accord with a permit issued under article III of this chapter.
(Code 1982, § 13-41)
Cross references: Definitions generally, § 1-2.

Sec. 70-162. Erection or placement of structures at site.

No structure of a temporary or permanent nature shall be erected or placed at the site of a public assembly, except upon the written permission of the town manager.
(Code 1982, § 13-42)
Cross references: Buildings and building regulations, ch. 22.

Sec. 70-163. Violations of article.

Unless otherwise specifically provided, a violation of any provision of this article shall constitute a class 3 misdemeanor.
(Code 1982, § 13-1)

Secs. 70-164--70-195. Reserved.

DIVISION 2. PERMIT

Sec. 70-196. Required.

It shall be unlawful for any person to organize, conduct or hold, or engage or participate in, a public assembly, unless a permit for such assembly has been obtained from the town manager.
(Code 1982, § 13-48)

Sec. 70-197. Application generally.

A person seeking a permit required by this division shall file an application with the town manager on forms provided by the town manager. Such application shall be filed not less than five days nor more than 60 days before the date on which it is proposed to conduct or hold the public assembly. Such application shall set forth the following information:

(1) The name, address and telephone number of the applicant.

(2) If the public assembly is to be conducted or held for, on behalf of or by an organization, the name, address and telephone number of the headquarters of the organization and of the authorized heads of such organization.

(3) The name, address and telephone number of the person who will be in charge of the public assembly and who will be responsible for its conduct.

(4) The names and addresses of the speakers.

(5) The date and hours for which the permit is desired.

(6) The street, sidewalk, public alley, park, parking lot or property where the public assembly will be conducted or held and which portions of the street, park, parking lot or property are proposed to be used therefor.

(7) The nature and purpose of the public address, lecture, discourse, meeting, demonstration or assembly.

(8) An estimate of the anticipated attendance.

(9) If the public assembly is designed to be conducted or held by, on behalf of or for any person other than the applicant, a communication, in writing, from the person proposing to conduct or hold the assembly, authorizing the applicant to apply for the permit on his behalf.

(10) Any additional information which the town manager shall find reasonably necessary to a fair determination as to whether a permit should be issued.

(Code 1982, § 13-49)

Sec. 70-198. Town manager to act on application within five days.

The town manager shall act upon the application for a permit required by this division within five days after the filing thereof.

(Code 1982, § 13-50)

Sec. 70-199. Standards for issuance.

The town manager shall issue a permit applied for under this division when, from a consideration of the application and from such other information as may otherwise be obtained, he finds that:

(1) The place where it is proposed to conduct or hold the public assembly has not been reserved for another use on the date and hours requested in the application.

(2) All customary and reasonable rents, fees, charges or deposits, if any, required by the town or any department thereof for the use of the park or place where it is proposed to conduct or hold the public assembly will be paid by the applicant or person conducting or holding the same.

(3) The conduct of the public assembly will not substantially interrupt the safe and orderly movement of pedestrian and vehicular traffic at or contiguous to the place where the assembly is proposed to be conducted or held.

(4) The conduct of the public assembly will not require the diversion of so great a number of police officers of the town, to properly police the place where the same is conducted or held and the areas contiguous thereto, as to prevent normal police protection to the remainder of the town.

(5) The concentration of persons, animals or vehicles at the place where the public assembly is proposed to be conducted or held will not unduly interfere with proper fire and police protection of or ambulance service to areas contiguous to such place.

(6) The stated purpose of the public assembly is not to incite to violence or crime or the overthrow of the government by force.

(7) The public assembly is not designed to be conducted or held purely for the private profit of the person conducting or holding the same or for the sole purpose of advertising any product or goods of such person.

(Code 1982, § 13-51)

Sec. 70-200. Contents.

Each permit issued under this division shall state the following information:

(1) The date of the public assembly.

(2) The starting time.

(3) The termination time.

(4) The portions of the street, sidewalk, public alley, park, parking lot or other public property where the public assembly may be conducted or held.

(5) Such other information as the town manager shall find necessary to the enforcement of this article.

(Code 1982, § 13-52)

Sec. 70-201. Copy to be sent to certain officials.

Immediately upon the issuance of a permit required by this division, the town manager shall send a copy thereof to the following:

(1) The mayor.

(2) The chief of police.

(3) The fire chief.

(Code 1982, § 13-53)

Sec. 70-202. Duties of permittee; permit to be carried on person.

A permittee under this division shall comply with all the permit directions and conditions and with all applicable laws and ordinances. The person conducting or holding the public assembly shall carry the permit upon his person during the conduct of the assembly.
(Code 1982, § 13-54)

Sec. 70-203. Not transferable.

No permit issued pursuant to this division shall be transferable or assignable to another person.
(Code 1982, § 13-55)

Sec. 70-204. Notice of denial.

If the town manager disapproves an application for a permit under this division, he shall mail to the applicant, within three days after the date upon which the application was filed, a notice of his action, stating the reasons for his denial of the permit.
(Code 1982, § 13-56)

Sec. 70-205. Appeal from denial.

If the town manager denies a permit applied for under this division, the applicant shall have the right, within ten days after the notice of denial given pursuant to section 70-204, to appeal the decision of the town manager to the town council. Such appeal shall be considered by the council at its next regular meeting to be held after notice of appeal is given, in writing, by the applicant. Any person desiring to appeal from the decision rendered by the council on the appeal from the decision of the town manager shall have the right to appeal the same to the circuit court of the county, provided notice of appeal is given within ten days after the decision of the council, in writing, is given to such person.
(Code 1982, § 13-57)

Sec. 70-206. Alternate permit.

The town manager, in denying an application for a permit required by this division, shall be empowered to authorize the conduct of the public assembly on a date, at a time or at a place different from that named by the applicant. An applicant desiring to accept an alternate permit shall, within one day after notice of the action of the town manager, file a written notice of acceptance with the town manager. An alternate permit shall conform to the requirements of and shall have the effect of a permit required by this division.
(Code 1982, § 13-58)

Sec. 70-207. Revocation.

The town manager shall have the authority to revoke a permit issued under this division upon a violation of the standards for issuance set forth in section 70-199.
(Code 1982, § 13-59)

Chapters 71—73

RESERVED

Chapter 74

TAXATION*

***Charter references:** General authority of town with respect to taxes and assessments, § 9; lien for and collection of taxes and assessments, § 25; town treasurer, § 38.

Cross references: Miscellaneous ordinances not affected by Code, § 1-8;any ordinance promising or guaranteeing the payment of money by or for the town or authorizing the issuance of any bonds of the town or any evidence of the town's indebtedness or any contract or obnligation assumed by the town saved from repeal, § 1-8(1); any ordinance appropriating funds, levying or imposing taxes or relating to an annual budget saved from repeal, § 1-8(3); administration, ch. 2; alcoholic beverages, ch. 10; ; license taxes, § 10-1; amusements and entertainments, ch. 14; license tax on dancehalls, § 14-43; animals, ch. 18; buildings and building regulations, ch. 22; businesses, ch. 26; peddlers and solicitors, ch. 54; vehicle license, § 78-46 et seq.

State law references: Vote for tax levy by town council, Code of Virginia, § 15.2-1427; amount of municipal taxes and assessments to be collected, 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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ARTICLE I. IN GENERAL

Sec. 74-1. Penalty for late filing of returns of tangible personal property, machinery and tools and merchant's capital.

There is hereby imposed a penalty for late filing of annual returns of taxable tangible personal property, machinery and tools and merchants' capital, or for failure to file such returns, which penalty shall be in the amount of ten percent of the tax assessable on such returns or $10.00, whichever is greater; however, the penalty shall in no case exceed the amount of the tax assessable.
(Code 1982, § 19-1)

State law references: Authority for above section, Code of Virginia, § 58.1-3916.

Sec. 74-2. Penalty and interest on delinquent taxes on real estate, tangible personal property and machinery and tools and merchants' capital.

There is hereby imposed a penalty for late payment of annual taxes or levies on real estate and tangible personal property, machinery and tools and merchants' capital, which penalty shall be in the amount of ten percent of the tax past due on such property or $10.00, whichever is greater; however, the penalty shall in no case exceed the amount of tax due. There is hereby imposed an interest charge on delinquent taxes at a rate in the amount of ten percent per annum, which interest shall commence on the first day of the month following the month in which such taxes are due to be paid.
(Code 1982, § 19-2)

Cross references: Payment of personal property taxes prerequisite to licensing of vehicle, § 78-50.

State law references: Authority for above section, Code of Virginia, § 58.1-3916.

Sec. 74-3. Property subject to taxation.

All real estate, tangible personal and chattel property and machinery and tools and all other taxable property, except as otherwise provided in this article, and except such property as is exempted by law, shall be subject to such annual taxation as may be prescribed by the town council.
(Code 1982, § 19-3)

Sec. 74-4. Lien for taxes and levies on real estate.

There shall be a lien upon real estate for the payment of the taxes and levies assessed thereon by the town council, prior to any other lien or encumbrance thereon, from the commencement of the year for which they are assessed. Such lien shall continue to be such prior lien until payment shall have been made to the treasurer or collection is barred by law. The words "taxes" and "levied," as used in this article, shall include the penalties and interest accruing on such taxes and levies in pursuance of law. The lien imposed hereby shall be enforceable by all means provided by law for the collection of taxes and levies.
(Code 1982, § 19-4)

Sec. 74-5. Assessment of property.

The town treasurer shall ascertain and assess, at the fair market value, taxes on all real estate and tangible personal and chattel property, machinery and tools and all other property subject to taxation, not exempt from taxation, in the town on the first day in each year, except as otherwise provided in this article, at the rate and penalty prescribed by this article upon the values so ascertained. Until otherwise provided by the town council, the town treasurer shall make such assessments upon the basis of the assessments made upon the property and furnished by the commissioner of the revenue of the county to the town treasurer of this town, or upon the basis of other information.
(Code 1982, § 19-5)

Sec. 74-6. Tax year.

Except where otherwise specifically provided, the tax year shall begin on January 1 of each year and shall end on December 31 of each year, and all assessments shall be made as of January 1 of each year.
(Code 1982, § 19-6)

Sec. 74-7. Personal property tax on motor vehicles, trailers and boats; proration thereof.

(a) There shall be a personal property tax at a rate established each year by the town council on motor vehicles, trailers, semitrailers and boats, hereafter referred to in this section as "taxable property," which have a situs within the town on January 1 of each year and which acquire a situs within the town on or after January 2 of each year. When taxable property acquires a situs within the town on or after January 2, the personal property tax for that year shall be assessed to the owner prorated on a monthly basis for the portion of the tax year during which the taxable property has situs within the town. When taxable property with a situs in the town is transferred to a new owner within the town, the personal property tax shall be assessed to the new owner prorated on a monthly basis for the portion of the tax year during which the new owner owns the taxable property. For purposes of proration, a period of one-half of a month or more shall be counted as a full month and a period less than one-half of a month shall not be counted. All taxable property shall be assessed as of January 1 of each year or, if it acquires situs or has its title transferred after January 1, as of the first day of the month in which the taxable property acquires situs within the town or has its title transferred. The owner of taxable property acquiring situs within the town or to whom taxable property is transferred shall file a declaration of property ownership to the commissioner of the revenue for the county within 30 days of the date on which such property acquires a situs within the town or has its title transferred to such owner.

(b) When any taxable property loses its situs within the town or its title is transferred to a new owner, the taxpayer shall from that time be relieved from personal property tax on such property and receive a refund of personal property tax already paid, or a credit against personal property taxes outstanding against the taxpayer, at the option of the treasurer of the town, on a monthly prorated basis, upon application to the commissioner of the revenue for the county if application is made within one year from the last day of the tax year which the taxable property lost situs or had its title transferred. Such refund 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.

(c) Any person who fails to pay personal property taxes on or before the date due shall incur a penalty of ten percent of the tax due, or $10.00, whichever is greater; however, the penalty shall in no case exceed the amount of tax due. This sum shall become part of the taxes due. Interest at the rate of ten percent per annum from the first day following the day such taxes are due shall be paid upon the principal and penalties of such taxes remaining unpaid.

(d) An exemption from this tax and any penalties arising therefrom shall be granted for any tax share or portion thereof during which the property was legally assessed by another jurisdiction and proof is presented to the treasurer of the town indicating that such tax on the assessed property was paid.
(Ord. of 9-7-93(3), § 19-6.1)

Cross reference—Traffic and vehicles, ch. 78.

State law references: Authority for above section, Code of Virginia, § 58.1-3516.

Sec. 74-8. Taxes to be extended on basis of assessment.

Taxes for each year on all property subject to assessment shall be extended by the town treasurer on the basis of the last assessment made prior to such year, subject to such changes and reassessments as may have been lawfully made. In the event of a lawful reassessment, including a general reassessment, made by the county after January 1, and prior to the date of adoption and levy of the tax rate, the taxes for such year shall be extended on the basis of the reassessment.
(Code 1982, § 19-7)

Sec. 74-9. Tax rate.

There shall be levied, assessed and collected a general levy or tax, in an amount determined annually by the town council, upon each $100.00 worth of property subject to local levy or taxation at its assessed value, except the net capital of banks as is otherwise provided for in this Code.
(Code 1982, § 19-8)

Sec. 74-10. Deduction of taxes due town by persons in whose favor town warrants are drawn.

In the payment of any warrants lawfully drawn on account of allowances made against the town, the treasurer of the town paying the warrants shall first deduct all taxes due by the party in whose favor the warrant is drawn. If such warrant is insufficient to pay the entire amount due, then such treasurer shall credit the tax bill by the amount of the warrant.
(Code 1982, § 19-9)

Sec. 74-11. Tax tickets--Form.

The town council shall prescribe the forms of tax tickets to be used by the town, and the treasurer shall follow the forms so prescribed, in which shall be stated the name and address of the taxpayer, the year for which the taxes and levies are due, the subjects of taxation, the value of the property taxed, the tax rate, the rate and amount of penalty, when the penalty attaches, the rate and amount of interest, when the interest attaches, the total amount of taxes, levies, penalty and interest, and the date of payment, when delinquent. The treasurer shall deliver to each taxpayer from whom he has collected taxes or levies such tax tickets as are so prescribed, showing the date of payment.

(Code 1982, § 19-10)

Sec. 74-12. Same--Mailing to taxpayers.

The treasurer shall, as soon as possible in each year, but not later than November 21, mail to each taxpayer assessed with taxes and levies for that year a bill in the form prescribed in section 74-11.
(Code 1982, § 19-11)

Sec. 74-13. When due and payable.

All taxes shall be due and payable on December 5 of the year for which such taxes are assessed. The treasurer shall commence to receive taxes and levies as soon as the assessments provided for in this article are completed and continue to receive the same up to and including December 5, without penalty.
(Code 1982, § 19-12)

Sec. 74-14. When taxes and levies are delinquent; reporting and recording of delinquent list.

All taxes and levies assessed in the town that are not paid on or before December 5 of the assessment year shall be, for the purposes of this article, deemed to be delinquent; and the treasurer shall make and furnish to the town council a list of all property that is delinquent for the nonpayment of taxes and levies thereon, with the amount of such taxes and levies charged thereon, not later than its March regular meeting immediately after December 5 of the assessment year. The treasurer shall return to and file with the clerk of the circuit court of the county a list of all real estate that is delinquent for the nonpayment of taxes and levies, with the amount of such taxes, levies and penalties charged thereon, not later than March 15 of the year next following the assessment year.
(Code 1982, § 19-12.1)

Sec. 74-15. How tax payments are to be credited.

Any payment of taxes received shall be credited first against the most delinquent tax account, the collection of which is not subject to a defense of an applicable statute of limitations.
(Code 1982, § 19-12.2)

Sec. 74-16. Motor vehicles owned by members of a volunteer rescue squad or volunteer fire department.

(a) One motor vehicle which is regularly used by each member of a volunteer rescue squad or volunteer fire department to respond to calls shall be classified for local taxation separately from other classifications of tangible personal property, provided that in January of each year, the volunteer shall furnish the commission of the revenue of the county, or other assessing officer, and the treasurer of the town with a certification by the chief or head of the volunteer organization, that the volunteer is a member of the volunteer rescue squad or fire department who regularly responds to calls or regularly performs other duties for the rescue squad or fire department, and the motor vehicle is identified as regularly used for such purpose.

(b) Such motor vehicles enumerated in subsection (a) shall be exempt from taxation as tangible personal property.

(Code 1982, § 19-12.3)

Sec. 74-17. Exemption or deferral for the elderly and handicapped.

(a) Real estate tax exemption or deferral is provided for qualified property owners or partial owners who are either:

(1) Heads of households and 65 years of age and older; or

(2) Permanently and totally disabled and who are eligible according to other terms of this section as provided in subsection (b) of this section.

(b) Exemption or deferral shall be granted to qualifying persons subject to the following provisions:

(1) The title of the property for which exemption or deferral is claimed is held or partially held on December 31 of the immediately preceding taxable year by the person claiming exemption or deferral;

(2) The person claiming the exemption or deferral was, as of December 31 of the year immediately preceding the taxable year, either:

a. Sixty-five years of age or older, or

b. Permanently and totally disabled, which, for the purposes of this section, means to be unable to engage in any substantial gainful activity by reason 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.

(3) The total combined income during the immediately preceding calendar year from all sources of the owners of the dwelling living therein does not exceed $30,000.00; provided, that the first $5,000.00 of income of each relative, other than spouse, of the owner or owners, who is living in the dwelling, shall not be included in such total;

(4) The net combined financial worth, including equitable interests, as of December 31 of the immediately preceding calendar year, of the owners and the spouse of any owner, excluding the value of the dwelling and the land not exceeding one acre upon which it is situated, does not exceed $100,000.00;

(5) Changes in respect to income, financial worth, ownership of property or other factors occurring during the taxable year for which the affidavit shown in subsection (f)(2) of this section is filed and having the effect of exceeding or violating the limitations and/or conditions of this section shall nullify any relief from real estate tax liability for the current taxable year and the taxable year immediately following.

(c) When the person or persons claiming exemption or deferral conforms to the standards and does not exceed the limitations contained in this section, the tax exemption or deferral is on the

sole dwelling owned and occupied by the applicant or applicants and up to one acre of land upon which the dwelling is situated.

(d) If the person elects exemption, the real estate described in this section shall be exempt from the following percentages of the real estate taxes based upon the total combined income as described in paragraph (b)(3) above:

Range of Income	*Exemption*	
0 - $12,000.00	100%	up to a maximum exemption of $600.00
$12,001.00 - $22,000.00	75%	up to a maximum exemption of $600.00
$22,001.00 - $30,000.00	50%	up to a maximum exemption of $600.00
$30,001.00 and above	0%	

provided, that if the ownership of the property for which the application is made is not held solely by the applicant or jointly with the applicant's spouse, then the amount of the tax exemption, hereunder, shall be in proportion to the applicant's ownership interest in the subject real property, as that ownership interest may appear.

(e) If the person elects deferral of real estate taxes granted by this section, the accumulated amount of taxes deferred shall be paid, without penalty and without interest on the amount so deferred upon the sale of the property or one year from the date of the death of the owner of the property, who received this deferral, and from that time on interest shall be at the rate of eight percent per annum until paid. Such deferred real estate taxes shall constitute a lien upon such real estate.

(1) The town treasurer or her authorized designee shall administer the exemption or deferral according to the general provisions of this section. The town treasurer is hereby authorized and directed to prescribe forms and make such further inquiry of persons applying for exemption, or deferral, including the requirements of answers under oath, production of certified tax returns and appraisal reports or other proofs, as may be reasonably necessary to determine income, financial worth and qualifications.

(2) Annually, and not later than October 15 of the taxable year, the person or persons claiming an exemption or deferral must file a real estate tax exemption affidavit with the town treasurer. The affidavit shall set forth, in a manner prescribed by the town treasurer, the location and assessed value of the property, the names of related persons occupying the dwelling for which exemption or deferral is claimed, the gross combined incomes of such persons, the net combined financial worth of such persons, the age or nature of the disability of the applicant and, if the person is eligible for social security, a certification by the Social Security Administration or, if such person is not eligible for social security, a sworn affidavit by two medical doctors licensed to practice in the state, to the effect that such person is permanently and totally disabled as defined in subsection (b)(2)b. of this section.

(f) Any person who has title to real estate transferred to his name after he becomes permanently and totally disabled or reaches age 65, solely for purposes of obtaining the benefits permitted under this section, shall be disqualified from obtaining the exemption or deferral created by this section.

(g) This section shall apply to tax bills due in June, 1993 and semiannually thereafter until amended or repealed.
(Ord. of 6-29-98)

State law references: Authority of town to enact this section, Code of Virginia, § 58.1-3210 et seq.

Sec. 74-18. Deferrals.

(a) Deferral of taxation of real estate and mobile homes is provided for qualified property owners or partial owners who are either:

(1) Heads of households and 65 years of age and older; or

(2) Permanently and totally disabled and who are eligible according to other terms of this section as provided in subsection (b) of this section.

(b) Deferral shall be granted to qualifying persons subject to the following provisions:

(1) The title of the property for which deferral is claimed is held or partially held on December 31 of the immediately preceding taxable year by the person claiming deferral.

(2) The person claiming deferral was, as of December 31 of the immediately preceding taxable year, either:

a. Sixty-five years of age or older; or

b. Permanently and totally disabled, which, for the purposes of this section, means to be unable to engage in any substantial gainful activity by reason 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.

(3) The total combined income during the immediately preceding calendar year from all sources of the owners of the dwelling living therein does not exceed $30,000.00; provided, that the first $5,000.00 of income of each relative, other than spouse, of the owner or owners, who is living in the dwelling, shall not be included in such total.

(4) The net combined financial worth, including equitable interests, as of December 31 of the immediately preceding calendar year, of the owners and the spouse of any owner, excluding the value of the dwelling and the land not exceeding one acre upon which it is situated, does not exceed $100,000.00.

(5) Changes in respect to income, financial worth, ownership of property or other factors occurring during the taxable year for which the affidavit shown in subsection (d) of this section is filed and having the effect of exceeding or violating the limitations and/or conditions of this section shall nullify any relief from real estate tax liability for the current taxable year and the taxable year immediately following.

(c) When the person or persons claiming deferral conforms to the standards and does not exceed the limitations contained in this section, the tax deferral is on the sole dwelling owned and

occupied by the applicant or applicants and up to one acre of land upon which the dwelling is situated.

(d) In the event of a deferral of real estate taxes granted by ordinance, the accumulated amount of taxes deferred shall be paid to the town by the vendor upon the sale of the dwelling, or from the estate of the decedent within one year after the death of the last owner thereof who qualifies for tax deferral by the provisions of sections 74-17 and 74-18 of the Town Code. Such deferred real estate taxes shall be paid without penalty within said one year period. Thereafter, interest shall accrue as to the accumulated amount of taxes deferred at the annual rate of eight percent until paid. The deferred taxes and interest, if applicable, shall constitute a lien upon the said real estate as if it had been assessed without regard to the deferral. Any such lien shall, to the extent that it exceeds in the aggregate ten percent of the price for which such real estate may be sold, be inferior to all other liens of record.

(e) The town treasurer or her authorized designee working in cooperation with the commissioner of revenue for the county shall administer the deferral according to the general provisions of this section. The town treasurer is hereby authorized and directed to prescribed forms and make such further inquiry of persons applying for deferral, including the requirements of answers under oath, production of certified tax returns and appraisal reports or other proofs, as may be reasonably necessary to determine income, financial worth and qualifications.

(1) Annually, and not later than October 15 of the taxable year, the person or persons claiming a deferral must file a real estate tax deferral affidavit with the commissioner of revenue who shall provide copies to the town treasurer. The affidavit shall set forth, in a manner prescribed by the town treasurer the location and assessed value of the property, the names of related persons occupying the dwelling for which deferral is claimed, the gross combined incomes of such persons, the net combined financial worth of such persons, the age or nature of the disability of the applicant.

(2) If the 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 subsection (b)(2)b. of this section; however, a certification pursuant to 42 U.S.C. § 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 this section. 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 this section.

(f) Any person who has title to real estate transferred to his name after he becomes permanently and totally disabled or reaches age 65, solely for purposes of obtaining the benefits permitted under this section, shall be disqualified from obtaining the deferral created by this section.

(g) This section shall apply to tax bills due in June 1993 and semiannually thereafter until amended or repealed.
(Ord. of 6-29-98)

State law references: Authority of town to enact this section, see Code of Virginia, § 58.1-3210 et seq.

Sec. 74-19. Notice of local real estate tax exemption or deferral program for the elderly and handicapped.

The town treasurer shall enclose written notice, in each real estate tax bill, of the terms and conditions of the real estate tax exemption or deferral program established pursuant to sections 74-17 and 74-18 above. The treasurer shall also employ any other reasonable means necessary to notify residents of the town about the terms and conditions of the real estate tax exemption or deferral program for elderly and handicapped residents of the town.
(Ord. of 6-29-98)

Sec. 74-20. Absence from residence.

The fact that persons who are otherwise qualified for tax exemption or deferral pursuant to this article 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 tax exemption or deferral 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.
(Ord. of 6-29-98)

Sec. 74-21. Care provided by a relative.

Notwithstanding the other provisions of this article, if a person qualifies for an exemption or deferral under this article, and if the person can prove by clear and convincing evidence that the person's physical or mental health has deteriorated to the point that the only alternative to permanently residing in a hospital, nursing home, convalescent home or other facility for physical or mental care is to have a relative move in and provide care for the person, and if a relative does then move in for that purpose, then none of the income of the relative or of the relative's spouse shall be counted towards the income limit, provided the owner of the residence has not transferred assets in excess of $5,000.00 without adequate consideration within a three-year period prior to or after the relative moves into such residence.

State law reference—Similar provisions, Code of Virginia, § 58.1-3211.

Secs. 74-22--74-50. Reserved.

ARTICLE II. BANK FRANCHISE TAX

Sec. 74-51. Definitions.

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

Bank shall be defined as provided in Code of Virginia, § 58.1-1201.

Net capital means a bank's net capital computed pursuant to Code of Virginia, § 58.1- 1205.
(Code 1982, § 19-13)
Cross references: Definitions generally, § 1-2.

Sec. 74-52. Imposed.

(a) Pursuant to the provisions of Code of Virginia, § 58.1-1200 et seq., there is hereby imposed upon each bank located within the boundaries of the town a tax on net capital equaling 80 percent of the state rate of franchise tax set forth in Code of Virginia, § 58.1- 1204.

(b) If any bank located within the boundaries of the town also has offices that are located outside the town, the tax upon such branch shall be apportioned as provided in Code of Virginia, § 58.1-1211.
(Code 1982, § 19-14)
State law references: Authority for above tax, Code of Virginia, § 58.1-1200 et seq.

Sec. 74-53. Returns, schedules to be filed.

(a) On or after January 1 of each year, but not later than March 1 of any such year, all banks whose principal offices are located within the town shall prepare and file with the town treasurer a return, as provided by Code of Virginia, § 58.1-1207, which shall set forth the tax on net capital computed pursuant to Code of Virginia, § 58.1-1200 et seq. The town treasurer shall certify a copy of the bank's return and schedules and shall forthwith transmit such certified copy to the state department of taxation.

(b) If the principal office of a bank is located outside the corporate boundaries of this town and such bank has branch offices located within this town, in addition to the filing requirements set forth in subsection (a) above, any bank conducting such branch business shall file with the commissioner of the revenue of the county a copy of the real estate deduction schedule, apportionment and other items which are required by Code of Virginia, §§ 58.1-1207, 58.1-1211 and 58.1-1212.
(Code 1982, § 19-15)

Sec. 74-54. Payment of tax.

Each bank, on or before June 1 of each year, shall pay into the town treasurer's office all taxes imposed pursuant to this article.
(Code 1982, § 19-16)
State law references: Similar provisions, Code of Virginia, § 58.1-1207.

Sec. 74-55. Penalty upon bank for failure to comply with article.

Any bank which fails to file a return or pay the tax required by this article or fails to comply with any other provision of this article shall be subject to a penalty of five percent of the tax due. If the commissioner of the revenue is satisfied that such failure is due to providential or other good cause, such return and payment of tax shall be accepted exclusive of such penalty, but with interest determined in accordance with Code of Virginia, § 58.1-15.
(Code 1982, § 19-17)
State law references: Similar provisions, Code of Virginia, § 58.1-1216.

Secs. 74-56--74-85. Reserved.

ARTICLE III. TAX ON PURCHASERS OF UTILITY SERVICES*

***Cross references:** License tax on telephone and telegraph companies, § 26-41; license tax on water and heat, light and power companies, § 26-42; utilities, ch. 82.

Sec. 74-86. Definitions.

Consumer means every person who, individually or through agents, employees, officers, representatives or permittees, makes a taxable purchase of electricity or natural gas services in this jurisdiction.

Gas utility means a public utility authorized to furnish natural gas service in Virginia.

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

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 Code of Virginia § 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.

Pipeline distribution company means a person, other than a pipeline transmission company which transmits, by means of a pipeline, natural gas, manufactured gas or crude petroleum and the products or byproducts thereof to a purchaser for purposes of furnishing heat or light.

Residential consumer means the owner or tenant of property used primarily for residential purposes, including but not limited to, apartment houses and other multiple-family dwellings.

Service provider means a person who delivers electricity to a consumer or a gas utility or pipeline distribution company which delivers natural gas to a consumer.

Used primarily relates to the larger portion of the use for which electric or natural gas utility service is furnished.
(Code 1982, § 19-28; Ord. of 10-3-00(2), § 1)
Cross references: Definitions generally, § 1-2.

Sec. 74-87. Electric utility consumer tax.

(a) In accordance with Code of Virginia § 58.1-3814, 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:

(1) *Residential consumers:* Such tax shall be $0.70 plus the rate of $0.007408 on each kWh delivered monthly to residential consumers by a service provider not to exceed $1.00 monthly.

(2) *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:

(a) Commercial consumers - such tax shall be $1.15 plus the rate of $0.006630 on each kWh delivered monthly to commercial consumers, not to exceed $70.00 monthly.

(b) Industrial consumers - such tax shall be $1.15 plus the rate of $0.006630 on each kWh delivered monthly to industrial consumers, not to exceed $70.00 monthly.

(3) 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.

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

The United States of America, the Commonwealth and the political subdivisions, boards, commissions and authorities thereof, including this jurisdiction and church sanctuaries and church buildings used primarily for religious services, assemblies and instruction.

(c) *Billing, collection and remittance of tax.* The service provider shall bill the electricity consumer tax to all users who are subject to the tax and to whom it delivers electricity and shall remit the same to this jurisdiction on a monthly basis. Such taxes shall be paid by the service provider to this jurisdiction in accordance with Code of Virginia § 58.1- 3814, paragraphs F. and G., and Code of Virginia § 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 this jurisdiction of the name and address of such consumer. If any consumer fails to pay a bill issued by a service provider, including the tax imposed by this section, the service provider must follow its normal collection procedures and upon collection of the bill or any part thereof must apportion the net amount collected between the charge for electric service and the tax and remit the tax portion to this jurisdiction. Any tax paid by the consumer to the service provider shall be deemed to be held in trust by such provider until remitted to this jurisdiction.

(d) *Computation of bills not on monthly basis.* Bills shall be considered as monthly bills for the purposes of this section 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:

(1) The kWh will be divided by two:

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

(3) The tax determined by subsection (d)(2) shall be multiplied by two; and

(4) The tax subsection (d)(3) may not exceed twice the monthly “maximum tax”.

(Code 1982, § 19-29; Ord. of 10-3-00(2), § 1; Ord. of 12-5-00, § 2)

State law references: Authority to impose above tax, Code of Virginia, § 58.1-3814.

Sec. 74-88. Local natural gas utility consumer tax.

(a) In accordance with Code of Virginia § 58.1-3814, there is hereby imposed and levied a monthly tax on each purchase of natural gas delivered to consumers by pipeline distribution companies and gas utilities classified by "class of consumers" as such term is defined in Code of Virginia § 58.1-3814 J., as follows:

(1) *Residential consumers:* Such tax on residential consumers of natural gas shall be $1.00. per month.

(2) *Non-residential consumers:* Such tax on non-residential consumers shall be at the rates per month shown for each CCF delivered by a pipeline distribution company or a gas utility for the classes as set forth below:

(a) Commercial consumers - such tax shall be $2.33 plus the rate of $0.056 on each CCF delivered monthly to commercial consumers, not to exceed $70.00 monthly.

(b) Industrial consumers - such tax shall be $2.33 plus the rate of $0.056 on each CCF delivered monthly to industrial consumers, not to exceed $70.00 monthly.

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

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

The United States of America, the Commonwealth and the political subdivisions, boards, commissions and authorities thereof, including this jurisdiction and church sanctuaries and church buildings used primarily for religious services, assemblies and instruction.

(c) *Billing, collection and remittance of tax.* The service provider shall bill the natural gas consumer tax to all users who are subject to the tax and to whom it delivers natural gas and shall remit the same to this jurisdiction on a monthly basis. Such taxes shall be paid by the service provider to this jurisdiction in accordance with Code of Virginia § 58.1-3814, paragraphs H. and I., and Code of Virginia § 58.1-2901. If any consumer receives and pays for natural gas billed but refuses to pay the tax imposed by this section, the service provider shall notify this jurisdiction of the name and address of such consumer. If any consumer fails to pay a bill issued by a service provider, including the tax imposed by this section, the service provider must follow its normal collection procedures and upon collection of the bill or any part thereof must apportion the net amount collected between the charge for electric service and the tax and remit the tax portion to this jurisdiction. Any tax paid by the consumer to the service provider shall be deemed to be held in trust by such provider until remitted to this jurisdiction.

(d) *Computation of bills not on monthly basis.* Bills shall be considered as monthly bills for the purposes of this section 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:

(1) The CCF will be divided by two;

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

(3) The tax determined by subsection (d)(2) shall be multiplied by two; and

(4) The tax in subsection (d)(3) may not exceed twice the only “maximum tax.”
(Code 1982, § 19-30; Ord. of 10-3-00(2), § 1; Ord. of 12-5-00, § 3)

Sec. 74-89. Seller's records.

Every service provider shall keep complete records showing all purchases of utility services in the town, which records shall show the price charged against each consumer with respect to each purchase, the number of kilowatt hours or CCF delivered to each consumer, the date thereof, the date of payment thereof and the amount of tax imposed under this article. Such records shall be kept open for inspection by the duly authorized agent of the town at reasonable times; and the duly authorized agent of the town shall have the right, power and authority to make such transcripts thereof during such times as they may desire.
(Code 1982, § 19-31; Ord. of 10-3-00(2), § 1)

Sec. 74-90. Penalties.

Any consumer of electricity or natural gas failing, refusing or neglecting to pay the tax imposed and levied under this ordinance, and any officer, agent or employee of any service provider violating the provisions of this ordinance shall, upon conviction thereof, be punished by a fine of not less than $25.00 nor more than $ 1,000.00, or by imprisonment in jail for not more than 60 days, or by both such fine and imprisonment. Each such failure, refusal, neglect or violation shall constitute a separate offense. Such conviction shall not relieve any person from the payment, collection and remittance of the tax as provided in this article.
(Code 1982, § 19-32; Ord. of 10-3-00(2), § 1)

Secs. 74-91--74-99. Reserved.

ARTICLE IV. LOCAL TELECOMMUNICATION SERVICES TAX

Sec. 74-100. Definitions.

As used in this article, unless the context clearly requires otherwise:

Affiliated group shall have the same meaning ascribed to it in the Code of Virginia, § 58.1-3703(C)(10), except, for purposes of this article, the word "entity" shall be substituted for the word "corporation" whenever it is used in that section.

Bad debts means any portion of a debt related to a sale of local telecommunication services, the gross charges for which are not otherwise deductible or excludable, that has become worthless or uncollectible, as determined under applicable federal income tax standards. If the portion of the debt deemed to be bad is subsequently paid, the service provider shall report and pay the tax on that portion during the reporting period in which the payment is made.

Consumer means a person who, individually or through agents, employees, officers, representatives, or permittees, makes a taxable purchase of local telecommunication services.

Enhanced services means services that employ computer processing applications to act on the format, code, or protocol or similar aspects of the information transmitted; provide additional, different, or restructured information; or involve interaction with stored information.

Gross charges means, subject to the exclusions of this article, the amount charged or paid for the taxable purchase of local telecommunication services. However, "gross charges" shall not include the following:

(1) Charges or amounts paid that vary based on the distance and/or elapsed transmission time of the communication that are separately stated on the consumer's bill or invoice.

(2) Charges or amounts paid for customer equipment, including such equipment that is leased or rented by the customer from any source, if such charges or amounts paid are separately identifiable from other amounts charged or paid for the provision of local telecommunication services on the service provider's books and records.

(3) Charges or amounts paid for administrative services, including, without limitation, service connection and reconnection, late payments, and roamer daily surcharges.

(4) Charges or amounts paid for special features that are not subject to taxation under § 4251 of the Internal Revenue Code of 1986, as amended.

(5) Charges or amounts paid that are (i) the tax imposed by § 4251 of the Internal Revenue Code of 1986, as amended, or (ii) any other tax or surcharge imposed by statute, ordinance or regulatory authority.

(6) Bad debts.

Local telecommunication service subject to the exclusions stated in this section, includes, without limitation, the two-way local transmission of messages through use of switched local telephone services; telegraph services; teletypewriter; or local mobile telecommunications services.

Local telephone service subject to the exclusions stated in this section, includes any service subject to federal taxation as local telephone service as that term is defined in § 4252 of the Internal Revenue Code of 1986, as amended or any successor statute.

Mobile local telecommunication service means commercial radio service, as defined in 47 C.F.R. § 20.3 as in effect on June 1, 1999.

Mobile service consumer means a person having a telephone number for mobile local telecommunication service who has made a taxable purchase of such service or on whose behalf another person has made a taxable purchase of such service.

Mobile service provider means every person engaged in the business of selling mobile local telecommunication services to consumers.

Residential consumer shall not include any consumer of mobile local telecommunication service.

Service address means the location of the telecommunication equipment from which the telecommunication is originated or at which the telecommunication is received by a consumer. However, if the service address is not a defined location, as in the case of maritime systems, air-to-ground systems and the like, service address shall mean the location of the subscriber's primary use of the telecommunication equipment within the licensed service area. In the case of mobile telecommunications service, service address shall mean the customer’s place of primary use.

Service provider means every person engaged in the business of selling local telecommunication services to consumers.

Taxable purchase means the acquisition of telecommunication services for consumption or use; however, taxable purchase does not include:

(1) The provision of telecommunications among members of an affiliated group of entities by a member of the group for their own exclusive use and consumption; and

(2) The purchase of telecommunications for resale in the subsequent provision of telecommunications, including, without limitation, carrier access charges, right of access charges, and charges for use of intercompany facilities;

however, the acquisition of telecommunications by a provider of enhanced services is not the purchase of telecommunications for resale, even when the cost of the telecommunications is separately stated to the purchaser of the enhanced services, as long as the primary object of the purchase of the telecommunications by the provider is for the provision of enhanced services and not telecommunications. A person may make tax-free purchases of telecommunications for resale if the person provides to the service provider a sworn affidavit indicating that the person's purchases are nontaxable sales for resale.
(Ord. of 12-5-00, § 4)

Sec. 74-101. Local telecommunications service consumer tax.

(a) In accordance with Code of Virginia § 58.1-3812, there is hereby imposed and levied a monthly tax at a rate of ten percent (10%) of the monthly gross charge to a consumer of local telecommunication service which shall not be applicable to any amount so charged in excess of ten dollars ($10.00) per month for a residential consumer; and which shall not be applicable to any amount so charged in excess of seven hundred dollars ($700.00) for a non-residential consumer. Notwithstanding the foregoing, the tax is imposed at a rate of ten percent (10%) of the monthly gross charge to a consumer of mobile local telecommunication service and shall not be applicable to any amount so charged in excess of twenty-five dollars ($25.00) per month for each mobile service consumer.

(b) A service provider of local telecommunication services 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 denied to be held in trust by the service provider until remitted to the town.

(c) A 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, less any discount allowed under § 59.1-3816.1of the Code of Virginia of 1950, as amended.
(Ord. of 12-5-00, § 4)

Sec. 74-102. Exemptions.

(a) An exemption from the foregoing tax is hereby granted to any public safety answering point as defined in section 58.1-3813.1 of the Code of Virginia, as amended, and to any church or religious body entitled to an exemption pursuant to article 4 (section 8.1-3650 et seq.) of chapter 36 of title 58.1 of the Code of Virginia of 1950, as amended.

(b) The United States of America, the State of Virginia, and the political subdivisions, boards, commissions, agencies and authorities thereof, and all educational institutions are hereby exempted from the payment of the tax imposed and levied under this article with respect to the purchase of local telecommunication services.
(Ord. of 12-5-00, § 4)

Sec. 74-103. Seller's records.

Every service provider shall keep complete records showing all purchases of local telecommunication services, which records shall show the price charged against each consumer with respect to each purchase, the gross charges to each consumer, the date thereof, the date of payment thereof and the amount of tax imposed under this article. Such records shall be kept open for inspection by the duly authorized agent of the town at reasonable times; and the duly authorized agent of the town shall have the right, power and authority to make such transcripts thereof during such times as they may desire.
(Ord. of 12-5-00, § 4)

Sec. 74-104. Penalties.

Any consumer failing, refusing or neglecting to pay the tax imposed and levied under this article, and any officer, agent or employee of any service provider violating the provisions of this article shall, upon conviction thereof, be punished by a fine of not less than $25.00 nor more than $ 1,000.00, or by imprisonment in jail for not more than 60 days, or by both such fine and imprisonment. Each such failure, refusal, neglect or violation shall constitute a separate offense. Such conviction shall not relieve any person from the payment, collection and remittance of the tax as provided in this section.
(Ord. of 12-5-00, § 4)

Secs. 74-105--74-120. Reserved.

ARTICLE V. MEALS TAX*

***State law references:** Municipal taxes and assessments, Code of Virginia, § 15.1-1104; meals tax, Code of Virginia, § 58.1-3840.

Sec. 74-121. Definitions.

The following words and phrases, when used in this article, shall have, for the purposes of this article, the following respective meanings except where the context clearly indicates a different meaning:

Cater means the furnishing of food, beverages, or both on the premises of another for compensation.

Collector means the treasurer or designee.

Food means 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 means 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, cafe, 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 means 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.

Treasurer means the treasurer and any duly designated deputies, assistants, inspector or other employees.
(Ord. of 6-25-96, § 1(19-41); Ord. of 7-5-00(2), § 1)
Cross references: Definitions generally, § 1-2.

Sec. 74-122. Levy of tax.

There is hereby imposed and levied by the town on each person a tax at the rate of four 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 $0.50 or less; on larger amounts a fractional cent of tax due shall be rounded to the next higher cent.
(Ord. of 6-25-96, § 1(19-42); Ord. of 6-6-00(1), § 1)

Sec. 74-123. Collection of tax by seller.

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 article from the 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, as set forth in the Code of Virginia, § 51.5-98, 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.
(Ord. of 6-25-96, § 1(19-43); Ord. of 7-5-00(2), § 1)

Sec. 74-124. Collections in trust for town.

All amounts collected by the seller as taxes under this article shall be deemed to be held in trust by the seller collecting them until remitted to the town as provided by this article.
(Ord. of 6-25-96, § 1(19-44))

Sec. 74-125. Report of taxes collected; remittance; preservation of records.

It shall be the duty of every person required by this article to pay to the town the taxes imposed by this article to make a report thereof setting forth such information as the treasurer may prescribe and require, including 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. Such records shall be kept and preserved for a period of five years. The treasurer or her duly authorized agents shall have the power to examine such records at reasonable times and without unreasonable interference with the business of such persons, for the purpose of administering and enforcing the provisions of this article, and to make transcripts of all or any parts thereof.
(Ord. of 6-25-96, § 1(19-45); Ord. of 7-5-00(2), § 1)

Sec. 74-126. Discount.

For the purpose of compensating sellers for the collection of the tax imposed by this article, every seller shall be allowed three percent of the amount of the tax due and accounted for in the form of a deduction on his quarterly return provided the amount due is not delinquent at the time of payment.
(Ord. of 6-25-96, § 1(19-46))

Sec. 74-127. Penalty and interest.

If any person whose duty it is to do so shall fail or refuse to make the report or remit the tax required by this article within the time and in the amount required, there shall be added to the tax by the treasurer a penalty in the amount of ten percent of the tax, and interest thereon at the rate of ten percent per annum, which shall be computed upon the tax and penalty from the date such were due and payable.
(Ord. of 6-25-96, § 1(19-47))

Sec. 74-128. Procedure when tax not reported or collected.

If any person whose duty it is to do so shall fail or refuse to collect the tax imposed under this article and make timely report and remittance thereof, the treasurer shall proceed in such manner as is practicable to obtain facts and information on which to base an estimate of the tax due. As soon as the treasurer has procured whatever facts and information may be obtainable, upon which to base the assessment of any tax payable by any person who has failed to collect, report or remit such tax, the treasurer shall proceed to determine and assess against such person the tax, penalty and interest provided in this article and shall notify the person, by registered mail sent to his last

known address, of the amount of such tax, penalty and interest. The total amount thereof shall be payable ten days after the date such notice is sent.
(Ord. of 6-25-96, § 1(19-48))

Sec. 74-129. Preservation of records.

It shall be the duty of every person liable for collection and remittance of the taxes imposed by this article to preserve for a period of two years records showing all purchases taxable under this article, the amount charged the purchaser for each such purchase, the date thereof, the taxes collected thereon, and the amount of tax required to be collected by this article. The treasurer shall be authorized to examine such records at reasonable times and without unreasonable interference with the business of such person, for the purpose of administering and enforcing the provisions of this article and to make transcripts of all or any parts thereof.
(Ord. of 6-25-96, § 1(19-49))

Sec. 74-130. Duty of person going out of business.

Whenever any person required to collect and remit to the town any tax imposed by this article shall cease to operate or otherwise dispose of his business, the tax shall immediately become due and payable; and the person shall immediately make to the treasurer a report and remittance thereof.
(Ord. of 6-25-96, § 1(19-50))

Sec. 74-131. 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 anyone else, or that the seller or anyone else will relieve any purchaser of the payment of all or any part of the tax.
(Ord. of 6-25-96, § 1(19-51))

Sec. 74-132. Gratuities and service charges.

Where a purchaser provides a gratuity for any employee of a seller, and the amount of the gratuity is wholly in the discretion of the purchaser, the gratuity is not subject to the tax imposed by this 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 gratuity is turned over to the employee by the seller. An amount or percent, whether designated as gratuity, tip or service charge, that is added to the price of the food and beverages by the seller, and required to be paid by the purchaser, as a part of the selling price of the food and beverages and is subject to the tax imposed by this article.
(Ord. of 6-25-96, § 1(19-52); Ord. of 7-5-00(2), § 1)

Sec. 74-133. Exemptions; limits on application.

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

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

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

(2) *Food sold in bulk.* For the purposes of this 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.

(3) Alcoholic and nonalcoholic beverages sold in factory sealed containers.

(4) Any tangible personal property 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.

(5) Food purchased for home consumption as defined in the Federal Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, and federal regulations adopted pursuant to that act, except for the following items:

(a) Sandwiches;

(b) Salad bar items sold from a salad bar;

(c) Prepackaged single-serving salads consisting primarily of an assortment of vegetables; and

(d) Non-factory sealed beverages.

This subsection shall not affect provisions set forth in subparagraphs (d)(3), (4) and (5) herein below.

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

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

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

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

(3) 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.

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

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

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

(7) Food and beverages sold through vending machines.

(Ord. of 6-25-96, § 1(19-53); Ord. of 7-5-00(2), § 1)

Sec. 74-134. Enforcement.

(a) It shall be the duty of the treasurer to ascertain every seller in the town liable for the collection of the tax imposed by this article, who fails, refuses or neglects to collect such tax or to make the reports and remittances required by this article. The treasurer may have issued a summons for such person, and this summons may be served upon such person by any town police officer in the manner provided by law; and the treasurer may seek a conviction or other civil remedy, including injunction, against such person.

(b) If the purchaser of any meal refuses to pay the tax imposed by this article, the seller may call upon the police department for assistance; and the investigating officer may, when probable cause exists, issue the purchaser a summons returnable to the general district court as provided by law.

(Ord. of 6-25-96, § 1(19-54))

Sec. 74-135. Penalty for violation of article.

(a) Any person willfully failing or refusing to file a return as required under this article 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 article shall be guilty of a class 1 misdemeanor.

(b) Except as provided in subsection (a) above, any corporate, partnership or limited liability company officer, as defined in Code of Virginia, § 58.1-3906, or any other person required to collect, account for, or pay over the meals tax imposed under this article, 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 article 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 article.
(Ord. of 6-25-96, § 1(19-55); Ord. of 7-5-00(2), § 1)

Sec. 74-136. Regulations.

The treasurer may issue regulations for the administration and enforcement of this article not in conflict with this article.
(Ord. of 6-25-96, § 1(19-56))

Secs. 74-137--74-150. Reserved.

ARTICLE VI. TRANSIENT OCCUPANCY TAX*

***Cross reference—**Peddlers an solicitors, ch. 54.

Sec. 74-151. Levy of tax.

In addition to all other taxes and fees of any kind now or hereafter imposed by law, a tax is hereby imposed and levied on hotels, motels, boarding houses, travel campgrounds, and other facilities offering guest rooms rented out for continuous occupancy for fewer than thirty consecutive days, at the rate of five percent of the amount of the charge for the occupancy of any room or space occupied. The tax imposed hereunder shall not apply to rooms or spaces rented and continuously occupied by the same individual or same group of individuals for 30 or more days.
(Ord. of 6-6-00(2), § 1)

Sec. 74-152. Payment and collection of tax.

The tax required by this article shall be collected by the business or person offering the room or space for occupancy and paid by the person occupying the room or space at the time the charge for occupancy becomes due and payable, whether payment is to be made in cash or on credit by means of a credit card or otherwise. The business or person collecting the tax shall add the tax to the amount charged for the occupancy of the room or space and shall pay the taxes collected to the town as provided in this article.
(Ord. of 6-6-00(2), § 1)

Sec. 74-153. Collections in trust for town.

All amounts collected by the business or person offering the room or space for occupancy as taxes under this article shall be deemed to be held in trust by the business or person collecting them until remitted to the town as provided by this article.
(Ord. of 6-6-00(2), § 1)

Sec. 74-154. Reports and remittances.

The treasurer shall require all prospective businesses or persons offering rooms or space for occupancy in the town to register for collection of the tax imposed by this article. Every business

or person offering the room or space for occupancy shall make a report to the town for each calendar quarter, showing the amount of charges collected for meals and the amount of tax required to be collected. The quarterly reports shall be made on forms prescribed by the treasurer and shall be signed by an employee of the business or the person offering the room or space for occupancy. The report shall be delivered to the treasurer on or before the 20th day of the calendar month following the quarter being reported. Each report shall be accompanied by a remittance of the amount of tax due, made payable to the town.
(Ord. of 6-6-00(2), § 1)

Sec. 74-155. Commission.

For the purpose of compensating businesses or persons offering rooms or space for occupancy for the collection of the tax imposed by this article, every businesses or persons offering rooms or space for occupancy shall be allowed a commission for such service in the amount of three percent of the amount of the tax due and accounted for in the form of a deduction from the tax remitted on their quarterly return provided the amount due is not delinquent at the time of payment.
(Ord. of 6-6-00(2), § 1)

Sec. 74-156. Penalty and interest.

If any person whose duty it is to do so shall fail or refuse to make the report or remit the tax required by this article within the time and in the amount required, there shall be added to the tax by the treasurer a penalty in the amount of ten percent of the tax, and interest thereon at the rate of ten percent per annum, which shall be computed upon the tax and penalty from the date such were due and payable.
(Ord. of 6-6-00(2), § 1)

Sec. 74-157. Procedure when tax not reported or collected.

If any person whose duty it is to do so shall fail or refuse to collect the tax imposed under this article and make timely report and remittance thereof, the treasurer shall proceed in such manner as is practicable to obtain facts and information on which to base an estimate of the tax due. As soon as the treasurer has procured whatever facts and information may be obtainable, upon which to base the assessment of any tax payable by any person who has failed to collect, report or remit such tax, the treasurer shall proceed to determine and assess against such person the tax, penalty and interest provided in this article and shall notify the person, by registered mail sent to his last known address, of the amount of such tax, penalty and interest. The total amount thereof shall be payable ten days after the date such notice is sent.
(Ord. of 6-6-00(2), § 1)

Sec. 74-158. Preservation of records.

It shall be the duty of every person liable for collection and remittance of the taxes imposed by this article to preserve for a period of two years records showing all purchases taxable under this article, the amount charged the purchaser for each such purchase, the date thereof, the taxes collected thereon, and the amount of tax required to be collected by this article. The treasurer shall be authorized to examine such records at reasonable times and without unreasonable interference with the business of such person, for the purpose of administering and enforcing the provisions of this article and to make transcripts of all or any parts thereof.
(Ord. of 6-6-00(2), § 1)

Sec. 74-159. Duty of person going out of business.

Whenever any person required to collect and remit to the town any tax imposed by this article shall cease to operate or otherwise dispose of his business, the tax shall immediately become due and payable; and the person shall immediately make to the treasurer a report and remittance thereof.
(Ord. of 6-6-00(2), § 1)

Sec. 74-160. Advertising payment or absorption of tax prohibited.

No business or person offering rooms or space for occupancy 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 business or person offering rooms or space for occupancy or anyone else, or that the business or person offering rooms or space for occupancy or anyone else will relieve any purchaser of the payment of all or any part of the tax.
(Ord. of 6-6-00(2), § 1)

Sec. 74-161. Enforcement.

(a) It shall be the duty of the treasurer to ascertain every seller in the town liable for the collection of the tax imposed by this article, who fails, refuses or neglects to collect such tax or to make the reports and remittances required by this article. The treasurer may have issued a summons for such person, and this summons may be served upon such person by any town police officer in the manner provided by law; and the treasurer may seek a conviction or other civil remedy, including injunction, against such person.

(b) If the person occupying any room or space applicable to taxation pursuant to this article refuses to pay the tax imposed by this article, the business or person offering rooms or space for occupancy may call upon the police department for assistance; and the investigating officer may, when probable cause exists, issue the purchaser a summons returnable to the general district court as provided by law.
(Ord. of 6-6-00(2), § 1)

Sec. 74-162. Violations.

(a) It shall be unlawful and constitute a misdemeanor for any person to violate any of the provisions of this article. Except as other wise provided in this section, any conviction or violation of any of the provisions of this article shall be punishable by a fine of not less than $10.00 nor more than $500.00, or imprisonment for up to 30 days, or both. Each day any such violation of the provisions of this article shall continue to constitute a separate offense.

(b) Any corporate, partnership or limited liability company officer who willfully fails to pay, collect, or truthfully account for and pay over the food and beverage tax or willfully attempts in any manner to evade or defeat such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable for a penalty of the amount of tax evaded or not paid, collected, or accounted for and paid over, to be assessed and collected in the same manner as such taxes are assessed and collected.

(c) The term “corporate, partnership or limited liability company officer” as used in this section means an officer or employee of a corporation, or a member, or employee of a partnership or member, manager or employee of a limited liability company who, as such officer, employee,

member or manager, is under a duty to perform on behalf of the corporation, partnership or limited liability company the act in respect of which the violation occurs and who:

(1) had actual knowledge of the failure or attempt as set forth in this section; and

(2) had authority to prevent such failure or attempt.

(d) Any corporate or partnership officer, or any other person required to collect, account for and pay over the food and beverage 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 class 1 misdemeanor.
(Ord. of 6-6-00(2), § 1)

State law reference—Similar provisions, Code of Virginia, § 58.1-3907.

Sec. 74-163. Regulations.

The treasurer may issue regulations for the administration and enforcement of this article not in conflict with this article.
(Ord. of 6-6-00(2), § 1)

Secs. 74-164--74-200. Reserved.

ARTICLE VII. CIGARETTE TAX

Sec. 74-201. 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:

Treasurer means the treasurer of the town and any of her duly authorized deputies and agents.

Dealer means every manufacturer, jobber, wholesale dealer or other person who supplies a seller with cigarettes.

Package means every package, box, can or other container of any cigarettes, irrespective of the material from which such container is made, in which retail sales of cigarettes are normally made or intended to be made.

Purchaser means every person to whom title to any cigarettes is transferred by a seller for any valuable consideration within the corporate limits of the town.

Sale means every act or transaction, irrespective of the method or means employed, including the use of vending machines and other mechanical devices, whereby title to any cigarettes shall be transferred from the seller to any other person within the corporate limits of the town, for any valuable consideration.

Seller means every person who transfers for any valuable consideration title to any cigarettes, or in whose place of business title to any cigarettes is transferred, within the corporate limits of the town, for any purpose other than resale.

Stamp means a small gummed piece of paper or decalcomania to be sold by the treasurer and to be affixed to every package of cigarettes sold at retail in the town, and also any insignia or symbols printed by a meter machine upon any such package under the authorization of the commissioner of the revenue.
(Ord. of 6-6-00(3), § 1)

Sec. 74-202. Rate and amount of tax on sale of cigarettes.

For each and every fiscal year beginning July ~~1~~ 1 and ending June 30 of each such year, unless otherwise changed by the town council, there is hereby levied and imposed by the town, upon each and every sale of cigarettes, a tax equivalent to $0.0125 for each cigarette sold within the town, the amount of tax to be paid by the seller, if not previously paid, in the manner and at the time provided in this article.
(Ord. of 6-6-00(3), § 1)
Cross reference: Definitions generally, §1-2.

Sec. 74-203. How tax paid.

The tax imposed by this article shall be paid by affixing or causing to be affixed a stamp of the proper denominational or face value to each and every package of cigarettes sold within the town, in the manner and at the time provided in section 74-202. Every dealer and every seller of cigarettes shall have the right to buy such stamps from the treasurer and to affix the stamps to packages of cigarettes as provided in this article.
(Ord. of 6-6-00(3), § 1)

Sec. 74-204. Duties of dealers and sellers.

(a) Every local dealer in cigarettes is required, and it shall be his duty, to purchase such stamps at the office of the treasurer as shall be necessary to pay the tax levied and imposed by this article and to affix, or cause to be affixed, a stamp of the monetary value prescribed by this article to each package of cigarettes prior to delivery or furnishing of such cigarettes to any seller; however, nothing contained in this section shall preclude any dealer from using a stamp meter machine in lieu of gummed stamps to effectuate the provisions of this article.

(b) Stamps, or the printed markings of a meter machine, shall be placed upon each package of cigarettes in such manner as to be readily visible to the purchaser.

(c) Every seller is required to examine each package of cigarettes prior to exposing the package for sale, for the purpose of ascertaining whether such package has the proper stamps affixed to or imprinted on the package, as provided by this article.

(d) If upon such examination unstamped or improperly stamped packages of cigarettes are discovered, the seller, where such cigarettes were obtained from a local dealer, shall immediately notify such dealer; and upon such notification, such dealer shall forthwith either affix to or imprint upon such unstamped or improperly stamped packages the proper amount of stamps, or shall replace such packages with others to which stamps have been properly affixed or imprinted on.

(e) Should a seller have in his possession any unstamped or improperly stamped cigarettes, or should a seller obtain or acquire possession from any person other than a local dealer any unstamped or improperly stamped cigarettes, such seller shall, forthwith, before selling, offering or exposing such cigarettes for sale in the town, purchase and affix or cause to be affixed to each package of cigarettes the proper stamps, or the markings of a meter machine, covering the tax imposed by this article.
(Ord. of 6-6-00(3), § 1)

Sec. 74-205. Preparation, sale of stamps.

For the purpose of making stamps available for use, the treasurer shall prescribe, prepare and sell, stamps of such denominations and in such quantities as may be necessary for the payment of the taxes imposed by this article. In the sale of such stamps, the treasurer shall allow a discount of eight percent of the denominational or face value of the stamps to cover the costs incurred in affixing the stamps to packages of cigarettes. If the printing by an authorized meter machine is used in lieu of gummed stamps, there shall be allowed a discount of eight percent of the denominational or face value of the imprints of such stamps so printed by such meter machine to cover the costs incurred in printing such imprints.
(Ord. of 6-6-00(3), § 1)

Sec. 74-206. New design of stamps.

The treasurer, as often as she may deem advisable, provide for the issuance and exclusive use of stamps of a new design, and forbid the use of stamps of any other design.
(Ord. of 6-6-00(3), § 1)

Sec. 74-207. Meter machines.

The treasurer is authorized to permit the payment in advance of the tax levied and imposed by this article by the method of placing imprints of stamps upon original packages by the use of meter machines in lieu of the method of paying such tax by the purchase and affixing of gummed stamps, and to prescribe and enforce the necessary regulations setting forth the method to be employed and the conditions to be observed in the use of such meter machines.
(Ord. of 6-6-00(3), § 1)

Sec. 74-208. Use by wholesaler of dual die to evidence payment of cigarette taxes.

The treasurer may enter into an arrangement with the state department of taxation under which any tobacco wholesaler who so desires may use a dual die to evidence the payment of both the tax levied by this article and the state tax on cigarettes.
(Ord. of 6-6-00(3), § 1)

Sec. 74-209. Refund for unused stamps and imprints.

(a) Should any person, after acquiring from the treasurer any stamps provided for in this article, cease to be engaged in a business necessitating the use of such stamps, or should any such stamps become mutilated and unfit for use other than by cancellation, such person shall be entitled to a refund of the denominational or face amount of any such stamps so acquired and not used by him less eight percent of their denominational or face amount, upon presenting the stamps to the treasurer with an affidavit showing to his satisfaction that the stamps were acquired by such person and have not in any manner been used, and the reason for requesting the refund.

(b) In the case of any authorized meter machine, should any imprints of such machine heretofore paid for not be used, such person shall, upon furnishing the treasurer with a similar affidavit, be entitled to a refund of the denominational or face amount of the machine less eight percent of the denominational or face amount of the imprints of the machine not so used.

(c) Any and all refunds for unused and mutilated stamps and for nonuse of imprints of such stamps by meter machines provided for under this section are authorized to be made on vouchers approved by the treasurer; and, when made, they shall be charged against the sums collected for the sale of the stamps and for the use of such imprints.
(Ord. of 6-6-00(3), § 1)

Sec. 74-210. Seizure and sale of cigarettes by commissioner of the revenue.

Whenever the treasurer shall discover any cigarettes subject to the tax imposed by this article and upon which the tax has not been paid or upon which stamps have not been affixed or evidence of such tax shown by the printed markings of an authorized meter machine, the treasurer is hereby authorized and empowered to forthwith seize and take possession of such cigarettes, which shall thereupon be deemed to be forfeited to the town; and she may, within a reasonable time thereafter, after written notice posted on the bulletin board in the Town Hall at least five days before the date of sale, sell such forfeited cigarettes at the time and place designated in such notice, and from the proceeds of such sale shall collect the tax due, together with a penalty of 50 percent and the costs incurred in such proceedings, and pay the balance, if any of such proceeds to the person in whose possession such forfeited cigarettes were found; however, such seizure and sale shall not be deemed to relieve any person from any fine provided for the violation of the provisions of this article. All moneys collected under the provisions of this section shall be paid to the treasurer and treated as other taxes collected under this article.
(Ord. of 6-6-00(3), § 1)

Sec. 74-211. Illegal acts.

It shall be unlawful and a violation of this article for any person to:

(1) Perform any act or fail to perform any act, for the purpose of evading the payment of any tax imposed by this article; for any dealer or seller, with intent to violate any provision of this article, to fail or refuse to perform any of the duties imposed upon him under the provisions of this article or to fail or refuse to obey any lawful order the treasurer may issue under this article;

(2) Falsely or fraudulently make, forge, alter or counterfeit any stamp or the printed markings of any meter machine, or to procure or cause to be made, forged, altered or counterfeited any such stamp or printed markings of a meter machine, or knowingly and willfully to alter, publish, pass or tender as true any false, altered, forged or counterfeited stamp or stamps or printed markings of a meter machine;

(3) Sell any cigarettes upon which the tax imposed by this article has not been paid and upon which evidence of payment of the tax is not shown on each package of cigarettes;

(4) Reuse or refill with cigarettes any package from which cigarettes, for which the tax imposed has been heretofore paid, have been removed; or

(5) Remove from any package any stamp or the printed markings of a meter machine

with intent to use or cause them to be used after they have already been used, or to buy, sell or offer for sale or give away any used, removed, altered or restored stamps or printed markings of a meter machine to any person, or to reuse any stamp or printed markings of a meter machine which had theretofore been used for evidence of the payment of any tax prescribed by this article, or, except as to the treasurer, to sell or offer to sell any stamp or printed markings of a meter machine provided for in this article.
(Ord. of 6-6-00(3), § 1)

Sec. 74-212. Presumption of violation against seller.

If more than six cartons of cigarettes are found in the possession of a seller without the proper stamps being affixed to or without authorized printed markings of a meter machine on the package, and the seller shall be unable to submit evidence establishing that he received such package within the immediately preceding 48 hours, and that he has not offered the package for sale, the presumption shall be that such package is being kept by such seller in violation of the provisions of this article and shall subject him to the penalties provided in this article.
(Ord. of 6-6-00(3), § 1)

Sec. 74-213. Keeping of records.

It shall be the duty of every local dealer and seller, and he is so required, to maintain and keep for a period of two years such record of cigarettes sold and delivered by him as may be required by the treasurer, and to make all such records available for examination by the treasurer, upon demand, at any and all reasonable times.
(Ord. of 6-6-00(3), § 1)

Sec. 74-214. Rules and regulations.

(a) The treasurer is authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to the method and means to be used in the cancellation of required stamps, and to any and all other matters pertaining to the administration and enforcement of the provisions of this article. It shall be unlawful for any person to fail, neglect or refuse to comply with such rules and regulations.

(b) The treasurer is further authorized and empowered to examine books, records, invoices, papers and any and all cigarettes in and upon any premises where they are placed, stored, sold, offered for sale or displayed for sale by a seller.
(Ord. of 6-6-00(3), § 1)

Sec. 74-215. Tax additional.

The tax levied and imposed by this article shall be in addition to all other taxes of every kind levied and imposed by any other ordinance of the town or law.
(Ord. of 6-6-00(3), § 1)

Sec. 74-216. Penalties for violation.

Any person violating any of the provisions of this article shall, upon conviction, be guilty of a class 1 misdemeanor punishable as provided in section 1-13. Such conviction and payment of fine shall not relieve any such person from the payment of any tax imposed by this article.
(Ord. of 6-6-00(3), § 1)

Chapters 75—77

RESERVED

Chapter 78

TRAFFIC AND VEHICLES*

***Charter references:** Authority of town to regulate traffic, §§ 7, 20(b).

Cross references: Alcoholic beverages, ch. 10; animals, ch. 18; civil emergencies, ch. 30; environment, ch. 38; fire prevention and protection, ch. 42; authority of fire officials to direct traffic, § 42-39; law enforcement, ch. 46; offenses and miscellaneous provisions, ch. 50; injuring or tampering with vehicles, § 50-20; peddlers and solicitors, ch. 54; streets, sidewalks and other public places, ch. 70; parades, § 70-81 et seq.; personal property tax on motor vehicles, trailers and boats; proration thereof, § 74-7; waterways, ch. 90; zoning, app. A.

State law references: Inoperable motor vehicles, etc., on residential or commercial property in certain localities, Code of Virginia, § 15.2-905; limited access streets, Code of Virginia, § 15.2-2026; municipal regulation of traffic, Code of Virginia, § 15.2-2028; identification of disabled parking spaces by above-grade signage, Code of Virginia, § 36-99.11; 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; 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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ARTICLE I. IN GENERAL

Sec. 78-1. Compliance with chapter; general penalty for violations.

It shall be unlawful for any person to refuse, fail or neglect to comply with any of the provisions of this chapter or any rule or regulation promulgated pursuant thereto. Unless otherwise specifically provided, a violation of this chapter or any such rule or regulation shall constitute a traffic infraction punishable by a fine of not more than $200.00.
(Code 1982, § 11-1)

State law references: Similar provisions applicable to violations of local ordinances and state traffic laws, Code of
Virginia, § 46.2-113; town prohibited from imposing penalty for traffic violation which is greater than penalty imposed by state for similar offense, Code of Virginia, § 46.2-1300.

Sec. 78-2. Arrest for misdemeanor; release on summons and promise to appear; right to demand hearing immediately or within 24 hours; issuance of warrant on request of officer; refusal to promise to appear; violations.

(a) Whenever any person is detained by or in the custody of an arresting officer, including an arrest on a warrant, for a violation of any provision of this chapter punishable as a misdemeanor, the arresting officer shall, except as otherwise provided in Code of Virginia, § 46.2-940, take the name and address of such person and the license number of his motor vehicle 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. Such time shall be at least five days after such arrest unless the person arrested demands an earlier hearing. Such person shall, if he so desires, have a right to an immediate hearing, or a hearing within 24 hours at a convenient hour, before a court having jurisdiction under this chapter within the county, or town wherein such offense was committed. 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.

(b) Notwithstanding the foregoing provisions of this section, if prior general approval has been granted by order of the general district court for the use of this section in cases involving violations of Code of Virginia, §§ 46.2-301 and 46.2-302, the arresting officer may take the person before the appropriate judicial officer of the county and make oath as to the offense and request issuance of a warrant. If a warrant is issued, the judicial officer shall proceed in accordance with the provisions of article 1, Code of Virginia, § 19.2-119 et seq.

(c) Notwithstanding any other provision of this section, in cases involving a violation of Code of Virginia, § 46.2-341.24 or 46.2-341.31, the arresting officer shall take the person before a magistrate as provided in Code of Virginia, §§ 46.2-341.26:2 and 46.2- 341.26:3. The magistrate may issue either a summons or a warrant as he shall deem proper.

(d) Any person refusing to give such written promise to appear under the provisions of this section shall be taken immediately by the arresting officer before a magistrate or other issuing officer having jurisdiction, who shall proceed according to the provisions of Code of Virginia, § 46.2-940.

(e) 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 Virginia, § 46.2-938.

(f) Any officer violating any of the provisions of this section shall be guilty of misconduct in office and subject to removal therefrom upon complaint filed by any person in a court of competent jurisdiction. This section shall not be construed to limit the removal of a law enforcement officer for other misconduct in office.
(Code 1982, § 11-2)
State law references: Similar provisions, Code of Virginia, § 46.2-936.

Sec. 78-3. When arresting officer shall take person before issuing authority.

If any person is believed by the arresting officer to have committed a felony, believed by the arresting officer to be likely to disregard a summons issued under section 78-2, or refuses to give a written promise to appear under the provisions of section 78-2 or Code of Virginia, § 46.2-945, the arresting officer shall promptly take him before a magistrate or other issuing authority having jurisdiction to determine whether probable cause exists that such person is likely to disregard a summons. The magistrate or other authority may issue either a summons or warrant as he shall determine proper.
(Code 1982, § 11-3)
State law references: Similar provisions, Code of Virginia, § 46.2-940.

Sec. 78-4. Traffic infractions treated as misdemeanors for arrest purposes.

For purposes of arrest, traffic infractions shall be treated as misdemeanors. Except as otherwise provided by this chapter or state law, the authority and duties of arresting officers shall be the same for traffic infractions as for misdemeanors.
(Code 1982, § 11-4)
State law references: Similar provisions, Code of Virginia, § 46.2-937.

Sec. 78-5. Adoption of state law.

(a) Pursuant to the provisions of Code of Virginia, § 46.2-1313, all the provisions and requirements of the laws of the state contained in Code of Virginia, tit. 46.2, except those the violation of which constitutes a felony and except those which, by their very nature, can have no application in the town, are hereby adopted and made a part of this chapter as fully as though set out herein and are hereby made applicable within the town; however, local regulations enacted pursuant to the provisions of state law and this chapter shall not be affected by the application and adoption of state law under and by this section.

(b) It shall be unlawful for any person, within the town, to violate or to fail, neglect or refuse to comply with any section of the state law made applicable or adopted by this section; however, in no event shall the penalty imposed for the violation of any provision or requirement hereby adopted exceed the penalty imposed for a similar offense under Code of Virginia, tit. 46.2.

(c) All definitions of words and phrases contained in the state law hereby adopted shall apply to such words and phrases when used in this chapter unless clearly indicated to the contrary.

(d) Pursuant to Code of Virginia, § 46.2-1313, this section shall remain in full force and effect and shall include all future amendments to the above-referenced provisions of the Code of Virginia provided such amendments have been adopted by the general assembly and signed by the governor. Future amendments shall be effective on the same date as the effective date of the state law.
(Code 1982, § 11-5; Ord. of 7-7-92, § 11-5; Ord. of 7-6-93)

Sec. 78-6. General authority of town manager as to traffic control devices; designation of private driveways as entrances or exits.

The town manager is authorized to erect and maintain such appropriate signs, markers, semaphores, signals or other devices as may be deemed necessary by him to enforce the rules and regulations made and promulgated by him to regulate and control traffic within the town and to execute the provisions of this chapter. The town manager shall also have the authority to designate private driveways as either "entrances" or "exits"; and when the property owner or lessee is notified in writing of such designation, such owner or lessee shall install appropriate signs in accordance with specifications drawn by the town manager and the drivers of all vehicles using such driveways shall obey such signs.
(Code 1982, § 11-6)

Sec. 78-7. Traffic on fresh pavement or painted markings.

No person shall ride or drive any animal or vehicle or walk over any newly made pavement or freshly painted marking on any street in the town, when a barrier or sign is in place warning persons not to drive or walk over such pavement or marking or when a sign is in place stating that the street or any portion thereof is closed.
(Code 1982, § 11-7)

Sec. 78-8. Riding on portion of vehicle not intended for passengers.

No person shall ride on any vehicle upon any portion thereof not designed or intended for the use of passengers. This provision shall not apply to an employee engaged in the necessary discharge of a duty or to persons riding within truck bodies in space intended for merchandise.
(Code 1982, § 11-8)

Sec. 78-9. Opening door of, or entering or emerging from, vehicle in path of approaching vehicle.

No person shall open the door of or enter or emerge from any vehicle in the path of any approaching vehicle without due regard for safety of persons and property.
(Code 1982, § 11-9)

Sec. 78-10. Boarding or alighting from moving vehicle.

No person shall board or alight from any vehicle while such vehicle is in motion.
(Code 1982, § 11-10)

Sec. 78-11. Decreasing vehicle weight and load limits.

(a) The town manager, in his discretion, may make, promulgate and enforce rules and regulations decreasing the vehicle weight and load limits specified in the state law adopted as a part of this chapter by section 78-5, for a total period not to exceed 90 days in any calendar year, when an engineering study discloses that operation over streets, by reason of deterioration, rain, snow or other climatic conditions, will seriously damage such streets unless such weights are reduced. The town manager shall cause to be erected signs stating the weight specified in such rule or regulation at each end of the section of the street affected, and no such rule or regulation shall be effective until such signs are erected.

(b) Any person violating a rule or regulation promulgated under this section shall be guilty of a class 2 misdemeanor. The vehicle or combination of vehicles involved in such violation may be held upon an order of the court until all fines and costs have been satisfied.
(Code 1982, § 11-12)
State law references: Authority for above section, Code of Virginia, § 46.2-1104.

Sec. 78-12. Temporary removal and disposition of vehicles involved in accidents.

Whenever a motor vehicle, trailer or semitrailer involved in an accident is so located as to impede the orderly flow of traffic, the police may at no cost to the owner or operator remove the motor vehicle, trailer or semitrailer to some point in the vicinity where it will not impede the flow of traffic or have the vehicle removed to a storage area for safekeeping and shall report the removal to the state department of motor vehicles and to the owner of the vehicle as promptly as possible. If the vehicle is removed to a storage area, the owner shall pay to the parties entitled thereto all costs incidental to its removal and storage.
(Code 1982, § 11-13)
State law references: Similar provisions, Code of Virginia, § 46.2-1212.

Sec. 78-13. Tax on unlicensed vehicles.

(a) Every person owning or having the possession or use of, within the corporate limits of the town, a motor vehicle which does not display a current ~~town license tag~~ license plates and which is not exempted from the requirements of displaying such license ~~tag~~ plate under any provision of this Code or under the provisions of Code of Virginia, §§ 46.2-662 et seq., 46.2-1554 and 46.2-1555, and which is not in a public dump or in an "automobile graveyard," as defined in Code of Virginia, § 33.1-348, or in the possession of a licensed junk dealer or licensed motor vehicle dealer, shall pay an annual license tax of $100.00 on each such vehicle. Any vehicle not displaying a current license ~~tag~~ plate after February 15 of any year shall be subject to this tax, and the tax shall be payable between February 15 and April 15 of each year.

(b) This section shall not apply to:

(1) Any vehicle which is stored on private property, for a period not in excess of 60 days, for the purpose of removing parts for the repair of another vehicle.

(2) Any vehicle being held or stored by, or at the direction of, any governmental authority.

(3) Any vehicle owned by a member of the armed forces on active duty.

(4) Any vehicle regularly stored within a structure.

(Code 1982, § 11-14; Ord. of 4-2-91, § 11-14)
State law references: Authority for above section, Code of Virginia, § 15.1-27.1.

Sec. 78-14. Keeping of inoperative vehicles on residential or commercial property.

(a) It shall be unlawful for any person to keep, except within a fully enclosed building or structure or otherwise shielded or screened from view, on any property zoned for residential or commercial or agricultural purposes any motor vehicle, trailer or semitrailer, as such are defined in Code of Virginia, § 46.2-100, which is inoperative. “Shielded or screened from public view,”

as used shall not include the use of a tarp or car cover. As used in this section, an "inoperative motor vehicle" shall mean any motor vehicle which is not in operating condition; or which for a period of 60 days or longer has been partially or totally disassembled by the removal of tires and wheels, the engine, or other essential parts required for operation of the vehicle or on which there are displayed neither valid license plates nor a valid inspection decal. However, the provisions of this section shall not apply to a licensed business which on June 26, 1970, is regularly engaged in business as an automobile dealer, salvage dealer or scrap processor.

(b) The owners of property zoned for residential or commercial or agricultural purposes shall, at such time or times as the council may prescribe, remove therefrom any such inoperative motor vehicles, trailers or semitrailers that are not kept within a fully enclosed building or structure. The council through its own agents or employees may remove any such inoperative motor vehicles, trailers or semitrailers, whenever the owner of the premises, after reasonable notice, has failed to do so. If the council, through its own agents or employees, removes any such motor vehicles, trailers or semitrailers, after having given such reasonable notice, the town may dispose of such motor vehicles, trailers or semitrailers after giving additional notice to the owner of the vehicle. The cost of any such removal and disposal shall be chargeable to the owner of the vehicle or premises and may be collected by the town as taxes and levies are collected. Every cost authorized by this section with which the owner of the premises has been assessed shall constitute a lien against the property from which the vehicle was removed, the lien to continue until actual payment of such costs has been made to the town.

(c) Violations of this section shall be subject to a civil penalty, not to exceed $50.00 for the first violation, or violations arising from the same set of operative facts. The civil penalty for subsequent violations not arising from the same set of operative facts within 12 months of the first violation shall not exceed $200.00. Each business day during which the same violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same set of operative facts result in civil penalties that exceed a total of $3,000.00 in a 12-month period.

(d) Except as provided in this subsection, subsection (c) of this section shall be in lieu of criminal penalties and shall preclude prosecution of such violation as a misdemeanor. However, such violations shall be a class 3 misdemeanor in the event three civil penalties have previously been imposed on the same defendant for the same or similar violation, not arising from the same set of operative facts, within a 24-month period. Classifying such subsequent violations as criminal offenses shall preclude the imposition of civil penalties for the same violation.
(Code 1982, § 11-15)

Cross references: Zoning, app. A.

State law references: Authority for above section, Code of Virginia, §15.1-904.

Sec. 78-15. Prohibition of through truck traffic on certain designated streets within historic preservation district.

(a) For the purposes of this section, the term "truck" shall be deemed to include trucks and tractor trucks, as defined in Code of Virginia, § 46.2-100, to wit:

Tractor truck means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the load and weight of the vehicle attached thereto.

Truck means every motor vehicle designed to transport property on its own structure

independent of any other vehicle and having a registered gross weight in excess of 7,500 pounds.

(b) Pursuant to the authority set forth in Code of Virginia, § 46.2-1304, the use of trucks, except for the purposes of receiving loads or making deliveries, shall be prohibited on the following streets or portions of streets located within the historic preservation district of the town:

(1) Main Street.

(2) North and South Church Street.

(3) Thomas Street.

(4) Grace Street.

(5) Cedar Street.

(6) North and South Mason Street.

(7) Institute Street.

(8) Jericho Road.

(9) Cary Street.

(10) James Street.

(11) Commerce Street.

(12) Cocke's Lane.

(13) Drummond's Lane.

(14) Underwood Lane.

(15) Sykes' Court.

(16) Hill Street.

(17) Washington Street.

(18) First Street.

(19) Clay Street.

(20) Chalmers Row.

(21) Astrid Street.

(22) Riverview Avenue.

(Ord. of 6-8-94, § 11-16)

Sec. 78-16. Riding bicycles or skateboards on sidewalks.

(a) It shall be unlawful for any person to ride a bicycle or skateboard on any sidewalk of the town.

(b) A violation of this section shall constitute a traffic infraction punishable by a fine of not less than $5.00 nor more than $25.00.
(Code 1982, § 18-8)
Cross reference—Streets, sidewalks and other public places, ch. 70.
State law references: Authority of town to prohibit operation of bicycles on sidewalks, Code of Virginia, § 46.2-904.

Secs. 78-17--78-45. Reserved.

ARTICLE II. VEHICLE LICENSE*

***Charter references:** Authority to license motor vehicles, § 10(b).
Cross references: Businesses, ch. 26; taxation, ch. 74.

Sec. 78-46. Required; exceptions.

(a) No person shall drive or operate a motor vehicle, other than one used by a licensed dealer for sales purposes, on or over the streets of the town, unless such vehicle is currently licensed in accord with this article.

(b) The situs for the imposition of licensing fees under this section shall in all cases, except as hereinafter provided, be the town when the motor vehicle, trailer or semitrailer is normally garaged, stored or parked in the town. If it cannot be determined where the personal property is normally garaged, stored or parked, the situs shall be the domicile of its owner. In the event the owner of the motor vehicle is a full-time student attending an institution of higher education, the situs shall be the domicile of such student, provided the student has presented sufficient evidence that he has paid a personal property tax on the motor vehicle in his domicile.

(c) This section shall not apply to a motor vehicle owned by a person who is not a resident of the town, when the vehicle is used exclusively for pleasure or personal transportation, other than transportation for hire, or when used both for such pleasure or personal transportation and for transporting into and within the town, for the sale, in person or by his employees, of wood, meat, poultry, fruit, flowers, vegetables, milk, butter, cream or eggs produced or grown by him, and not purchased by him for sale, provided such vehicle is not used in the town in the conduct of any business or occupation, other than those herein set out.

(d) This section shall further not apply to any motor vehicle not required to be registered by state law.
(Code 1982, § 11-26)

Sec. 78-47. When to be purchased; license year.

(a) Licenses required by this article shall be purchased from the town treasurer, by payment of the prescribed tax, between January 15 and February 15 of each year. All such licenses shall expire on February 15 of the next succeeding year.

(b) If a motor vehicle is acquired or otherwise becomes subject to this article after the deadline for purchasing licenses in any year the license required by this article must be purchased within ten days after the vehicle is operated on the streets of the town.
(Code 1982, § 11-27)

Sec. 78-48. Tax levied.

There is hereby levied an annual license tax of $20.00 on all motor vehicles required to be licensed under this article. In addition, the town may charge a license fee of no more than $1.00 per motor vehicle, trailer, and semitrailer. Except for the provisions of subsection (b) thereof, such fee shall be subject to all provisions of Code of Virginia, § 46.2-752. All funds collected pursuant to this subsection shall be paid pursuant to Code of Virginia, § 51.1-1204 to the Volunteer Firefighters' and Rescue Squad Workers' Service Award Fund to the accounts of all members of the fund who are volunteers for fire departments or rescue squads within the jurisdiction of the town.
(Code 1982, § 11-28)
State law references: Authority for above tax, Code of Virginia, § 46.2-752.

Sec. 78-49. Proration of tax.

The license tax levied by section 78-48 shall be subject to proration in the following manner: A license tax equal to 1 / 12 of the prescribed tax, computed to the nearest cent and multiplied by the number of months in the license period, shall be paid. A fraction of a month shall be treated as an entire month for purposes of proration.
(Code 1982, § 11-29)

Sec. 78-50. Prerequisites to issuance of licenses.

The town treasurer shall not issue any license pursuant to this article until the applicant produces evidence satisfactory to the treasurer of the following:

(1) Valid state registration of motor vehicle to be licensed; and

(2) That all personal property taxes on the motor vehicle to be licensed have been paid and that any delinquent motor vehicle personal property taxes owing, which have been properly assessed or are assessable against the applicant by the town, have been paid.

(3) That all tangible personal property taxes properly assessed or assessable by the town on any tangible personal property used or usable as a dwelling titled by the department of motor vehicles and owned by the taxpayer have been paid.

(Code 1982, § 11-30)
Cross references: Penalty and interest on personal property taxes, § 74-2.
State law references: Authority for above section, Code of Virginia, § 46.2-752.

Sec. 78-51. Issuance and display of tag generally.

The town treasurer shall issue a license tag for each vehicle for which the tax prescribed by this article is paid. Such tag shall be displayed on the front of such vehicle at all times, so that it is plainly visible. Such tag shall be maintained in such condition that the numbers thereon shall be, at all times, clearly visible and clearly legible.
(Code 1982, § 11-31)

Sec. 78-52. Special provisions for vehicle dealers.

(a) Every licensed motor vehicle dealer having a place of business in this town shall purchase from the town treasurer a license for one motor vehicle used in such business for sales purposes. Should any such dealer have or use more than three sets of state dealers license tags during any fiscal year, commencing on July 1 and ending on June 30, he shall purchase one additional town vehicle license tag for each additional three sets, or major portion thereof, of state dealers tags so owned or used.

(b) Each motor vehicle dealer shall purchase town vehicle tags pursuant to this section on or before July 1 of each year.

(c) Nothing contained in this article shall be construed as requiring any motor vehicle dealer to display the town license tags purchased pursuant to this section on any vehicle owned or used by such dealer in the operation of his business. No tag purchased pursuant to the provisions of this section shall at any time be used or displayed on any private motor vehicle.

(d) Every licensed motor vehicle dealer shall, upon request of the chief of police, disclose the number of sets of state motor vehicle tags owned or used by such dealer during any license year.
(Code 1982, § 11-32)

Sec. 78-53. Duplicate and exchange tags.

The charge for a duplicate vehicle license tag, ~~and~~ for the exchange of such a tag or for the transfer of such tag shall be $3.00. No refund shall be given on the fee paid for a duplicate tag.
(Code 1982, § 11-33)

Sec. 78-54. Issuance of free tags.

Notwithstanding any other provision of this article, each state and town police officer, each member of the town volunteer fire department and the county volunteer rescue squad and each member of the county sheriff's department residing in the town shall be issued one free town license tag for his private motor vehicle.
(Code 1982, § 11-34)
Cross references: Fire department, § 42-36 et seq.; law enforcement, ch. 46.

Sec. 78-55. Refund of tax upon return of tag.

If a vehicle license tag issued under this article is returned to the town treasurer prior to midnight on August 31 of the year for which such tag was issued, half the license tax paid for such tag shall be refunded. No refund shall be made to any person returning a vehicle license tag to the town treasurer except as set forth in this section.
(Code 1982, § 11-35)

Sec. 78-56. Disposition of money collected under article.

All money collected pursuant to this article shall be credited by the town treasurer to the general fund.
(Code 1982, § 11-36)

Sec. 78-57. Sale of licenses to exempt residents.

Notwithstanding any other provision of this article, any resident of this town who, by reason of federal or state law, is exempt from the requirements of this article, may be issued a motor vehicle license by the town, upon payment of a fee of $3.00, upon proof of exemption, residency and payment of all town personal property taxes.
(Code 1982, § 11-37)

Secs. 78-58--78-90. Reserved.

ARTICLE III. OPERATION OF VEHICLES

Sec. 78-91. Obedience to traffic control devices.

No driver of a vehicle shall disobey the instructions of any traffic control device placed in accordance with the provisions of this Code or other ordinances, unless at the time otherwise directed by a police officer, subject to the exceptions granted the driver of an authorized emergency vehicle.
(Code 1982, § 11-47)
State law references: Drivers to obey signs, Code of Virginia, § 46.2-830.

Sec. 78-92. Stop and yield intersections.

The town manager may designate intersections at which vehicles shall come to a full stop or yield the right-of-way and may cause to be erected appropriate signs or markings at such intersections so that an ordinarily observant person will be aware of the existence of such designation. The duty of drivers approaching such signs or markers shall be as prescribed by the state law adopted by section 78-5.
(Code 1982, § 11-48)
State law references: Duty of drivers approaching stop or yield signs, Code of Virginia, § 46.2-821; designation of stop and yield right-of-way intersections, Code of Virginia, § 46.2-1301.

Sec. 78-93. Driving motor vehicle while under the influence of alcohol or certain drugs.

(a) Pursuant to the provisions of Code of Virginia, § 46.2-1313, all of the provisions and requirements of the laws of the commonwealth of relative to the operation of motor vehicles under influence of alcohol or certain drugs, as contained in Code of Virginia, § 18.2-266 et seq., and those relative to the disposition of juvenile cases, as contained in Code of Virginia, § 16.1-278 et seq., except those which by their very nature can have no application in the town, are hereby adopted and made a part of this section by reference as fully as if set forth herein and are hereby made applicable within the town; that local regulations enacted pursuant to the laws of the commonwealth and this chapter shall not be affected by the application and adoption of laws of

the commonwealth and by this section. It shall be unlawful for person, within the town, to violate or to fail or refuse to comply with any section of the laws of the commonwealth made applicable or adopted by reference hereby.

(b) Pursuant to Code of Virginia, § 46.2-1313, this section shall remain in full force and effect and shall include all future amendments to the above-referenced provisions of the Code of Virginia provided such amendments have been adopted by the general assembly and signed by the governor. Future amendments shall be effective on the same date as the effective date of the state law.
(Code 1982, § 11-49; Ord. of 7-7-92, § 11-49; Ord. of 7-6-93)
Cross references—Alcoholic beverages, ch. 10; intoxication in public, § 50-8.

Sec. 78-94. Driving through or in procession or parade.

(a) No driver of a vehicle shall drive between the vehicles, persons or animals comprising a funeral or other authorized procession or a parade while such procession or parade is in motion except when otherwise directed by a police officer. This provision shall not apply to authorized emergency vehicles.

(b) Each driver in a procession or parade shall drive as near to the right hand edge of the roadway as practicable and shall follow the vehicle ahead as closely as is practicable and safe.
(Code 1982, § 11-50)
Cross references: Parades, § 70-81 et seq.
State law references: Right-of-way of funeral processions under police or sheriff's escort, Code of Virginia, § 46.2-828.

Sec. 78-95. Limitations on backing.

The driver of a vehicle shall not back the same unless such movement can be made with reasonable safety and without interfering with other traffic, and such driver shall in every case yield the right-of-way to moving vehicles and pedestrians.
(Code 1982, § 11-51)

Sec. 78-96. Blocking intersection or marked crosswalk.

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 1982, § 11-52)

Sec. 78-97. Permit for operation of sound trucks.

No sound truck or other vehicle equipped with an amplifier or loudspeaker shall be driven upon any street within the town for the purpose of selling, offering for sale or advertising in any fashion except in accordance with a permit issued by the town manager. A violation of this section shall constitute a class 3 misdemeanor.
(Code 1982, § 11-53)
Cross references: Advertising, ch. 6; environment, ch. 38.

Sec. 78-98. Drinking while operating a motor vehicle; penalty.

It shall be unlawful for any person to consume an alcoholic beverage while driving a motor vehicle upon a public street or highway of this town. A violation of this section is punishable as a class 4 misdemeanor.
(Code 1982, § 11-54)
Cross reference—Alcoholic beverages, ch. 10.

Sec. 78-99. Reimbursement of expenses incurred in responding to DUI incidents.

(a) A person convicted of violating any of the following provisions shall be liable in a separate civil action for reasonable expenses incurred by the locality or by any volunteer rescue squad, or both, when providing an appropriate emergency response to any accident or incident related to such violation:

(1) The provisions of Code of Virginia, §§ 18.2-51.4, 18.2-266 or 29.1-738, or a similar ordinance, when such operation of a motor vehicle, engine, train or watercraft while so impaired is the proximate cause of the accident or incident;

(2) The provisions of Code of Virginia, § 46.2-852 et seq., relating to reckless driving, when such reckless driving is the proximate cause of the accident or incident;

(3) The provisions of Code of Virginia, § 46.2-300 et seq., relating to driving without a license or driving with a suspended or revoked license; and

(4) The provisions of Code of Virginia, § 46.2-894 relating to improperly leaving the scene of an accident.

(b) Personal liability under this section ~~fro~~ for reasonable expenses of an appropriate emergency response shall not exceed $1,000.00 in the aggregate for a particular accident or incident occurring in such locality. In determining the "reasonable expenses," the town may bill a flat fee of $100.00 or a minute-by-minute accounting of the actual costs incurred. As used in this section, "appropriate emergency response" includes all costs of providing law enforcement, firefighting, rescue, and emergency medical services. The provisions of this section shall not preempt or limit any remedy available to the commonwealth, to the town or to any volunteer rescue squad to recover the reasonable expenses of an emergency response to an accident or incident not involving impaired driving, operation of a vehicle or other conduct as set forth herein.

(c) No policy or contract of bodily injury or property damage liability insurance relating to the ownership, maintenance, or use of a motor vehicle, engine or watercraft issued, or issued for delivery, in the commonwealth shall ensure against any civil liability under this section.
(Ord. No. 3-6-01(2), § 1)
State law reference—Authority for subsections (a) and (b) of above section, Code of Virginia, § 15.2-1716.

Secs. 78-100--78-130. Reserved.

ARTICLE IV. STOPPING, STANDING AND PARKING*

***State law references:** Authority for local parking regulations, Code of Virginia, § 46.2-1220.

Sec. 78-131. General authority of town manager relative to stopping and parking.

(a) The town manager is hereby authorized to make, promulgate and enforce rules and regulations, not in conflict with this chapter, for the parking or stopping of vehicles upon town streets and town parking lots, including the classification of vehicles with reference to parking or stopping; the designation of the time, place and manner vehicles may be allowed to park or stop on the streets; and the designation of areas for bus stops, taxicab stands and loading zones. The town manager may revoke, alter or amend such rules and regulations at any time when, in his opinion, traffic conditions and use of the streets require such action.

(b) It shall be unlawful for any person to fail, refuse or neglect to observe and comply with any rule or regulation made and promulgated by the town manager pursuant to this section; provided, that no such rule or regulation shall be deemed to have been violated unless appropriate and adequate signs, markers or other devices are erected to inform ordinarily observant persons using the street of such rule or regulation, which signs, markers or other devices shall be so placed that they may be readily and easily seen.

(c) Notwithstanding any other provisions of this section, the town manager shall hereby be deemed to have promulgated any parking rules and regulations whenever appropriate; and adequate signs, markers or other devices shall be erected, installed or applied upon town streets and publicly or privately owned parking lots, in such a manner as to inform ordinarily observant persons using the streets or parking lots of such rules or regulations.
(Code 1982, § 11-64)

State law references: Authority for above section, Code of Virginia, § 46.2-1220.

Sec. 78-132. Manner of parking generally.

Except upon streets designated by the town manager as one-way streets, no vehicle shall be parked except close to and parallel to the right hand curb or edge of the roadway unless otherwise provided by rules and regulations made and promulgated by the town manager. Upon streets designated by the town manager as one-way streets, no vehicle shall be parked except close to and parallel to either curb or edge of the roadway unless otherwise provided by rules and regulations made and promulgated by the town manager. Where parallel parking is required the front and rear wheels of the vehicle nearest the curb shall not be more than 12 inches from the curb or edge of the street, and the front and rear of the vehicle shall not be closer than two feet to other parked vehicles unless otherwise indicated by signs or markings.
(Code 1982, § 11-65)

State law references: Location of parked vehicles, Code of Virginia, § 46.2-889.

Sec. 78-133. Right to parking space.

Whenever the driver of a vehicle pulls up parallel with a parked vehicle for the purpose of backing into the parking space behind such parked vehicle, he shall have the first privilege of using such parking space; and no driver of any other vehicle shall drive his vehicle into such space or stop immediately behind the first vehicle in such a way as to block access to the parking space.

(Code 1982, § 11-66)

Sec. 78-134. Parking within marked spaces.

Where parking spaces are marked and clearly visible on a street or parking lot, motor vehicles shall be parked entirely within such spaces.
(Code 1982, § 11-67)

Sec. 78-135. Reserved.

Editor's note: Ord. of 6-5-01, § 1, repealed § 78-135, which pertained to removing keys from unattended vehicles and derived from Code 1982, § 11-68.

Sec. 78-136. Parking unlicensed vehicle.

It shall be unlawful for any person to park any vehicle on any street within this town unless a valid license plate, issued by this state or some other state, territory or country, is displayed thereon.
(Code 1982, § 11-69)

Sec. 78-137. Parking of buses, trucks between midnight and 6:00 a.m.

(a) It shall be unlawful for the owner, operator or driver of any motor passenger bus or any truck, trailer or semitrailer to park the same or permit the same to be parked on any street or public place between the hours of 12:00 midnight and 6:00 a.m.

(b) This section shall not apply to trucks with a capacity of not more than one ~~half~~ ton.
(Code 1982, § 11-71)

Sec. 78-138. Parking in bus stops or taxicab stands.

No person shall park a vehicle, other than a bus, in a bus stop or a vehicle, other than a taxicab, in a taxicab stand, except that the driver of a passenger vehicle may stop temporarily in such an area for the immediate purpose of loading or unloading passengers and while actually engaged therein, when such stopping does not interfere with any bus or taxicab desiring to use such area.
(Code 1982, § 11-72)

Sec. 78-139. Parking for more than seven days.

It shall be unlawful for any person to park any vehicle on any street or within any town parking lot and leave the same standing for a period of more than seven consecutive days.
(Code 1982, § 11-73)

Sec. 78-140. Parking citations generally.

Whenever any motor vehicle without driver is found parked, stopped or standing in violation of any of the restrictions imposed by this Code or other ordinance of this town, the officer finding such vehicle shall take its registration number and make any other information displayed on the vehicle which may identify its user and shall conspicuously affix to such vehicle a parking citation, for the driver to answer the charge against him within five days, during the hours and at a place specified in the citation. The officer shall deliver one copy of such citation to the police department.

(Code 1982, § 11-74)

Sec. 78-141. Penalty for parking violations generally; certification of contest of parking citation; penalty for abuse of parking spaces reserved for exclusive use of persons with disabilities.

(a) Unless otherwise provided, any person parking a vehicle in violation of any provision of this article or other ordinance provision of the town or any rule or regulation promulgated pursuant to this article shall, upon conviction thereof, be punished by a fine of not less than $10.00 nor more than $20.00 for each offense; however, any such violation may be satisfied, in full, by payment of $10.00 to the police department, within five days of such violation.

(b) All uncontested parking citations paid under this section shall be accounted for by the chief of police. The contest, by any person, of a parking citation shall be certified in writing, upon an appropriate form, to the general district court by the chief of police.

(c) It shall be unlawful for a vehicle not displaying disabled parking license plates, an organizational removable windshield placard, a permanent removable windshield placard, or a temporary removable windshield placard, issued under Code of Virginia, § 46.2-1241, or DV disabled parking license plates issued under Code of Virginia, § 46.2-739(B), by the commissioner of the department of motor vehicles, to be parked in a parking space reserved for persons with disabilities that limit or impair their ability to walk or for a person who is not limited or impaired in his ability to walk to park a vehicle in a parking space so designated except when transporting a person with such a disability in the vehicle. Notwithstanding any other provision of this section, any person parking a vehicle in violation of parking regulations pertaining to spaces for persons with disabilities shall be punished by a fine of not less than $100.00 nor more than $500.00 for each offense; however, any such violation may be satisfied, in full, by payment of $100.00 to the police department, within five days of such violation. A summons for this offense may be issued by law-enforcement officers, volunteers serving in units established pursuant to Code of Virginia § 46.2-1244, as amended, and other uniformed law enforcement department personnel employed by the Town to enforce parking regulations without the necessity of a warrant's being obtained by the owner of a private parking area.
(Code 1982, § 11-75; Ord. of 2-3-98, § 1; Ord. of 2-6-01, § 1)

State law references: Local parking regulations, Code of Virginia, § 46.2-1220; requirement for subsection (b) above, Code of Virginia, § 46.2-1225; parking in spaces reserved for persons with disabilities, Code of Virginia, § 46.2-1237.

Sec. 78-142. Procedure for delinquent parking citations.

(a) The chief of police shall cause a complaint, summons or warrant to be issued for delinquent parking citations.

(b) Notwithstanding the provisions of subsection (a) above, before any summons shall be issued for the prosecution of a violation of this Code or other ordinance of the town regulating parking, the violator shall have been first notified, by mail at his last known address or at the address shown for such violator on the records of the state department of motor vehicles, that he may pay the fine provided by law for such violation, within five days of receipt of such notice, and the authorized person issuing such summons shall be notified that the violator has failed to pay such fine within such time. The notice to the violator, required by the provisions of this section, shall be contained in an envelope bearing the words "Law Enforcement Notice" stamped or printed on the face thereof in all capital letters, bold face type, no smaller than the print type

size used for the primary address on the envelope. If "window" envelopes are used, the words "Law Enforcement Notice" shall be clearly visible through the window of the envelope.
(Code 1982, § 11-76)

State law references: Similar provisions, Code of Virginia, §§ 46.2-941, 46.2-1225.

Sec. 78-143. Parking regulations for privately owned parking lots.

(a) Parking rules and regulations promulgated by the town manager shall apply to privately owned off-street parking lots which are open to the public and designed to accommodate 50 or more vehicles, upon the adoption of any resolution by the town council specifically applying such rules and regulations to the particular parking lot.

(b) The owner of any parking lot may petition the town council, in writing, for the application for such parking rules and regulations to a particular parking lot.

(c) Such rules and regulations shall not be in effect until the owner of the parking lot shall have erected, installed or applied, at his own expense, appropriate and adequate signs, markers or other devices apprising persons using the parking lot of such rules and regulations, and appropriate signs are erected at each entrance to the parking lot giving notice to the public that town parking rules and regulations apply.
(Code 1982, § 11-77)

Sec. 78-144. Cruising in privately owned public areas.

(a) This section shall be applicable to the parking areas or driveways of shopping centers and commercial office and apartment complexes. It shall be applied to and enforced in a specific center or commercial area upon application in writing by the owner or person in general charge of the operation of such area to the chief of police.

(b) No person shall drive or permit a motor vehicle under his care, custody, or control to be driven past a traffic control point three or more times within a two-hour period from 6:00 p.m. to 4:00 a.m. Monday through Sunday, in or around a posted no cruising area so as to contribute to traffic congestion; obstruction of streets, sidewalks, parking lots, or public vehicular areas; impediment of access to shopping centers or other buildings open to the public; or interference with the use of property or conduct of business in the area adjacent thereto.

(c) At every point where a public street or alley becomes or provides ingress to a no cruising area, there shall be posted a sign which designates "No cruising" areas and times.

(d) "Traffic control point," as used in this section, means any point or points within the no cruising area established by the police department for the purpose of monitoring cruising.

(e) No violations shall occur except upon the third passage past the same traffic control point within a two-hour period.

(f) No area shall be designated or posted as a no cruising area except upon the passage of a resolution by the council specifically requiring such designation and posting for a particular area.

(g) This section shall not apply to in-service emergency vehicles, taxicabs for hire, buses, and other vehicles being used for business purposes.

(h) Where there is a violation of any provision of this section, a law enforcement officer shall charge such violation on the uniform traffic summons form. Any person violating this section shall, upon conviction, be subject to a fine of $25.00.

(i) Any person convicted of a second or subsequent violation of this section may be punished by a fine of not less than $50.00 nor more than $100.00 for each succeeding violation. No assignment of demerit points shall be made under Code of Virginia, § 46.2-489 et seq. for any violation of this section.

Secs. 78-145 --78-175. Reserved.

ARTICLE V. ABANDONED VEHICLES*

***State law references:** Authority of town to adopt ordinance similar to this article, Code of Virginia, § 46.2-1201.

Sec. 78-176. Definitions.

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

Abandoned motor vehicle means a motor vehicle, trailer or semitrailer or part of a motor vehicle, trailer or semitrailer that:

(1) Is inoperable and is left unattended on public property, other than primary highway, for more than 48 hours; or

(2) Has remained illegally on public property for more than 48 hours; or

(3) Has remained for more than 48 hours on private property without the consent of the property's owner, regardless of whether it was brought onto the private property with the consent of the owner or person in control of the private property.

(4) Is inoperable, left unattended, or both, on the shoulder of a primary highway.

Demolisher means any person whose business is to convert a motor vehicle, trailer or semitrailer into processed scrap or scrap metal or otherwise to wreck, or dismantle such vehicles. (Code 1982, § 11-87)

Cross references: Definitions generally, § 1-2.

State law references: Similar provisions, Code of Virginia, § 46.2-1200.

Sec. 78-177. Authority to remove.

(a) The town may remove and take into custody any abandoned motor vehicle or any motor vehicle, trailer or semi-trailer which is a traffic hazard and dispose of it in accordance with this article. In this connection, the town may employ its own personnel, equipment and facilities or hire persons, equipment and facilities or firms or corporations that may be independent

contractors for the purpose of removing, preserving, storing and selling at public auction such vehicles.

(b) If an abandoned motor vehicle is on private property, the vehicle shall not be removed under this section, without the written request of the owner, lessee or occupant of such property. The person requesting the removal of such vehicle shall indemnify the town against any loss or expense incurred by reason of the removal, storage or sale of the vehicle.

(Code 1982, § 11-88)
State law references: Similar provisions, Code of Virginia, §§ 46.2-1201, 46.2-1213.

Sec. 78-178. Notice to owner of vehicle taken into custody.

(a) When the town takes an abandoned motor vehicle into custody, the town manager shall, within 15 days, by registered or certified mail, return receipt requested, notify the owner of record of the motor vehicle and all persons having security interests in the vehicle of record that it has been taken into custody. The notice shall:

(1) State the year, make, model, and serial number of the abandoned motor vehicle;

(2) Set forth the location of the facility where it is being held; and

(3) Inform the owner and any persons having security interests of their right to reclaim it within 15 days after the date of the notice after payment of all towing, preservation, and storage charges resulting from placing the vehicle in custody.

(b) The notice shall state that the failure of the owner or persons having security interests to reclaim the vehicle within the time provided shall constitute:

(1) Waiver by the owner and all persons having any security interests of all right, title, and interest in the vehicle; and

(2) Consent to the sale of the abandoned motor vehicle at a public auction.

(c) If records of the state department of motor vehicles contain no address for the owner or no address of any person shown by the department's records to have a security interest, or if the identity and addresses of the owner and all persons having security interests cannot be determined with reasonable certainty, notice by publication once in a newspaper of general circulation in the area where the motor vehicle was abandoned shall be sufficient to meet all requirements of notice pursuant to this article as to any person who cannot be notified pursuant to the foregoing provisions of this section. Notice by publication may contain multiple listings of abandoned motor vehicles. Any notice of this kind shall be within the time requirements prescribed by this section for notice by mail and shall have the same contents required for a notice by mail.

(d) The consequences of failure to reclaim an abandoned motor vehicle shall be as set forth in a notice given in accordance with and pursuant to this section.
(Code 1982, § 11-89)
State law references: Similar provisions, Code of Virginia, § 46.2-1202.

Sec. 78-179. Sale of vehicle at public auction; disposition of proceeds.

(a) If an abandoned motor vehicle is not reclaimed as provided for in section 78-178, the locality or its authorized agent shall, notwithstanding the provisions of Code of Virginia, § 46.2-617, sell it at public auction. The purchaser of the motor vehicle shall take title to the motor vehicle free of all liens and claims of ownership of others, shall receive a sales receipt at the auction, and shall be entitled to apply to and receive from the state department of motor vehicles a certificate of title and registration card for the vehicle. The sales receipt from the sale shall be sufficient title only for purposes of transferring the vehicle to a demolisher for demolition, wrecking or dismantling, and in that case no further titling of the vehicle shall be necessary.

(b) From the proceeds of the sale of an abandoned motor vehicle, the town or its authorized agent shall reimburse itself for the expenses of the auction, the cost of towing, preserving and storing the vehicle that resulted from placing the abandoned motor vehicle in custody, and all notice and publication costs incurred pursuant to section 78-178. Any remainder from the proceeds of a sale shall be held for the owner of the abandoned motor vehicle or any person having security interests in the vehicle, as their interests may appear, for 90 days, and then be deposited into the treasury of the town.
(Code 1982, § 11-90)

State law references: Similar provisions, Code of Virginia, § 46.2-1203.

Sec. 78-180. Vehicles abandoned in garages.

(a) Notwithstanding section 78-176, any motor vehicle, trailer, semitrailer or part thereof shall be considered abandoned and may be reported by the garage keeper to the town if it has been left in a garage for more than ten days or for more than ten days beyond the period the vehicle was to remain on the premises pursuant to a contract, after notice by registered or certified mail, return receipt requested, to the owner of record and all persons having security interests of record therein, to reclaim the vehicle within 15 days of the notice. Any abandoned motor vehicle left in a garage may be taken into custody by the town in accordance with section 78-177 and shall be subject to the notice and sale provisions contained in sections 78-178 and 78-179. If, however, the vehicle is reclaimed in accordance with section 78-178, the person reclaiming it, in addition to the other charges required to be paid, shall pay the reasonable charges of the garage keeper, unless otherwise provided by contract or ordinance. If the vehicle is sold pursuant to section 78-179, any garage keeper's charges shall be paid from and to the extent of the excess of the proceeds of sale after paying the expenses of the auction, the costs of towing, preserving, and storing the vehicle which resulted from placing the vehicle in custody and all notice and publication costs incurred pursuant to section 78- 178. Except as otherwise provided in this article, nothing in this section shall restrict any rights conferred on any person under Code of Virginia, §§ 43-32 through 43-36.

(b) For the purposes of this section, "garage" means any commercial parking place, motor vehicle storage facility, or establishment for the servicing, repair, maintenance or sale of motor vehicles whether or not the vehicle had been brought to that location with the consent of the owner or person in control of the premises, and "garage keeper" means the operator of a garage.
(Code 1982, § 11-91)

State law references: Similar provisions, Code of Virginia, § 46.2-1204.

Sec. 78-181. Disposition of inoperable abandoned vehicles.

(a) Notwithstanding any other provisions of this article, any inoperable motor vehicle, trailer, semitrailer, or part of a motor vehicle, trailer or semitrailer that has been taken into custody

pursuant to other provisions of this article may be disposed of to a demolisher, without the title and without the notification procedures, by the town or by the person on whose property or in whose possession the motor vehicle, trailer or semitrailer is found. The demolisher, on taking custody of the inoperable abandoned motor vehicle, shall notify the state department of motor vehicles on forms and in the manner prescribed by the commissioner of such department. Notwithstanding any other provision of law, no other report or notice shall be required in this instance.

(b) When a motor vehicle, trailer, semitrailer or major portion thereof has been disposed of to a demolisher in accordance with the provisions of this section, the town manager or other authorized agent of the town council shall so certify to the state department of motor vehicles, upon forms provided by such department, and apply for reimbursement in the sum of $50.00 for each vehicle so disposed of and shall otherwise comply with such rules and regulations as the commissioner of such department may make with reference thereto.
(Code 1982, § 11-92)

State law references: Similar provisions, Code of Virginia, §§ 46.2-1205, 46.2-1207.

Secs. 78-182—78-199. Reserved.

ARTICLE VI. TAXICAB SERVICE*

DIVISION 1. GENERALLY.

***State law reference—**Authority of the town to regulate taxicabs and similar for-hire vehicles, Code of Virginia, §§ 46.2-310, 46.2-2062 et seq.

Sec. 78-200. 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:

Applicant means the person or entity who or which has (have) applied for a certificate of public convenience and necessity pursuant to the provisions of this article.

Certificate means the certificate of public convenience and necessity required by the provisions of this article.

Certificate holder means that person or entity who or which holds a certificate issued pursuant to the provisions of this article.

Chief or chief of police means the chief of police of the town, Virginia or his designee.

Department means Smithfield Police Department unless the language of a provision clearly indicates otherwise.

Driver means the person in charge of or actually operating a taxicab.

Manifest means a written document required by this article that shall be present in all taxicabs at all times indicating the date, time, origination, destination and fee charged for every hire.

Passenger means a person occupying a taxicab, other than the driver, who has hired and expects to be transported by the taxicab.

Person means person, firm, proprietor, partnership, company, corporation or any other legal entity.

Private taxicab stand means a parking area for use by taxicabs for the purpose of waiting for passengers that is located on private property, not on a public street, and for which a certificate of public convenience and necessity has been issued by the chief of police or his designee.

Public taxicab stand means the public parking areas which have bee approved by the chief of police or his designee for use by taxicabs for the purpose of waiting for passengers.

State code means the Code of Virginia, 1950, as amended.

Taxicab or other motor vehicle performing a taxicab service means any motor vehicle having a seating capacity of not more than six passengers, excluding the driver, not operating on a regular route or between fixed terminals used in the transportation of passengers for hire or for compensation, and not a common carrier or restricted common carrier as defined in Code of Virginia, § 46.2-2000 or its successor. The term "taxicab" shall include the terms "taxi," "cab," "hack" or like terms as used to indicate a taxicab. Motor vehicles used for the transportation of particular classes of passengers under a services contract with another business or governmental agency, which are never used or available for use as a vehicle for hire by the general public are not taxicabs for purposes of this chapter.

Taxicab owner means any person who is a registered owner of a vehicle being used as a taxicab, any person having control of the operation or maintenance of a taxicab, the lessor and lessee of a taxicab and purchaser of a taxicab pursuant to a conditional sales contract or other title reserving agreement.

Taxicab rate card means the document that is required to be conspicuously displayed inside a taxicab which indicates fare rates set by the town for the hire of taxicabs.

Taximeter means any instrument or device used in a taxicab by which the charge for hire of the taxicab is calculated mechanically or electronically and on which such charge is plainly indicated.

Town code means the Code of Town of Smithfield, Virginia, as amended.

Street means any highway, alley, avenue or other way designed for vehicular travel.
(Ord. of 9-2-2003)
Cross reference—Definitions generally, § 1-2; businesses, ch. 26.

Sec. 78-201. Licensing generally.

Upon the issuance of a certificate of public convenience and necessity pursuant to the provisions of this article, the holder of such certificate shall, pursuant to chapter 26 of this Code, make application to the town treasurer for a license for the operation of taxicabs in the town and shall pay the license tax prescribed in section 26-222 of this Code.
(Ord. of 9-2-2003)

Sec. 78-202. Insurance.

(a) It shall be unlawful for any person to operate a taxicab upon the streets of the town unless the taxicab is covered by motor vehicle liability insurance issued by an insurance company authorized to do business in the commonwealth in such amounts as are approved by the state corporation commission for taxicabs operating under the provisions of chapter 20 of title 46.2 of the state code (Code of Virginia, § 46.2-2000 et seq.) such policy shall contain a clause obligating the insurance company to give 30 days' written notice to the chief of police or his designee cancellation of such policy. The certificate granted under this article shall, be revoked by the lapse, cancellation or termination of such policy of insurance, whether or not notice of such is sent to or received by the chief of police or his designee, unless the same shall have been renewed or replaced as herein required.

(b) A properly completed, current and signed certificate of insurance from an insurance company authorized to do business in Virginia evidencing the required insurance coverage shall be provided to the chief of police or his designee at all times the taxicab is available for operation. In lieu of a certificate issued by an insurance company, a current certificate of self-insurance issued by the commissioner of the state department of motor vehicles shall satisfy the requirements of this section. Failure to provide the chief of police or his designee with evidence of current insurance or self-insurance shall be cause for revocation of the certificate of public convenience and necessity after reasonable notice to the certificate holder that a hearing for that purpose will be conducted by the chief of police or his designee in the matter.
(Ord. of 9-2-2003)

Sec. 78-203. Lettering and numbering; display of advertising; lights other than those required by law.

(a) All taxicabs operated under the provisions of this article which are operated under one trade name shall be of unique and uniform color and lettering as approved by the chief of police or his designee, shall display the trade name of the taxicab on both sides and rear of the vehicle in letters at least 2-1/2 inches in height on both sides and the rear of the taxicab. Such numbers shall be placed on both sides and rear of each taxicab in a prominent place. Lettering and numbers shall be affixed to the taxicab by painting thereon or by stick-on letters and numbers that are not easily removed without damage to the letters and numbers. Letters and numbers shall not be magnetically attached to the taxicab.

(b) No advertising shall be displayed in or on a taxicab, except advertising on a panel affixed to the rear bumper of the taxicab. Such panel shall not in any manner obscure the rear view vision of the driver, nor shall it obscure any licensing, lettering, lights or signals required to be displayed on the rear of the taxicab.

(c) No lights shall be placed on a taxicab, other than the dome light designating the vehicle as a taxicab and those lights otherwise required by law.

(d) Dome lights shall be turned on and in operating order during all times as the taxicab is hired or available for hire.

Sec. 78-204. Use of vehicle other than as taxicab.

It shall be unlawful for any person to use or operate a taxicab in the town for any purpose other than a purpose within the purview of the definition of "taxicab."

(Ord. of 9-2-2003)

Sec. 78-205. Adequate and efficient service required.

Adequate and efficient service shall at all times be maintained by the holder of a certificate of public convenience and necessity issued under this article by:

(1) Providing 24-hour service;

(2) Providing radio, mobile telephone or other electronic dispatch service; and

(3) Maintaining a business office and maintaining business records within the town.
(Ord. of 9-2-2003)

Sec. 78-206. Rates of fare prescribed.

(a) *Generally.* The schedule of rates set out in this section shall be charged and collected for the transportation of passengers by a taxicab operating under a certificate of public convenience and necessity issued pursuant to the provisions of this article, and no different rates shall at any time be charged or collected for such service unless otherwise provided for in this article.

(b) *Meter rates.* The rates of fare to be charged and collected for service by taxicabs operated within town shall be determined exclusively by taximeters, regardless of the destination, whether within or beyond the corporate limits of the town. If the destination is within the town or Isle of Wight County, the following rates of fare shall apply: For the first one-sixth of a mile, the rate shall be $1.75 and for each additional one-sixth mile, the rate shall be $0.25.

(c) *Additional charges.* The rates of fare required by this section shall be considered the minimum rates of fare for pickups and discharges at destinations located within the town, or within Isle of Wight County. Additional charges based upon the meter mileage may also be levied for such destinations so long as the driver provides the passenger with a written rate sheet prior to engagement of the taximeter which clearly identifies the additional charges and the passenger sign the rate sheet agreeing to pay the additional charges. In lieu of using the taximeter and charging an additional fare, taxicab drivers may charge a flat rate for such trips so long as the driver provides the passenger with a written rate sheet prior to hire which clearly identifies the flat rate charge and the passenger sign the rate sheet agreeing to pay the flat rate.

(d) *Waiting time.* The charge for waiting time by a taxicab shall be $0.25 for each one minute of waiting time. Waiting time shall include:

(1) The time when the taxicab is stopped or moving at a speed of less than 12 miles per hour;

(2) The time when the taxicab is not in motion beginning in five minutes after its time of arrival at the place to which it has been initially called; and

(3) The time consumed while it is standing or waiting at the direction of the passenger; but no charge shall be made for time lost on account of inefficiency of the taxicab or its operation or time consumed by premature response to a call.

(e) *Trunks, baggage, parcels, etc.* The charge for trunks, baggage, parcels and the like shall be as follows: a charge of fifty cents ($0.50) may be made for transportation of a trunk, parcels and baggage, other than ordinary handbags, when such items in combination do not exceed five in number; provided, that such charge for transporting a trunk shall include only the loading of the trunk on the taxicab at the curb and the unloading of the trunk from the taxicab to the curb at the point of destination. A charge of $0.75 may be made for the transportation of trunks, baggage, parcels and the like when such items in combination exceed five in number. A charge of $5.00 may be made for the transportation of non-pedestrian carried items, or the driver may refuse to transport such items.

(f) *Elderly / handicapped discount.* The owner of a participating taxicab may, upon receipt of satisfactory proof that a person is 60 years of age or older, offer transportation and services to such qualified person at a reduced fare. Proof of entitlement to such a discount may be by presentment of a Medicare card, and satisfactory proof of the identity of the holder of such card, or by any other proof that may be deemed satisfactory in lieu thereof.

(g) *Certificate of public convenience; other localities.* Notwithstanding the provisions of this section, taxicabs operating under a certificate of public convenience and necessity, or the equivalent, from another locality which are transporting passengers from outside the town to a destination within the town may charge the rates prescribed by such other locality in lieu of the rates prescribed in this article.
(Ord. of 9-2-2003)

Sec. 78-207. Photo-rate card generally; display of rates of fare on outside of taxicab.

(a) Upon arrival of a rate or rates of fare pursuant to this article, or upon approval of a taxicab driver's license pursuant to this article, the chief of police or his designee shall cause to be issued either a rate card and/or a driver's license. Each such card shall be not less than three inches by three inches in size. The driver's license shall contain a photographic likeness of the driver to whom it has been issued and shall also have printed thereon the name, business address and description of the driver. The rate card shall have printed thereon the name, address and telephone number of the owner of the taxicab, together with the approved rates of fare.

(b) Both cards referred to in this section shall be displayed in any taxicab being operated in the town by affixing the cards to the right front sun visor and the cards shall be enclosed in a clear plastic shield through which their contents may be fully discernible and clearly legible from the rear seat.

(c) There shall be displayed, on the outside surface of both rear doors of every taxicab, the rates of fare to be charged for the use thereof, in letters and figures at least one-half inch in height.

(d) There shall be posted in a conspicuous place in each taxicab operating under a certificate issued pursuant to this article a card, plaque or document of similar import upon which is legibly printed the rates of fare prescribed by this article to be charged for the hire of the taxicab and that, upon request by the passenger, a receipt will be provided for the payment of the fare.
(Ord. of 9-2-2003)

Sec. 78-208. Issuance of replacement rate card.

Should it become necessary for the holder of a photo-rate card issued under section 78-207 of this article to obtain another card due to loss or defacement of the original, the chief of police or his designee shall issue the holder another card, upon payment of a re-issuance fee in the amount of $5.00.
(Ord. of 9-2-3003)

Sec. 78-209. Carrying more than one passenger; division of fare among passengers.

(a) Not more than one passenger shall be transported at one time by a taxicab without the consent of the person first engaging the taxicab.

(b) If the hirer of a taxicab consents to another passenger occupying the taxicab with him or her, the passenger first arriving at his or her destination shall pay in accordance with the meter charge, whereupon the driver of the cab shall immediately clear the taximeter and set the same for immediate operation for the next passenger who shall pay the meter charge upon arrival at his or her destination. The same method shall be followed for each succeeding passenger.

(c) When two or more passengers are bona fide traveling together to the same destination, the charge shall be made as if the taxicab was hired by one passenger.
(Ord. of 9-2-2003)

Sec. 78-210. Failure to pay fare; advance payments; receipts.

(a) It shall be unlawful for any person or persons to refuse to pay the legal fare of a taxicab after having hired same for transportation.

(b) Taxicab owners and drivers may require the estimated lawful fare to be paid in advance before undertaking the transportation of a passenger; however, if the final total fare is less than the advance payment, the driver shall return the unearned portion of the advance payment; provided further that if the final total fare is more than the advance payment, the passenger or passengers shall pay the balance of the final total fare.

(c) A driver shall provide a receipt indicating the driver's name, the time, date, place of origin and destination of the trip, taxicab number and the amount of the fare when requested to do so by a passenger.
(Ord. of 9-2-2003)

Sec. 78-211. Consent required for change of location of operations.

The location of the premises from which taxicabs are to be operated pursuant to a certificate of public convenience and necessity issued under this article shall not be changed, transferred or removed from that specified in the certificate, without the written consent of the chief of police or his designee.

Sec. 78-212. Parking while awaiting employment.

Except while waiting for a passenger who has already engaged the services of such vehicle, no taxicab shall park or stand awaiting employment on any public street or private property in a residential zoning district except at an approved public or private taxicab stand. This section shall

not be construed to prohibit the parking of a taxicab operated by its owner or designated driver or any street in the town while such owner is in the course of transacting private, personal business, however, at such times, the dome light must be turned off indicating that the taxicab is not available for hire.

Sec. 78-213. Parking on street in front of owner's or designated driver's residence.

Notwithstanding any other provision of this article, the chief of police or his designee may include, in a certificate of convenience and necessity issued under this article, permission to park one taxicab on the street in front of the residence of the owner, designated driver or certificate holder of such taxicab.

Sec. 78-214. Taking on passengers when taxicab parked in front of owner's, designated driver's or certificate holders' residence.

It shall be unlawful for the driver of a taxicab to take on passengers from a location at which such taxicab may be parked on the street in front of the residence of the owner, designated driver or certificate holder of such taxicab, pursuant to permission given under section 78-213 of this article.
(Ord. of 9-2-2003)

Sec. 78-215. Calls to be accepted in order.

It shall be the duty of every taxicab operator, dispatcher or driver to give preference to calls fro service in order of their receipt, regardless of the destination of the passenger.
(Ord. of 9-2-2003)

Sec. 78-216. Use of shortest practicable route required; use of toll facilities.

The driver of a taxicab operated under the provisions of this article shall operate the same over the shortest practicable route, or as otherwise directed by the passenger, from the place of the beginning of the trip to the place of destination. When such route requires the payment of a toll, the driver shall transport the passenger by way of a toll facility when the passenger agrees to pay the toll charge incurred with respect to the trip.
(Ord. of 9-2-2003)

Sec. 78-217. Limitation on number of passengers.

It shall be unlawful for a driver to transport, in a taxicab, more than two passengers in the front seat or more than four passengers in the rear seat at the same time.
(Ord. of 9-2-2003)

Sec. 78-218. Transporting person other bona fide passenger.

It shall be unlawful for a driver to transport, in a taxicab available for hire, any person, who is not a bona fide passenger; or officer, employee or prospective employee of the certificate holder; or police officer in the performance of duty.
(Ord. of 9-2-2003)

Sec. 78-219. Refusal to carry orderly person.

Drivers of taxicabs operated under the provisions of this article shall not refuse to carry any orderly person anywhere in town, unless previously engaged or unable to do so.

Sec. 78-220. Driver not to permit passengers to enter or leave on traffic side of taxicab.

No taxicab driver shall willfully permit any passenger to enter or leave such taxicab on a public way by the left rear door or side thereof, except on one-way streets when such vehicle is lawfully stopped on the left side of the street for the purpose of taking on or discharging a passenger; nor shall such driver willfully permit any passenger to enter or leave such taxicab on a public way by the right rear door or side thereof, except when such vehicle is lawfully stopped on the right side of the street for the purpose of taking on or discharging a passenger.
(Ord. of 9-2-2003)

Sec. 78-221. Driver's manifest.

(a) Every person driving a taxicab under the provisions of this article shall keep a manifest or accurate written record as follows:

(1) Whenever a driver begins a shift or comes on duty taking charge of a taxicab as the driver thereof, such driver shall record the odometer reading of such taxicab before any passenger is transported as a fare. Such odometer shall be in working order.

(2) Whenever a driver begins a shift or comes on duty taking charge of a taxicab as the driver thereof, such driver shall record the units and trips, as shown on the taximeter at that time, before any passenger is transported as a fare.

(3) Whenever a driver ends a shift or goes off duty, such driver shall record the units and trips, as shown on the taximeter at that time.

(4) At the beginning of each call or trip made, the driver shall record the time of beginning such call or trip and the place where the fare is picked up. At the end of such call or trip, the driver shall record the time of ending such call or trip and the place where the fare is discharged. The fare collected for each call or trip shall be recorded immediately after collection.

(b) Manifests or records required by this section shall be available for the inspection, either in the taxicab while it is in operation or at the business office of the certificate holder in Smithfield, and use by any member of the police or codes compliance departments. All such manifests and records shall be preserved for at least 12 months.
(Ord. of 9-2-2003)

Sec. 78-222. Disposition of property left in taxicabs.

It shall be unlawful for the driver of a taxicab to knowingly fail, refuse or neglect to preserve any property left in such taxicab by any passenger. The driver shall deliver such property to the certificate holder who shall inventory and preserve same for the passenger who left the property in the taxicab. The inventory shall include the date the property was discovered in the taxicab, a description of the property, the driver, the date of disposition and the disposition of the property.

Property of an apparent value in excess of $100.00 shall be delivered to the chief of police or his designee on a weekly basis, who shall mark the same for identification and preserve the same for the passenger who left the property in the taxicab. When the property has been identified and ownership established, it shall be promptly delivered to its owner upon the owner's request. Any property which is not called for within 60 days of the date of the inventory or delivery to the chief of police or his designee may be disposed of according to law.
(Ord. of 9-2-2003)

Sec. 78-223. Drivers not to remain on duty longer than 13 hours within any 24-hour period.

No person shall drive a taxicab or remain on duty, available to drive a taxicab, longer than 13 hours within any 24-hour period.
(Ord. of 9-2-2003)

Sec. 78-224. Scanners or other monitoring devices prohibited.

It shall be unlawful to have radio frequency scanning or similar electronic devices in a taxicab. It shall also be unlawful to monitor radio communications between a dispatcher and a taxicab or between two or more taxicabs for the purpose of responding to a call for taxicab service, without the permission of the participants to the communication, or of the company for whom they are employed.

Sec. 78-225. Cleanliness of taxicab drivers.

Taxicab drivers shall be clean in personal hygiene and dress in clean clothing at all times while operating a taxicab for hire.

Sec. 78-226—78-229. Reserved.

DIVISION 2. CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

Sec. 78-230. Required; renewal; exception.

(a) Before any vehicle shall be operated as a taxicab upon the streets of the town, a current certificate of public convenience and necessity must first have been issued by the chief of police or his designee in accordance with the provisions of this article.

(b) The initial certificate issued pursuant to the provisions of this article, including those certificates lawfully existing on the date of the adoption of this article, shall expire on January 31 following its issuance, and shall be administratively renewed or denied thereafter before January 31 on an annual basis, so long as the vehicle is operated as a taxicab. If renewal is denied by the chief of police or his designee, notice and a hearing as provided in section 78-234 of this article shall be conducted within 30 days of a request for such a hearing by the applicant.

(c) Notwithstanding the provisions of this section, taxicabs operating under a lawful certificate of public convenience and necessity, or the equivalent, from another jurisdiction may transport passengers from outside the town to a destination within the town, but only under the express

condition that such other jurisdiction provides reciprocity to taxicabs operating under certificates issued by the town.

(d) Notwithstanding the provisions of this section, taxicabs operating under a certificate of public convenience and necessity, or the equivalent, from another jurisdiction may pick up passengers within the town, but only under the express conditions that:

(1) Such pickup is under contract or has been prearranged and the taxicab has a manifest indicating such a contract or arrangement together with the origination and destination times and locations and the accumulated fare therefore; and

(2) Such other jurisdiction provides reciprocity to taxicabs operating under certificates issued by the town.

(Ord. of 9-2-2003)

Sec. 78-231. Filing and contents of application.

Any person desiring a certificate of public convenience and necessity required by this article shall file an application therefore with, and on forms provided by, the chief of police or his designee. Such application shall set forth the name and address of the applicant, the trade name under which the applicant desires or proposes to do business, the location of the premises from which it is proposed to operate taxicabs, the number of taxicabs the applicant desires to operate, the class and seating capacity of such taxicabs and coloring, lettering or marks to be used thereon, written permission for the chief of police or his designee to conduct necessary criminal and motor vehicle records checks, together with any other information which may be required by the chief of police or his designee. The application shall be made under oath by the applicant or an authorized representative of the applicant in the event the applicant is a partnership, corporation or other legally operating entity.

(Ord. of 9-2-2003)

Sec. 78-232. Evidence required of applicant.

No certificate of public convenience and necessity shall be issued under the provisions of this article, if the applicant therefore is not able to produce satisfactory evidence, under oath:

(1) That public convenience and necessity require the issuance of such certificate.

(2) That the applicant is of good moral character and personally fit to carry on the business of operating taxicabs under such certificate. An applicant may provide references or other documents that support the application.

(3) That the applicant is the bona fide owner of the vehicles to be operated under such certificate.

(4) Of the location of the business office from which the taxicab operation will be operated in Smithfield, together with a certificate of occupancy indicating that such an operation is allowed by the zoning ordinance at that location.

(5) If the applicant is a corporation, a certified copy of the state charter and articles of incorporation.

(6) Written permission by the applicant for a criminal history record's check to be conducted by the police department.

(7) Any additional information the applicant wants to include.

Sec. 78-233. Fees.

Prior to the issuance of a certificate of public convenience and necessity under this article or an application for a change in location, a fee of $40.00 shall be paid to cover the cost of processing the application, including time expended for police investigation, cost of notice to the public and the like; together with a fee of $10.00 for each vehicle listed on the application. A fee of $5.00 for each vehicle shall be paid for each renewal certificate.
(Ord. of 9-2-2003)

Sec. 78-234. Hearing application; issuance of refusal.

(a) The chief of police or his designee shall hear and determine applications filed under this article. Within 90 days after receipt of any such application, the chief of police or his designee shall conduct a public hearing thereon, after giving 10 days notice thereof, in writing, to the applicant and holders of such certificates as are then outstanding. Such notice shall be mailed to the applicant and the holders of such certificates to the addresses as shown on the application and on the certificates, and shall be published twice in some newspaper published in the town.

(b) At the hearing provided for above, the chief of police or his designee shall determine whether or not the public convenience and necessity require the operation of the taxicabs in the town, in addition to those vehicles being operated at the time such application is made, and whether or not the applicant is qualified, or may become qualified, to comply with all the provisions of this article, and shall issue or refuse to issue certificates therefore.

(c) All applications filed within the 90-day period provided for in subsection (a) above and prior to the issuance of the notice fixing the date for such hearing shall be considered at the same time. The decision to issue or refuse to issue such certificates shall be based on the evidence presented at such hearing.

(d) Upon issuance of a certificate of public convenience and necessity, the applicant shall apply for a business license and pay to the town the required business license tax, and such license is then authorized to be issued.
(Ord. of 9-2-2003)

Sec. 78-235. Contents.

Certificates of public convenience and necessity issued under the provisions of this article shall designate the name of the person to whom granted, the Smithfield business address of the taxicab company, the make, class, vehicle identification number (VIN) and seating capacity of each vehicle and the coloring, lettering or marks used on the vehicles to be operated as taxicabs under such certificate and the location of the premises from which such vehicles are to be operated.
(Ord. of 9-2-2003)

Sec. 78-236. Transfer.

Certificates of public convenience and necessity issued under the provisions of this article shall not be transferred to another person, without the written consent of the chief of police or his designee.
(Ord. of 9-2-2003)

Sec. 78-237. Substitution of vehicles.

The holder of a certificate of public convenience and necessity issued under the provisions of this article may substitute new or other satisfactory vehicles in place of vehicles that have become worn, damaged or obsolete; provided, that the number of vehicles does not exceed the number provided for in the certificate already issued and outstanding. The holder of a certificate of public convenience and necessity shall resubmit the vehicle identification number (VIN) for certification of public convenience update.
(Ord. of 9-2-2003)

Sec. 78-238. Compliance with specifications.

(a) The person to whom a certificate of public convenience and necessity is issued under the provisions of this article shall operate taxicabs covered by the certificate in accordance with the specifications contained in the certificate, except as provide in subsection (b) below.

(b) It shall be unlawful for any person to operate a taxicab if the make or class of vehicle, the motor number, the seating capacity and coloring, lettering or marks used on such vehicle are at variance with the specifications in the certificate issued under this article, except upon written authorization by the chief of police or his designee.

Sec. 78-239. Holder to give notice of termination of operation.

Should any holder of a certificate of public convenience and necessity issued under the provisions of this article terminate operation for reasons not other wise provided for herein, the holder shall notify the chief of police or his designee, in writing, within ten days after such termination.
(Ord. of 9-2-2003)

Sec. 78-240. Revocation, suspension—Generally.

A certificate of public convenience and necessity issued under the provisions of this article may be suspended, or if repeated violations occur, revoked by the chief of police or his designee, after reasonable notice and hearing, for the following reasons:

(1) Failure of such holder to comply with the provisions of section 78-206 of this article as to the fares. Failure to post the drivers photo card shall be charged to the driver and not the certificate holder.

(2) Failure of the holder to comply with the provisions of section 78-205 of this article.

(3) Knowingly permitting or acquiescing in the violation of any provision of this Code or other ordinance of the town or law of the state.

(4) Failure to maintain insurance as required by this article, provided, however, that lapse of required insurance coverage shall result in the revocation of the certificate.

(5) Failure to maintain the taxicab in good order and repair in accordance with state motore vehicle inspection standards.

(Ord. of 9-2-2003)

Sec. 78-241. Same—Failure to operate or to render reasonable service.

Should any holder of a certificate of public convenience and necessity issued under the provisions of this article fail to operate the taxicab business for a period of 48 consecutive hours, such certificate shall automatically be revoked, unless cause for such failure is shown to the satisfaction of the chief of police or his designee. Such certificate may be revoked by the chief of police or his designee, after reasonable notice and hearing, for failure to properly and adequately render reasonable service to the public, as required by section 78-205 of this article.
(Ord. of 9-2-2003)

Sec, 78-242. Same—Appeal.

(a) An appeal shall lie to the town manager from a decision of the chief of police or his designee denying, revoking, suspending or failing to renew a certificate of public convenience and necessity issued under this article. Such appeal shall be filed in writing with the town manager within ten days after such revocation.

(b) The town manager shall respond to the appellant within ten business days after receipt by his office of the written appeal. The town manager's response must either grant the relief requested or schedule a hearing within ten days of the date of his response in order to afford the appellant an opportunity to be heard in the matter. A decision by the town manager shall be communicated to the appellant within five business days after the hearing. The decision of the town manager shall be final; no further appeals are authorized or provided.
(Ord. of 9-2-2003)

Sec. 78-243. Use of the term "taxi," "taxicab," "cab," etc.

It shall be unlawful for any person to use the term "taxi," "taxicab," "cab" or like term or derivation in advertising; or hold such person out as the operator, driver or owner of a taxicab unless such person shall have complied with the provisions of this article to the extent that it is applicable.
(Ord. of 9-2-2003)

Secs. 78-244—78-249. Reserved.

DIVISION 3. DRIVERS LICENSE

Sec. 78-250. Required.

No person shall drive a taxicab within the town, unless such person has a current taxicab drivers license issued under this article, which license shall be in addition to any other license required of such person. Notwithstanding the requirements of this section, drivers operating under a certificate of public convenience and necessity, or the equivalent, from another locality

who are transporting passengers from outside the town to a destination within the town may do so as long as the driver is in compliance with the requirements of the locality which issued his/her certificate of public convenience and necessity, and only so long as that locality provides reciprocity to drivers issued a taxicab drivers license by the town.

Sec. 78-251. Application.

(a) The application for a taxicab driver's license shall be in writing, sworn to and filed with the chief of police or his designee. Such application shall state the following information concerning the applicant:

(1) Full name, residence and places of residence previous to moving to present address.

(2) Age, height, race, color of eyes and hair, sex, place of birth and places of previous employment.

(3) Length of time residing in the town.

(4) Whether or not a citizen of the United States.

(5) Whether or not previously employed or licensed as a driver or chauffeur, and if so, whether or not license has ever been suspended, revoked or refused, and for what cause.

(6) Whether or not ever convicted of a violation of any federal, state or municipal law and whether or not ever addicted to the use of any intoxicating liquors or drugs.

(b) The application filed under this section and any exhibits attached thereto shall be kept by the chief of police or his designee as a permanent record.

(c) Any person who knowingly makes any false statement in any application filed under this section shall be guilty of a class 3 misdemeanor.
(Ord. of 9-2-2003)

Sec. 78-252. Applicant's qualifications.

No taxicab driver's license shall be issued under this article, unless the applicant:

(1) Is at least 18 years of age;

(2) Possesses a current driver's license, as required by Code of Virginia, title 46.2;

(3) Is qualified, by knowledge of the provisions of this Code and other ordinances of the town relative to traffic and knowledge relative to the traffic laws of the state to drive a taxicab.
(Ord. of 9-2-2003)

Sec. 78-253. Investigation of applicant.

Upon receipt of an application under this article, the chief of police or his designee shall make an investigation, including such examination and hearings as the chief of police or his designee may deem proper, of the qualifications and fitness of the applicant to drive a taxicab.
(Ord. of 9-2-2003)

Sec. 78-254. Fee.

The fee for the initial issuance of a taxicab driver's license shall be $10.00. The annual fee for the renewal of such license shall be $7.50.
(Ord. of 9-2-2003)

Sec. 78-255. Issuance of refusal.

If, upon investigation pursuant to section 78-253 of this article, the chief of police or his designee is satisfied that the applicant for a taxicab driver's license meets the requirements of section 78-252 of this article and is otherwise qualified and fit to drive a taxicab, and upon payment of the fee prescribed by section 78-254 of this article, the chief of police or his designee shall issue such license. If the chief of police or his designee is not satisfied as to the qualifications and fitness of the applicant to drive a taxicab, the chief of police or his designee shall refuse to issue such license and explain in writing the reasons why. Notwithstanding any other reason, the chief of police or his designee shall refuse to issue a taxicab driver's license if, after investigation, any of the following is found:

(1) The applicant has ever used a taxicab for illegal purposes;

(2) The applicant has any physical or mental infirmity which might render such driver unfit for the operation of a taxicab;

(3) The applicant's current privilege to operate a motor vehicle in any state is suspended or revoked;

(4) The applicant has been convicted of a felony within the past five years;

(5) The applicant has been convicted in any state of driving under the influence of alcohol or other self-administered drug within the past 12 months;

(6) The applicant has been convicted of three or more violations of the state or town code provisions regulating the ownership or operation of taxicabs, or four or more moving violations of the motor vehicle codes of either the town or the commonwealth within a 12 month period;

(7) The applicant is less than 18 years of age;

(8) The applicant does not possess a valid and current license to drive a taxicab issued to him/her by the commonwealth's department of motor vehicles;

(9) The applicant has provided false information on the application that is material to the chief of police or his designee's determination to issue or not issue a license.

(Ord. of 9-2-2003)

Sec. 78-256. Term, renewal.

A taxicab driver's license issued under this article shall be valid for a term of 12 months from the date of issuance, unless sooner suspended or revoked. On or before the expiration date of such license, the holder thereof may renew the same, upon payment of the renewal fee prescribed in section 78-254 of this article. If such license is not renewed on or before the expiration date, the holder must apply for a new license in accord with the provisions of this article and pay the fee prescribed by section 78-254 of this article for the initial issuance of a license.
(Ord. of 9-2-2003)

Sec. 78-257. Duplicate license.

Should it become necessary for a holder of a taxicab driver's license, during the term of such license, to obtain another license due to the loss or defacement of the original, the chief of police or his designee shall issue the holder another license, upon the payment of a re-issuance fee in the amount of $5.00.

Sec. 78-258. Suspension or revocation.

(a) A taxicab driver's license issued under this article may be suspended or revoked for a maximum period of one year at any time by the chief of police or his designee, after reasonable notice to the driver complained of and an opportunity to be heard, if:

(1) The driver uses a taxicab for illegal purposes;

(2) The driver has any physical or mental infirmity which might render such driver unfit for the operation of a taxicab;

(3) The driver's privilege to operate a motor vehicle in any state has been suspended or revoked;

(4) The driver has been convicted of a felony within the past five years or since issuance of the license;

(5) The driver has been convicted in any state of driving under the influence of alcohol or other self-administered drug within the past 12 months;

(6) The driver has been convicted of three or more violations of the state or town code provisions regulating the ownership or operation of taxicabs, or three or more moving violations of the motor vehicle codes of either the town or the commonwealth;

(7) The driver is less than 18 years of age;

(8) The driver does not possess a valid and current license to drive a taxicab issued to him/her by the commonwealth's department of motor vehicles;

(9) The applicant has provided false information on the application that is material to the chief of police or his designee's determination to issue or not issue a license;

(b) In the event of the suspension or revocation of such license, the license shall be forthwith surrendered to the chief of police or his designee. In case of suspension only, the license shall be returned to the driver at the expiration of the period of suspension. In the event of a second suspension for the same cause, or of a third suspension for any cause, the chief of police or his designee may revoke the license, after reasonable notice to the driver complained of and an opportunity to be heard. Each suspension and revocation shall be noted on the license.

(c) An appeal shall lie to the town manager from a decision of the chief of police or his designee revoking or suspending a taxicab driver's license issued under this article. Such appeal shall be filed in writing with the town manager within ten days after such revocation. The town manager shall respond in writing to the appellant within ten business days after receipt by his office of the written appeal. The town manager's response must either grant the relief requested or schedule a hearing within ten days of the date of his response in order to afford the appellant an opportunity to be heard in the matter. A decision by the town manager shall be communicated to the appellant within five business days after the hearing. The decision of the town manager shall be final; no further appeals are authorized or provided.

Sec. 78-259. Records to be kept.

The department shall keep a complete record of all taxicab driver's licenses issued under the provision of this article and of renewals, suspensions and revocation thereof.
(Ord. of 9-2-2003)

Sec. 78-260—78-264. Reserved.

DIVISION 4. TAXIMETERS

Sec. 78-265. Required.

Except as otherwise provided by law, all taxicabs operating on the streets of the town shall be equipped with a taximeter of a type approved by the chief of police or his designee of the department of codes compliance or his designee.
(Ord. of 9-2-2003)

Sec. 78-266. Sealing generally.

No person shall use or permit to be used any taxicab equipped with a taximeter unless the taximeter shall have first been sealed by the chief of police or his designee of the department of codes compliance or his designee with the official designated seal.
(Ord. of 9-2-2003)

Sec. 78-267. Tampering with seal or meter; operation of cab with broken seal.

It shall be unlawful for any person to break a seal on a taximeter or to tamper with it or to manipulate such taximeter in such manner as to cause it to measure inaccurately the distance traveled by the taxicab to which it is attached, or the amount of the charges based upon the distance traveled. It shall be unlawful for any person to operate a taxicab with the seal thereon broken.
(Ord. of 9-2-2003)

Sec. 78-268. Location.

Taximeters installed under the provisions of this article shall be so placed in the taxicab that the reading dial showing the amount to be charged shall be well lighted and readily discernible by the passenger riding in such taxicab.
(Ord. of 9-2-2003)

Sec. 78-269. Display and positioning of flag.

(a) It shall be unlawful for the driver of any taxicab, while carrying therein any other person, to display the flag or other device attached to the taximeter installed in such taxicab in a position so as to denote that such vehicle is for hire, or is not employed, or to have such flag or other attached device in such a position as to prevent such taximeter from operating.

(b) It shall be unlawful for any driver of a taxicab to throw such flag or other attached device of a taximeter in a position which causes such taximeter to record when such vehicle is not actually employed or to fail to throw such flag or other device on the taximeter into a non-recording position at the termination of each and every service.
(Ord. of 9-2-2003)

Sec. 78-270. Maintenance.

It shall be the duty of every owner of a taxicab to keep the taximeter installed thereon in proper mechanical condition, so that such taximeter will, at all times, correctly and accurately indicate the correct charge for the distance traveled or for the distance traveled, plus waiting time.
(Ord. of 9-2-2003)

Sec. 78-271. Inspection; procedure upon discovery of inaccuracy.

A taximeter installed on a taxicab under the provisions of this article shall, at all reasonable times, be subject to inspection by members of the police department or inspectors designated by the codes compliance administrator. Such inspector, on his own authority or upon complaint of any person, may investigate or cause to be investigated any taximeter used on any taxicab operated in this town and, upon the discovery of any inaccuracy in such taximeter, remove or cause to be removed such taxicab so equipped with such taximeter from the streets of the town until such time as the taximeter shall have been correctly adjusted and approved by the inspector or such taximeter has been replaced in the taxicab by a proper taximeter.

Sec. 78-272. Removal and reinstallation of taximeter.

It shall be unlawful to utilize a taximeter that has been removed from one taxicab and replaced in the same taxicab or another taxicab without first having the taximeter reinspected and resealed in accordance with the provisions of this article.
(Ord. of 9-2-2003)

Secs. 78-273—78-279. Reserved.

DIVISION 5. TAXICAB STANDS

Sec. 78-280. Operation from public stands.

(a) The chief of police or his designee shall, after conducting a hearing thereon which is open to the public, designate such places in the streets of the town as public taxicab stands as will best serve the public convenience and necessity for taxicabs, and he shall further prescribe the number of taxicabs that may be parked at each stand at any one time. Such public stands shall be available for use only by taxicabs and only so long as the chief of police or his designee determines that the stand is necessary for the public's convenience and necessity. The hearing shall be advertised in a local newspaper of general circulation at least once not less than seven days prior to the hearing. Such advertisement shall invite public comment, advise the public of the location, time and date of the hearing, and state the purpose for which the hearing will be held.

(b) Any driver of a taxicab for which a certificate has been issued by the chief of police or his designee, and which is then available for hire, shall have the privilege of parking or stopping at such public taxicab stands to await the hiring or dispatch of his taxicab by a passenger when space is available therefore.

(c) Taxicabs shall not park or stop on the public streets of the town waiting to be hired except at those public stands designated in accordance with this section and only when available for hire.

(d) In lieu of parking and stopping at public taxicab stands waiting for hire, taxicabs may park or stop at such private stands as are designated by the chief of police or his designee as provided in this article.

(e) No person shall stop, stand or park a vehicle other than a taxicab in a taxicab stand when such stand has been officially designated and signed or marked as such.

(f) Any person found in violation of this section shall be guilty of a class 3 misdemeanor.
(Ord. of 9-2-2003)

Sec. 78-281. Application for assignment of a private stand.

Any owner of a taxicab operated under the provisions of this article desiring to have a private stand assigned for the use of and occupation by such taxicab shall make application in writing for such assignment to the chief of police or his designee, stating in such application the location of the desired stand and the number of vehicles to occupy such stand. Such application shall be accompanied by the written consent of the owner or person in legal control of the property on which the stand is to be located.
(Ord. of 9-2-2003)

Sec. 78-282. Issuance of assignment.

The chief of police or his designee is hereby authorized to assign private stands for taxicabs, if he approves the application therefore filed under this article.
(Ord. of 9-2-2003)

Sec. 78-283. Sale or transfer of assignment.

No assignment of a taxicab stand made pursuant to the provisions of this article shall be sold or further assigned.
(Ord. of 9-2-2003)

Sec. 78-284. Revocation of assignment—Generally.

The chief of police or his designee, for good cause and after hearing, may revoke any assignment made under this article and the right of the assignee to use the stand in question shall thereupon terminate.
(Ord. of 9-2-2003)

Sec. 78-285. Revocation of assignment for nonuse.

In the event any owner of a taxicab shall fail to use or occupy the stand assigned to such owner under this article for 48 consecutive hours, the chief of police or his designee shall revoke the assignment, and right of such owner to make further use of such stand shall thereupon terminate, unless cause for such failure be shown to the satisfaction of the chief of police or his designee.
(Ord. of 9-2-2003)

Sec. 78-286. Driver's attendance required for cabs parked in stand.

The driver of a taxicab parked in a stand assigned pursuant to this article shall be at all times alert and awake, and seated in such taxicab or be within 25 feet of such taxicab, as long as such taxicab is parked in such stand.
(Ord. of 9-2-2003)

Secs. 78-287—78-289. Reserved.

DIVISION 6. ANNUAL TAXICAB INSPECTION

Sec. 78-290. Unlawful to operate taxicab without taxicab inspection sticker.

It shall be unlawful for any person to operate or allow to be operated any taxicab that does not display a valid taxicab inspection sticker issued by the chief of police or his designee.
(Ord. of 9-2-2003)

Sec. 78-291. Yearly inspections required; inspection procedure; cost of inspection sticker.

(a) *Inspection required.* Each taxicab shall be inspected yearly by a person or persons designated to do so by the chief of police or his designee.

(b) *Inspection procedure.*

(1) Holders of taxicab certificates of public convenience and necessity must arrange for each taxicab to be inspected each year by contacting the chief of police or his designee. Inspections may be conducted during any month upon initial acquisition of a certificate of public convenience and necessity; successive

annual inspections shall be at staggered intervals as scheduled by the chief of police or his designee's taxicab inspector. The taxicab inspector shall provide at least 30 days prior notice of the inspection to the certificate holder at the address provided in the application for a certificate of public convenience and necessity, or at such address as has been otherwise provided by the certificate holder.

(2) Each taxicab inspected shall be evaluated regarding:

(i) *Mechanical condition*—Including but not limited to all lights, tires, speedometer, etc.

(ii) *Color and lettering*—Including but not limited to clarity, legibility, and accuracy, including consistency with any other cabs operating under the same trade name.

(iii) *Cleanliness*—Cleanliness of the exterior and interior of vehicle.

(iv) *Condition of exterior*—Including but not limited to the condition of the body of the vehicle, bumpers, windows and windshield, as well as the proper operating condition of the dome light.

(v) *Condition of interior*—Including but not limited to seats, including the proper operation of seat belts, carpet, window shelves, interior panels and dashboard.

(vi) *Meter seal*—The seal shall not be broken or missing.

(vii) *State corporation commission tag*—Current issue.

(viii) *Town tag*—Current issue.

(ix) *State tag*—Current issue.

(3) All items listed in subsection (2) above must be found acceptable before an inspection sticker may be used.

(4) Each yearly inspection shall include all items listed in subsection (2) above, however, a re-inspection of a rejected vehicle during the period of validity of the inspection sheet shall include only the item or items previously found defective.

(5) The inspection sheet rejecting such vehicle shall serve as a rejection notice and shall have a validity period of 15 calendar days beyond the day of issuance, except in the case of rejection for defects that are of a cosmetic nature, in which case the rejecting inspection sheet shall have a validity period of 30 days. A complete inspection shall be performed on any vehicle which has an expired rejection inspection sheet.

(6) An administrative fee of $5.00 shall be charged for each initial inspection, or re-inspection after the rejecting inspection sheet has expired.

(7) A charge of $2.00 shall be made for each re-inspection of a vehicle previously rejected if such vehicle is submitted for re-inspection within the validity period stated on the rejecting inspection sheet.

(8) Nontransferable inspection stickers shall be issued for each taxicab upon successful completion of the required inspection. Stickers shall be affixed to the rear bumper of the taxicab after issuance.

(9) A valid inspection sticker may be replaced; for a fee of $2.00, on a taxicab upon a viewing of the taxicab by the town's taxicab inspection in the event the original inspection sticker is stolen or becomes damaged so as to be illegible.

(Ord. of 9-2-2003)

Sec. 78-292. Police orders to cease use of vehicle as a taxicab.

A sworn police officer or town's taxicab inspector may require any taxicab operating within the town to cease operation until such time as mechanical deficiencies are corrected, and the taxicab re-inspected, if the police officer observes a condition of the taxicab which places persons or property in eminent danger of accident or injury. Failure to obey the order of such police officer pursuant to this section shall be unlawful. At such time as the taxicab deficiencies are corrected and the certificate holder has requested a re-inspection, town personnel designated to re-inspection shall endeavor to re-inspect the taxicab within 48 hours, not including Saturdays, Sundays, and town holidays.

(Ord. of 9-2-2003)

Chapters 79—81

RESERVED

Chapter 82

UTILITIES*

***Charter references:** Power of town to grant public utility franchises, § 14; town treasurer, § 38.

Cross references: Miscellaneous ordinances not affected by Code, § 1-8; administration, ch. 2; standing committees of council, § 2-37; permit to display advertising matter on utility poles or across street, § 6-2; buildings and building regulations, ch. 22; businesses, ch. 26; environment, ch. 38; fire prevention and protection, ch. 42; personnel, ch. 58; solid waste, ch. 66; streets, sidewalks and other public places, ch. 70; tax on purchasers of utility services, § 74-86 et seq.; vegetation, ch. 86; waterways, ch. 90; zoning, app. A; subdivisions, app. B.

State law references: Construction of dams, etc., for water supply purposes, Code of Virginia, § 15.2-2134 et seq.; water-saving ordinances, Code of Virginia, § 15.2-923; water supply emergency ordinances, Code of Virginia, § 15.2-924; assessments for local improvements, Code of Virginia, § 15.2-2404 et seq.; general local powers pertaining to public utilities, Code of Virginia, § 15.2-2109 et seq.; local sewage disposal, Code of Virginia, §§15.22-2122 et seq., 15.1- 876; local water supply systems, Code of Virginia, § 15.2-2134 et seq.; municipal water, sewage, refuse disposal, electricity and gas, Code of Virginia, §§ 15.1-854 et seq., 15.1-875 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.

Article I. In General

Secs. 82-1--82-30. Reserved.

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ARTICLE I. IN GENERAL

Secs. 82-1--82-30. Reserved.

ARTICLE II. WATER SUPPLY*

***Charter references:** Acquisition of water rights, § 8; authority of town as to waterworks and water supply, § 13.

Sec. 82-31. Connections and availability.

(a) A connection fee of $660.00 and an availability fee of $2,150.00 shall be charged for residential connections to water mains. In addition, when the distance from the property line to the water main is more than 60 feet, the cost of installing pipe and fitting in excess of 60 feet shall be charged to the customer or may be installed by the customer, when so authorized by the town manager.

(b) The following connection and availability fees shall be charged for connection of commercial or industrial structures to water mains:

Water Meter Size (inches)	*Connection Fee*	*Availability Fee*
5/8	$ 660.00	$ 2,150.00
3/4	700.00	3,660.00
1	1,200.00	6,600.00
1-1/2	2,000.00	12,100.00
2	4,000.00	22,800.00
3	8,000.00	46,400.00
4	14,000.00	73,000.00
6	31,000.00	146,700.00

(c) Upon payment of the connection charge the town will provide water service at the property line, at the nearest point to existing or proposed water mains. The cost of tapping the main and of the meter, meterset, meterbox, corporation stop, linesetter and pipe from the main to the meter will be at town's expense. (d) Connections will not be made to town water mains or service lines by persons other than town employees or the town's designated agent.
(Code 1982, § 21-1; Ord. of 6-15-99, § 1; Ord. of 4-1-2003, § 1)

Sec. 82-32. Maintenance of lines from main to property line.

The maintenance of water lines, from the main to the property line, shall be at the town's expense.
(Code 1982, § 21-2)

Sec. 82-33. Service charges--Generally.

(a) The following service charges for water shall be charged by the town:

(1) For service rendered within corporate limits: The bimonthly rate for water customers shall be $19.30 (this rate will not be prorated due to occupancy changes during the billing period), plus $2.55 per 1,000 gallons for all water used during the bimonthly billing period.

(2) For service rendered outside corporate limits: The bimonthly rate for water customers shall be $19.30, plus $3.19 per 1,000 gallons for all water used during the bimonthly billing period.

(b) Customers shall pay an application fee of $28.00 to establish a new account with the town.

(1) Contractors shall pay an application fee of $11.00 during new construction.

(c) Water customers shall be based on usage. New accounts activated in the middle of the billing cycle may be billed in excess of bimonthly amount on first bill, if previous occupant has usage that must be billed.

(d) A customer whose water service is discontinued before the end of the billing period shall pay based on usage.

(e) Customers shall be billed on the first day of every other month for bimonthly water service, and for the gallons used during the prior bimonthly billing period.

(f) Where more than one occupant or tenant is served through a water meter, such as in apartments, multifamily dwellings or office buildings, a single water debt service charge for each ~~use or~~ unit will be billed, either to the owner or his agent or to any one tenant who assumes responsibility for the whole account.

(g) All water bills shall be payable, in full, on the tenth of the month following the month in which the customer was billed.
(Code 1982, § 21-3; Ord. of 6-15-99, § 1; Ord. of 4-1-2005)
Charter references: Authority to impose and collect charges for water service, § 13(c).
State law references: Authority of town to charge and collect compensation for water furnished, Code of Virginia, § 15.1-875.

Sec. 82-34. Same--Credit for vacant property.

No water customer will be allowed credit for vacant property unless the owner thereof notifies the town manager or the town treasurer, in writing, within ten days from the date of the beginning of such vacancy. In case of vacancy and notice, the water will be cut off by a representative of the town and may not be cut back on until all delinquent accounts and the cut on charge prescribed by section 82-36 have been paid.
(Code 1982, § 21-4)

Sec. 82-35. Cutting off water for repairs, extensions.

The town reserves the right, at any time, to shut off the water in the mains, distribution lines and services, for the purpose of repairing or making connections or extensions or for any other purpose that may be deemed necessary. If practicable, due notice will be given.
(Code 1982, § 21-5)

Sec. 82-36. Discontinuance of service.

(a) Water service may be discontinued for any of the following reasons:

(1) For nonpayment of a bill for such service.

(2) For permitting the use of water through a pipe to any property other than that described in the application for service.

(3) For willful waste of water through defective pipes or fixtures or otherwise.

(4) For violation of any rule of the town relating to water service.

(b) Water service discontinued pursuant to this section shall not be reinstated until all defects have been corrected and until a service charge of $25.00 has been paid. In addition, all delinquent bills for water and sewer service shall be paid in full prior to reinstatement of service.
(Code 1982, § 21-6) (Ord. 10-01-02)

Sec. 82-37. Right of entry to inspect connections and outlets, enforce rules and disconnect service.

Any representative of the town, or its designated agent, may, at all proper and reasonable times, enter upon the premises of a water customer for the purpose of inspecting the water connections, services, outlets and the like, enforcing the rules of the town and protecting its interests, including the disconnection of any water service.
(Code 1982, § 21-7)

Sec. 82-38. Regulation of cross-connection control and backflow prevention for waterworks.

The town hereby adopts by reference section 6.00, relating to cross-connection and backflow prevention control in waterworks, commonwealth waterworks regulations, the text of which is incorporated herein by reference.
(Ord. of 9-7-93(2), § 21-8)

Sec. 82-39. Water conservation and water supply emergency.

The town hereby adopts by reference the water conservation and water supply emergency ordinance, the text of which is incorporated herein by reference.
(Ord. of 9-6-94)

Sec. 82-40. Pool fill/refill discount.

The town shall give a credit on the sewer side of utility billing only for filling and/or refilling of pools if the following criteria are met:

(1) Issuance of a zoning permit must be verified before credit is considered.

(2) Customer contacts the Water and Sewer Department and gives number of gallons used to fill or refill the pool. This amount will be verified by number of gallons used over the

average usage. If verified and approved by Water and Sewer Department credit will be given for the full overage amount.

(3) One such credit per year per property is allowed.

(4) If 2,500 gallons or less are used to fill or refill a pool, there will be no adjustment made to the customers bill.

Sec. 82-41. Water leak credit.

The town shall give a credit for water usage during a situation involving a leak at a rate of one half off the average water gallons used over the average of the last three months or based on seasonal usage to be determined by the Water and Sewer Department. The following criteria would have to be met:

(1) A receipt showing payment for repairs to the piping would need to be submitted.

(2) One credit per year per property. Any customer requesting more credit than that would go before the Water and Sewer Committee for review.

Sec, 82-42. Customer voluntarily disconnecting water service.

(a) Any customer voluntarily requesting disconnection of water service shall appear and sign disconnect forms when moving or for any other reason.

(b) Person requesting disconnection must be the same name as on the account.

Secs. 82-43—82-70. Reserved.

ARTICLE III. WASTEWATER DISCHARGE; SEWER USE*

***Charter references:** Authority of town as to sewerage rates, § 13(c); general authority of town as to sewers and sewage disposal, § 16.

Sec. 82-71. 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:

BOD, denoting biochemical oxygen demand, means the laboratory determination of the quantity of oxygen by weight, expressed in milligrams per liter, utilized in the biochemical oxidation of organic matter under standard laboratory conditions of incubation for five days at a temperature of 20 degrees Celsius.

Building drain means that part of the lowest horizontal piping of a building drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the buildings and conveys such drainage to the building sewer.

Building drainage system means that part of the plumbing system which receives, conveys and removes liquid and water-carried wastes to a building drain.

Building sewer means a sewer conveying wastewater from the premises of a user to a public sewer.

COD, denoting chemical oxygen demand, means the laboratory determination of the quantity of oxygen by weight, expressed in milligrams per liter, susceptible to oxidation by a strong chemical oxidant.

Combined sewer means a sewer receiving combined waste.

Combined waste means a wastewater containing surface water or storm water and sewage.

Compatible pollutant means wastewater constituents which the wastewater treatment plant is designed to treat, and wastewater substances which will not inhibit the wastewater treatment processes employed nor be detrimental to the receiving stream.

Constituent means any analytically defined parameter.

Control point (control manhole) means a point of access to a course of discharge before the discharge mixes in the public sewer.

Cooling water means once-through, non-contact cooling water discharged from any system of condensation, air conditioning, cooling, refrigeration or other sources.

Domestic wastes means a combination of water-carried wastes, consisting of wash water, culinary wastes and liquid wastes containing only human excreta and similar matter flowing in or from a building drainage system or sewer originating from residences, business buildings, institutions and commercial establishments.

Effluent means wastewater flowing out of any facility.

Garbage means animal and vegetable wastes from the preparation, cooking and disposing of food, and from the handling, processing, storage and sale of food products and produce.

Grab sample means a sample which is taken from a waste stream on a one-time basis, with no regard to the flow in the waste stream and without consideration of time.

Holding tank waste means any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks and vacuum pump tank trucks.

HRSD means Hampton Roads Sanitation District.

Incompatible pollutant means any wastewater constituent or substance which is not a compatible pollutant, as defined in this section.

Industry means any establishment which uses water in a product or generates wastewater during any period of production.

Influent means wastewater, raw or partially treated, flowing into any sewage treatment

device or facilities.

Intercepting sewer means a sewer which receives dry weather flow from sanitary sewers and/or additional predetermined quantities of combined waste, and conducts such flow to a plant for treatment or disposal.

Mass emission rate means the weight of material discharged to the sewer system during a given time interval, expressed as pounds per day of a particular constituent or combination of constituents.

Maximum permissible composite concentration means the highest allowable constituent concentration, as determined by laboratory testing from representative samples collected during a minimum six-hour period of normal operation.

Natural outlet means any outlet into a watercourse, ditch, lake or other body of surface water or groundwater.

Non-domestic waste (industrial waste) means any wastewater resulting from any process of industry, manufacturing, trade or business, or from the development or recovery of any natural resource, or any mixture of such waste with water or domestic wastewater, as distinct from domestic wastewater.

Nuisance means anything which is judicially determined to be injurious to health or is indecent or offensive to the senses or an obstruction to the free use of property so as to interfere with the comfort or enjoyment of life or property or which affects at the same time an entire community or neighborhood or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

Overload means the imposition of any constituent or hydraulic loading on a treatment facility in excess of its treatment capacity.

pH means the negative base 10 logarithm of the hydrogen ion concentration, expressed as moles per liter.

Premises means any parcel of real estate, including any improvements, upon which there is a single user for the purposes of receiving, using and paying for sewer services.

Public sewer means a sewer owned and operated by the town, tributary to wastewater facilities operated by the town.

Sanitary sewer means a sewer, the specific purpose of which is to carry domestic or industrial wastes or a combination of both, and into which storm water, surface water, groundwater, and any unpolluted waters are not intentionally passed.

Sewage means the same as wastewater, as defined.

Sewage treatment works (sewage treatment plant, wastewater treatment plant) means any arrangement of devices, facilities and structures used for receiving, processing, and treating wastewater, industrial wastes, and sludges from the sanitary or combined sewers.

Sewer means a pipe or conduit, generally closed, for carrying wastewater.

Sewerage system means all sewers, laterals or other connections or plants which connect with, or pertain to a connection with, the sewers, plants, public works, and/or projects of the town, including all town-owned facilities.

Shredded garbage means garbage shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle having a dimension greater than one-half inch in any direction.

Standard Methods means the examination and analytical procedures set forth in the recommended standard analytical techniques prepared by the U.S. Environmental Protection Agency and published in the Federal Register and contained in the current edition of the APHA Manual which is identified as "Standard Methods."

Storm sewer means a public sewer which carries storm waters and surface waters and drainage, and into which domestic wastewater or industrial wastes are not intentionally passed.

Storm water means the excess water running off from the surface of a drainage area or building, during and following a period of precipitation.

Superintendent means the superintendent of the town wastewater treatment plant, or his authorized representative.

Suspended solids means the dry weight of solids, expressed as milligrams per liter, that either float on the surface of, are in suspension or are settleable in, water, wastewater or other liquids and which are largely removable by a laboratory filtration device.

To discharge means to include, to deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit, or suffer any of these acts or omission.

Town manager means the town manager of the Town of Smithfield or his authorized representative.

Toxic substances means any substance, whether gaseous, liquid or solid, which, when discharged to the sewer system in sufficient quantities, interferes with any sewage treatment process, constitutes a hazard to recreation in the receiving waters of the effluent from the sewage treatment plant, poses a hazard to workers in the sewer system, constitutes a hazard to fish or animal life, or interferes with proper sludge disposal.

24-hour, flow proportionate composite sample means a sample consisting of several effluent portions collected during a 24-hour period, in which the portions of the sample are proportionate to the flow and combined to form a representative sample.

Unpolluted water means water to which no constituent has been added, either intentionally or accidentally, that would render such water unacceptable to the agency having jurisdiction thereof for disposal to storm or natural drainages or directly to surface waters.

User means any person who discharges, causes or permits the discharge of wastewater into a public sewer.

User charge means a charge levied on the users of wastewater facilities and treatment works for the cost of operation and maintenance of such facilities and works.

Waste means rejected, unutilized or superfluous substances in liquid, gaseous or solid state, resulting from domestic and non-domestic activities.

Wastewater means a combination of the water-carried waste from residences, business buildings, institutions, industrial establishments and other sources, whether treated or untreated, discharged into or permitted to enter a public sewer.

Wastewater constituents and characteristics means the chemical, physical, bacteriological and radiological parameters, including volume, flow rate and such other parameters, that serve to define, classify or measure the contents, quality, quantity and strength of wastewater.

Wastewater facilities means all facilities for collection, pumping, treating and disposing of wastewater.

Wastewater pretreatment means the treatment of wastewater before discharge into the sewerage system.

Wastewater treatment plant means the sewage treatment plant, as defined.

Watercourse means a natural or manmade channel in which a flow of water occurs, either continuously or intermittently.
(Code 1982, § 16-2)
Cross references: Definitions generally, § 1-2.

Sec. 82-72. Purpose and policy.

This article sets forth policies for the administration and operation of the town's wastewater collection and treatment system, to assure that the facilities are used in the common interest of the public. The uniform requirements established in this article for wastewater discharges are intended to enable the town to comply with the water quality requirements set forth in its NPDES permit issued by the state water control board.
(Code 1982, § 16-1)

Sec. 82-73. Prohibited actions.

(a) *Unsanitary, objectionable deposits.* It shall be unlawful for any person to place, deposit or permit to be deposited in any unsanitary manner on public or private property within the town, or in any area under the jurisdiction of the town, any human or animal excrement, garbage or other objectionable waste.

(b) *Discharge of untreated, polluted water to storm sewer or natural outlet.* It shall be unlawful to discharge to any natural outlet or storm sewer within the town or in any area under the jurisdiction of the town any sewage or other polluted waters, except where suitable treatment has been provided, or such discharge has been permitted by the state water control board and/or federal permit.

(c) *Use of public sewers mandatory.* Where a public sewer is available, it shall be unlawful to construct or reconstruct any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of sewage, except as hereinafter provided.

(d) *Suitable toilet facilities required.* The owner of any house, building or property used for human occupancy, employment, recreation or other purposes, situated within the town and abutting on any street, alley or right-of-way in which there is now located, or may in the future be located, a public sanitary sewer of the town, is hereby required, at his expense, to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this article within 90 days after date of official notice to do so. Any building beyond 200 feet from the public sewer, or constructed at such elevation that it cannot be connected by gravity to the public sewer, or which, in the opinion of the town manager, is impractical to connect to the public sewer, will not be required to so connect.
(Code 1982, § 16-3)

Sec. 82-74. Private sewage disposal.

(a) Where a public sanitary sewer is not available, the building sewer shall be connected to a private sewage disposal system, the type, capacity, location and layout of which shall comply with regulations of and be approved by the state department of health. No septic tank or cesspool shall be permitted to discharge to any natural outlet.

(b) The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at no expense to the town.

(c) No statement contained in this article shall be construed to interfere with any additional requirement that may be imposed by the state department of health.
(Code 1982, § 16-4)

Sec. 82-75. Building sewers and connections.

(a) No unauthorized person shall uncover, make any connections with or opening into, alter or disturb any public sewer or appurtenances thereof, without first obtaining a written permit from the town manager.

(b) The owner or his agent shall make application on a special form furnished by the town. The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the town manager.

(c) All costs and expenses incident to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the town from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer. Subject to the provision below in the case of resubdivisions of lots previously subdivided, the town shall construct a lateral sewer to the owner's property line when a sewer is adjacent thereto. Should the lateral exceed 60 feet in length, the additional cost for that portion over 60 feet shall be borne by the owner. Except as provided in subsection (e) below, the owner shall pay, upon application for connection, a residential connection fee of $1,580.00 and an availability fee of $2,900.00; except that in the case of those users who must lift residential sewage to the public sewer, the connection fee shall be $790.00 plus the availability fee of $2,900.00. Commercial connection and availability fees shall be paid by the owner, upon application for connection, according to the schedule in subsection (d) of this section. Residential connection and availability fees shall be paid for each dwelling unit, apartment or tenant, regardless of the number served. In the case of resubdivisions of lots previously subdivided, the owner of any such resubdivided lot shall, in addition, pay to the town the actual cost of installing a lateral sewer from the existing main to the owner's property line.

(d) Sewer connection fees, to be paid by the owner upon application for connection, shall be as follows:

Water Meter Size (Inches)	*Connection Fee*	*Availability Fee*
5/8	$ 1,580.00	$ 2,900.00
3/4	2,250.00	4,800.00
1	4,000.00	8,500.00
1-1/2	8,000.00	15,400.00
2	15,000.00	28,800.00
3	35,000.00	58,400.00
4	62,000.00	91,700.00
6	139,000.00	184,200.00

In addition to the connection and availability fees charged by the town as specified above, the Hampton Roads Sanitation District (HRSD) levies an availability fee for sewer connections.

(e) In connection with the extension of town sewer lines to Riverside Drive, Jamesview Circle and Waterview Circle, the property owners shall be subject to the same provisions and conditions as specified in subsection (c) above; except that in the case of any property located on Riverview Drive, Jamesview Circle or Waterview Circle not previously served by the town's sewerage system, the property owner of a lot on which an existing residence is located as of May 4, 1994, the effective date of the ordinance from which this subsection is derived, shall pay a residential connection fee of $500.00. The property owners of a lot on which no residence has been constructed as of such date shall pay a residential connection fee of $5,000.00. These fees for connection to the sewer line extension shall be payable as follows: for property owners of a lot on which an existing residence has been constructed as of May 4, 1994, the effective date of the ordinance from which this subsection is derived, the residential connection fee shall be paid within one year from the date that the construction of the sewer line is completed and accepted by the town. For property owners of a lot on which no residence has been constructed as of such date, the residential connection fee shall be payable within three years from the date that the construction of the sewer line is completed and accepted by the town. If not sooner paid, the $5,000.00 residential connection fee shall be paid in three equal annual installments of $1,500.00 each and a final installment of $500.00 payable at the time that the lateral sewer line is installed to provide sewer service to any dwelling constructed on any vacant lot. There shall be a lien upon the real estate for the payment of the residential connection fees assessed thereon prior to any other lien or encumbrance thereon, from the commencement of the year for which the residential connection fees are assessed. The lien imposed hereby shall be enforceable by all means provided by law.

(f) No person, while engaged in the construction of a building or otherwise, shall injure, trim, break or remove any portion of any main or lateral sewer, or "Y", or manhole, or do any injury to any building sewer previously laid; and no penalty fixed by this chapter shall prevent the town or any property owner from recovering any damages sustained by reason of such injury, by appropriate civil action or otherwise.

(g) A separate and independent building sewer shall be provided for each building; except, where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard or

driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer.

(h) Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the superintendent, to meet all requirements of this chapter.

(i) The size, slope, alignment and materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench, shall all conform to the requirements of the building and plumbing code or other applicable rules and regulations of the town. In the absence of code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the ASTM and WEF Manual of Practice No. 9 shall apply.

(j) Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer. Where basements are in existence at the time of adoption of the ordinance from which this subsection is derived and are connected to existing septic tanks, and, in the opinion of the town manager, it is impractical to connect by gravity to the public sewer, the basement building drains may continue to discharge to the septic tank until such time as there is failure of the tank or tile field, at which time the basement flow shall be lifted by approved means to the public sewer.

(k) No person shall make connection of roof downspouts, exterior foundation drains, areaway drains or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer.

(l) The connection of the building sewer into the public sewer shall conform to the requirements of the building and plumbing code or other applicable rules and regulations of the town or the procedures set forth in appropriate specifications of the ASTM and the WEF Manual of Practice No. 9 and in accordance with the Virginia Uniform Statewide Building Code--BOCA National Plumbing Code. All such connections shall be made gastight and watertight. A cleanout shall be installed, by the owner, at the property line.

(m) The applicant for the building sewer permit shall notify the town manager when the building sewer is ready for inspection and connection to the public sewer. The connection shall be approved by the superintendent or his representative.

(n) All excavations for building sewer installation shall be adequately guarded with barricades and lights, so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the town.

(o) Grease, oil and sand interceptors shall be provided when, in the opinion of the town manager, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the town manager and shall be so located as to be readily and easily accessible for cleaning and inspection.

(p) In case of stoppage in the main sewer, the town shall remove the obstruction. If the stoppage occurs in a building sewer, the town will clean the building sewer from an existing

cleanout at the property line and repair that portion of any defective sewer within the street right-of-way. Where no building sewer cleanout exists at the property line, the town will install a cleanout at the owner's expense.
(Code 1982, § 16-5; Ord. of 5-4-94, § 6-5; Ord. of 6-15-99, § 1; Ord. of 4-1-2003, § 1)

Sec. 82-76. Prohibited discharges.

It shall be unlawful for any person to discharge or permit the discharge or infiltration into any public sewer of any of the following:

(1) Any liquid or vapor having a temperature higher than 120 degrees Fahrenheit (49 degrees Celsius) or any substance which causes the temperature of the total wastewater treatment plant influent to increase at a rate 10 degrees Fahrenheit (5 degrees Celsius) or more per hour, or a combined total increase of plant influent temperature to 100 degrees Fahrenheit (38 degrees Celsius).

(2) Any liquid containing fats, wax, grease or oils, whether emulsified or not, in excess of 300 mg/liter, or containing substances which may solidify or become viscous at temperatures between 32 degrees and 150 degrees Fahrenheit (0 degrees and 65 degrees Celsius), at the point of discharge into the system.

(3) Any explosive or flammable liquids, solids or gases in such concentrations which would cause or potentially cause an explosive, flammable or other hazardous condition. Such materials include but are not limited to gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides and sulfides.

(4) Any substances, of such nature and quantity which, either singly or by interaction with other waste substances:

a. Cause obstruction to the flow in a sewer or damage to the wastewater facilities;

b. Reduce the biological effectiveness of, impede the proper functioning of, or otherwise hinder the performance of any wastewater treatment process;

c. Cause excessive loading or overloading of wastewater facilities or cause excessive treatment costs; or

d. Pass to the receiving waters without being effectively treated, due to the incompatibility of the substance, and cause violation of state or federal regulations.

(5) Any discharge into public sewers of harmful quantities of solid substances, including but not limited to:

a. Ashes.

b. Cinders.

c. Sand.

d. Mud.

e. Straw.

f. Shavings.

g. Metal.

h. Glass.

i. Rags.

j. Tar.

k. Plastics.

l. Wood or sawdust.

m. Unground garbage.

n. Whole blood.

o. Paunch manure.

p. Hair and fleshings.

q. Entrails.

r. Feathers.

s. Bones.

t. Slops.

u. Paint residues.

v. Bulk solids.

(6) Any garbage that has not been properly shredded to a degree that all particles can be carried freely under the flow conditions normally prevailing in public sewers. Particles greater than one-half inch in any dimension are prohibited.

(7) Any liquid having a pH lower than 6.0 or higher than 9.0 or having any property capable of causing hazard, damage or any other condition deleterious to structures, equipment, personnel, treatment processes or operation of the wastewater facilities.

(8) Any noxious or malodorous substance that is capable of causing objectionable odors, public nuisance, hazard to life, or any condition which requires unusual provisions, alteration or expense to accommodate such material.

(9) Any wastewater containing in excess of the following limitations:

Constituent	*Daily Concentration 24-hour Composite Sample (mg / l)*	*Instantaneous Concentration Grab Sample (mg / l)*
a. Arsenic	0.02	0.02
b. Barium	2.0	2.0
c. Boron	0.05	0.1
d. Cadmium	0.1	0.1
e. Chlorides	250.0	500.0
f. Chromium, trivalent	1.0	1.0
g. Chromium, hexavalent	0.1	0.1
h. Chemical oxygen demand	300.0	500.0
i. Copper	0.2	0.2
j. Cyanide	0.25	0.25
k. Iron	1.0	2.0
l. Lead	0.1	0.1
m. Manganese	1.0	2.0
n. Mercury	0.005	0.005
o. Nickel	0.2	0.2
p. Phenolic compounds	0.2	0.5
q. Selenium	0.02	0.02
r. Silver	0.1	0.1
s. Surfactants	5.0	10.0
t. Tin	0.2	0.2
u. Zinc	0.2	0.2

(10) Any dilution water for the purpose of satisfying the requirements set forth herein, except when such dilution may be beneficial in the operation of the wastewater treatment plant and is approved by the superintendent.

(11) Any wastewaters at a flow rate which is excessive relative to the capacity of the treatment works and which would cause a treatment process upset and subsequent loss of treatment efficiency; or wastewaters containing such concentration or quantities of pollutants that their introduction into the treatment works over a relatively short time period (sometimes referred to as slug discharges) would cause a treatment process upset and subsequent loss of treatment efficiency.

(12) Any unpolluted stormwater, surface water, groundwater, roof runoff, interior or exterior footing or basement floor drainage, subsurface drainage, or cooling water.

(Code 1982, § 16-6)

Sec. 82-77. Incompatible pollutants.

The Federal Water Pollution Control Act Amendments of 1972 require industrial users discharging incompatible pollutants into publicly owned treatment works to pretreat such incompatible pollutants to the extent required by effluent limitation guidelines promulgated by the administrator of the U.S. Environmental Protection Agency, pursuant to sections 301(b) and 307(b) of the act. Upon the promulgation of the federal categorical pretreatment standards for a particular industrial subcategory, the federal standard, if more stringent than limitations imposed

under this article for sources in that subcategory, shall immediately supersede the limitations imposed under this article:

(1) If the superintendent determines that the limitations in section 82-76 may not be sufficient to protect the operation of the treatment works; or

(2) If the superintendent determines that the limitations in section 82-76 may not be sufficient to enable the treatment works to comply with water quality standards or effluent limitations specified in NPDES permit issued; or

(3) If the town manager determines that the limitations in section 82-76 do not provide the overall most cost-effective means of wastewater treatment at the treatment works, the town manager may modify these limitations in whatever manner is necessary to assure overall cost effectiveness. Such modifications shall be based on adequate supportive engineering information and shall be subject to review by federal and state agencies.

(Code 1982, § 16-7)

Sec. 82-78. Toxic materials.

Any liquids containing toxic materials in sufficient quantity, either singly or by interaction with other wastes, which would tend to injure or interfere with any treatment process, constitute a hazard to humans or animals, or create any hazard in the receiving waters or the effluent of the treatment plant, are hereby prohibited.

(Code 1982, § 16-8)

Sec. 82-79. Radioactive materials.

No user shall discharge radioactive materials into public sewers.

(Code 1982, § 16-9)

Sec. 82-80. Holding tank waste.

A user proposing to discharge holding tank waste into a public sewer must secure written permission. This permit will state the specific location of discharge, the time of day the discharge is to occur, the volume of the discharge, and the wastewater constituents and characteristics. If permission is granted for discharge of such waste into a public sewer, the user shall pay applicable user charges and fees and shall meet such other conditions as required by the town manager.

(Code 1982, § 16-10)

Sec. 82-81. Limitations on point of discharge.

No person shall discharge any waste directly into a manhole or other opening in a public sewer, other than through an approved building sewer, unless, upon written application by the user and payment of the applicable user charges and fees, the town manager issues a permit for such direct discharge. This provision does not apply to employees or agents of the town involved in the construction, repair or maintenance of the sewerage system.

(Code 1982, § 16-11)

Sec. 82-82. Control of prohibited wastes.

If wastewater containing any substance described in section 82-76 is discharged or proposed to be discharged into the sewerage system of the town or to any sewerage system tributary thereto, the town may take any appropriate action necessary to:

(1) Prohibit the discharge of such wastewater.

(2) Require a discharger to demonstrate that in-plant modifications will eliminate the discharge of such substances to a degree as to be acceptable to the town.

(3) Require pretreatment, including storage facilities or flow equalization if necessary, to reduce or eliminate the objectionable characteristics or substances, so that the discharge will not violate the provisions of this article.

(4) Require the person making, causing or allowing the discharge to pay any added cost of handling and treating excess loads imposed on the sewerage facilities.

(5) Take such other remedial action as may be deemed to be desirable or necessary to achieve the purpose of this article.

(Code 1982, § 16-12)

Sec. 82-83. Pretreatment facilities.

Users shall provide necessary wastewater treatment as required to comply with this article and shall achieve compliance with all federal categorical pretreatment standards within the time limitations as specified by the federal pretreatment regulations. Any facilities required to pretreat wastewater to a level acceptable to the town shall be provided, operated and maintained at the user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the town for review and shall be acceptable to the town before construction of the facility. The review of such plans and operation procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the town under the provisions of this article. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be acceptable to the town prior to the user's initiation of the changes.

(Code 1982, § 16-13)

Sec. 82-84. Special agreements.

No statement contained in this article shall be construed as preventing any special agreement between the town and any user of the sewerage facilities, whereby a wastewater of unusual strength or character may be accepted into the system when unusual or extraordinary circumstances compel special terms or conditions. No such agreement, however, shall be made which would allow the combined influent to the wastewater treatment plant to exceed the limitations set forth in section 82-76.

(Code 1982, § 16-14)

Sec. 82-85. Wastewater discharge permits required.

All nondomestic users proposing to connect to or to discharge into a public sewer shall obtain a wastewater discharge permit before connecting to or discharging into a public sewer.

(Code 1982, § 16-15)

Sec. 82-86. Permit application.

(a) Users seeking a wastewater discharge permit shall complete and file with the town manager an application in the form prescribed by the town manager and accompanied by any applicable fees. The applicant shall be required to submit, where applicable, in units and terms appropriate for evaluation, information including but not limited to the following:

(1) Name, address and telephone number of applicant or responsible party.

(2) Volume of wastewater to be discharged.

(3) Schedule of all industrial process waste flows produced before pretreatment, if any, at the premises, including the daily volume, maximum rate of discharge, and wastewater constituents and characteristics as determined by a representative analysis.

(4) Time and duration of discharge.

(5) Average and hourly peak wastewater flow rates, including daily, monthly and seasonal variations, if any.

(6) Conceptual site and plumbing plans to show all connections to the town sewerage system.

(7) A general description of activities, facilities and plant processes on the premises, including all process waste materials which are or could be discharged, but excluding proprietary information concerning process and products.

(8) Each product produced by type.

(9) Number of employees, and hours of work.

(10) Any other relevant information as may be deemed by the town manager to be necessary to evaluate the permit application.

(b) The town manager will evaluate the data furnished by the user and may require additional information. After evaluation and acceptance of the data furnished, the town manager shall issue, within 60 days, a draft wastewater discharge permit. A 30-day comment period shall be allowed all users, and thereafter the town manager shall issue a wastewater discharge permit if all of the terms and conditions herein are complied with.
(Code 1982, § 16-16)

Sec. 82-87. Permit conditions.

Wastewater discharge permits shall be subject to all provisions of this article and all other pertinent regulations, user charges and fees established by the town. Wastewater discharge permits may contain the following:

(1) The unit charge or schedule of user charges and fees for the wastewater to be discharged to a public sewer.

(2) The maximum permissible instantaneous and composite concentration and mass emission rates of wastewater constituents.

(3) Limits on rate and time of discharge or requirements for flow regulation and equalization.

(4) Requirements for inspection and sampling facilities.

(5) Pretreatment requirements.

(6) Specifications for monitoring programs, which may include sampling locations, frequency and method of sampling, number, types and standards for tests and reporting schedule.

(7) Requirement for submission of periodic discharge reports. The discharge report may include but not be limited to wastewater volume, rates of flow, constituent concentrations and mass emission rates, hours of operation, number of employees, or other information which relates to the wastewater discharge to the sewers.

(8) Requirements for maintaining plant records relating to wastewater discharge, as specified by the town manager, and affording access thereto.

(9) Other conditions as deemed appropriate by the director to ensure compliance with this chapter.

(Code 1982, § 16-17)

Sec. 82-88. Duration of permits.

Wastewater discharge permits shall be issued for a specified time period, not to exceed two years. A permit may be issued for a period less than a year or may be stated to expire on a specified date. The terms and conditions of the permit may be subject to modifications and change by the town manager during the life of the permit, as limitations or requirements are modified and changed by state and federal regulations. Whenever possible, users shall be informed of any proposed changes in permits at least 90 days prior to the effective date of change. Users shall be allowed a comment period, relating to any of the proposed changes in permits, which shall be the first 45 days of the 90-day period prior to the effective date of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.
(Code 1982, § 16-18)

Sec. 82-89. Transfer of a permit.

A wastewater discharge permit shall be issued to a specific user for a specific operation. A wastewater discharge permit shall not be re-assignable or transferable, and shall only be used for the operation for which it was obtained.
(Code 1982, § 16-19)

Sec. 82-90. Accidental discharges.

Users shall notify the superintendent or town manager immediately, upon accidentally discharging wastes in violation of this article. Users are required to take countermeasures to stop the discharge and to neutralize its effect, if possible. Such notification shall be followed, within three days of the date of occurrence, by a detailed written statement to the town manager, describing the causes of the accidental discharge and the measures being taken to prevent future occurrence. The town manager may require the user to provide protection from accidental discharge of prohibited materials or other wastes regulated by this chapter.
(Code 1982, § 16-20)

Sec. 82-91. New discharge or change in existing discharge.

Any proposed change in a discharge to the wastewater facilities by any nondomestic user, including any new significant discharge or significant change in the quantity or quality of an existing discharge, must be reported to the town manager.
(Code 1982, § 16-21)

Sec. 82-92. User charges.

(a) Wastewater user charges shall be based on the metered water consumption on the premises. The bimonthly sanitary sewer service charge-within the corporate limits of the town, shall be $2.90 per 1,000 gallons.

(b) The bimonthly sanitary sewer service charge, outside the corporate limits of the town, shall be $3.63 per 1,000 gallons.

(c) In addition to the charges levied by the town as specified above in paragraphs (a) and (b) of this section, the Hampton Roads Sanitation District (HRSD) levies a monthly charge to each customer for the treatment and disposal of the sewage.

(e) For those users who have basements that, in the opinion of the town manager, it is impractical to connect to the public sewer, and that remain connected to existing septic tanks, the charges shall be calculated on the number of gallons of water consumed during any bimonthly period.

(f) In addition to the above, any discharger whose wastewater has a BOD exceeding 300 ppm or has a suspended solids count (SS) exceeding 300 ppm, shall pay a surcharge of two percent of the base rates given above, for each ten ppm of BOD and/or SS above 300 ppm.

(g) Customers shall pay the charge prescribed by this section, in advance, for the period from the time of beginning of service until the end of the billing period. Customers shall be billed at the bimonthly rate when sewer service is provided on or before 30 days prior to the next bimonthly rate and half the bimonthly rate when sewer service is provided within 29 days prior to the next bimonthly billing date.

(h) Customers shall be billed on the first day of every other month for bimonthly sewer service, at the bimonthly rate. All bills shall be payable, in full, on the tenth of the month following the month in which the customer was billed.

(i) If any water meter fails to register properly, the user charge shall be estimated, using the average of the readings for the two previous billing periods.

(j) Users using private water supplies may be required to install, at their own expense, a flow meter or other device for determining the volume of wastewater discharged to the town's sewerage system. Where no such device exists, and installation of such device is not required by the town manager, the user shall pay a wastewater user charge based on the average water consumption rates for this type of user.
(Code 1982, § 16-22; Ord. of 6-15-99, § 1; Ord. of 4-1-2005)

Sec. 82-93. Revocation of discharge permit.

Any user who violates any of the following conditions may be subject to the revocation of his discharge permit:

(1) Failure of a user to factually report the wastewater constituents and characteristics of his discharge.

(2) Failure of the user to report significant changes in wastewater constituents or characteristics.

(3) Refusal of reasonable access to the user's premises for the purpose of inspection or monitoring.

(4) Violation of the conditions of the permit or of this article.
(Code 1982, § 16-23)

Sec. 82-94. Termination of service.

The town manager may terminate wastewater service and disconnect a user from the system when:

(1) Materials damaging to sewer lines or treatment process are released by the user to the sewer, causing deterioration of these structures or interfering with proper conveyance and treatment of wastewater.

(2) The effluent from the wastewater treatment plant is no longer of a quality permitted for discharge to a watercourse, and it is found that the user is delivering wastes to the wastewater system that cannot be sufficiently treated or require pretreatment.

(3) The user:

a. Discharges wastewater that is in significant violation of the permit issued;

b. Fails to pay user charges for public sewer services when due;

c. Discharges prohibited wastes to public sewers; or

d. Violates any requirement of this article.
(Code 1982, § 16-24)

Sec. 82-95. Notification of proposed revocation of discharge permit and termination of service.

(a) The town manager will endeavor, within reasonable limits, to eliminate or remedy a violation without resorting to discontinuance of the user's discharge. However, if those informal efforts have been unsuccessful, the town manager is authorized to revoke the discharge permit and terminate service to a user.

(b) The town manager shall not revoke a discharge permit and terminate service to a user without first delivering to the user written notice of such proposed revocation and termination. The notice shall state the reason or reasons of the revocation and may allow a reasonable time for satisfactory compliance to meet the wastewater constituents and/or characteristic limitation(s) that are being violated.

(c) Nothing in this chapter is intended to deter, hinder or stop the town manager from taking immediate action to terminate service to a user when there is imminent risk or great danger to the wastewater facilities.
(Code 1982, § 16-25)

Sec. 82-96. Show-cause hearing.

(a) The town manager may direct any user who causes or allows an unauthorized discharge to show cause before the town council why such discharge should not be discontinued. A notice shall be served on the offending party, specifying the time and place of a hearing, such time to be not less than five days from the date of the notice, to be held by the town council regarding the violation and directing the offending party to show cause why an order should not be issued directing the discontinuance of such discharge.

(b) The town council shall conduct the hearing and take the evidence.

(c) At any public hearing, testimony taken before the town council must be under oath and recorded. The transcript so recorded will be made available to any member of the public or any party to the hearing, upon payment of the usual charges therefore.

(d) After the town council has reviewed the evidence, it may issue an order to the user responsible for the discharge, directing that, within a specified time period, the discharge shall be discontinued unless adequate treatment works, facilities or devices shall have been installed, or existing treatment works, facilities or devices, if adequate, are properly operated, or such other action is taken as the town council may deem necessary. Any user aggrieved by any order or other action of the town council shall have a right to judicial review thereof by the circuit court having jurisdiction, by an appropriate petition to such court filed within 30 days of the date of the order of the town council.
(Code 1982, § 16-26)

Sec. 82-97. Court proceedings.

If any user discharges sewage, industrial waste or other wastes to the wastewater facilities under the jurisdiction of the town contrary to any order of the town council, the town may commence an action by proceeding in the circuit court having jurisdiction where the discharging facilities are located, for the purpose of having the discharge stopped.
(Code 1982, § 16-27)

Sec. 82-98. Penalties.

A violation of any provision of this article shall constitute a class 4 misdemeanor. Each day's continuance of such violation shall constitute a separate offense. The penalties so imposed, plus reasonable attorney's fees, court costs and other expenses of litigation, are recoverable by the town.
(Code 1982, § 16-28)

Sec. 82-99. Injunctive relief.

In addition to the penalties provided in section 82-98, wherever a user violates any provision of this article or fails to comply with any order of the town council, the town may apply to the circuit court having jurisdiction where the discharger is located for the issuance of an injunction restraining the user violating the article or penalty, or failing to comply with the order, from making any further discharges to the facilities under the jurisdiction of the town.
(Code 1982, § 16-29)

Sec. 82-100. Appeals.

Any user or permit applicant affected by any decision, action or determination made by the town manager, interpreting or implementing the provisions of this article or in any permit issued under this article, may file with the town manager a written request for reconsideration within ten days of such decision, action or determination, setting forth in detail the facts supporting the user's request for reconsideration. The decision of the town manager shall remain in effect during such period of reconsideration. Any person aggrieved by a decision shall have the right to judicial review, by appeal to the circuit court having jurisdiction, appeal to be made within 30 days of the date of such decision.
(Code 1982, § 16-30)

Sec. 82-101. Damage to facilities.

When a discharge of waste causes an obstruction, damage or any other impairment to wastewater facilities, the town may assess a charge against the user for the work required to clean or repair the facility and add such charge to the user's charges and fees, and collect the same as the user's charges and fees are collected.
(Code 1982, § 16-31)

Sec. 82-102. Authority of town manager.

The town manager is charged with the responsibility for the town's wastewater discharge control program and enforcement of the provisions of this article.
(Code 1982, § 16-32(a))

Chapters 83—85

RESERVED

Chapter 86

VEGETATION*

***Charter references:** Keeping premises free from weeds, § 20(b).

Cross references: Buildings and building regulations, ch. 22; environment, ch. 38; streets, sidewalks and other public places, ch. 70; utilities, ch. 82; waterways, ch. 90; zoning, app. A; subdivisions, app. B.

State law references: Tree conservation ordinance, civil penalties, Code of Virginia, § 10.1-1127.1; planting of trees destroyed during construction, Code of Virginia, § 15.2-960; replacement of trees during development process in certain localities, Code of Virginia, § 15.2-961; destruction of trees, shrubs, etc., Code of Virginia, § 18.2-139 et seq.

Article I. In General

Sec. 86-1. Violations of chapter generally.
Sec. 86-2. Maximum height of weeds, grass.
Sec. 86-3. Clearance between sidewalk or street and overhanging shrubs or trees.
Sec. 86-4. Notice to correct violation of section 86-2 or 86-3.
Sec. 86-5. Charges constitute lien.
Sec. 86-6. Correction of town of violation of section 86-2 or 86-3.

ARTICLE I. IN GENERAL

Sec. 86-1. Violations of chapter generally.

(a) Unless otherwise specifically provided, a violation of any provision of this chapter shall constitute a class 3 misdemeanor.

(b) No person shall cause a nuisance, as described in this section or in Code of Virginia, § 15.2-900 or 15.2-1115, in any place whatever within the corporate limits of the town, nor suffer any nuisance to remain in any house or lot occupied or owned by him. Everything shall be deemed a nuisance, within the meaning of this section, which is offensive or prejudicial to the health of any citizen and which is not specifically proscribed by the provisions of this Code.
(Code 1982, § 20-1)

Sec. 86-2. Maximum height of weeds, grass.

It shall be unlawful for any owner, lessee or occupant, or the agent, representative or employee of any owner, lessee or occupant, having control of any parcel of land within the town, whether developed or undeveloped or subdivided or not subdivided, to allow, permit or maintain any growth of weeds, grass or other natural growth thereon which exceeds an average of 14 inches from the general level of the ground. Bona fide agricultural land, wooded parcels of land and marshland are exempt from this section.
(Code 1982, § 20-2)

Sec. 86-3. Clearance between sidewalk or street and overhanging shrubs or trees.

It shall be unlawful for any owner, lessee or occupant, or the agent, representative or employee of any owner, lessee or occupant, having control of any parcel of land in the town to allow or permit any part of any shrub or tree to overhang any sidewalk at a height of less than eight feet or overhang any street or alley at a height of less than 14 feet.
(Code 1982, § 20-3)
Cross references: Streets, sidewalks and other public places, ch. 70.

Sec. 86-4. Notice to correct violation of section 86-2 or 86-3.

(a) When any condition exists on any lot or parcel of land in violation of section 86-2 or 86-3, the town manager shall give written notice to the owner, lessee or occupant of such lot or parcel, or to his agent, employee or representative having charge or control of such lot or parcel, requiring the abatement and removal of the weeds, grass, natural growths or overhanging trees or shrubs existing upon such lot or parcel within seven days. The weeds, grass, natural growths or overhanging trees and shrubs shall be cut and removed within seven days from the date of such notice.

(b) In cases where there is no owner, lessee or occupant or agent or representative of such owner, lessee or occupant within the town, the notice provided for in subsection (a) of this section may be served by mailing the same to the owner at the address shown on the town real estate tax records.
(Code 1982, § 20-4)
State law references: Authority to town to require cutting of weeds and grass, Code of Virginia, §§ 15.2-901, 15.2-1115.

Sec. 86-5. Charges constitute lien.

Every charge authorized by this chapter with which the owner of any property shall have been assessed and which remains unpaid shall constitute a lien against such property ranking on a parity with liens for unpaid local taxes and enforceable in the same manner as provided in Code of Virginia, §§ 58.1-3940 et seq. and 58.1-3965 et seq. The town may waive such liens in order to facilitate the sale of the property. Such liens may be waived only as to a purchaser who is unrelated by blood or marriage to the owner and who has no business association with the owner. All such liens shall remain a personal obligation of the owner of the property at the time the liens were imposed.

State law reference—Similar provisions, Code of Virginia, § 15.2-901.

Sec. 86-6. Correction of town of violation of section 86-2 or 86-3.

If a notice given pursuant to section 86-4 is not complied with within the specified time, the town manager may have the weeds, grass, natural growths or overhanging trees or shrubs referred to in the notice cut and removed. The expense of such work shall be charged to the property and billed to the owner of the property. If the charge is not paid within ten days, the amount due shall be collected in the same manner as fixed by state law for the collection of taxes and shall be subject to the same penalties for delinquency, costs and fees.
(Code 1982, § 20-5)

State law references: Authority for above section, Code of Virginia, §§ 15.2-901, 15.2-1115.

Chapters 87—89

RESERVED

Chapter 90

WATERWAYS*

***Cross references:** Administration, ch. 2; environment, ch. 38; streets, sidewalks and other public places, ch. 70; traffic and vehicles, ch. 78; utilities, ch. 82; vegetation, ch. 86; zoning, app. A; subdivisions, app. B.

State law references: Local regulation of vessels, Code of Virginia, § 29.1-744 et seq.

Article I. In General

Sec. 90-1. Motorboat wake.

ARTICLE I. IN GENERAL

Sec. 90-1. Motorboat wake.

It shall be unlawful for any person to operate a boat in such a manner as to cause the boat to create a wake or propwash sufficient to disturb or threaten damage to other boats, whether moored, anchored or underway, within any portion of any waterway in the town designated a "no wake zone" by the establishment or erection of "no wake" signs. Any person violating this section shall be guilty of a class 4 misdemeanor.
(Code 1982, § 12-36)

APPENDIX A

ZONING*
(RESERVED)

***Editor's note:** The zoning ordinance is not included in this Code but is on file in the town clerk's office. This appendix is reserved for its inclusion in the future.

Cross references—Any zoning ordinance in effect on the date of adoption of this Code, or any amendment thereto, including amendments to the zoning map and ordinances zoning or rezoning specific property saved from repeal, § 1-8(7); board of zoning appeals, § 2-271 et seq.; buildings and building regulations, ch. 22; environment, ch. 38; streets, sidewalks and other public places, ch. 70; utilities, ch. 82; vegetation, ch. 86; waterways, ch. 90; subdivisions, app. B.

State law references: Notice of planning or zoning matters, Code of Virginia, § 15.1-33.1; planning, Code of Virginia, § 15.1-427 et seq.; zoning, Code of Virginia, § 15.1-486 et seq.; regulations to be uniform, Code of Virginia, § 15.1-488; conflict with statutes, local ordinances or regulations, Code of Virginia, § 15.1-498.

APPENDIX B

SUBDIVISIONS*
(RESERVED)

***Editor's note:** The subdivision ordinance is not included in this Code but is on file in the town clerk's office. This appendix is reserved for its inclusion in the future.

Cross references—Any subdivision ordinance or any amendment thereto or any ordinances dedicating or accepting any plat or subdivision in the town saved from repeal, § 1-8(8); buildings and building regulations, ch. 22; environment, ch. 38; streets, sidewalks and other public places, ch. 70; utilities, ch. 82; vegetation, ch. 86; waterways, ch. 90; zoning, app. A.

State law references: Land subdivision and development, Code of Virginia, § 15.1-465 et seq.; Virginia Public Records Act, Code of Virginia, § 42.1-76 et seq.; Subdivided Land Sales Act of 1978, Code of Virginia, § 55-336 et seq.