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PREFACE

This Code constitutes a complete recodification of the ordinances of the City of Virginia Beach of a general and permanent nature. As expressed in the Adopting Ordinance, the Code supersedes all such ordinances not included herein or recognized as continuing in force by reference thereto.

Source materials used in the preparation of the Code were the 1965 Virginia Beach City Code as supplemented through March 26, 1979, and ordinances subsequently adopted by the City Council. The source of each section is included in the history note appearing in parentheses at the end thereof. The absence of such a note indicates that the section is new and was adopted for the first time with the adoption of the Code. By use of the Comparative Tables appearing in the back of the volume, the reader can locate any section of the 1965 Code and any subsequent ordinance included herein.

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

Numbering System

The numbering system used in this Code is the same system used in many state and local government codes. Each section number consists of two component parts separated by a dash, the figure before the dash representing the chapter number and the figure after the dash indicating the position of the section within the chapter. Thus, the first section of chapter 1 is numbered 1-1 and the ninth section of chapter 2 is 2-9. Under this system, each section is identified with its chapter, and, at the same time, new sections or even whole chapters can be inserted in their proper places, simply by using the decimal system for amendments. By way of illustration: If new material consisting of three sections that would logically come between sections 4-2 and 4-3 is desired to be added, such new sections would be numbered 4-2.1, 4-2.2 and 4-2.3 respectively. New chapters may be included in the same manner. If the new material is to be included between chapters 12 and 13 it will be designated as chapter 12.1. Care should be taken that the alphabetical arrangement of chapters is maintained when including new chapters. New articles and new divisions may

be included in the same way or, in the case of articles, may be placed at the end of the chapter embracing the subject, and, in the case of divisions, may be placed at the end of the article embracing the subject, the next successive number being assigned to the article or division.

Index

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

Looseleaf Supplements

A special feature of this Code is the looseleaf system of binding and supplemental service, by which the Code will be kept up-to-date periodically. Upon the final passage of amendatory ordinances, they will be properly edited and the page or pages affected will be reprinted. These new pages will be distributed to holders of copies of the Code, with instructions for the manner of inserting the new pages and deleting the obsolete pages. Each such amendment, when incorporated into the Code, may be cited as a part thereof, as provided in section 5 of the Adopting Ordinance.

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

Acknowledgments

The publication of this Code was under the direct supervision of George R. Langford, President, and Robert D. Ussery, Vice-President, of the Municipal Code Corporation, Tallahassee, Florida. Credit is gratefully given to the other members of the publishers' staff for their sincere interest and able assistance throughout the project.

The publishers are most grateful to Mr. J. Dale Bimson, City Attorney, for his cooperation and assistance during the progress of the work on this Code. It is hoped that his efforts and those of the publishers have resulted in a Code of Ordinances which will make the active law of the city readily accessible to all citizens and which will be a valuable tool in the day-to-day administration of the city's affairs.

March, 1981

	MUNICIPAL CODE CORPORATION
	Tallahassee, Florida

ADOPTING ORDINANCE

An Ordinance Adopting and Enacting a New Code for the City of Virginia Beach, Virginia; Establishing the Same; Providing for the Repeal of Certain Ordinances Not Included Therein; Providing for the Manner of Amending and Supplementing Such Code; and Providing When Such Code and This Ordinance Shall Become Effective.

Be It Ordained by the Council of the City of Virginia Beach, Virginia:

Section 1. That the Code of Ordinances, consisting of Chapters 1 to 38, each inclusive, is hereby adopted and enacted as the "Code of the City of Virginia Beach, Virginia," which Code shall supersede all general and permanent ordinances of the City adopted on or before October 27, 1980, to the extent provided in Section 2 hereof.

Section 2. That all provisions of such Code shall be in full force and effect from and after May 25, 1981, and all ordinances of a general and permanent nature of the City of Virginia Beach, adopted on final passage on or before October 27, 1980, and not included in such Code or recognized and continued in force by reference therein, are hereby repealed from and after the effective date of such Code.

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

Section 4. That any person convicted of a violation of such Code shall be punished as prescribed in Section 1-9 thereof, or as provided in any other applicable section of such Code.

Section 5. That any and all additions and amendments to such Code, when passed in such form as to indicate the intention of the Council to make the same a part of such Code, shall be deemed to be incorporated in such Code, so that reference to such Code shall be understood and intended to include such additions and amendments.

Section 6. That in case of the amendment of any section of such Code, or the addition of any section thereto, for Which a penalty is not provided, the general penalty, as provided in Section 1-9 of such Code shall apply to the section as amended or added, or in case such amendment or addition contains provisions for which a penalty, other than the aforementioned general penalty, is provided in another section in the same chapter, the penalty so provided in such other section shall be held to relate to the section so amended or added, unless such penalty is specifically repealed therein.

Section 7. All ordinances or parts of ordinances in conflict herewith are, to the extent of such conflict, hereby repealed.

Section 8. This ordinance shall become effective from date of adoption.

Adopted by the Council of the City of Virginia Beach, Virginia, on the 16th day of March, 1981.

JDB: jh
2-20-81

APPROVED AS TO CONTENT

_____
SIGNATURE

_____
DEPARTMENT

APPROVED AS TO FORM

JDB 3-11-81

_____

SIGNATURE

CITY ATTORNEY

Certified to be a true excerpt from the Minutes of the Council of the City of Virginia Beach adopted March 16, 1981, subject to approval of the Minutes on March 23, 1981.

(SEAL)

Ruth Hodges Smith

City Clerk

Chapter 31 - SOLID WASTE

Footnotes:

*--- **(1)** ---*

***Cross reference—** Solid waste division of department of public works, § 2-270; burning of brush, debris, etc., § 12-3; accumulations of trash, garbage, etc., § 23-50; junk dealers, ch. 25; automobile graveyards, junkyards and dumps, § 25-23 et seq.; sewers and sewage disposal, ch. 28; storm sewer system discharge ordinance, app. H.*

***State Law reference—** Solid and hazardous waste management, Code of Virginia, § 32.1-177 et seq.; authority of city to require property owners to remove garbage and refuse and city's right to operate garbage and refuse collection and disposal service, §§ 15.1-11, 15.1-857.*

ARTICLE I. - IN GENERAL

Sec. 31-1. - Definitions.

The following definitions shall apply in the interpretation and enforcement of this chapter:

Building and construction materials means any material such as lumber, wire, pilings, sheetrock, shingles, brick, plaster, gutters, pipes, concrete, asphalt, stones, topsoil, dirt, dredge spoil or other substances accumulated as a result of the construction, repair, alteration or demolition of infrastructure, including, but not limited to, buildings, highways, utilities, streets, sidewalks, or similar structures, dredging or land-clearing activities.

Bulk container, dumpster means a metal container of not less than four (4) cubic yards nor larger than eight (8) cubic yards, made of watertight construction with doors opening on two (2) sides and/or top, and constructed so that it can be emptied mechanically by specially equipped trucks. Containers shall be covered. Hereinafter, upon the effective date of this section, all new bulk containers shall meet these specifications.

Business trash means any waste accumulation of dust, paper and cardboard, excelsior, rags or other accumulations, other than hazardous waste, garbage or household trash, which are usually attendant to the operation of stores, offices and similar businesses.

City means the City of Virginia Beach.

Commercial establishment means any retail, restaurant, manufacturing, wholesale, institutional, religious, governmental or other nonresidential establishment at which garbage or trash may be generated. For purposes of this chapter the term "commercial establishment" shall not apply to churches, synagogues, mosques, or any other such house of worship.

Detachable container means a unit, varying in capacity between five (5) cubic yards and forty (40) cubic yards, which is used for collecting, storing and transporting building and construction materials, business trash, industrial waste, hazardous waste, refuse or yard trash. The unit may or may not use an auxiliary stationary packing mechanism for compaction of materials into the container and may be of the open or enclosed variety. The distinguishing feature of the detachable container is that it is picked up by a specially equipped truck and becomes an integral part of the truck for transporting the waste materials to the disposal site.

Garbage means the by-product of animal or vegetable foodstuffs resulting from the handling, preparation, cooking and consumption of food or other matter which is subject to decomposition, decay, putrefaction or the generation of noxious or offensive gases or odors, or which, during or after decay, may serve as breeding or feeding material for insects or animals.

Hazardous waste means any substance, material, solid waste or combination of solid waste 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 in capacitating illness; or

(2) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

For purposes of this chapter, the term "hazardous waste" shall include, but not be limited to, materials such as poison, acids, caustics, chemicals, infectious materials, offal, fecal matter, biological materials, petroleum, petroleum products, flammable materials, compressed gases, radioactive materials and explosives.

Household trash means every waste accumulation of paper, sweepings, dust, rags, bottles, cans or other matter of any kind, other than garbage, which is usually attendant to housekeeping.

Industrial waste means all waste, including solids, semi-solids, sludges and liquids, created by factories, processing plants or other manufacturing enterprises.

Litter means garbage, refuse, waste materials, including waste tires, or any other discarded, used or unconsumed substance which is not handled as specified in this chapter.

Loading and unloading area means any stream, river or lakeside or land dock, space or area used by any moving vehicle for the purpose of receiving, shipping and transporting goods, wares, commodities or persons.

Mobile containers means containers for refuse for use by commercial establishments, and having a capacity of up to one hundred twenty (120) gallons and equipped with wheels for mobility.

Multiple residential unit means any duplex, apartment, group of apartments or condominium used as a dwelling place for more than one (1) family.

Out of view of the public means stored behind the plane of the front wall of the residence or building being serviced, except when otherwise designated by the city manager or his designee.

Person means any individual, firm, company, corporation, partnership, association, governmental body, municipal corporation or any other legal entity.

Portable packing unit means a metal container, not exceeding forty-five hundred (4,500) pounds gross weight, with four (4) to six (6) cubic yard capacity, that contains a packing mechanism and an internal or external power unit.

Recyclables means recyclable items, including, but not limited to, newspaper, cardboard, chipboard, junk mail, and catalog grade papers; clear, green and brown glass bottles and jars; plastic containers #1—#7; aluminum beverage cans, aluminum foil and pie pans and steel/tin food cans.

Refuse means solid waste accumulations consisting of garbage, household trash, vegetative waste, yard trash and business trash as herein defined.

Residential refuse receptacle means a metal or plastic container for refuse, of substantial construction, with a tight-fitting lid, and provided with wheels or handles sufficient for safe and convenient handling for collection at curbside. Except for those areas serviced by automated collection equipment, such receptacles shall have a capacity of not more than thirty-two (32) gallons and a total weight of not more than fifty (50) pounds or an empty weight of not more than ten (10) pounds and shall be kept in serviceable condition at all times. Any areas serviced by automated collection equipment shall use 90- to 120-gallon automated refuse receptacles as approved by the city manager or his designee. Any receptacle which does not meet standards set by the city manager or his designee shall be removed. Exceptions to these requirements may be made by the city manager or his designee.

Resort area includes all real property within the RT-1, RT-2, RT-3 and RT-4 Resort Tourist Districts.

Resort collection zone includes all commercial establishments within the area defined by and including the establishments fronting on the west side of Pacific Avenue to the boardwalk and by Rudee Inlet to 42nd Street. This zone is established to ensure that the Resort Area, with its dense concentration of businesses, its high visibility, and its impact on city resources, is adequately maintained for the numerous visitors and residents who visit the Resort Area. The city manager or his designee may include in the resort collection zone such commercial establishments that operate as a "resort business" and which are located along the periphery of the resort collection zone.

Single residential unit means any dwelling place occupied by one (1) family.

Small dead animals means dead cats, dogs, small household pets and other animals of similar size.

Tree removal activity means the removal of trees wholly or partially felled or damaged by storm, disease or other natural causes, as well as the cutting down and removal of standing trees;

Tree removal contractor means any person, firm, corporation or other entity regularly performing tree removal activity for monetary or other consideration.

Vegetative waste means waste accumulation of tree branches, tree limbs, parts of trees, bark, roots, stumps, bushes or shrubbery generated by yard and lawn care or land-clearing activities.

Yard waste, yard trash means waste accumulations of lawn, grass or shrubbery cuttings or clippings and dry leaf rakings, free of dirt, rocks, large branches and bulky or noncombustible material.

Yard waste receptacles means plastic bags closed by a tight-sealing method of suitable type, such as drawstring, wire tie or knot, made of a clear material, which have a maximum capacity of forty (40) gallons and a maximum weight, when full, of twenty-five (25) pounds.

Yard waste container means a container thirteen (13) feet long, seven (7) feet wide and five (5) feet high for residential yard waste.

(Ord. No. 1016, § 17-1, 1-14-80; Ord. No. 1580, 1-21-86; Ord. No. 1592, 4-7-86; Ord. No. 1957, 5-7-90; Ord. No. 2034, 2-12-91; Ord. No. 2307, 1-24-94; Ord. No. 2370, 2-6-96; Ord. No. 2450, 6-10-97; Ord. No. 2500, 8-4-98; Ord. No. 2853, 12-7-04)

Sec. 31-2. - Administration and enforcement of chapter.

The administration and enforcement of the provisions of this chapter, including provisions for refuse collection throughout the city, by both private contractors and the city, shall be the duty of the department of public works and the department of housing and neighborhood preservation.

(Ord. No. 1016, §§ 17-2, 17-3, 17-11(F), 1-14-80; Ord. No. 2284, 7-5-94; Ord. No. 2370, 2-6-96)

Sec. 31-2.1. - Notice of violation, summons—Authority to issue.

All provisions of this chapter shall be enforced by inspectors assigned to the departments of public works and housing and neighborhood preservation; provided, however, that sections 31-7, 31-8, 31-10 and 31-11 shall also be enforced by police officers, assistant fire marshals and by inspectors of the departments of planning and public utilities. In their enforcement of this chapter, such assistant fire marshals and inspectors shall exercise all authority of police officers including, without limitation, the authority to issue notices of violation and to issue summonses directing the appearance before a court of competent jurisdiction of any person alleged to have violated any of the provisions of this chapter.

(Ord. No. 1197, 7-6-81; Ord. No. 2307, 1-24-95; Ord. No. 2370, 2-6-96)

Sec. 31-2.2. - Notice of violation, summons—Method of issuance.

(a) Upon finding or observing a violation of any of the provisions of this chapter, the inspector, assistant fire marshal or police officer shall issue a notice of violation to the owner, operator, occupant or other person causing or permitting such violation. Such notice shall set forth the date and nature of the violation, including a citation of the city code section violated, and shall specify the time within which the violation shall be corrected. Service of the notice shall be by personal delivery to the person causing or permitting the violation or, if the person cannot be found, by posting of the notice in a conspicuous location upon the land or premises.

If the person so served fails to comply with the notice of violation, a summons shall be issued against and served on such person directing him to appear before the general district court, on the date and at the time specified in the summons, to answer for the violation alleged, the date and nature of which shall be set forth in the summons; provided, however, that the procedure in cases of violations of sections 31-26, 31-28 and 31-33 shall be in accordance with the provisions of section 31-3.1 of this chapter.

(b) In any case where an inspector, assistant fire marshal or police officer observes a violation in progress, a summons may be issued against and served on the person committing the violation directing him to appear before the general district court without the necessity of issuing a notice of violation.

(Ord. No. 1197, 7-6-81; Ord. No. 2307, 1-24-95; Ord. No. 2370, 2-6-96; Ord. No. 2853, 12-7-04)

Sec. 31-3. - Violations of chapter.

Unless otherwise specifically provided, a violation of any of the provisions of this chapter shall constitute a class 1 misdemeanor. In any case where building and construction materials, hazardous waste, or refuse is deposited, transported, transferred or stored in or upon any public or private property in the city without acquiring all permits under applicable city, state, and federal laws, the mere cessation of such activities shall not be deemed sufficient to correct the violation. Said violation shall not be deemed corrected until such time that all required permits and approvals have been obtained or until such time as the building and construction materials, hazardous waste or refuse have been removed from the subject property and disposed of in a lawful manner.

In addition to and not in lieu of the penalties prescribed in this section, the city may apply to the circuit court for an injunction against the continuing violation of any of the provisions of this chapter and may seek any other remedy authorized by law; provided, that the assessment of a civil penalty for any violation shall preclude the institution of a criminal prosecution for the same violation.

(Ord. No. 1196, 7-6-81; Ord. No. 2307, 1-24-95; Ord. No. 2370, 2-6-96; Ord. No. 2853, 12-7-04)

Sec. 31-3.1. - Civil penalties.

(a) Any person who violates the provisions of section 31-26 or section 31-28 of this chapter shall be assessed a civil penalty in the amount of twenty-five dollars ($25.00) for the first violation and fifty dollars ($50.00) for each subsequent violation, and any person who violates section 31-33 shall be assessed a civil penalty in the amount prescribed therein. Each day during which the same violation is found to have existed shall constitute a separate offense.

(b) Except as provided in section 31-33(e), no civil penalty shall be assessed without first issuing a notice of violation in the manner specified in section 31-2.2 to the owner, operator, occupant or other person causing or permitting such violation.

(c) Any person issued a civil summons for a violation may make an appearance in person or in writing by mail to the city treasurer 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 person shall be informed of his 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. 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 by law. In any trial for a violation, it shall be the burden of the city 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.

(Ord. No. 2853, 12-7-04)

Sec. 31-4. - Construction or use of commercial-type incinerators for burning solid waste.

It shall be unlawful for any person to construct or use any commercial-type incinerator for the burning of rubbish or other readily combustible solid waste material in any zoning district of the city except those areas zoned for industrial or agricultural uses.

(Code 1965, § 17-23; Ord. No. 2370, 2-6-96)

Sec. 31-5. - Refuse receptacles for parking lots.

The owner or manager of any parking lot or establishment with a parking lot shall provide refuse receptacles distributed within the parking area. The city manager or his designee shall have the authority to determine the number of receptacles necessary to provide proper containerization. It shall be the responsibility of the owner or manager of the parking lot to maintain such receptacles and place them for collection in accordance with the provisions of this chapter.

(Ord. No. 1016, § 17-8, 1-14-80; Ord. No. 2220, 5-11-93; Ord. No. 2246, 9-28-93; Ord. No. 2370, 2-6-96)

Sec. 31-6. - Containers utilized by commercial establishments.

The owner, manager or occupant of any commercial establishment shall be responsible for the collection or handling of solid waste originating from their commercial property. Said owner, manager or occupant of the commercial establishment shall provide refuse receptacles for the commercial establishment, and shall maintain such receptacles and place them for collection in accordance with the provisions of this chapter. Owners, managers or occupants of commercial establishments in the resort collection zone shall provide either a bulk or mobile container for said commercial establishments and shall maintain such container and place it for collection in accordance with the provisions of this chapter. The city manager or his designee may authorize the use of a refuse receptacle other than a bulk or mobile container in the resort collection zone only in such cases where the nature of the business or the size, or physical constraints of the commercial property renders the use or placement of a bulk or mobile container impossible or impracticable. All containers shall at all times be clean, neat and in a good state of repair. Cleaning up materials spilled from containers when emptying shall be the responsibility of the private contractor or the property owner, manager or occupant. No refuse shall be placed adjacent to any bulk or mobile container or refuse receptacle. The owner, manager or occupant of any establishment for which a bulk or mobile container screening requirement applies must maintain such screening in a clean and neat condition and in good state of repair.

(Ord. No. 1016, § 17-7(C), 1-14-80; Ord. No. 2220, 5-11-93; Ord. No. 2246, 9-28-93; Ord. No. 2370, 2-6-96)

Sec. 31-7. - Hazardous waste not to be placed in collection receptacles; special care and preparation required before placing certain refuse items in containers.

No hazardous waste, contagious disease refuse or any other refuse that may cause a public health hazard shall be placed in any receptacle used for collection by the city or collection by any private agency. The following are several types of special refuse items which shall be given special care and preparation before disposing of the same in any refuse container:

(1) *Hypodermic instruments and other sharp articles.* No person shall dispose of or discard any hypodermic syringe, hypodermic needle or any instrument or device for making hypodermic injections before first breaking, disassembling, destroying or otherwise rendering the same inoperable and incapable of reuse. Such hypodermic syringe, needle, instrument or device shall not be disposed of without safeguarding by wrapping or securing the same in a suitable manner so as to avoid the possibility of causing injury to the collection personnel.

(2) *Ashes.* Ashes that are to be collected by the city or private collectors must have been wetted and cooled to the touch prior to collection. Ashes shall be placed in suitable containers of such size and weight as stipulated in section 31-26 and shall not be placed with the normal refuse unless separately wrapped, so that they will not cause injury to the collection personnel.

(3) *Pressurized cans.* All pressurized cans containing pesticides or any other dangerous materials shall be released of all pressure before being deposited in a receptacle for collection by the city or any private collection agency.

(4) *Glass.* All broken glass or any type of glass that may cause injury to refuse collection personnel shall be separately wrapped to prevent injury and placed with the normal refuse.

(5) *Pesticides.* All pesticide containers and other poisonous containers shall be emptied and the contents thereof shall be disposed of in a lawful manner before being placed for collection.

(6) *Animal waste.* Animal waste from domesticated animals such as dogs, cats or birds shall be wrapped separately from other refuse in a manner to prevent spillage prior to placing the same in a refuse container.

(Ord. No. 1016, § 17-7(E), 1-14-80; Ord. No. 2370, 2-6-96)

Sec. 31-8. - Disposal of refuse and debris from construction, demolition, etc., operations.

(a) The city shall not be responsible for the collection or hauling of building and construction materials originating from private property preliminary to, during or subsequent to the construction, repair, alteration or demolition of infrastructure, dredging or land-clearing activities. Such material shall be removed by the owner of the property or by the contractor and disposed of in a lawful manner. No inspection certificate or certificate of occupancy shall be issued until such material has been removed by the owner or contractor. In addition, all contractors must provide refuse receptacles for construction debris and litter to be deposited in at the end of each working day.

(b)

Building and construction materials, refuse or other debris deposited upon any public or private property as a result of the construction, repair, alteration or demolition of infrastructure, dredging or land-clearing activities shall be immediately removed by the contractor and disposed of in a lawful manner. Construction sites shall be kept clean and orderly at all times.

(c) The prime contractor or developer of a construction, demolition, dredging or land-clearing activities site shall be held responsible for maintaining the site as required by this section.

(Ord. No. 1016, §§ 17-7(F), 17-12(D), 1-14-80; Ord. No. 2307, 1-24-95; Ord. No. 2370, 2-6-96)

Cross reference— Building regulations, ch. 8.

Sec. 31-9. - Collection, removal and disposal of industrial waste.

Industrial waste shall be collected, removed and disposed of in an approved manner by the operator of the factory, plant or enterprise creating or causing same.

(Ord. No. 1016, § 17-7(D), 1-14-80; Ord. No. 2370, 2-6-96)

Sec. 31-10. - Unlawful storage and deposits generally; littering.

(a) No person shall store or place any accumulation of building and construction materials, hazardous waste or refuse in any street, median strip, alley or other public place of travel, nor upon any private property, except as stated in other sections of this chapter, or unless such storage or accumulation is authorized by a federal, state or local statute, regulation or permit, or is specifically related to an ongoing and active building or construction project. For purposes of this subsection, "ongoing and active" shall mean that all applicable federal, state and/or local permits have been issued and are in effect or, in the case of any project not requiring a permit, that the owner of the property in question is actively pursuing completion of the project.

(b) It shall be unlawful for any person to:

(1) Scatter building and construction materials, hazardous waste or refuse about or litter any public or private street, area or place.

(2) Cast, throw, place, sweep or deposit anywhere within the city any building and construction materials, hazardous waste or refuse in such a manner that it may be carried or deposited by the elements upon any street, sidewalk, alley, sewer, parkway or other public place or into any occupied or unoccupied premises within the city.

(3) Throw or deposit any hazardous waste, refuse or debris in any stream or body of water.

(c) The driver of any vehicle shall be responsible for assuring that no litter, hazardous waste, refuse, or building and construction materials are thrown from the vehicle or occurs through the lack of proper covering.

(d) Any person convicted of a violation of this section shall be guilty of a misdemeanor punishable by confinement in jail for not more than twelve (12) months and a fine of not less than two hundred fifty dollars ($250.00) or more than two thousand five hundred dollars ($2,500.00), either or both.

(Ord. No. 1016, §§ 17-13(A), 17-14, 17-15, 1-14-80; Ord. No. 2307, 1-24-95; Ord. No. 2370, 2-6-96; Ord. No. 2610, 8-22-2000)

Cross reference— Scattering advertising matter, § 3-4; litter control on beaches, § 6-7; depositing hazardous or injurious material on street, § 33-12.

State Law reference— Dumping on highways, Code of Virginia, § 33.1-346.

Sec. 31-11. - Placing hazardous waste, refuse or refuse receptacles on, in or over storm drains.

No person shall place any hazardous waste, refuse or refuse receptacle or container on, in or over any storm drain.

(Ord. No. 1016, § 17-13(B), 1-14-80; Ord. No. 2370, 2-6-96)

Sec. 31-12. - Property to be kept free of litter.

All owners or occupants shall maintain the real property owned or occupied by them in a clean and litter-free condition. This section shall not be construed as prohibiting the lawful storage of refuse or litter in authorized receptacles or containers for collection pursuant to the provisions of this chapter.

(Ord. No. 1016, §§ 17-12(E), 17-13(A), 1-14-80; Ord. No. 2370, 2-6-96)

Sec. 31-13. - Interference with or damaging receptacles.

No person, other than employees of the city charged with such duty, shall interfere with the contents of any refuse receptacle set out for removal by the city or any private collection agency, unless authorized by the city manager or his designee. It shall be unlawful for any person to damage or destroy any refuse receptacle placed at the curbline for collection.

(Ord. No. 1016, § 17-9, 1-14-80; Ord. No. 2370, 2-6-96)

Cross reference— Damaging property generally, § 23-38 et seq.

Sec. 31-14. - Location and screening of refuse receptacles, mobile and bulk containers in resort collection zone.

Approved refuse receptacles in the resort collection zone shall be located in areas out of public view. All privately owned mobile and bulk containers in the resort collection zone shall be screened from the public view on all sides. Any enclosure utilized for screening such containers shall be subject to approval by the city manager or his designee and shall be located on private property unless an encroachment has been approved as set forth in section 33-113.

(Ord. No. 1580, 1-21-86)

Sec. 31-15. - Provision of automated refuse receptacles.

(a) It shall be the responsibility of owners of residential structures located in areas of the city serviced by the automated collection system to provide automated refuse receptacles.

(b) Within thirty (30) days of the date of occupancy of a new structure located in any such area, the owner or occupant thereof shall provide an automated refuse receptacle.

(c)

The city shall make automated refuse receptacles available for sale to homeowners who are residents of the city. The fee for each receptacle shall be seventy-five dollars ($75.00), which shall be paid to the city before the receptacle is provided.

(Ord. No. 1957, 5-7-90; Ord. No. 2032, 2-12-91; Ord. No. 2370, 2-6-96; Ord. No. 2822, 5-11-04)

Secs. 31-16—31-25. - Reserved.

ARTICLE II. - COLLECTION BY CITY

> *Footnotes:*
> *--- (**2**) ---*
> ***Cross reference—** Responsibility of solid waste division of department of public works with respect to collection and disposal of garbage and waste, § 2-270.*

Sec. 31-26. - Receptacles generally.

All refuse to be collected by the city shall be stored in proper receptacles between times of collection. Except in those areas serviced by automated collection equipment, such receptacles shall be metallic or plastic, with a capacity of not more than thirty-two (32) gallons or a total weight of not more than fifty (50) pounds. Any automated refuse receptacle serviced by the city shall not be filled to exceed two hundred (200) pounds total weight, and all refuse therein must fit inside the receptacle. Refuse may be placed in plastic or polyethylene bags which meet the standards set by the city manager or his designee. Each receptacle shall have a tight-fitting cover, and each bag shall be tightly secured. The cover of any receptacle shall be kept on at all times except when the receptacle is being filled, emptied or cleaned. Animal waste, ashes and special refuse items shall be disposed of in the manner set forth in section 31-7 of this chapter. Any areas serviced by automated collection equipment shall use automated refuse receptacles and containers for recyclables as approved by the city manager or his designee. All garbage or receptacle material shall be placed within the automated refuse receptacles. No hazardous waste, refuse, medical waste, or any other refuse or nonrecyclables shall be placed in any container for recyclables used for collection by the city or a city contractor. No other types of receptacles are permitted for use in the automated collection areas. Exceptions to these requirements may be made by the city manager or his designee. Only yard waste containers or yard waste receptacles as defined in section 31-1 of this chapter shall be used for yard waste. A maximum of twenty-five (25) yard waste receptacles shall be collected per residence on any given collection day.

(Ord. No. 1016, §§ 17-4, 17-5, 1-14-80; Ord. No. 1580, 1-21-86; Ord. No. 1592, 4-7-86; Ord. No. 2034, 2-12-91; Ord. No. 2370, 2-6-96; Ord. No. 2450, 6-10-97; Ord. No. 2853, 12-7-04)

Sec. 31-27. - Frequency of collection.

(a) Garbage and household trash accumulated at residences shall be collected by the city one (1) time each week, except when otherwise designated by the city manager or his designee. Oversized household trash, and bulky items such as refrigerators, water heaters and washing machines shall be collected by the city one

(1) time each week at the curbside; provided that, the service of collecting these articles shall only be provided when a special order is placed by telephoning the waste management division in advance.

(b) Recyclables shall be collected every other week on the same day as waste collection, except when otherwise designated by the city manager or his designee.

(Ord. No. 1016, § 17-7(A), (B), 1-14-80; Ord. No. 1198, 7-6-81; Ord. No. 1580, 1-21-86; Ord. No. 1592, 4-7-86; Ord. No. 1957, 5-7-90; Ord. No. 2220, 5-11-93; Ord. No. 2246, 9-28-93; Ord. No. 2450, 6-10-97)

Sec. 31-28. - Points of collection.

(a) Privately owned residential refuse receptacles, including automated refuse receptacles and containers for recyclables, oversized household trash and bulky items such as refrigerators, water heaters, washing machines, other household appliances, furniture, mattresses and similar items, the contents of which are to be collected by the city or a city contractor, shall be placed on the curb line of a city right-of-way no earlier than 5:00 p.m. on the day before collection and by 7:00 a.m. on the day of collection. All receptacles must be removed out of view of the public after collection on the day of collection, except as otherwise designated by the city manager or his designee. Containers for recyclables provided to townhouses shall be removed out of view of the public after collection on the day of collection. Except as otherwise set forth in this subsection, automated refuse receptacles and containers for recyclables that are not removed from public view on the day of collection may be removed by the city and taken into temporary custody with posted written notice to the property owner as to the location of the containers and the procedure for reclaiming such containers. Some residents serviced by automated collection equipment shall be required to place the automated refuse receptacles on the opposite side of the street from their house.

(b) Mobile containers in the resort collection zone may be placed on the curb line of a city right-of-way by 6:00 a.m. on the day of collection.

The collection of refuse from any mobile or bulk container by a private contractor in the resort collection zone during the resort season shall be restricted to between the hours of 6:00 a.m. and 10:00 a.m. daily. Any mobile container in the resort collection zone placed on the curb line of a city right-of-way during the resort season must be removed from said right-of-way no later than 10:00 a.m. If mobile containers are not removed by that time, the city may remove them and take temporary custody of such containers with posted written notice to the property owner as to the location of the containers and the procedure for reclaiming such containers.

(c) The city manager or his designee may authorize the placement of mobile containers outside of the resort collection zone on the curb line of a city right-of-way for collection by a private contractor where access to and the servicing of such containers from the commercial property is impossible or impracticable because of the size or physical constraints of the property. In such cases the mobile container may be placed on the curb line of a city right-of-way by 6:00 a.m. on the day of collection. Such mobile containers shall be removed out of view of the public immediately after collection.

(d) The city will not make refuse collections on private property.

(e) Except as set forth in subsections (b) and (c) of this section, refuse receptacles, mobile containers and bulk containers used by commercial establishments and serviced by private refuse collectors shall not be placed on any street or city right-of-way for collection. Unless otherwise authorized by the city manager or his

designee, all collections shall be made directly from the premises of the customer and any emptied receptacles or containers shall be returned directly to such premises.

(Ord. No. 1016, §§ 17-3, 17-6, 1-14-80; Ord. No. 1580, 1-21-86; Ord. No. 1592, 4-7-86; Ord. No. 2034, 2-12-91; Ord. No. 2450, 6-10-97; Ord. No. 2853, 12-7-04; Ord. No. 2868, 4-26-05)

Sec. 31-29. - Limitation on the number of mobile containers.

Commercial establishments shall not place more than six (6) mobile containers of refuse each collection day, unless otherwise authorized by the city manager or his designee.

(Ord. No. 2246, 9-28-93; Ord. No. 2370, 2-6-96)

Sec. 31-30. - Holiday collection schedule.

Refuse collection service shall be provided by the city on official holidays as designated by the director of public works.

(Ord. No. 1016, § 17-7(A), 1-14-80; Ord. No. 1198, 7-6-81; Ord. No. 2370, 2-6-96)

Sec. 31-31. - Refuse from multiple-unit dwellings not to be collected.

The city shall not provide refuse collection to apartments, residential condominiums, duplexes, or other multiple-unit residential buildings unless each unit or duplex is individually located on a separate lot abutting the right-of-way of a publicly maintained street; provided, however, that such refuse collection shall be done in accordance with the other provisions of this chapter.

(Ord. No. 1016, § 17-3, 1-14-80; Ord. No. 1592, 4-7-86; Ord. No. 2220, 5-11-93; Ord. No. 2370, 2-6-96)

Sec. 31-32. - Collection of dead animals.

Dead animals, except marine life, may be collected and disposed of by the city bureau of animal control in conjunction with section 5-14 of this Code.

(Ord. No. 1016, § 17-7(G), 1-14-80; Ord. No. 2370, 2-6-96)

Sec. 31-33. - Storage or preparation of yard trash, limbs, shrubbery, etc., for collection.

(a) *Yard waste storage.* Yard waste may be stored for collection by the city in approved yard waste receptacles or yard waste containers as described in this chapter. Any yard waste that cannot be put in an approved refuse receptacle shall be handled as described in subsection (b) of this section.

(b) *Restrictions on yard waste material.* All limbs, branches, shrubbery and hedge trimmings generated from normal pruning to be collected by the city shall be cut into lengths not to exceed four (4) feet and shall be stacked neatly by the curbline for collection. Stacks shall not exceed four by four by four (4 × 4 × 4) feet, shall contain no material greater than six (6) inches in diameter, and shall contain no debris generated as a result

of tree removal activity. No more than one (1) pile per week per residence shall be collected. If such material is not prepared for collection as herein required, its disposal shall be the responsibility of the owner or occupant of the premises.

(c) *Violations.* Except as provided in section 31-35 or as allowed by the city manager in cases of declared emergency, any property owner, tenant or occupant who places, or causes to be placed, any debris generated by tree removal activity on any public street, alley or right-of-way, including the area between the paved portion thereof and abutting property line, and who fails to remove such debris within the time prescribed in the notice issued pursuant to section 31-3.1 of this chapter shall be subject to a civil penalty in the amount of one hundred dollars ($100.00) for each day that the violation continues after the date specified in the notice.

(d) *Summons; procedure.* In the event of a violation of any of the provisions of this section, the owner, tenant or occupant of the subject property shall be notified of such violation in the manner provided in section 31-2.2 and directed to remedy the violation within a reasonable time specified in the notice, but not less than forty-eight (48) hours. If the person so notified fails or refuses to comply with the notice of violation within the time specified, or such extension of time as may be authorized by the city manager or his designee, the code enforcement administrator of the department of housing and neighborhood preservation or his designee may issue a civil summons for a violation. In such event, further proceedings shall be in accordance with section 31-3.1(c).

(e) *Special provisions for tree removal contractors.* The provisions of subsections (b), (c) and (d) hereof shall apply to tree removal contractors, except that any violation of the provisions of this section by a tree removal contractor shall be subject to a civil penalty in the amount of five hundred dollars ($500.00) for an initial violation and each day thereafter that a violation continues, and a civil summons may be issued against such a contractor without the prior issuance of a notice of violation.

(Ord. No. 1016, § 17-7(H), (I), 1-14-80; Ord. No. 1022, 2-11-80; Ord. No. 1198, 7-6-81; Ord. No. 2370, 2-6-96; Ord. No. 2853, 12-7-04)

Sec. 31-34. - Forking of debris flooded or washed upon private property.

On seasonal occasions, when various types of debris from public waterways, highways or drainage systems is either flooded or washed upon residential private property utilizing city waste management services, and such debris has been carted to the curb line for collection by the city, the city manager or his designee may authorize the forking of such accumulations of debris not in approved refuse receptacles or stacked as normally required by this chapter.

(Ord. No. 1022, 2-11-80; Ord. No. 2220, 5-11-93; Ord. No. 2246, 9-28-93; Ord. No. 2370, 2-6-96)

Sec. 31-35. - Use of yard waste containers.

The city shall make available to those homeowners who are residents of the city a yard waste container, which shall be picked up and delivered by city employees. Prior to the container being delivered, there shall be paid to the city a fee of forty dollars ($40.00), for the use of a yard waste container delivered for a 24-hour period Monday through Thursday and seventy-five dollars ($75.00) for deliveries made on Fridays and picked up on Monday. The city employees shall

deliver and place the yard waste container on the property of the homeowner of an occupied dwelling who has requested the yard waste container. Prior to delivery of the yard waste container, the homeowner shall sign a statement which shall state:

(1) That he is not a contractor and that his need arises from his homeownership;

(2) That the yard waste container shall only be used for tree limbs, leaves, shrubbery, grass trimmings and yard debris;

(3) That he will not place hazardous waste, stumps, building and construction materials or other bulky items within the yard waste container;

(4) That he will not fill the load above the top of the container;

(5) That he will release the city from liability for any damages resulting from city equipment or personnel being on private property to deliver or remove the yard waste container;

(6) That he will be responsible for any injuries and/or damages that result to individuals using the container or directly to the container while being used by the homeowner; and

(7) That he will reimburse the city for any costs associated with the handling and disposal of any material or items placed in the yard waste container in violation of any of the provisions of this section.

(Ord. No. 1603, 6-9-86; Ord. No. 2370, 2-6-96; Ord. No. 2745, 5-13-03; Ord. No. 2815, 5-11-04; Ord. No. 3016, 5-13-08)

Sec. 31-36. - Reserved.

Editor's note— Ord. No. 2370, adopted Feb. 6, 1996, deleted § 31-36, which contained charges to commercial establishments in the resort collection zone for city disposal of solid waste, and which derived from Ord. No. 2246, adopted Sept. 28, 1993.

Sec. 31-37. - Reserved.

Editor's note— Sections 31-36 and 31-37 were repealed by Ord. No. 2220, adopted May 11, 1993. Section 31-36 gave the charges to commercial establishments for city disposal of solid waste and was derived from Ord. No. 1957, adopted May 7, 1990, and Ord. No. 1988, adopted June 25, 1990. Section 31-37 limited the provision of city disposal and collection services to commercial establishments outside the resort collection zone and was derived from Ord. No. 1957. Subsequently, Ord. No. 2246, adopted Sept. 28, 1993, added a new § 31-36.

Sec. 31-38. - Reserved.

Editor's note— Ord. No. 2370, adopted Feb. 6, 1996, deleted § 31-38, which pertained to solid waste collection service from commercial establishments in the Resort Area during the season, and derived from Ord. No. 2220, adopted May 11, 1993.

Sec. 31-39. - Waste collection fee; billing and collection.

(a) That rate(s) to be charged for access to the service of solid waste collection, management, and disposal of solid waste materials, and other refuse shall be as follows:

(1) A waste collection fee of twenty-seven dollars and fifty cents ($27.50) per month shall be charged to each occupied dwelling unit eligible for, and each participating church receiving, city trash collection services in accordance with this chapter.

(b) That the billing and collection of the waste collection fee shall be pursuant to the same procedures as the collection of water and sewer utility service and stormwater management charges as described in section 37-53.

(Ord. No. 3587, § 1, 5-14-19; Ord. No. 3736, § 1, 5-9-23, eff. 7-1-23)

Secs. 31-40—31-45. - Reserved.

ARTICLE III. - PRIVATE COLLECTORS

Sec. 31-46. - Reserved.

Editor's note— Ord. No. 2370, adopted Feb. 6, 1996, deleted § 31-46, which pertained to permits required for private collectors, and which derived from Ord. No. 1016, § 17-10(A), adopted Jan. 14, 1980.

Sec. 31-47. - Maintenance, etc., of vehicles and other equipment.

All vehicles, containers and other equipment used by private refuse collectors shall be maintained in a clean, sanitary condition and free from odors at all times and shall be equipped with water-tight bodies with a suitable system for cleaning, disinfecting and deodorizing garbage and refuse containers.

(Ord. No. 1016, § 17-10(B), 1-14-80; Ord. No. 2370, 2-6-96)

Sec. 31-48. - Inspection of containers and vehicles.

All containers and vehicles owned or operated by private refuse collectors shall be subject to inspection by police officers, assistant fire marshals, and inspectors assigned to the department of housing and neighborhood preservation to ensure safety compliance and to ensure that proper lids or covers are provided to prevent litter problems.

(Ord. No. 1016, § 17-10(A), 1-14-80)

Sec. 31-49. - Reserved.

Editor's note— Section 31-49, requiring private collectors to collect from customers' premises, and derived from Ord. No. 1016, § 17-10(C), adopted Jan. 14, 1980, was deleted by Ord. No. 2370, adopted Feb. 6, 1996.

Secs. 31-50—31-60. - Reserved.

ARTICLE IV. - CITY REFUSE DISPOSAL AREAS

Footnotes:

--- (3) ---

Cross reference— *Private dumps, § 25-23 et seq.*

Sec. 31-61. - Use charges.

(a) Effective as of July 1, 2001, there shall be a fee of fifty-four dollars ($54.00) per ton, or a fifteen dollar ($15.00) minimum charge for less than one ton, or any part thereof, for all sanitary solid waste, refuse, debris or garbage generated solely within the city and deposited at the city refuse disposal areas; provided, however, that residents of the city depositing sanitary solid waste, refuse, debris, or garbage generated solely from their households may deposit the same free of charge.

(b) There shall be a fee of seventy-five cents ($0.75) per passenger and light truck tire and five dollars ($5.00) per truck tire for cutting and disposing of tires at the city refuse disposal areas.

(Ord. No. 1016, § 17-11(A), (C), 1-14-80; Ord. No. 1038, 5-12-80; Ord. No. 1277, 5-14-82; Ord. No. 1504, 12-17-84; Ord. No. 1505, 12-17-84; Ord. No. 1602, 5-12-86; Ord. No. 1701, 5-11-87; Ord. No. 1777, 5-9-88; Ord. No. 1863, 5-8-89; Ord. No. 1959, 5-7-90; Ord. No. 2059, 5-7-91; Ord. No. 2089, 8-6-91; Ord. No. 2131, 5-12-92; Ord. No. 2214, 5-11-93; Ord. No. 2329, 5-23-95; Ord. No. 2417, 9-3-96; Ord. No. 2581, 5-9-00; Ord. No. 2656, 8-14-01)

Sec. 31-62. - Use by private collectors—Generally.

Persons engaged in the business of collecting sanitary solid waste, refuse, debris or garbage may deposit solid waste, refuse, debris or garbage collected within the city at the city refuse disposal areas subject to the provisions of section 31-61 and the following provisions:

(1) The proper city business license has been purchased and is current.

(2) The vehicles transporting the sanitary solid waste, refuse, debris or garbage have a current city license decal displayed thereon.

(3) Section 31-63 has been and is fully complied with.

(Ord. No. 1016, § 17-11(B), 1-14-80; Ord. No. 1038, 5-12-80)

Sec. 31-63. - Same—Disposal permit.

(a) No person engaged in the business of collecting solid waste, refuse, debris or garbage shall deposit such material at any city refuse disposal area, unless he has a current refuse disposal permit issued by the director of public works or his designated agent. Such permit shall be issued only upon the certification and affidavit by the applicant that all sanitary solid waste, debris, refuse or garbage deposited at a city refuse disposal area will be generated and collected within the city.

(b) The fee for a permit required by this section shall be twenty-five dollars ($25.00) per vehicle per year or any part thereof. Each such permit shall expire on December 31 of each year.

(c) When a permit is issued under this section, a decal shall be issued for each vehicle listed on the permit. Such decal shall be displayed on the vehicle at all times when it is being used at any city refuse disposal area.

(d)

The director of public works or his designated agent is hereby authorized to revoke or suspend any permit issued under this section, to prevent the holder thereof from utilizing the city refuse disposal areas, for good cause.

(Ord. No. 1016, § 17-11(B), (G), 1-14-80; Ord. No. 1038, 5-12-80)

Sec. 31-64. - Hours of operation.

The director of public works, with the approval of the city manager, is hereby authorized to establish reasonable hours for the operation of the city refuse disposal areas.

(Ord. No. 1016, § 17-11(E), 1-14-80)

Sec. 31-65. - Determination of acceptability of deposits.

The director of public works or his designated agent shall have the authority to determine what sanitary solid waste, refuse or garbage shall be acceptable for deposit at the city refuse disposal areas.

(Ord. No. 1016, § 17-11(D), 1-14-80)

Sec. 31-66. - Delivery vehicles to conform to section 21-129.

Every vehicle used to deliver material to a city refuse disposal area shall conform to the requirements of section 21-129 of this Code, so that the contents of such vehicle do not escape therefrom. A person operating a vehicle which does not conform to such section shall be allowed access to such area only after he is issued a notice of, or summons for, a violation of section 21-129 of this Code.

(Ord. No. 1016, § 17-15, 1-14-80; Ord. No. 1962, 5-21-90)

Editor's note— See Code of Virginia, section 46.2-1156 for state law regulating construction, maintenance and loading to prevent escape of contents.

Sec. 31-67. - Scale and fee collection procedures.

The director of public works, in conjunction with the director of finance, is hereby authorized to establish such scale and fee collection procedures as they may determine to be necessary to ensure the efficient collection of fees imposed by this article.

(Ord. No. 1016, § 17-11(D), 1-14-80)

Sec. 31-68. - Liability of officers, etc., of corporation, partnership or association for violation of article.

Any officer or agent of a corporation or member of a partnership or association, who shall personally participate in or be an accessory to any violation of this article by such corporation, partnership or association, shall be subject to the penalties provided for such violation.

(Ord. No. 1016, § 17-11(G), 1-14-80)

ARTICLE V. - SOLID WASTE RECYCLING REPORTS

Footnotes:
*--- (**4**) ---*
***Cross reference—** Recyclable materials, app. A, § 231.*

Sec. 31-69. - Definitions.

For purposes of this chapter, the following words shall have the meanings respectively ascribed to them:

(1) *Person* shall mean any nonresidential generator of solid waste and any individual, firm, company, corporation or association that collects, transports, processes, manages or recycles solid waste.

(2) *Recycle* shall mean to sell, donate, or otherwise transfer solid waste material to any other person located outside the city so that such waste material may be processed and used again as a raw material for a product which may or may not be similar to the original product; and/or to process a given waste material at a location within the City of Virginia Beach so that such material may be used again as a raw material for a product which may or may not be similar to the original product.

(Ord. No. 2016, 11-20-90)

Sec. 31-70. - Annual report required.

(a) Each person located within the city who recycles solid waste shall submit an annual report to the department of public works/solid waste division.

(b) The annual report shall cover the twelve-month period beginning January 1 and ending December 31, and shall be submitted not later than twenty (20) days from the end of such period.

(Ord. No. 2016, 11-20-90)

Sec. 31-71. - Information required.

The annual report required by this article shall include the following information:

(1) The name, address and telephone number of the person on whose behalf the report is being filed;

(2) The name, address and telephone number of an individual who may be contacted on behalf of such person; and

(3) The total quantity of solid waste recycled by such person during the twelve-month period.

(Ord. No. 2016, 11-20-90)

Sec. 31-72. - Method of measurement.

All quantities of solid waste required to be reported hereunder shall be measured by weight. When a person is unable to accurately determine quantity by weight, such quantities shall be reported based upon carefully estimated data. Each report shall identify all information which is based upon estimated data.

(Ord. No. 2016, 11-20-90)

Sec. 31-73. - Proprietary information.

Nothing in this article shall be construed to require any person to report information of a proprietary nature. Where any person fails to report any information otherwise required hereunder based upon a determination that such information is of a proprietary nature, the person shall specify in the annual report the nature of the information withheld and the basis for the determination that such information is of a proprietary nature.

(Ord. No. 2016, 11-20-90)

Sec. 31-74. - Consolidated report.

Any person who recycles solid waste at or from locations both within and without the city and is not reasonably able to identify the quantity of solid waste recycled at or from each location may submit a consolidated report. Any such consolidated report shall state that it reflects quantities of solid waste recycled at or from all locations of the person within the city.

(Ord. No. 2016, 11-20-90)

Sec. 31-75. - Report forms.

The city may prepare forms to be used by any person required to submit a report under this article. Any such form shall be available at the office of the waste management division of the department of public works.

(Ord. No. 2016, 11-20-90)

Chapter 32 - SPECIAL SALES

ARTICLE I. - IN GENERAL

Secs. 32-1—32-15. - Reserved.

ARTICLE II. - GOING-OUT-OF- BUSINESS SALES

DIVISION 1. - GENERALLY

Sec. 32-16. - Violations of article.

Any person who shall violate any of the provisions of this article shall be guilty of a Class 1 misdemeanor, and each day's business in violation of the provisions of this article shall constitute a separate offense.

(Code 1965, § 23-24.6; Ord. No. 1003, 11-5-79)

Sec. 32-17. - Advertisement or sale of uninventoried goods.

(a) It shall be unlawful for any person connected with a sale authorized by a permit issued under this article to advertise or to sell, during the period covered by such permit, any goods which are not specified in the inventor filed pursuant to section 32-27.

(b) In addition to any other penalties prescribed by law, the commissioner of the revenue shall revoke any special sale permit upon proof that goods not appearing on the original inventory of special sale goods filed pursuant to section 32-27 have been commingled with or added to the special sale goods.

(Code 1965, § 23-24.2; Ord. No. 1815, 10-31-88; Ord. No. 2166, 8-4-92; Ord. No. 3142, 6-22-10)

State Law reference— Similar provisions, Code of Virginia, § 18.2-224.

Sec. 32-18. - Inspections.

The commissioner of the revenue shall inspect the advertisement and conduct of a sale authorized by a permit issued under this article to insure that it is advertised and conducted in conformity with such permit.

(Code 1965, § 23-24.3; Ord. No. 3142, 6-22-10)

State Law reference— Similar provisions, Code of Virginia, § 18.2-224.

Secs. 32-19—32-25. - Reserved.

DIVISION 2. - PERMIT

Sec. 32-26. - Required.

It shall be unlawful for any person to advertise or conduct a sale for the purpose of discontinuing a retail business, or to modify the word "sale" in any advertisement with the words "going out of business" or any other words which tend to insinuate that the retail business is to be discontinued and the merchandise liquidate, unless such person has a valid permit to conduct such sale issued by the commissioner of the revenue of the city.

(Code 1965, § 23-24.1; Ord. No. 1003, 11-5-79; Ord. No. 3142, 6-22-10)

State Law reference— Similar provisions, Code of Virginia, § 18.2-223.

Sec. 32-27. - Application.

(a) Application for a permit required by this division shall be filed, on forms provided for the purpose, with the commissioner of the revenue. Such application shall be accompanied by an inventory, including the kind and quantity of all goods which are to be offered for sale during the sale for which the permit is sought.

(b) It shall be unlawful for any person to make any false statement in any application filed pursuant to this section.

(Code 1965, §§ 23-24.2, 23-24.6; Ord. No. 1392, 9-6-83; Ord. No. 3142, 6-22-10)

State Law reference— Inventory of goods required, Code of Virginia, § 18.2-224.

Sec. 32-28. - Fee.

The fee for a permit required by this division shall be sixty-five dollars ($65.00).

(Code 1965, § 23-24.4; Ord. No. 1392, 9-6-83)

State Law reference— Authority to charge above fee, Code of Virginia, § 18.2-224.

Sec. 32-29. - Issuance.

The commissioner of the revenue shall issue permits required by this division to retail merchants upon the filing of a proper application and payment of the prescribed fee.

(Code 1965, § 23-24.3; Ord. No. 3142, 6-22-10)

State Law reference— Similar provisions, Code of Virginia, § 18.2-224.

Sec. 32-30. - Term.

Each permit issued under this division shall be valid for a period of no longer than sixty (60) days and any extension of that time shall constitute a new sale and shall require an additional permit and inventory. A maximum of one (1) permit beyond the initial sixty-day permit may be granted solely for the purpose of liquidating only those goods contained in the initial inventory list and which remain unsold.

(Code 1965, § 23-24.5; Ord. No. 1392, 9-6-83; Ord. No. 1815, 10-31-88; Ord. No. 2166, 8-4-92)

State Law reference— Similar provisions, Code of Virginia, § 18.2-224.

Chapter 32.5 - STORMWATER MANAGEMENT UTILITY

> *Footnotes:*
> *--- (**1**) ---*
> ***Editor's note—** Ord. No. 2195, adopted Dec. 1, 1992, added ch. 32.5. Under authority of § 1-7 of this Code, in order to maintain alphabetical sequence of chapter titles, the editor has redesignated the chapter as ch. 32.5.*

Sec. 32.5-1. - Findings and determinations.

(a) The City of Virginia Beach has a unique topography which has required development and maintenance of a system of manmade and natural components of a stormwater management infrastructure to both limit and manage the volume of stormwater to control flood events and to prevent degradation of the city's waterways through stormwater quality management.

(b) Stormwater runoff is associated with all improved properties in the city, whether residential or nonresidential, and the individual property impacts of runoff are correlated to the amount of impervious surface on the property and land-disturbing activities on property.

(c) The elements of the stormwater management infrastructure provide benefit and service to properties within the city through direct protection of property and through control of flooding of critical components of the infrastructure and through protection of the city's natural environment.

(d) The costs of monitoring, operating, maintaining, and constructing the stormwater system required in the city, both to meet new regulations and to address identified flood event needs, should therefore be allocated, to the extent practicable, to all property owners based on their impact on the stormwater management system.

(Ord. No. 2195, 12-1-92; Ord. No. 2243, 6-22-93)

Sec. 32.5-2. - Definitions.

The following words and terms used in this section shall have the following meanings:

(a) Equivalent residential unit or ERU means the equivalent impervious area of a single-family residential developed property per dwelling unit located within the city based on the statistical average horizontal impervious area of a single-family residence in the city. An equivalent residential unit (ERU) equals two thousand two hundred sixty-nine (2,269) square fee of impervious surface area.

(b) ERU rate means the utility fee charged on an equivalent residential unit, which shall be forty-nine and three-tenth cents ($0.493) per day, effective July 1, 2019, fifty-two and eight-tenths cents ($0.528) per day, effective July 1, 2028, fifty-six and three tenth cents ($0.563) per day, effective July 1, 2029, fifty-nine and eight tenth cents ($0.598) per day, effective July 1, 2030, sixty-three and three tenth cents ($0.633) per day, effective July 1, 2031, and sixty-six and eight tenth cents ($0.668), effective July 1, 2032.

(c) *Developed property* means real property which has been altered from its "natural" state by the addition of any improvements such as buildings, structures, and other impervious surfaces. For new construction, property shall be considered developed pursuant to this section upon: (a) certification of the final plumbing permit inspection; or (b) certification of the final building permit inspection for those facilities not requiring a plumbing permit.

(d) *Impervious surface area* means a surface which is compacted or covered with material that is highly resistant to infiltration by water, including, but not limited to, most conventionally surfaced streets, roofs, sidewalks, parking lots, and other similar structures.

(e) *Developed residential property* means a developed lot or parcel containing at least one (1) but no more than four (4) residences or dwelling units, and accessory uses related to but subordinate to the purpose of providing permanent dwelling facilities. Such property shall include houses, duplexes, triplexes, quadruplexes, townhouses and mobile homes.

(f) *Developed multifamily residential property* means developed property containing more than four (4) residences or dwelling units, and accessory uses related to but subordinate to the purpose of providing permanent dwelling facilities. Such property shall include apartments and condominiums.

(g) *Developed nonresidential property* means developed property which does not serve a primary purpose of providing permanent dwelling units. Such property shall include, but not be limited to, commercial properties, industrial properties, parking lots, recreational and cultural facilities, hotels, offices and churches.

(h) *Revenues* means all rates, fees, assessments, rentals or other charges or other income received by the utility, in connection with the management and operation of the system, including amounts received from the investment or deposit of moneys in any fund or account and any amounts contributed by the city, fees-in-lieu-of provided by developers or individual residents, and the proceeds from sale of utility bonds.

(i) *Stormwater management system* or *system* means the stormwater management infrastructure and equipment of the city and all improvements thereto for stormwater control in the city. Infrastructure and equipment shall include structural and natural stormwater control systems of all types, including, without limitation, retention basins, sewers, conduits, pipelines, pumping and ventilation stations, and other plants, structures, and real and personal property used for support of the system. The system does not include privately owned farm ditches and other private drainage systems.

(j) *Stormwater management utility* or *utility* means the enterprise fund created by this section to operate, maintain and improve the city's stormwater management system.

(k) *Undeveloped property* means any parcel which has not been altered from its natural state to disturb or alter the topography or soils on the property in a manner which substantially reduces the rate of infiltration of stormwater into the earth.

(l) *Utility fees* means the monthly service charges based upon the ERU rate applied to property owners or occupants, including condominium unit owners or tenants (when the tenant or occupant is the party to whom water and sewer service is billed), of developed residential property, developed multifamily residential property and developed nonresidential property, all as more fully described in section 32.5-4.

(m) *Agricultural property* means land used for the tilling, planting or harvesting of agricultural, horticultural or forest crops or land used for raising livestock.

(Ord. No. 2195, 12-1-92; Ord. No. 2243, 6-22-93; Ord. No. 2445, 5-13-97; Ord. No. 2636, 5-15-01; Ord. No. 2827, 6-8-04; Ord. No. 2874, 5-10-05; Ord. No. 3012, 5-13-08; Ord. No. 3179, 5-10-11; Ord. No. 3347, 5-13-14, eff. 7-1-14; Ord. No. 3501, 5-9-17, eff. 7-1-17; Ord. No. 3560, 5-15-18, eff. 7-1-18; Ord. No. 3588, 5-14-19, eff. 7-1-19; Ord. No. 3616, 5-12-20, eff. 7-1-20; Ord. No. 3656, 5-11-21, eff. 7-1-21; Ord. No. 3679, 11-16-21)

Sec. 32.5-3. - Establishment of stormwater management utility.

(a) The stormwater management utility is established to provide for the general welfare, health, and safety of the city and its residents.

(b) The utility shall deposit in a separate ledger account all revenues collected pursuant to this chapter. The funds deposited shall be used exclusively to provide services and facilities related to the stormwater management system. The deposited revenues shall be used for the following:

(1) Acquisition of real or personal property, and interest therein necessary to construct, operate and maintain stormwater control facilities;

(2) The cost of administration of such programs, to include the establishment of reasonable operating and capital reserves to meet unanticipated or emergency requirements of the utility;

(3) Engineering and design, debt retirement, construction costs for new facilities and enlargement or improvement of existing facilities;

(4) Facility maintenance;

(5) Monitoring of stormwater control devices; and

(6) Pollution control and abatement, consistent with state and federal regulations for water pollution control and abatement.

(Ord. No. 2195, 12-1-92)

Sec. 32.5-4. - Imposition of utility fees.

Adequate revenues shall be generated to provide for a balanced operating and capital improvement budget for maintenance of the stormwater management system by setting sufficient levels of utility fees. Income from utility fees shall not exceed actual costs incurred in providing the services and facilities described in section 32.5-3. Utility fees shall be charged to owners of all developed property in the city; provided, however, where a tenant or occupant is the person to whom water or sewer service, or both, are billed, the utility fee may be charged to such tenant or occupant.

(a) For purposes of determining the utility fee, all properties in the city are classified into one of the following classes:

(1) Developed residential property;

(2) Developed multifamily residential property;

(3) Developed nonresidential property;

(4) Undeveloped property; or

(5) Agricultural property.

(b) The monthly utility fee for developed residential property shall equal the ERU rate. Provided, however, where more than one (1) residence or dwelling unit is located on a single lot or parcel the owner of the lot or parcel shall be charged a utility fee which is equal to the ERU rate multiplied by the number of residences or dwelling units located on the lot or parcel.

(c) The monthly utility fee for developed multifamily residential property shall be the ERU rate multiplied by the numerical factor obtained by dividing the total impervious surface area of a developed multifamily residential property by one (1) ERU (2,269). The numbered factor will be rounded to the nearest tenth (0.1) of a unit.

(d) The monthly utility fee for developed nonresidential property shall be the ERU rate multiplied by the numerical factor obtained by dividing the total impervious surface area of a developed nonresidential property by one (1) ERU (2,269). The numbered factor will be rounded to the nearest tenth (0.1) of a unit. The minimum utility fee for any developed nonresidential property shall equal the ERU rate.

(e) The utility fee for vacant developed property, both residential and nonresidential, shall be the same as that for occupied property of the same class.

(f) Undeveloped property shall be exempt from the utility fee.

(g) Agricultural property shall be exempt from the utility fee. Provided however, each developed residential unit situated on a parcel devoted to agricultural use shall be charged a fee equal to the ERU rate.

(Ord. No. 2195, 12-1-92; Ord. No. 2243, 6-22-93; Ord. No. 2827, 6-8-04)

Sec. 32.5-5. - Billing and payment, interest, liens.

(a) The utility fee is to be paid by the owner of each lot or parcel subject to the utility fee; provided, however, where a tenant or occupant is the person to whom water or sewer service, or both, are billed, the utility fee may be charged to such tenant or occupant. In any case in which a tenant or occupant fails to pay utility fees, the delinquent utility fees shall be collected from the owner of the property. All properties, except undeveloped property, shall be rendered bills or statements for stormwater services. Such bills or statements may be combined with water and sewer bills levied pursuant to Chapters 28 and 37, provided that all charges shall be separately stated. The combined bill shall be issued for one (1) total amount. The director of public utilities is hereby authorized and directed to create policies and procedures for the efficient billing and collection of the combined bill, including a policy for allocating payments to the separate charges stated on the combined bill.

(b) The bills or statements shall include a date by which payment shall be due. All bills for charges prescribed by this article shall be due and payable thirty (30) days from the date of the bill and shall be deemed delinquent if not paid in full within such time.

(c) Billing for the utility fee shall be rendered in arrears to all chargeable persons and shall represent charges for each day of the preceding billing period of stormwater service, and any unpaid balances and interest on an account.

(d) Any bill which has not been paid by the due date shall be deemed delinquent, and the account shall be collected by any means available to the city. Notice to the owner shall be provided in every case when stormwater charges incurred by a tenant or occupant become more than ninety (90) days delinquent. All payments and interest due may be recovered by action at law or suit in equity. Unpaid fees and interest accrued shall constitute a lien against the property, ranking on a parity with liens for unpaid taxes. Records of all unpaid fees and interest, indexed by the name of the record owner of the real estate, shall be maintained in the city treasurer's office.

(e) In the event charges are not paid when due, interest thereon shall commence on the due date and accrue at the rate of ten (10) percent per annum until such time as the overdue payment and interest is paid.

(f) When developed properties are brought into the utility, fees will accrue commencing with the release of the final plumbing inspection for the property. In the absence of a plumbing inspection, utility fees will accrue commencing with release of the final building inspection for the property. A bill will be issued in the next billing cycle and will be prorated for the number of days in which service was provided.

(g) In the event of alterations or additions to developed multifamily property or developed nonresidential property which alter the amount of impervious surface area, the utility fees will be adjusted upon release of the final plumbing inspection. In the absence of a plumbing inspection, utility fees will be adjusted upon release of the final building inspection. A bill will be issued in the next billing cycle and will be prorated for the number of days in which service was provided.

(Ord. No. 2195, 12-1-92; Ord. No. 2243, 6-22-93; Ord. No. 2445, 5-13-97; Ord. No. 2827, 6-8-04)

Sec. 32.5-6. - Adjustment of fees, exemptions.

(a) Full waiver of the utility fee shall be provided to properties owned by federal, state, and local government agencies when those agencies own and provide for maintenance of storm drainage and stormwater control facilities.

(b) Any owner, tenant or occupant who has paid his utility fees and who believes his utility fees to be incorrect may submit an adjustment request to the director of public works or his designee. Adjustment requests shall be made in writing setting forth, in detail, the grounds upon which relief is sought. Response to such adjustment requests, whether providing an adjustment or denying an adjustment, shall be made to the requesting person by the director of public works or his designee within sixty (60) days of receipt of the request for adjustment.

(Ord. No. 2195, 12-1-92; Ord. No. 2243, 6-22-93; Ord. No. 2827, 6-8-04)

Sec. 32.5-7. - Severability.

The provisions of this chapter shall be deemed severable; and if any of the provisions hereof are adjudged to be invalid or unenforceable, the remaining portions of this chapter shall remain in full force and effect and their validity unimpaired.

(Ord. No. 2195, 12-1-92; Ord. No. 2243, 6-22-93)

Chapter 33 - STREETS AND SIDEWALKS

Footnotes:
*--- (**1**) ---*
Cross reference— *Payments to persons displayed by city road projects, § 2-235 et seq.; responsibilities of department of public works with respect to streets, § 2-268 et seq.; duties of director of planning with respect to street names, § 2-384; signs and other advertising devices in public right-of-way, § 3-3; projecting signs, § 3-41 et seq.; abandoning domestic animal on street right-of-way, § 5-12; depositing dead animals or leaving disabled animal on street or sidewalk, § 5-15; taking of food or drink on street adjacent to beach, § 6-6; riding bicycles and mopeds on streets, § 7-50 et seq.; riding bicycles and mopeds on sidewalks, § 7-57; parking bicycles and mopeds on sidewalks or roadways, § 7-61; building regulations, Ch. 8; farmer's market, Ch. 11; fires on street, § 12-6; street vendors of food products, § 13-36 et seq.; motor vehicles and traffic, Ch. 21; obscene films not to be visible to juveniles from public way, § 22-29; disorderly conduct in streets, § 23-14; begging on streets, § 23-15; obstructing free passage of others, § 23-16; riots and unlawful assemblies, §§ 23-17—23-20; damaging property in or on streets, lanes or public squares, § 23-39; altering surface of road or other public property, § 23-40; soil removal and other land-disturbing activities, Ch. 30; littering streets, § 31-10; vehicles for hire, Ch. 36; zoning ordinance, App. A; design standards for streets and alleys in subdivisions, App. B, § 4.1; required street improvements in subdivisions, App. B, § 5.2 et seq.; site plan ordinance, App. C.*
State Law reference— *General authority of city relative to streets and sidewalks, Code of Virginia, §§ 15.1-14, 15.1-363—15.1-426, 15.1-888 et seq.*

ARTICLE I. - IN GENERAL

Sec. 33-1. - Certain ordinances relating to streets and alleys not affected by Code.

Nothing in this Code or the ordinance adopting this Code shall affect any ordinance opening, locating, closing, altering or naming any street or alley 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.

Sec. 33-2. - Violations of article generally.

Except as otherwise specifically provided, a violation of any provision of this article shall constitute a Class 3 misdemeanor.

Sec. 33-3. - Obstructions generally.

Except as otherwise specifically provided, it shall be unlawful for any person to place on any sidewalk, street or alley in the city any fence, gate, porch, step, post, barrel, bench, bar, table, box, merchandise, goods, wares or other fixtures or articles whatsoever, whether they be for sale, exhibition or any other purpose.

(Code 1965, § 32-12)

Sec. 33-4. - Temporary fence or barricade for protection of newly seeded or sodded grass plots in sidewalk area.

(a) A permit for the erection of a temporary fence or barricade, for a period not exceeding ninety (90) days, in the sidewalk area in front of any premises, for the protection of newly sodded or seeded grass plots, may, upon application to the director of public works, be issued to the owner of such premises. Such fence or barricade shall conform to the specifications therefor on file in the office of the director of public works, but in no event shall such fence or barricade be less than twenty-four (24) inches or more than thirty (30) inches in height above the level of the grade of the sidewalk. Such fence or barricade shall be constructed of well-dressed lumber not less than one inch nor more than two (2) inches square, shall consist of only one rail and the necessary posts supporting the same and shall not extend beyond the building line further than within six (6) inches of the walkway or paved sidewalk in front of the premises.

(b) The granting of a permit under this section and the acceptance and use thereof by the owner of the premises shall not be deemed or taken to be a release from liability of the owner or person installing or maintaining such fence or barricade for damages to persons or property occasioned by its installation or maintenance, but such owner or person, by accepting the permit and constructing and maintaining the fence or barricade, assumes all liability for damage that may be occasioned thereby and agrees to save the city harmless from all loss, costs, damage and expenses that may accrue to it or to any person by reason of the construction and maintenance of the fence or barricade.

(Code 1965, § 32-13)

Sec. 33-5. - Removal of poles, etc., interfering with erection or construction of public improvements.

The owner of any pipes, poles, wires or other fixtures or appliances located or erected under or upon any of the streets of the city shall remove the same, within a reasonable time, to such place as may be approved by the director of public works, when notified that such pipes, poles, wires or other fixtures and appliances are in the way of, interfere

with or retard the erection and construction of any public improvement in the city. Should the owner of such pipes, poles, wires or other fixtures or appliances fail or refuse to remove the same within a reasonable time after having been so notified, the city shall proceed to have the same removed and shall collect the cost of such removal from the owner thereof.

(Code 1965, § 32-11)

Sec. 33-6. - Sales conducted on or adjacent to the public right-of-way.

For purposes of this section only, "sale or exchange" shall be defined as the advertising, displaying, offering or exchanging for value of the below-mentioned items.

The sale or exchange of any item, including but not limited to any and all goods, wares, flowers, prepared or unprepared food or any other product by any person from any temporary structure, including but not limited to any table or stand, or from any motor vehicle, trailer, cart, dray, wagon, pushcart or any hand or pedal-propelled vehicle shall be subject to the following regulations:

(a) *Sales conducted in the public right-of-way.*

(1) No such sale or exchange shall be made in any street or public right-of-way along any street for which the posted speed limit is greater than twenty-five (25) miles per hour, nor shall such sale or exchange be made in any street or public right-of-way within twenty-five (25) feet of any intersection.

(2) No person conducting such sale or exchange in any street or public right-of-way may remain within any one-block area for more than fifteen (15) minutes before moving to another block. Additionally, such sale or exchange may not be repeated in the same block within any eight-hour period. A block shall be understood to mean a section of a street between its intersection with two (2) adjoining streets, or a section of street five hundred (500) feet in length, whichever is shorter.

(3) The provisions of subsection (a) hereof shall not apply to such sales or exchanges conducted on the premises of the Virginia Beach Farmer's Market or of any other commercial enterprise operated under franchise agreement or permit authorized by the city manager.

(b) *Sales conducted on private property adjacent to the public right-of-way.* Persons conducting a sale or exchange of the type described in this section on private property, and persons allowing their private property to be used for such sales or exchanges, shall be subject to the following regulations:

(1) No sale or exchange shall take place or be conducted, and no structure used for such sale or exchange shall be located, within fifty (50) feet of the closest edge of the nearest sidewalk pavement, or street pavement if there is no sidewalk, of any public right-of-way.

(2) The person conducting the sale or exchange shall have obtained written permission to conduct such activity from the owner of the property involved, and shall have also obtained from such owner exclusive control over any area of the property, within the allowed area, sufficient to ensure that there is adequate space for the safe circulation of traffic; such area shall not be less than eight hundred (800) square feet. The person conducting the sale or exchange shall not allow any other activity to be conducted within this minimal eight hundred (800) square foot area.

(3) Such sales or exchanges shall not be conducted on or from vacant lots.

(4) Before any person may conduct such sale or exchange, such person must have provided to and have had approved by the department of planning a plat or site plan identifying the location of the property on which the activity is to be conducted and showing the location of the structure from which the sale or exchange activity will occur, the area under the control of such person, and provisions for well-defined vehicular entrances and exists. Such plat or site plan shall be accompanied by a nonrefundable fee of twenty-five dollars ($25.00) for processing. After review and approval of such plat or site plan by the department of planning, application shall be made to the city manager or his designee for a permit to engage in the activities covered by this section, in accordance with this section and the approved plat or site plan. Such application shall state the name, address and telephone number of the person or persons conducting the activity, the days and hours of operation, and shall include evidence of the property owner's permission to so use the property, as required above, as well as a copy of the approved plat or site plan. A copy of the permit issued by the city manager or his designee as well as a copy of the approved plat or site plan and the written permission of the property owner shall be kept at the site of the activity. Such permit must be obtained before a business license for such activity may be issued, and shall be renewed annually prior to the renewal of any business license.

(5) The requirements of subsection (b) hereof shall not apply to outdoor sales and exchanges which occur as an incidental part of the retail sales activity of a merchant regularly conducting business from a permanent building where such sales are conducted on the premises of the building and in close proximity to said building; nor shall they apply to the otherwise lawful sale of market produce and processed agricultural food products such as jams and jellies; nor to garage sales in residential areas.

(6) Nothing herein shall exempt any person conducting a sale or exchange of the type described herein from the requirements of the comprehensive zoning ordinance or any other applicable provision of the law.

(7) A person who obtains a permit pursuant to subsection (4), above, shall be allowed one sign which shall be permanently attached to a motor vehicle and which shall not exceed ten (10) square feet in size.

(c) *Compliance.* Every person who obtains a permit under the requirements of this section shall keep the permit, approved plat or site plan and written permission of the property owner in a convenient place and, whenever requested to do so, shall exhibit the same to any police officer, agent of the commissioner of revenue or inspector for the department of planning. Violation of any of the requirements of this section shall constitute a class 1 misdemeanor. The city manager or his designee shall revoke the permit issued to any person pursuant to subsection (b)(4) upon his conviction of violating any of the provisions of this section.

(Ord. No. 1205, 7-13-81; Ord. No. 1482, 8-27-84; Ord. No. 1576, 1-21-86; Ord. No. 2136, 6-2-92; Ord. No. 2149, 6-23-92; Ord. No. 2244, 8-10-93)

Editor's note— Ord. No. 1205, adopted July 13, 1981, repealed § 33-6 as it pertained to street vendors and re-enacted the section as set out above. Formerly, § 33-6 derived from Code 1965, §§ 32-7, 32-9; Ord. No. 1153, adopted March 23, 1981, and Ord. No. 1154, also adopted March 23, 1981.

Cross reference— Street vendors of food products, § 13-36 et seq.

Sec. 33-7. - Sidewalk photographers.

(a) Unless authorized by the city by franchise, permit, license or otherwise, it shall be unlawful for any person, on any street or sidewalk in the city, to take any picture, photograph or snapshot, by any process whatsoever, of any person and offer to furnish to such person, or to any person selected by him, a copy of the picture, photograph or snapshot so taken, for a consideration in any form. The passing out of written, printed, typewritten or mimeographed matter, or the giving of information orally, concerning the means by which a copy of the picture, photograph or snapshot taken may be obtained, shall constitute an offer to furnish a copy of the picture, photograph or snapshot taken for a consideration.

(b) The provisions of this section shall not be deemed to prohibit the taking of a picture solely for the purpose of reproducing it in a book, newspaper, magazine or periodical.

(Code 1965, § 32-8; Ord. No. 1854, 5-1-89)

Sec. 33-8. - Packing and unpacking on sidewalks.

No person receiving or shipping goods, wares and merchandise in boxes, crates or other packing shall pack, unpack or store the same upon any sidewalk or street, unless such package, crate or box is too large to enter the door of the building through which the contents of such package, crate or box are to be carried, in which case such package, crate or box may be unpacked or packed upon the sidewalk, without unreasonable delay, and all packing material, trash and boxes shall be immediately removed by the owner thereof.

(Code 1965, § 32-10)

Sec. 33-9. - Congregations obstructing streets or sidewalks.

It shall be unlawful for any persons to congregate in such a manner so as to block, hinder, impede or obstruct the free and uninterrupted passage of vehicular or pedestrian traffic on the streets or sidewalks in the city. Any person who violates the provisions of this section shall be guilty of a class 4 misdemeanor.

(Code 1965, 23-36.2)

Cross reference— General prohibition against interfering with traffic, § 21-34; general prohibition against obstructing free passage of others, § 23-16.

Sec. 33-9.1. - Permits for parades and processions.

No procession or parade, excepting the forces of the United States Army or Navy, the military forces of the state, the forces of the police and fire departments of the city and funeral processions, shall occupy, march or proceed along any street or highway in the City, except in accordance with a permit issued by the city manager and such other regulations

as are set forth in Chapter 21 which may apply.

(Ord. No. 2903, 12-13-05)

Sec. 33-10. - Sitting, reclining or lying down on streets or sidewalks.

It shall be unlawful for any person to sit, recline or lie down on any street, sidewalk, alley, curb or entrance to any store or other place of business. Any person who violates the provisions of this section shall be guilty of a class 4 misdemeanor.

(Code 1965, § 23-36.3)

Sec. 33-11. - Trains obstructing street crossings.

(a) It shall be unlawful for any railroad company, or any receiver or trustee operating a railroad, to obstruct, for a longer period than five (5) minutes, the free passage on any street or road, by standing cars or trains across the same, except a passenger train while receiving or discharging passengers, but a passway shall be kept open to allow normal flow of traffic; provided that, when a train has been uncoupled, so as to make a passway, the time necessarily required, not exceeding three (3) minutes, to pump up the air after the train has been recoupled shall not be included in considering the time such cars or trains were standing across such street or road.

(b) Any railroad company, receiver or trustee violating any of the provisions of this section shall be fined not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00); provided that, the fine may be one hundred dollars ($100.00) for each minute beyond the permitted time, but the total fine shall not exceed five hundred dollars ($500.00).

(c) This section shall not apply when a train is stopped due to breakdown, mechanical failure or emergency.

(Code 1965, § 22-29)

State Law reference— Similar provisions, Code of Virginia, § 56-412.1.

Sec. 33-12. - Depositing hazardous or injurious material on street and removal of same.

(a) No person shall throw or deposit upon any street or highway, any bottle, glass, nail, tack, can or any other substance likely to injure any person or animal or damage any vehicle upon such street or highway, nor shall any person throw or deposit, or cause to be deposited, upon any street or highway, any soil, sand, mud, gravel or other substance, so as to create a hazard to the traveling public.

(b) Any person who drops, or permits to be dropped or thrown, upon any street or highway, any destructive or injurious material shall immediately remove the same or cause it to be removed.

(c) Any person removing a wrecked or damaged vehicle from a street or highway shall remove any glass or other injurious substance dropped upon the street or highway from such vehicle.

(d) A violation of this section shall constitute a Class 1 misdemeanor.

(Code 1965, § 22-32)

Cross reference— General prohibition against littering streets, § 31-10.

State Law reference— Similar provisions, Code of Virginia, § 18.2-324.

Sec. 33-13. - Duty of property owners and occupants to keep abutting streets and sidewalks free of litter.

All owners or occupants of real property shall maintain the sidewalks and curbs and the right-of-way up to the edge of the pavement of any public street abutting such property and one-half of abutting alleys in a clean and litter-free condition. All owners or occupants of real property adjacent to a sound wall or similar noise attenuation structure shall maintain the area between the property line and the sound wall or similar noise attenuation structure in a clean and litter-free condition.

(Ord. No. 1016, §§ 17-12(E), 17-13(A), 1-14-80; Ord. No. 3385, 12-9-14)

Cross reference— Streets and sidewalks abutting junkyards and automobile graveyards to be kept clear of junked vehicles and waste matter, § 25-27.

Sec. 33-14. - Duty of property owners and occupants to remove snow and ice from sidewalks.

The owner or occupant of any lot or parcel of land in the city shall remove snow and ice from the sidewalks in front of such lot or parcel within six (6) hours after such time as such removal can first be reasonably effected.

(Ord. No. 1016, § 17-12(E), 1-14-80)

State Law reference— Authority for above section, Code of Virginia, § 15.1-867.

Sec. 33-15. - Driving on street barricaded while work in progress.

No person shall ride or drive over any street barricaded or guarded because paving, grading, macadamizing or other public improvement is in progress.

(Code 1965, § 32-15)

Sec. 33-16. - Removing street barriers placed for protection of work in progress.

No person shall remove barriers or other guards placed across the streets of the city while paving, grading, macadamizing or other public improvement is in progress.

(Code 1965, § 32-14)

Sec. 33-17. - Reserved.

Editor's note— Ord. No. 3082, adopted May 12, 2009, repealed § 33-17, which pertained to portions of streets as quiet zones and derived from § 32-6 of the 1965 Code.

Sec. 33-18. - Vending machines on public property.

(a) Notwithstanding the provisions of this chapter or any other chapter of the Code, the placement of vending machines on any sidewalk or other public property located within designated RT-1, RT-2, RT-3 and RT-4 Resort Tourist Districts shall be prohibited.

(b) For purposes of this section, a vending machine shall be defined as any self-service or coin-operated box, container, storage unit or other dispenser installed, used or maintained for the provision or delivery, by sale or otherwise, of consumable and/or nonconsumable products.

(c) The provisions of this section shall not be applicable to newspaper vending machines, coin-operated telephones, or machines dispensing public transportation tickets or tokens.

(d) The placement and appearance of machines dispensing public transportation tickets or tokens shall be approved by the city manager or his designee prior to placement of the machines.

(e) Any person who violates the provisions of this section shall be guilty of a Class 4 misdemeanor.

(Ord. No. 1844, 4-3-89; Ord. No. 1860, 5-1-89; Ord. No. 2744, 5-6-03)

Cross reference— Vending machines on private property, § 23-60.

Sec. 33-18.1. - Newsracks on public property.

(a) For purposes of this section, the following words and phrases shall be construed as follows:

City manager shall mean the city manager or such other employee of the city as may be designated by the city manager to perform the duties prescribed in this section.

Distributor shall mean the person, firm, corporation or other entity responsible for placing or maintaining a newsrack in a public right-of-way.

Newsrack or newspaper vending machine shall mean any self-service or coin-operated box, container, storage unit or other dispenser installed, used or maintained for the display or sale of newspapers or other publications.

(b) The City of Virginia Beach hereby finds and declares:

(1) That the uncontrolled placement of newsracks and newspaper vending machines at signaled pedestrian crosswalks and next to utility poles containing pedestrian crossing buttons interferes with the rights of disabled, blind or visually impaired persons under the 1990 Americans With Disabilities Act (42 U.S.C.A. § 1201 et seq.) and the Virginia Rights of Persons With Disabilities Act (Va. Code Ann. §§ 51.5-40 through 51.5-46) to the full and free use of the public streets and highways; and

(2) That the benefits of regulating the placement of newsracks and newspaper vending machines at signaled pedestrian crosswalks and next to utility poles containing pedestrian crossing buttons outweigh the potential impact which may result from such regulation.

(c) Any newsrack or newspaper vending machine which, in whole or in part, is located upon or over any public sidewalk, street or other portion of a public right-of-way shall be located in accordance with the following provisions:

(1)

No newsrack or newspaper vending machine shall be chained, bolted or otherwise attached to any utility pole containing a pedestrian crossing button or crosswalk bar, or to any other fixture located within five (5) feet of any signaled pedestrian crosswalk.

(2) No newsrack or newspaper vending machine or grouping of newsracks or newspaper vending machines shall be placed, installed, used or maintained:

(i) Within five (5) feet of the curb-cut ramp of any signaled pedestrian crosswalk; or

(ii) Within three (3) feet of any utility pole containing a pedestrian crossing button.

(d) Any newsrack or newspaper vending machine which, in whole or in part, is located upon or over any public right-of-way shall display, in a conspicuous location, the name of the distributor and an address where the distributor can be contacted.

(e) Any newsrack or newspaper vending machine which has been installed, used or maintained in violation of the provisions of this section shall be removed by the city manager and stored in temporary custody subject to the notice requirements of subsection (f) of this section. Additionally, the distributor of any newsrack or newspaper vending machine removed and stored pursuant to this subsection may be charged a reasonable fee for such removal and storage.

(f) Upon a determination by the city manager that a newsrack or newspaper vending machine has been installed, used or maintained in violation of the provisions of this section, a notice to correct the violation shall be issued to the distributor. Such notice shall be deemed to constitute sufficient notice of a violation if it is properly addressed and mailed to the distributor by certified mail, return receipt requested, at the address set forth on the newsrack or newspaper vending machine. The notice shall specifically describe the violation and set forth the action(s) necessary to correct the violation. The notice shall also specify that failure to correct the violation within seven (7) days following the date of mailing of the notice will result in the removal of the newsrack or newspaper vending machine by the city manager and its storage in temporary custody. The notice shall advise the distributor as to the location of the newsrack or newspaper vending machine and the procedure for claiming same.

(g) Notwithstanding the provisions of subsection (f), if any newsrack or newspaper vending machine (i) has been installed, used or maintained in violation of the provisions of this section and (ii) does not display the name and address of the distributor, notice of violation shall be sufficient by posting such notice on the newsrack or newspaper vending machine. Failure to correct the violation within seven (7) days following the date of posting will result in removal and storage of the newsrack or newspaper vending machine as set forth in subsection (e) of this section.

(h) Any distributor, person, or other entity who claims to be aggrieved by a finding, determination, notice or action taken under the provisions of this section may appeal to the city manager. An appeal shall be perfected within three (3) days after receipt of a notice of violation or other action by filing with the office of the city manager a letter of appeal stating the basis for such appeal. The city manager shall schedule a hearing of such appeal on a date not later than ten (10) days after the filing of the appeal; provided, however, that such hearing may, at the discretion of the city manager, be rescheduled for good cause shown. The city

manager shall take no action during the pendency of an appeal. Failure to correct a violation of this section within seven (7) days following (i) the expiration of the time for noting an appeal or (ii) the denial of an appeal, shall result in the removal and storage of the newsrack or newspaper vending machine.

(i) Any newsrack or newspaper vending machine removed pursuant to this section must be claimed by the distributor within thirty (30) days of such removal. If the distributor fails to claim the newsrack or newspaper vending machine or refuses to pay storage costs, the city manager may dispose of same. Any proceeds or monies, if any, from the disposal of a newsrack or newspaper vending machine shall be forwarded to the city treasurer for deposit into the general fund of the city.

(j) If any provision of this section is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this section.

(Ord. No. 2559, 8-24-99)

Sec. 33-19. - Hauling of sand, gravel, topsoil, fill, or other excavated material off an excavation site.

(a) It shall be unlawful for any person to haul more than three hundred thirty-seven (337) in situ cubic yards of sand, gravel, topsoil, fill, or other excavated material from an excavation site by vehicle upon any street in the City of Virginia Beach without a hauling permit from the department of planning in accordance with the provisions of this section.

(b) Application for a permit required by this section shall be filed with the department of planning on forms supplied by the city. The application fee shall be fifty dollars ($50.00). The application shall be signed by the property owner, hauler and operator and shall include the following information:

(1) The names and addresses of all haulers;

(2) If the hauler is a corporation, the name and address of its corporate offices and registered agent;

(3) The name and address of the excavator and/or operator;

(4) The names and addresses of owners of all property from which the fill material is to be hauled;

(5) The proposed date on which the hauling operation will commence and the proposed date on which the operation will be completed;

(6) The total number of cubic yards of material to be hauled;

(7) The number, type, carrying capacity, and weight of vehicles to be used in the hauling operation on a daily basis;

(8) The location of all haul roads leading to public streets and highways within the hauling area;

(9) A statement listing the public streets to be used as haul routes to access an arterial or major street or highway;

(10) A statement of the methods to be used to maintain or repair any public street or highway to be used for hauling purposes;

(11) A site plan or survey of the excavation site, with a location map, showing the locations of the area to be excavated, the on-site haul road, the point at which the haul road intersects the public right-of-way, the nearest street intersections in all directions leaving the excavation site and all existing and proposed

entrances on both sides of the public street within five hundred (500) feet of the proposed entrance;

(12) A detailed description of the on-site haul road and the entrance to the public right-of-way, including width, radii, composition of surface material and length of improved surface;

(13) Erosion and sediment control measures to be employed at the haul road entrance and all access points;

(14) The method by which dirt and dust will be controlled on the public streets and in the air;

(15) A traffic maintenance/control plan, including, but not limited to, sign type, size, color, lettering size and locations;

(16) Location and description of public structures and improvements immediately adjacent to and under the haul road entrance; and

(17) A description or plan of all proposed improvements to mitigate the traffic impacts associated with the hauling activity including, but not limited to, turn lanes, signalization, striping and other traffic control measures.

In the event any changes in the above-required information are needed, the applicant shall submit such changes to the planning department for review and approval prior to the commencement thereof.

(c) The director of the department of planning or his designee shall determine the acceptability of the hauling methods and routes proposed by the applicant, and shall grant the hauling permit unless:

(1) Under accepted engineering standards, it is determined that the public streets and highways to be used in the proposed hauling route cannot sustain the weight or frequency of the hauling vehicles without substantial damage thereto; or

(2) The proposed hauling operation would render the streets and highways affected by the hauling unsafe for public travel; or

(3) The noise or dust generated by the hauling operation is of such character, intensity and duration as to be detrimental to the life or health of persons of reasonable sensitivity, or to disturb or annoy the quiet, comfort or repose of reasonable persons who reside in close proximity to the hauling operation.

Any person aggrieved of the decision of the planning director or his designee may appeal such decision to the city manager or his designee within thirty (30) days of the date of such decision. Any person aggrieved of the decision of the city manager or his designee may appeal such decision to the circuit court within thirty (30) days of the date of such decision.

(d) In the event the planning director or his designee issues a hauling permit under this section, he may attach such conditions and safeguards as are deemed necessary to protect the public safety and to ensure against the creation of a public nuisance or substantial damage to the streets due to the hauling and may require the posting of a bond with surety, cash, escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the city attorney, to assure compliance.

(e) No permit issued under this section shall be transferred to another person without approval by the planning department. Such approval shall be granted in the same manner as for original applications for permits.

(f)

A hauling permit issued under this section shall expire one (1) year from the date of issuance. The holder of the permit may thereafter apply annually to the department of planning for a renewal of the permit upon the payment of a fifty dollar ($50.00) renewal fee and verification of all information required under subsection (b).

(g) A violation of any of the provisions of this section or failure to comply with the terms and conditions of a hauling permit shall constitute a Class 1 misdemeanor. In addition to the penalties imposed hereunder, the city may institute legal action to enjoin a continuing violation of any of the provisions of this section or of any of the terms and conditions of a hauling permit issued pursuant to this section.

(h) In addition to, and not in lieu of, the remedies set forth in subsection (g) hereof, the director of planning or his designee may revoke a hauling permit issued pursuant to this section as a result of the violation of any of the terms or conditions of the permit.

(i) This section shall not apply to excavation operations conducted pursuant to an excavation permit and a conditional use permit for a borrow pit or to stormwater management facilities constructed pursuant to approved subdivision construction plans or site plans.

(Ord. No. 2395, 6-11-96)

Secs. 33-20—33-28. - Reserved.

ARTICLE II. - WORK ON, OVER, UNDER OR AFFECTING STREETS

Footnotes:
*--- (**2**) ---*
***Cross reference—** Planning commission approval required to alter surface of road or other public property, § 23-40.*

DIVISION 1. - GENERALLY

Sec. 33-29. - Definitions.

For the purposes of this article, the following words shall have the meanings respectively ascribed to them by this section:

Permittee. The word "permittee" shall mean any person to whom a permit is issued pursuant to this article.

Street. The word "street" includes alleys, avenues, boulevards, parks, public rights-of-way and all other public places or easements.

Structure. The word "structure" means any building, pole and appurtenance thereto, fixture, post, wire, guy and tower and cable, vault, culvert, drainage system as defined in the stormwater management ordinance (appendix D), manhole and other underground installations.

(Code 1965, § 32-1; Ord. No. 2377, 3-26-96)

Sec. 33-30. - Violations of article.

Unless otherwise specifically provided, a violation of any provision of this article shall constitute a Class 1 misdemeanor.

Sec. 33-31. - Certain provisions of article subject to provisions of articles II and III of chapter 3.

The provisions of this article which relate or apply to signs shall be construed as subject to the provisions of articles II and III of chapter 3 of this Code.

(Code 1965, § 32-18)

Sec. 33-32. - Warning signs, lights or barricades.

Whenever any person performs any work which might tend to affect the use of any street, whether or not a permit therefor is required by this article, appropriate warning signs, lights, barricades or other measures shall be erected, placed or taken in such manner as to give effective notice of such work and to protect the public.

(Code 1965, § 32-43; Ord. No. 1078, 8-18-80)

Sec. 33-32.1. - Traffic maintenance/control plan.

Whenever any work within any street will affect traffic or public travel, a traffic maintenance/control plan shall be submitted to and approved by the traffic engineer. This plan shall contain all necessary items, traffic control devices and signing, as well as construction sequence, to adequately maintain traffic through and/or around the work area.

(Ord. No. 1078, 8-18-80)

Sec. 33-33. - Inspections.

(a) The city manager or his designee shall conduct such inspections as may be necessary that work being done and completed pursuant to a permit issued under this article conforms to such permit. When the permittee reports that such work is completed, the city manager or his designee shall inspect the work and advise the permittee of the approval or disapproval of such work.

(b) If the city manager or his designee determines that a permittee is not going forward with the work in a continuing manner and it appears that more than the normal number of inspections will therefore be necessary, the city manager or his designee shall give the permittee notice, in writing, of this fact. Should additional inspections thereafter result, the city manager or his designee may charge the expense thereof against the guarantee fee provided for in division 3 of this article or, where a bond has been given in lieu of guarantee fee pursuant to section 33-73, appropriate proceedings may be carried out to recover the cost of such inspections.

(Code 1965, §§ 32-31, 32-32; Ord. No. 1078, 8-18-80; Ord. No. 2073, 6-25-91)

Sec. 33-34. - Notice and correction of defects.

(a) If work done or being done pursuant to a permit issued under the provisions of this article has not been done or is not being done in accordance with the permit, or a street is not left in satisfactory condition, notice shall be given the permittee in question and such permittee shall correct same, when deemed necessary, as follows:

(1) When there is a direct violation of highway specifications.

(2) When work does not comply with conditions of the permit, in which case, the permittee shall be given ten (10) days, upon receipt of a certified letter, to correct the same.

(b) Upon receipt of a notice given pursuant to this section, should the permittee in question refuse or fail to correct the condition referred to in such notice within a reasonable time, the city manager or his designee shall cancel the permit in question and cause the necessary work to be done, deducting the cost thereof from the guarantee fee required by division 3 of this article; provided that, where a bond has been given in lieu of a guarantee fee pursuant to section 33-73, appropriate proceedings shall be carried out to recover such cost. Where a bond or guarantee fee is not required by this article, the cost of correcting any defective work shall be recovered through legal means. When the city has to intervene and correct or make safe any situation that threatens public liability, a twenty-five (25) percent administrative fee will be added to the cost of repairing same by means stated in this article.

(Code 1965, §§ 32-33, 32-34; Ord. No. 1078, 8-18-80; Ord. No. 2073, 6-25-91)

Sec. 33-35. - Location of mail and newspaper boxes in street.

Mail and newspaper boxes may be placed in the streets without obtaining, under the provisions of this article, a permit therefor; provided, all such boxes shall be so located as not to interfere with or endanger public travel or maintenance on such streets. Every such box shall be placed within the limits of the property frontage of the address for which it is to be used. Any such box so located or so sized as to interfere with or endanger public travel or create a visibility obstruction for public travel or maintenance on such streets shall be moved to an approved location upon reasonable notice from the city manager or his designee. Failure to remove such box after such notice has been given shall constitute a violation of this section.

(Code 1965, § 32-39; Ord. No. 1078, 8-18-80; Ord. No. 2073, 6-25-91)

Sec. 33-36. - Illumination of business place from across street.

Illumination or floodlighting of a business place from light structures across a street from the business place shall be unlawful and no permit shall be issued under the provisions of this article for this purpose.

(Code 1965, § 32-40)

Sec. 33-37. - Design standards for curbing, combination curb and gutter, etc.

All curbing, combination curb and gutter, endwalls and flared end sections constructed in the city shall be in accordance with design standards on file in the office of the city engineer and made reference to in the site plan regulation dated November 28, 1973. Such design standards are hereby approved by city council.

(Code 1965, § 32-4; Ord. No. 1078, 8-18-80)

Sec. 33-38. - Construction of valley curbs or gutters.

Valley curbs or gutters shall not be constructed in the city unless authorized by the city engineer prior to May 1, 1964.

(Code 1965, § 32-5)

Sec. 33-39. - Reserved.

Editor's note— Ord. No. 2073, adopted June 25, 1991, deleted former § 33-39, relative to cutting down or lowering curbs, which derived from Code 1965, § 32-3.

Sec. 33-40. - Installation or maintenance of defective sewers, drains or utilities under street.

No person shall install or maintain, or cause to be installed or maintained, any defective private sewer, drain or underground utility, where the same passes under a public street, highway, easement or right-of-way. The city manager or his designee may cause such defective sewer, drain or underground utility to be closed and the cost thereof shall be recoverable, by suit or action, from such person.

(Code 1965, § 32-17; Ord. No. 2073, 6-25-91)

Cross reference— Sewers, Ch. 28.

Sec. 33-41. - Repair of street or sidewalk damaged by sewers, drains or utilities.

Whenever the surface of any street or sidewalk area, whether paved or not, is damaged by reason of any private sewer, drain or underground utility, it shall be the duty of the person owning the same to have such surface properly repaired and, upon neglect thereof for five (5) days, the city manager or his designee shall cause the repairs to be made, at the expense of the owner in question. Such expense shall be collected by the director of public works.

(Code 1965, § 32-16; Ord. No. 2073, 6-25-91)

Sec. 33-42. - Payment of cost of relocating or removing utility facilities when street vacated or abandoned.

Unless otherwise specifically provided, whenever any street, alley or other public way is vacated or abandoned by the city at the request of any private individual, association, corporation or public authority, the cost of the relocation or removal of public utility facilities located in such street, alley or other public way shall be paid by the private individual, association, corporation or public authority requesting such vacation or abandonment.

(Code 1965, § 32-17.1)

Sec. 33-43. - Restoration of street surface when permit not required for disturbance thereof.

Whenever any person disrupts or disturbs the paved or improved surface of any street used primarily for public travel and a permit therefor is not required by this article, such person shall notify the city manager or his designee when the paved or improved surface shall be restored. The city may restore the paved or improved section and shall render to such person a statement of its costs. Such person shall reimburse the city for its costs in such restoration.

(Code 1965, § 32-42; Ord. No. 1078, 8-18-80; Ord. No. 2073, 6-25-91)

Secs. 33-44—33-50. - Reserved.

DIVISION 2. - PERMIT GENERALLY

Sec. 33-51. - General requirement.

Except as otherwise provided in this article, it shall be unlawful for any person to perform any work in connection with the erection, construction, removal, relocation or maintenance of any structure, drainage system, surface, overhead or underground installation or to cut, trim or spray trees or to place signs, if such work, cutting, trimming, spraying or placing is on, under or over a street or affects a street, until such person has obtained a permit therefor in accordance with the provisions of this division.

(Code 1965, § 32-18; Ord. No. 2377, 3-26-96)

Sec. 33-52. - Only one permit required for work of continuing nature.

For work of a continuing nature along one or more routes, only one application shall be made and only one permit shall be required under this division.

(Code 1965, § 32-30; Ord. No. 1078, 8-18-80)

Sec. 33-53. - Application.

(a) Application for a permit required by this division shall be filed on forms supplied by the city. Such application shall show all required information and be signed by the applicant or his authorized agent. Such application shall include a description of the work to be done, a sketch or site plan showing such work, if required by the city manager or his designee, a statement as to whether subcontractors will perform any work pursuant to the permit and, if so, the name, business address, and telephone number of each subcontractor, and the name and telephone number of an employee, agent or representative of the applicant who is responsible for supervising the subcontractors.

(b) Sketches or site plans filed with an application under this section shall show the following:

(1) The nature of the work to be done.

(2) Property lines, where appropriate, and street right-of-way lines with location of the work with reference to a fixed point on the street.

(3)

Where surface or underground work is involved, a cross-section indicating conditions and proposed changes.

(4) Where grading operations are involved, the pavement, shoulder, ditch and slope.

(5) Any tree which is to be removed.

(6) A traffic maintenance/control plan.

(7) An engineer's cost estimate of the total construction costs of any improvements located within public rights-of-way and easements.

(c) In addition to the information required in subsection (b) above, a sketch or site plan filed with application under this section for a permit involving underground installations shall also show the following:

(1) The exact location and dimensions of conduits, pipes, vaults, manholes, crossings and other installations.

(2) Type (concrete, iron, etc.).

(3) Depth of covering material.

(4) Outlets, showing type and size.

(5) Design and location of identification indicators.

(Code 1965, §§ 32-19—32-21; Ord. No. 1078, 8-18-80; Ord. No. 2073, 6-25-91; Ord. No. 2377, 3-26-96; Ord. No. 2999, 9-4-07)

Sec. 33-54. - Issuance and terms generally.

Upon the filing of an application for a permit under this division, the city manager or his designee shall ascertain that all work to be done pursuant to the permit applied for complies in all respects with prevailing planning, practices, appropriate construction standards and with the provisions of this Code and other ordinances of the city and the resolutions, policies and regulations of the city before the permit shall be issued. The city manager or his designee shall issue the permit when such compliance is apparent or can be assured by the terms of the permit and when all applicable requirements for obtaining the permit has been met. The city manager or his designee may prescribe a limit for the duration of such permit and may extend the same.

(Code 1965, §§ 32-23, 32-29; Ord. No. 1078, 8-18-80; Ord. No. 2073, 6-25-91)

Sec. 33-55. - Liability insurance or bond prerequisite to issuance for disturbing improved surface of street.

(a) No person shall lower the curb on any street, or lay any private driveway or ramp crossing any sidewalk, or otherwise cut, undermine, disrupt or disturb in any means the paved or improved surface (including shoulders, sidewalks, curbs and gutters) of any street without first obtaining a permit therefor in accordance with the provisions of this division.

(b) Before any permit shall be issued to any person pursuant to the provisions of this division, such person shall provide proof of general liability insurance or a bond to indemnify, keep and hold the city free and harmless from liability on account of injury or damage to persons or property growing out of the activity to be authorized by such permit, in the amount of five hundred thousand dollars ($500,000.00) Such insurance shall be combined single limit per occurrence.

(c)

All paving and repaving, where necessary, shall be done at the expense of the person receiving such permit, and it shall be the duty of the owner of the property served by any driveway or ramp to keep the sidewalk, driveway or ramp in good repair at all times at such owner's expense.

(Code 1965, § 32-28; Ord. No. 1078, 8-18-80; Ord. No. 2073, 6-25-91)

Sec. 33-56. - Reserved.

Sec. 33-57. - Issuance for logging roads, tram roads and other temporary entrances.

The city manager or his designee may issue a permit under this division authorizing a logging road, tram road or other temporary private entrance, if in addition to all other applicable requirements of this division, there is posted a bond, satisfactory to the city manager or his designee, conditioned that off-site drainage shall not be disrupted and that the permittee shall maintain erosion and sediment control, drainage, including off-site drainage, during his operations and that his failure to do so will result in the cancellation of his permit. No such bond shall be released until the entrance and all drainage, including off-site drainage, has been inspected and found to be in at least the same condition as existed at the time of the issuance of the permit.

(Code 1965, § 32-37; Ord. No. 2073, 6-25-91; Ord. No. 2377, 3-26-96)

Sec. 33-58. - Reserved.

Sec. 33-59. - Issuance for cutting, trimming or spraying trees or shrubs.

The city manager or his designee my issue a permit under this division for the cutting, trimming or spraying of trees or shrubs on a street only when such work is fully justified in the public interest. Such work shall be done only in a manner prescribed in the permit so issued as directed by the city arborist or the superintendent of landscape services. Any bush, shrub, tree, vegetation, fence, wall, berm, landscape screening or the like, which obscures, hinders or creates visibility obstruction for vehicles entering a street from another street or from a driveway shall be trimmed, relocated, adjusted or removed, whichever action is deemed appropriate or necessary for traffic safety by the traffic engineer's office. For failure to remove, trim, relocate or adjust such item within fourteen (14) days after written notice from the traffic engineer, the city will cause such work to be accomplished at the expense of the owner in question.

(Code 1965, § 32-41; Ord. No. 1078, 8-18-80; Ord. No. 2073, 6-25-91)

Sec. 33-60. - Issuance of emergency permit.

The city manager or his designee may issue an emergency permit to allow work which requires immediate attention to proceed before the application for a permit under this division is completely processed.

(Code 1965, § 32-45; Ord. No. 2073, 6-25-91)

Sec. 33-61. - Issuance and term of blanket permit.

Persons whose regular course of business requires work on, under or over streets or affecting streets or the use of streets may be granted a blanket permit for such work. All such blanket permits shall be accompanied by a traffic maintenance/control plan approved by the traffic engineer. Such blanket permits shall be for not more than one year's duration.

(Code 1965, § 32-30; Ord. No. 1078, 8-18-80)

Sec. 33-62. - Issuance to, and responsibility of, contractor for work on government project.

Where work on any government project is to be performed by a contractor, the permit required under the provisions of this division shall be issued in the name of the contractor. The contractor in such a case shall be responsible for inspection and guarantee fees under the provisions of this article and shall give evidence of liability insurance or bond as required in section 33-55.

(Code 1965, § 32-36)

Sec. 33-63. - Contents.

(a) Permits issued under this division shall specify the manner and the conditions under which the permitted work shall be done. Unless otherwise specified in the permit, every permit issued shall be deemed to include the following provisions:

(1) Public travel shall be protected by adequate lights, barricades and appropriate warning signals and signs at all times. For maintenance of traffic, the permit shall be accompanied by a traffic maintenance/control plan indicating proposed measures for adequate traffic maintenance and such plan shall be approved by the traffic engineer.

(2) Public travel shall be blocked only in the manner specified in the permit and as depicted on the traffic maintenance/control plan approved by the traffic engineer.

(3) Pavement shall be used for piling or storing of excavated material or for deposit of material and the placing of equipment only as specified in the permit.

(4) The maximum amount of ditch, trench or other excavation to be opened at one time shall not exceed five hundred (500) feet, including the backfilled portion of any trench which is not in condition for public travel, unless the city manager or his designee finds reason for exception.

(5) All backfilling of excavations shall be done to a ninety-five (95) percent density compaction. Compaction by using water shall not be permitted.

(6) On pavement cuts, the pavement shall be restored to its former dimensions, cross-section and profile, with material conforming to city specifications.

(7) No tree roots shall be cut to the extent of rendering the tree unsafe and, if possible, tunneling through or under roots instead of cutting anchor roots shall be followed.

(8) Shoulders, ditches and drainage mediums shall be left in the same condition as found or as specified in the permit.

(9)

The permittee agrees to repair any sinks in the backfill or pavement occurring within one year after the work done under the permit is completed.

(10) If entrances to adjacent property are affected, the permittee shall, if practical, provide temporary facilities for safe ingress and egress to such property.

(11) The permittee agrees to restore the street to a satisfactory condition consistent with adjoining sections of the street.

(12) The permittee agrees, by the acceptance of the permit in question, to indemnify, keep and hold the city free and harmless from liability on account of injury or damage to persons or property growing out of activity authorized by the permit, whether suit is brought against the city either independently or jointly with the permittee.

(13) The permittee agrees, by the acceptance of the permit in question, upon notice in writing, to remove or relocate any structure or installation placed in, on, under or over any street, if such structure or installation interferes with the use of the street.

(14) The permittee shall promptly report to the city manager or his designee when the work authorized by the permit is completed.

(15) The permittee shall provide written notice to any and all adjacent private property owners prior to performing work in public rights-of-way that are adjacent to private properties. Such notice shall include the following: 1) the full name of the permittee; 2) the permit number; 3) when the work will be performed; 4) the name and telephone number of the employee, agent, or representative of the permittee who is responsible for supervising the work; and 5) the telephone number for the city's permitting office. The written notice shall be provided to the private property owner by a door hanger on the property owner's front door, which shall be placed on the door at least twenty-four (24) hours prior to permittee commencing work, but no more than seven (7) days before such work is commenced. In the case of an emergency in which the permittee is required to immediately commence repair work, the permittee shall provide the written notice described herein, but the notice may be provided contemporaneously with the commencement of the repair work.

(b) When any work or installation for which a permit is required by this division will or may disturb or obstruct any natural or artificial drainage medium, including ditches, storm sewers, ravines and the like, the permit shall specify the manner in which surface water shall be controlled during the progress of the work and thereafter, if the disturbance or obstruction is a permanent nature.

(Code 1965, §§ 32-26, 32-27; Ord. No. 1078, 8-18-80; Ord. No. 2073, 6-25-91; Ord. No. 2999, 9-4-07)

Sec. 33-64. - Authority of city when work done without permit.

Whenever any person uses a street for any purpose for which a permit is required under the provisions of this division, without such permit, the city may remove such work and restore the street to its original condition. Where the city exercises such right, it shall have the right to recover from such person its cost and expense.

(Code 1965, § 32-35)

Secs. 33-65—33-70. - Reserved.

DIVISION 3. - PERMIT, INSPECTION AND GUARANTEE FEES

Sec. 33-71. - Schedule.

(a) Permit, inspection and guarantee fees for work for which a permit is required by this article shall be required or not required in accordance with the following schedule:

	Type of Project	Permit Fee	Inspection Fee	Minimum Guarantee Fee
(1)	One (1) permit for work of a continuing nature	$100.00	Based on 1.5% the total cost of construction as provided in the engineer's cost estimate, excluding water, sewer and street light costs, with a $50.00 minimum.	Deposit in accordance with estimated cost
(2)	Logging road, tram road and other temporary entrances	$100.00	$50.00	Deposit in accordance with estimated cost
(3)	Cutting, trimming or spraying trees or shrubs	$100.00	$50.00	$25.00
(4)	Blanket permit	$500.00	$0.00	
(5)	Single- or two-family driveway aprons	$35.00	$0.00	$0.00
(6)	Single permit	$100.00	$0.00	$0.00

(7)	All other work	$100.00	Based on 1.5% of the total cost of construction as provided in the engineer's cost estimate, excluding street light costs, with a $50.00 minimum; provided, however, that water and sewer fees shall be based on 10% of the construction cost up to $7,500.00 plus 1.5% of the construction cost in excess of $7,500.00, with a $50.00 minimum.	Deposit in accordance with estimated cost.

(b) At the time easement or dedication plats are submitted a review fee in the amount of eighty-four dollars ($84.00) shall be required.

(Code 1965, § 32-49; Ord. No. 1869, 5-15-89; Ord. No. 2073, 6-25-91; Ord. No. 2377, 3-26-96; Ord. No. 2633, 5-15-01; Ord. No. 2808, 5-11-04; Ord. No. 2876, 5-10-05; Ord. No. 3021, 5-13-08)

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Sec. 33-72. - Technology fee.

In addition to any fees otherwise required by this chapter, there shall be a fee in the amount of ten dollars ($10.00) for permits issued pursuant to section 33-51. Such fee shall be for the following purposes:

(a) To improve community access to general information about cases, applications, permits and inspections by providing online, user-friendly search and viewing tools;

(b) To facilitate communications with property owners, consultants and contractors through use of on-line checklist and activity tracking that automatically emails notifications and updates regarding permit status and other information not previously available on-line;

(c) To increase transparency and accountability in business operations by providing users the ability to track all transactions online;

(d) To enhance performance and revenue reporting by providing the ability to produce ad hoc reports on demand; and

(e) To improve and expand electronic document storage, management and retrieval by including scanned images as part of the on-line permit record.

(Ord. No. 3231, 5-8-12, eff. 7-1-12; Ord. No. 3696, 5-10-22)

Sec. 33-73. - Payment before issuance of permit; bond in lieu of guarantee fee.

Fees required by section 33-71 shall be paid before the city manager designee shall issue a permit under the provisions of this article; provided, however, that a bond may be accepted by the city manager or his designee in lieu of a guarantee fee required by such section.

(Code 1965, §§ 32-44, 32-45; Ord. No. 1078, 8-18-80; Ord. No. 2073, 6-25-91)

Sec. 33-74. - Sufficiency of guarantee fees.

Guarantee fees under this division shall be sufficient to cover the estimated cost of completing the work and/or restoring the street to a satisfactory condition should the holder of a permit issued under the provisions of this article fail to do so.

(Code 1965, § 32-46; Ord. No. 2377, 3-26-96)

Sec. 33-75. - Return of guarantee fee.

Whenever work done pursuant to a permit provided for in this article is completed and approved by the city manager or his designee or the city has made the necessary corrections, the city manager or his designee shall return the guarantee fee, after deducting therefrom any inspection fee and such other deductions as are provided for in this article, to the permittee.

(Code 1965, § 32-48; Ord. No. 1078, 8-18-80; Ord. No. 2073, 6-25-91; Ord. No. 2377, 3-26-96)

Secs. 33-76—33-85. - Reserved.

ARTICLE III. - INSTALLATION OR REPAIR OF UNDERGROUND UTILITIES PRIOR TO STREET IMPROVEMENTS

Sec. 33-86. - Notice of intention to improve street.

Whenever the city shall determine to pave or surface any street in the city, the director of public works shall notify, in writing, at the time plans are completed and prior to advertisement for bids and award of the contract, if the work is not performed by the city forces, at least one hundred twenty (120) days in advance of actual construction, all utility companies, corporations, firms, associations, receivers and other fiduciaries, governmental agencies and political subdivisions of the state operating in the city of the intention of the city to pave, surface or otherwise improve such street.

(Code 1965, § 32-50)

Sec. 33-87. - Installation of new pipes, wires, etc.

The recipients of the notice provided for in section 33-86 shall, within one hundred twenty (120) days, at their own expense and cost, lay, install, construct and complete new underground pipes, mains, wires, conduits, equipment and utilities where none are then installed, including house services for each lot abutting a residential street, in advance of

the street improvements contemplated by the city; provided, however, that this section is not intended to require utility companies and corporations to place existing overhead wires or cables underground nor is it intended to hold a utility company in default where, pursuant to the terms of this article, house services have been installed but the size of the services are found to be inadequate within the one-year period referred to in section 33-89.

(Code 1965, § 32-51)

Sec. 33-88. - Repair of existing pipes, wires, etc.

Repair of existing pipes, wires, where the mains, repair of existing pipes, conduits, wires, equipment and utilities necessary to render adequate and proper service to the abutting property are already in the street at the time of receipt of the notice provided for in section 33-86, the recipients of such notice shall examine the same carefully and repair or replace the same wherever needed, at their own expense and cost, in a proper and satisfactory order and condition and install the house service for each lot abutting on such street. Such repairs and replacement and the installation of house service shall be made and completed within one hundred twenty (120) days after receipt of such notice.

(Code 1965, § 32-52)

Sec. 33-89. - Subsequent street openings by persons failing to comply with sections 33-87 and 33-88.

If any person whose duty it is to comply with sections 33-87 and 33-88 shall fail to comply with the requirements of such sections within the time specified, and subsequently, within one year from the date of the notice provided for in this article, shall, without reasonable excuse satisfactory to the director of public works, or shall, in event of an emergency, install new underground pipes, mains, wires, conduits, equipment and utilities, including house services, and in so doing cut into the street surface or in manner disturb the street pavement or hard surface, he shall be guilty of a misdemeanor punishable by a fine of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000.00). Each street opening shall constitute a separate offense. In addition, such person shall restore the pavement or hard surface required under this Code and other ordinances of the city at his own cost and expense.

(Code 1965, § 32-53)

Secs. 33-90—33-100. - Reserved.

ARTICLE IV. - STREET NUMBERS FOR BUILDINGS

> *Footnotes:*
> *--- **(3)** ---*
> ***Cross reference—** Buildings and building regulations, Ch. 8.*

Sec. 33-101. - System; blocks and base lines.

All houses and business buildings in the city shall be numbered pursuant to the grid system, as administered by the planning commission. The entire city shall be divided into blocks, with the Norfolk and Southern Railroad right-of-way being the base line from which all blocks on the north and south are to be computed and the Atlantic Ocean being the base line from which all blocks west are to be computed.

(Code 1965, § 32-54)

Sec. 33-102. - Display of number generally.

(a) It shall be the duty of the owner of each house or business building in the city to properly display, in or at the front thereof, in a position easily observed from the street, the proper number of his house or building, for the ascertainment of which he shall apply to the planning commission.

(b) In addition to, but not in lieu of, the requirements of subsection (a) above, it shall be permissible to display the number of a house or building on the curb in front thereof. Any display of such number on the curb shall conform to the following standards:

(1) The numerals shall be in block form painted with black paint.

(2) The numerals shall be four (4) inches high and three-fourths (¾) inches wide.

(3) There shall be no more than two (2) inches between numerals.

(c) Any person who violates any provision of this section shall be guilty of a Class 4 misdemeanor, and each day that such violation continues after conviction thereof shall be deemed to constitute a separate offense.

(Code 1965, § 32-55)

Sec. 33-103. - Display of improper number.

(a) It shall be unlawful for the occupant or the owner of any building in the city to which a street number has been assigned or would be assigned upon request, to attach or paint or permit to be or remain attached to or painted on such building any figure tending or purporting to indicate the street number of such building, unless the number so indicated is the street number assigned, or which would be assigned upon request, to such building.

(b) Any person who violates any provision of this section shall be guilty of a Class 4 misdemeanor and each day that such violation continues after conviction thereof shall be deemed to constitute a separate offense.

(Code 1965, § 32-56)

Secs. 33-104—33-110. - Reserved.

ARTICLE V. - VACATION OF PUBLIC STREETS, ALLEYS, EASEMENTS AND OTHER PUBLIC WAYS

Footnotes:

*--- **(4)** ---*

***Editor's note—** Ord. No. 1142, enacted Jan. 26, 1981, added art. V to ch. 32 of the 1965 code; at the editor's discretion, these materials have been designated as art. V, §§ 33-111, 33-112 hereof.*

Sec. 33-111. - Fee for processing application and viewers' services.

A fee of four hundred ten dollars ($410.00) shall be paid to the city for the processing of an application and for the viewers' services regarding said application for the vacation of any street or alley. Such fee shall include all costs of notifications and advertising. The planning director or his authorized representative shall not accept any application unless such fee be paid at the time the application is filed.

(Ord. No. 1142, 1-26-81; Ord. No. 1607, 6-23-86; Ord. No. 1747, 7-13-87; Ord. No. 3546, 5-15-18, eff. 7-1-18)

State Law reference— Similar provisions, Code of Virginia, §§ 15.1-364, 15.1-364.1.

Sec. 33-111.1. - Posting of signs.

In addition to the notice of public hearings as required by general law, upon the application of any person to vacate any street or alley, the applicant shall erect, on or immediately adjacent to such property, a suitable sign, clearly visible and legible from the public streets. Such signs hall be erected not less than fifteen (15) days before, and given notice of, the public hearing before the planning commission, and shall display information as to the nature of the application and date and time of the scheduled planning commission hearings. Signs may be purchased in the planning department office, or must be duplicated in size, format, lettering, coloring, and wording. Such signs may not be removed by the applicant until after the hearing before city council at which tentative approval of the street closure is issued, and shall be removed by the applicant within five (5) days after said city council hearing. Notwithstanding the above, when such signs have been inadequately posted, city council may deny or defer the application.

(Ord. No. 1637, 9-29-86; Ord. No. 1676, 4-13-87)

Sec. 33-111.2. - Appointment of viewers for one year terms.

Three (3) viewers shall be appointed each year to serve terms of one year beginning July 1 to view each and every street or alley proposed to be altered or vacated during the term. The applicant for closure of streets or alleys shall not be required to advertise, and city council shall not be required to hold a separate hearing, for appointment of viewers for each specific street or alley proposed to be altered or vacated. The notice requirements of section 15.2-2204 of the Code of Virginia and section 33-111.1 of the Code of Virginia Beach shall be complied with for each hearing regarding discontinuance of the street or alley proposed to be altered or vacated. The cost of public notices required by section 15.2-2204 of the Code of Virginia shall be charged to the applicant. Also, the applicant and city council shall comply with all other provisions of section 15.2-2006 of the Code of Virginia for the alteration and vacation of streets and alleys.

(Ord. No. 2494, 6-23-98; Ord. No. 3282, 5-14-13, eff. 7-1-13)

Sec. 33-112. - Sale of public street, alley, easement and other public ways.

The city council, as a condition to a vacation or abandonment, may require the fractional portion of its streets, alleys, easements or other public ways to be purchased by any abutting property owner or owners; and the price shall be no greater than its fair market value or its contributory value to the abutting property, whichever is greater, or the amount

agreed to by the parties. No such abandonment shall be concluded until the agreed price has been paid. If any abutting property owner does not make such payment for such owner's fractional portion within one (1) year, or other time period made a condition of the vacation or abandonment, of the city council action to vacate or abandon, the vacation or abandonment shall be null and void as to any such property owner.

(Ord. No. 1142, 1-26-81; Ord. No. 1819, 11-21-88; Ord. No. 2165, 8-4-92)

State Law reference— Similar provisions, Code of Virginia, § 15.1-366.

ARTICLE VI. - ENCROACHMENTS INTO PUBLIC STREETS AND OTHER PUBLIC WAYS, PLACES OR PROPERTY

Sec. 33-113. - Provisions applicable to all encroachments.

(a) Encroachments into, over, under or upon any public street, road, alley or other public right-of-way or public property, shall be unlawful unless expressly authorized pursuant to the provisions of the city code or by franchise, license, lease or other legal instrument approved by the city council. The city council may deny or grant permission to encroach subject to such terms and conditions as it may, in its discretion, deem proper. Notwithstanding any other provision of law, no encroachment that is determined to be detrimental to the public health, safety, welfare or interest shall be approved.

(b) Any authorization for an encroachment granted pursuant to this article is hereby deemed to be a license only, and may be revoked, conditioned or otherwise limited, with or without notice, at the pleasure of the city council.

(c) Authorization for encroachments other than those allowed pursuant to subsection (b) of section 33-114.3 shall be in writing, approved as to legal sufficiency by the city attorney and recorded in the Clerk's Office of the Circuit Court.

(d) Unless otherwise provided by the city council, it shall be a condition of every encroachment authorized pursuant to any of the provisions of this article that:

(1) The owner or occupant shall remove the encroachment, at no expense to the city, within thirty (30) days after notification by the city or such other time as may be directed by the city manager or his designee;

(2) The owner shall indemnify, hold harmless and defend the city, its agents, officers and employees, from and against all claims, damages, losses, and expenses, including reasonable attorney's fees, in any action arising out of the location or existence of such encroachment;

(3) The owner shall obtain and maintain liability insurance with the city as named insured, in the minimum amounts of five hundred thousand dollars ($500,000.00) per person injured and property damage per incident combined or, for subdivision identification signs, two hundred and fifty thousand dollars ($250,000.00) per person injured and property damage per incident;

(4) The encroachment shall not be unsightly or constitute a hazard;

(5) Prior to construction within or affecting any existing public street, road, alley, or other public right-of-way or public property, the owner or his agent shall obtain a permit from the permits and inspections division of the department of planning in accordance with the provisions of Article II of this chapter;

(6) No open cut of a public roadway shall be made unless specifically allowed by the permit;

(7) No construction within or affecting any existing public street, road, alley, or other right-of-way shall be allowed without an approved traffic control plan; and

(8) The owner shall submit for review and approval, a survey of the area being encroached upon or "as-built" plans of the encroachment if required by either the city engineer's office or the engineering division of the public utilities department. Such survey or plans shall be certified by a professional engineer, surveyor or such other qualified professional licensed to practice in the Commonwealth of Virginia as the city manager or his designee may require; provided, however, that this requirement may be waived if, in the judgment of the city manager or his designee, the nature of the work to be performed renders it unnecessary.

(e) Authorization to any person to construct and maintain an encroachment shall not relieve such person from complying with all other applicable laws, regulations and requirements.

(Ord. No. 3428, 10-6-15)

Editor's note— Ord. No. 3428, adopted October 6, 2015, amended § 33-113 in its entirety to read as herein set out. Former § 33-113, pertained to application; processing fee. See Code Comparative Table for complete derivation.

Sec. 33-113.01. - Violations; enforcement.

(a) In the event the city manager or his designee determines that there exists any unauthorized encroachment, or that any encroachment is in violation of any applicable provision of this article or condition of approval therefor, he shall give notice thereof to the owner or occupant of such encroachment, stating the nature of the violation and ordering the removal of the encroachment or correction of the violation within a reasonable period of time specified in the notice. Such notice shall be in writing and served upon the owner or occupant of the encroachment or his agent, and may be served personally, sent by certified or registered mail to the last known address of the owner or occupant or his agent as shown on the current real estate tax assessment books or current real estate tax assessment records, posted in a conspicuous place in or upon such encroachment, or served by any other means authorized by law.

(b) Such notice shall also state that the owner or occupant shall respond to the notice within thirty (30) days of the date of the notice, in writing, by electing to: (i) remove the encroachment or otherwise correct the violation within the time period specified in the notice; or (ii) apply for approval of the encroachment within sixty (60) days of the date of the notice. If the owner or occupant fails to respond to such notice within the aforesaid thirty (30) days, the city manager or his designee shall proceed in accordance with provisions of subsection (c). In the event the owner or occupant elects to seek approval of the encroachment, the city manager shall not take enforcement action unless the applicant fails to file an application within the required time.

(c) Failure to comply with the terms of such notice within the time specified therein shall be remediable in the following manner. The election by the city of any one or more or the remedies set forth in this subsection shall not preclude the city from seeking any other such remedy:

(1) By a civil penalty in an amount not to exceed one hundred dollars ($100.00) for each day that the unauthorized encroachment continues;

(2) By legal action to enjoin the continuing violation of this section or by action in ejectment or other appropriate legal proceeding to recover possession of the street, road, alley or other public right-of-way or public property;

(3) By removal of such encroachment by or on behalf of the city, in which event the cost thereof shall be charged to the owner or occupant of the encroachment and collected as real estate taxes are collected;

(4) By charging, the owner or occupant of the encroachment, pending the removal of any such encroachment, compensation for the use of such portion of the street, road, alley or other public right-of-way or public property at the equivalent of the tax upon the land so occupied if it were property of the owner or occupant; or

(5) By abatement as a nuisance.

(d) Notwithstanding any other provision of this section, the city manager or his designee may, without notice, remove or cause the removal of any unauthorized encroachment, without liability to the owner or occupant of such encroachment, if he determines that such encroachment:

(1) Interferes with the intended use of a public street, road, alley or other public right-of-way or public property;

(2) Constitutes or causes a physical or visual obstruction to vehicles, pedestrians, bicyclists or other persons;

(3) May interfere with the response to an emergency on the property on which the encroachment is located; or

(4) Otherwise constitutes an imminent hazard to the public health, safety or welfare.

(Ord. No. 3428, 10-6-15)

Sec. 33-113.02. - Applications for encroachments.

Except as otherwise provided in this article, applications for encroachments into public streets, roads, alleys or other public rights-of-way or other public property shall be made to the city manager of his designee. A fee of two hundred fifty dollars ($250.00) shall be paid to the city for the processing of an application for an encroachment. No such application shall be accepted unless the fee therefor is paid at the time the application is filed. The city manager or his designee is hereby authorized and directed to adopt a procedure for the processing of such applications and, where city council approval is required, the reporting to the city council of any detrimental effect which a requested encroachment may have on the public health, safety, welfare or interest.

(Ord. No. 3428, 10-6-15)

Sec. 33-113.1. - Encroachments by private underground utilities and subdivision signs.

(a) The city council hereby authorizes the city manager or his designee to approve any encroachments into public streets, roads, alleys or other public rights-of-way or other public property by private underground utilities and subdivision signs, as defined herein, upon the following conditions, in addition to those required by section 33-113:

(1)

If the encroachment consists of private water mains or private gravity sanitary sewer laterals or force mains, the owner shall comply with the provisions of section 28-2 or 37-5 at such time as public sanitary sewer or public water service becomes available to the site being serviced by the encroachment; and

(2) Subdivision signs shall not be greater in area than thirty-two (32) square feet per face, have more than two (2) faces, or exceed six (6) feet in height above the natural grade at the curb. Landscaping approved by the department of parks and recreation shall be provided. No subdivision sign shall be located so as to constitute a traffic or other hazard, and such signs shall not contain any commercial advertising and shall conform to all applicable sign regulations of the City Zoning Ordinance.

(b) Definitions. As used in this section, the following words shall have the meanings respectively ascribed to them herein, except in those instances when the context clearly indicates a different meaning:

(1) *"Private underground utilities"* shall mean any private gravity or pressurized pipe for the conveyance of raw sewerage, water or storm drainage, other than stormwater conveyance facilities described in subdivision (iii) of section 33-114.5, private irrigation systems and underground conduit for wires and cables.

(2) *"Subdivision sign"* shall mean any permanent sign located at the entrance to a residential subdivision, and shall include the electrical components necessary to light the sign and associated landscaping and irrigation around the sign.

(c) No application for an encroachment that does not comply with all of the criteria set forth in this section shall be approved by the city manager or his designee; provided, however, that upon denial of the application, the applicant may seek authorization of the encroachment by making application in accordance with the provisions of section 33-113.02.

(Ord. No. 3428, 10-6-15; Ord. No. 3445, 4-19-16)

Editor's note— Ord. No. 3428, adopted October 6, 2015, amended § 33-113.1 in its entirety to read as herein set out. Former § 33-113.1, pertained to criteria for administrative approval of certain encroachment applications. See Code Comparative Table for complete derivation.

Sec. 33-113.2. - Administrative approval of temporary encroachments into Neighborhood Dredging Special Service Districts.

(a) City council hereby authorizes the city manager or his designee, upon proper application to the department of public works, to approve any temporary encroachment into city-owned waterways and city-owned property adjacent to waterways for boatlifts, bulkheads, rip-rap, piers, boat-ramps, decks, shoreline stabilization projects, pilings, wharves, and associated walkways and landscaping in any of the council-approved neighborhood dredging special service districts when the following conditions are met:

(1) The owner has procured any permits required by the city or other applicable regulatory body; and

(2) The owner has secured approval from any board or body appointed by the city to oversee the general health and welfare of the Chesapeake Bay, wetlands, and any rivers, beaches or waterways; and

(3) The city attorney or his designee has reviewed and approved the encroachment request for compliance with relevant local ordinances and resolutions, the city code, state law, federal law and regulations, and that adjacent property owners have been notified.

(b) The application and processing fee for such temporary encroachment shall be as provided by section 33-113.02.

(c) The applicant shall provide the required 15-foot vegetated riparian buffer area or shall provide payment to the city for offsetting buffer improvements.

(d) Any application that includes a boathouse is excluded from the authorization for an administrative process set forth by this section.

(e) The application for such encroachment shall include proof of notice to the adjacent property owner. If an adjacent property owner objects to such application because of navigational concerns, the application shall be excluded from the authorization for an administrative approval set forth by this section.

(Ord. No. 3421, 6-16-15; Ord. No. 3428, 10-6-15)

Secs. 33-114—33-114.2. - Reserved.

Editor's note— Ord. No. 3428, adopted October 6, 2015, repealed §§ 33-114—33-114.2, which pertained to criteria for administrative approval of wall-mounted signs; removal, etc., of certain unauthorized encroachments; administrative approval of encroachments by awnings. See Code Comparative Table for complete derivation.

Sec. 33-114.3. - Administrative approval of encroachments within certain zoning districts.

Notwithstanding any contrary provision of this article:

(a) The city manager or his designee may, and is hereby vested with the authority to, enter into written agreements allowing encroachments upon or over any public street, road, alley or other public right-of-way or public property or sidewalk in any zoning district listed in Section 102(a)(13), pertaining to districts implementing a Strategic Growth Area Plan, or in the B-4C Central Business Mixed Use District, by outdoor cafes, fixed furniture or planters, decorative architectural features, privately-maintained bus shelters or other storefront appurtenances that are expressly allowed by the regulations of the district in which they are located, provided that such encroachments conform to applicable regulations and design guidelines for the district in which they are located. Such encroachments shall also comply with all applicable zoning and building codes, regulations and standards.

(b) Encroaching signs, fabric awnings, building-mounted light fixtures, non-fixed objects, and other storefront appurtenances, other than encroachments authorized pursuant to subsection (a), that are expressly allowed pursuant to the regulations of any zoning district listed in Section 102(a)(13), shall be permitted, without payment of a fee and without a written agreement. Such encroachments shall conform to the applicable regulations and design guidelines of the district in which they are located and to all applicable zoning and building codes.

(c) Notwithstanding the provisions of subsection (a), open-air cafes on public property in the OR Oceanfront Resort District or the RT-1 or RT-3 Resort Tourist Districts shall require the approval of the city council pursuant to franchise and shall be subject to the provisions of the Resort Open Air Café Guidelines.

(Ord. No. 2701, 5-28-02; Ord. No. 2845, 10-12-04; Ord. No. 3250, 7-10-12; Ord. No. 3329, 2-25-14; Ord. No. 3428, 10-6-15)

Sec. 33-114.4. - Encroachments by certain directional signs concerning the location of farms or farm stands.

(a) Notwithstanding the provisions of section 33-114.1 of this Code, the city manager or his designee may, and is hereby authorized to, approve the encroachment, in, upon or over any public street or other publicly-owned property, of any sign conforming to the following criteria:

(1) Such sign shall be owned by the city, and may be located, relocated or removed at the discretion of the city manager;

(2) Such sign may contain only the following matter:

(i) The name of a farm or farm stand on which at least fifty (50) percent by value of the products sold at such farm or farm stand have been produced on the farm of the operator thereof, or the name of a farm on which agriculturally-related recreational and amusement activities are conducted;

(ii) Directional arrows indicating the general direction of each such farm or farm stand; and

(iii) Such logo or other pictorial or graphic matter as may be approved by the city manager;

(3) Such sign shall be of a size, type and design approved by the city manager, and shall be located on public property at or near street intersections south of the Green Line; and

(4) The name of any such farm or farm stand may be displayed on a maximum of four (4) such signs at any one time.

(b) Application for the inclusion of the name of a farm or farm stand upon a sign or signs authorized by subsection (a) hereof shall be made annually by no later than January 15. Each application shall be accompanied by a fee in an amount determined by the city manager or his designee to be sufficient to defray the costs of including such farm or farm stand on the number of signs requested.

(c) In addition to the signs authorized by subsection (a) hereof, the city manager or his designee may also authorize the encroachment in, upon or over any public street or other publicly-owned property, of signs, not exceeding an area of twenty-four (24) square feet per face, displaying words or pictorial or other graphic matter generally promoting agriculture in the City of Virginia Beach. Such signs may be located at the intersections of roads deemed by the city manager or his designee to be significant entryways to, or major travel routes within, the city's rural service area.

(Ord. No. 2624, 3-27-01)

Sec. 33-114.4.1. - Roadside guide signs.

Roadside guide signs located on city property may be permitted in accordance with the following provisions:

(a) Signs shall be allowed only by resolution of the city council upon the application of the owner or operator of a use or establishment operated exclusively for cultural, literary, scientific or artistic purposes and on a not-for-profit basis, and only if the city council, in its discretion, finds that the use or establishment: (1) is

of outstanding cultural, literary, scientific or artistic value to the city, its residents and visitors; and (2) significantly contributes to the city's image as an attractive year-round destination and desirable place to live;

(b) Applications for such signs, which shall include an application fee in the amount of two hundred fifty dollars ($250.00), shall be made to the Director of Planning on forms prescribed by him;

(c) No signs shall be larger than five (5) square feet in area or higher than nine and one-half (9½) feet above ground level, and all such signs shall have a minimum clearance from ground level to the bottom of the sign face of seven (7) feet;

(d) No use or establishment shall be the subject of more than three (3) roadside guide signs; provided, however, that the city council may allow additional signs if it finds that three (3) signs are insufficient to provide motorists with adequate guidance to the use or establishment;

(e) The lettering, graphic elements and background shall be consistent with the applicable standards for such signage;

(f) Signs shall be erected only in the specific locations approved by the city council as necessary to provide route confirmation and continuity of guidance to the use or establishment. The city manager or his designee may relocate a sign if necessary to accommodate public signage requirements; and

(g) Signs shall be maintained in good condition at all times. Any sign not in good condition shall be subject to removal and disposal by the city manager or his designee.

(h) As used in this section, the term "roadside guide sign" shall mean a sign intended to provide traffic directions concerning the location of a use or establishment described in subsection (a).

(Ord. No. 3445, 4-19-16)

Sec. 33-114.4.2. - Public art sponsorship signs.

(a) The city manager or his designee may permit signs in conjunction with exhibitions of public art authorized by the city council and located on public property. Such signs shall not be illuminated or larger than one (1) square foot in area, and no more than one such sign per individual item of public art shall be permitted.

(b) As used in this section, "public art" shall mean works expressing creative skill or imagination in a visual form, such as painting or sculpture, which are intended to beautify or provide aesthetic influences to public areas or areas that are visible from public areas.

(Ord. No. 3445, 4-19-16)

Sec. 33-114.5. - Exempted encroachments.

The following improvements upon city-owned property shall be exempt from the provisions of this article, provided such improvements are otherwise properly permitted and do not present a safety risk: (i) driveway aprons; (ii) private sidewalks that connect to public sidewalks; (iii) extension of private underground stormwater conveyance facilities that connect to public systems within a public street, public right-of-way, public easement, or other public property, provided such connections remain within the property's extended side lot lines; and (iv) fences along extended side lot lines between privately owned real property and a sound wall or similar noise attenuation structure. Nothing herein

shall be construed to authorize the construction or maintenance of any improvement upon city property that constitutes a danger to the public health, safety, or welfare, and nothing herein shall relieve the owner of any such improvement from the duty to remove such encroachment if a public need for its removal should arise.

(Ord. No. 3428, 10-6-15)

Editor's note— Ord. No. 3428, adopted October 6, 2015, amended § 33-114.5 in its entirety to read as herein set out. Former § 33-114.5, pertained to improvements not considered encroachments. See Code Comparative Table for complete derivation.

ARTICLE VII. - SALE OF PROPERTY

> *Footnotes:*
> *--- (**5**) ---*
> ***Editor's note—** Ord. No. 1605, adopted June 23, 1986, added § 33-115 to Art. VII of Ch. 33. At the discretion of the editor, said Art. VII has been titled "Sale of Property"; § 33-115 is included as enacted.*

Sec. 33-115. - Disposition of excess property.

Applications for the sale of excess property shall be submitted to the real estate division of the department of public works. A nonrefundable fee of one hundred dollars ($100.00) shall be paid to the city for the processing of the application. The department of public works is hereby authorized and directed to prepare and adopt a procedure for the processing of such applications and the reporting to city council of any detrimental effect the sale of the excess property may have on the public's health, safety, welfare or interest.

City council may deny or approve the sale of the excess property and direct, the city manager to execute the necessary documents to effectuate the sale of the property.

(Ord. No. 1605, 6-23-86)

Secs. 33-116—33-119. - Reserved.

ARTICLE VIII. - NEWSRACKS IN THE RESORT AREA

Sec. 33-120. - Legislative intent and purpose.

The City Council of the City of Virginia Beach hereby finds and declares that:

(1) The uncontrolled placement of newsracks and newspaper vending machines in public rights-of-way presents an inconvenience and danger to the safety and welfare of the public, including pedestrians, persons entering and leaving vehicles and buildings, and persons performing essential utility, traffic control, and emergency services;

(2)

The ready availability of newspapers and other publications is beneficial to the public and to government, for without an informed public, government cannot properly function. However, the uncontrolled placement of newsracks in the public rights-of-way can constitute a public nuisance;

(3) The city's economic vitality depends in large measure upon its continued growth as a major center of tourism and as a place in which business can flourish. The resort area of the city, in particular, is a unique and valuable asset to the city and its citizens, inasmuch as it is a major center of tourism generating substantial revenue for the public benefit. The continued revitalization of the resort area, and especially Atlantic and Pacific Avenues, will be promoted by regulating the location and characteristics of newsracks. An appealing, well-kept appearance is critical to the city's continued ability to attract visitors and businesses;

(4) Moreover, maintaining and improving the appearance of the city is vital to the well-being of the residents of the city. An attractive and harmonious community enhances the quality of life of the city's residents; and

(5) It is the intention of city council in adopting this section to carefully weigh and balance the benefits of regulating the placement and other characteristics of newsracks in public rights-of-way against the potential impacts which may result from such regulation.

(Ord. No. 2975, 4-24-07)

Sec. 33-121. - Definitions.

For purposes of this article, the following words and phrases shall be construed as follows:

City manager shall mean the city manager or such other employee of the city as may be designated by the city manager to perform the duties prescribed in this article.

City of Virginia Beach or *city* shall mean employees or agents of the City of Virginia Beach.

Distributor shall mean a person, firm, corporation or other entity responsible for placing or maintaining a newsrack in the public right-of-way.

Newsrack shall mean any self-service or coin-operated box, container, storage unit or other dispenser that rests or projects, in whole or in part, in or upon any portion of the public rights-of-way, and is installed, used or maintained for the display, sale, or distribution of newspapers or other publications.

Resort area shall mean that area bordered on the north by the northernmost curb line of 38th Street, on the east by the mean low water line of the Atlantic Ocean, on the south by Rudee Inlet, and on the west by the imaginary line running north to south, fifteen (15) feet to the west of the westernmost curb line of Pacific Avenue.

(Ord. No. 2975, 4-24-07)

Sec. 33-122. - Applicability.

This article applies only to newsracks located in the public rights-of-way in the resort area.

(Ord. No. 2975, 4-24-07)

Sec. 33-123. - General prohibitions.

No newsrack shall be placed, installed, used or maintained in any public right-of-way in the resort area unless such placement, installation, use, or maintenance is explicitly authorized by this article and the requirements of this article.

(Ord. No. 2975, 4-24-07)

Sec. 33-124. - Location of newsracks.

The city manager surveyed the resort area and determined the locations that are suitable for newsracks. The locations are set forth in appendix A. In evaluating each location, the city manager used, and shall use in the future if additional locations are required, the following general criteria: 1) effect on pedestrian, emergency services, and public transportation access on, to, and from streets and sidewalks; 2) required maintenance of public facility infrastructure; 3) vehicular safety; 4) the effect of the location, mass, and bulk of newsracks on the streetscape aesthetics of each block; 5) sidewalk width; 6) parking meter access, including access by persons with disabilities; 7) access to bicycle parking; 8) access to fire hydrants; 9) access to bus stops; 10) access to benches and trash receptacles; 11) maintenance and access to street trees, planters, and utility and signal poles; 12) access generally from the street to the sidewalk and the sidewalk to the street; 13) blocking of views at intersections, alleys, and driveways; and 14) distance from intersections and driveways and alleys.

(Ord. No. 2975, 4-24-07)

Sec. 33-125. - Installation of newsracks.

The space available at each location identified in appendix A shall be available to distributors on a first-come, first served basis. Distributors may not install more than one (1) newsrack per publication at each location identified in appendix A. A distributor may not divide, split, or separate a publication into two (2) or more publications that are substantially similar for purposes of evading this article. A subcommittee of the resort advisory commission shall advise the city's director of the convention and visitors bureau as to whether two or more publications are substantially similar. The subcommittee shall consist of at least three (3) members, and none of the members may be distributors or publishers of similar publications. Upon receiving the subcommittee's recommendation, the city's director of the convention and visitors bureau shall make a determination as to whether the publications are substantially similar. If the director concludes that two (2) or more publications are substantially similar, in accordance with section 33-129, he shall inform the distributor in writing that only one of those publications may be placed in each location. Any distributor, person, or other entity who claims to be aggrieved by a finding under the provisions of this section may appeal pursuant to section 33-129(d).

(Ord. No. 2975, 4-24-07; Ord. No. 2980, 5-15-07)

Sec. 33-126. - General standards for newsracks.

(a) Each newsrack shall have permanently affixed, in a readily visible place, the current name, address, and telephone number of the distributor.

(b)

Each newsrack shall have a door, covering, and/or other appropriate device(s) preventing the publications therein from getting wet or flying out due to rain, wind, or similar environmental conditions.

(Ord. No. 2975, 4-24-07)

Sec. 33-127. - Standards for installation and maintenance of newsracks.

In addition to the standards set forth in section 33-18.1, newsracks shall comply with the standards set forth in this section:

(a) Newsracks shall only be placed in the resort area in the locations specifically identified in appendix A.

(b) When installing a newsrack, if one or more newsracks have previously been installed in said location, a distributor shall install his/her newsrack in such a manner so that the newsrack is immediately contiguous to another newsrack previously installed in said location.

(c) If any portion of a newsrack, including the door when ajar or the coin collection mechanism, is outside of the four corners of the location designated by the city manager for newsracks to be placed in the public rights-of-way, the city manager may remove the newsrack pursuant to the procedure set forth in section 33-129.

(d) In the event that demand for newsrack space exceeds availability, the city manager shall consider the general criteria set forth in section 33-124 and may add additional newsrack locations.

(e) No portion of any newsrack shall project into or be located in any roadway.

(f) No portion of any newsrack shall be located directly in front of any display window.

(g) Only drop-in type anchor bolts may be used to secure newsracks to the public right-of-way.

(h) Newsracks shall not be chained, bolted, or otherwise attached to the private property of another, any street furniture, tree, sign, or other permanently fixed object.

(i) Each newsrack shall be maintained in a reasonably neat and clean condition and in good repair, including: (1) reasonably free of dirt, trash, debris, foreign objects, graffiti, stickers, dents, and grease; (2) reasonably free of chipped, faded, peeling, and cracked paint in any visible painted areas; (3) reasonably free of rust and corrosion in any visible unpainted metal areas; (4) any clear parts through which publications are visible shall be unbroken and reasonably free of cracks, scratches, dents, blemished, and discoloration; (5) any paper or cardboard parts or inserts shall be reasonably free of tears, peeling, or fading; and (6) no structural components shall be broken or unduly misshapen.

(Ord. No. 2975, 4-24-07)

Sec. 33-128. - Standards for removal of newsracks by distributors.

Upon removal of any newsrack, the distributor shall eliminate any potential hazards to the public, such as bolts, brackets, or holes, and shall restore any disturbed area in the public right-of-way to the same or reasonably similar condition as any adjoining public right-of-way by removing any protrusions, cleaning the cavity of debris, filling the cavity with high strength epoxy or grout to meet the elevation of the adjoining public right-of-way, and avoiding

potential depressions by taking into account shrinkage and settlement of new materials. The public right-of-way shall be level and free of protrusions or depressions. The distributor shall match as close as reasonably possible the color, texture, and material of any adjoining public right-of-way.

(Ord. No. 2975, 4-24-07)

Sec. 33-129. - Removal of newsracks by city manager.

(a) If the city manger determines (1) a newsrack has been installed or maintained in violation of the provisions of this article, or section 33-18.1; (2) the condition or placement of a newsrack poses a threat to the health, safety, or welfare of pedestrians or wheelchair users, or the safe flow of vehicles; or (3) that the identification of a distributor, publisher or other party responsible for a newsrack in not readily identifiable or affixed to the newsrack, the newsrack may be removed by the city manager and stored in temporary custody, subject to the notice requirements set forth below.

(b) Prior to removing a newsrack, the city manager shall provide the distributor with a notice to correct the violation. Such notice shall be deemed to constitute sufficient notice of a violation if it is properly addressed and mailed to the distributor by certified mail, return receipt requested, at the address set forth on the newsrack. The notice shall specifically describe the violation and set forth the action(s) necessary to correct the violation. The notice shall also specify that failure to correct the violation within ten (10) days following the date of receipt of the notice will result in the removal of the newsrack by the city manager and its storage in temporary custody. The notice shall advise the distributor as to the location of the newsrack and the procedure for claiming same.

(c) Notwithstanding the provisions of subsection (b), if any newsrack (i) has been installed, used or maintained in violation of the provisions of this article and (ii) does not display the name and address of the distributor, notice of violation shall be sufficient by posting such notice on the newsrack. Failure to correct the violation within seven (7) days following the date of posting will result in removal and storage of the newsrack as set forth in subsection (b).

(d) Any distributor, person, or other entity who claims to be aggrieved by a finding, determination, notice or action taken under the provisions of this section may appeal to the city manager. An appeal shall be perfected within three (3) days after receipt of a notice of violation or other action by filing with the office of the city manager a letter of appeal stating the basis for such appeal. The city manager shall schedule a hearing of such appeal on a date not later than ten (10) days after the filing of the appeal; provided, however, that such hearing may, at the discretion of the city manager, be rescheduled for good cause shown. The city manager shall take no action during the pendency of an appeal. Failure to correct a violation of this section within seven (7) days following (i) the expiration of the time for noting an appeal or (ii) the denial of an appeal, shall result in the removal and storage of the newsrack or newspaper vending machine.

(e) Any newsrack removed pursuant to this section must be claimed by the distributor within thirty (30) days of such removal. Additionally, any distributor of any newsrack removed and stored pursuant to this subsection may be charged a reasonable fee for such removal, restoring any part of the public right-of-way, and storage.

If the distributor fails to claim the newsrack or refuses to pay storage, removal, or restoration costs, the city manager may dispose of same. Any proceeds or monies from the disposal of a newsrack shall be forwarded to the city treasurer for deposit into the general fund of the city.

(Ord. No. 2975, 4-24-07; Ord. No. 2980, 5-15-07)

Sec. 33-130. - Severability.

If any provision of this article or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect the other provisions or application of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

(Ord. No. 2975, 4-24-07)

Sec. 33-131. - Reserved.

Editor's note— Ord. No. 3073, adopted March 24, 2009, repealed § 33-131, which pertained to sunset provision and derived from Ord. No. 2975, 4-24-07.

Chapter 34 - SWIMMING POOLS

Footnotes:
*--- (**1**) ---*
***Editor's note—** Ord. No. 2351, adopted Oct. 17, 1995, amended and reordained Ch. 34 in its entirety to read as herein set out. Prior to such amendment, Ch. 34 contained similar subject matter and was derived from Ord. No. 1668, adopted Feb. 2, 1987.*
***Cross reference—** Building regulations, Ch. 8.*

ARTICLE I. - IN GENERAL

Sec. 34-1. - Title.

This chapter shall be known and cited as the "Virginia Beach Swimming Pool Ordinance."

(Ord. No 2351, 10-17-95)

Sec. 34-2. - Scope.

(a) The Virginia Board of Health Swimming Pool Regulations and the Virginia Uniform Statewide Building Code, as amended, including all future amendments thereto and editions thereof, and all model building codes and portions of other model codes or standards which are, or may hereinafter be, referenced, adopted or incorporated therein, are hereby adopted and incorporated by reference into this chapter of the Code of the City of Virginia Beach.

(b) The provisions of this chapter shall apply to all type 2 swimming pools as indicated and defined in section 34-3, including but not limited to commercial pools, public or private school pools, gymnasium pools and health establishment pools. Type 2 swimming pools for which building permits are issued subsequent to the

effective date of this chapter shall be constructed in accordance with provisions of the Virginia Uniform Statewide Building Code, fire prevention code, the zoning ordinance and this chapter. The administrative authority or authorized agent shall order reasonable changes in any public pool or related facility or in its operation if it finds any condition(s) that endanger the life, health or safety of the users of such type 2 swimming pools. In considering whether to order such changes, the administrative authority shall consider the magnitude of the danger, cost of the change(s) required, and the requirements imposed by this chapter upon newly constructed type 2 swimming pools.

(c) Type 1 swimming pools shall be constructed in accordance with the provisions of the Virginia Uniform Statewide Building Code and the zoning ordinance.

(d) The provisions of the chapter shall apply to all auxiliary structures and equipment provided and maintained in connection with type 2 pools, including but not limited to:

(1) Locker rooms.

(2) Shower rooms.

(3) Dressing rooms.

(4) Disinfecting equipment.

(5) Safety equipment.

(Ord. No. 2351, 10-17-95; Ord. No. 2995, 7-17-07)

Sec. 34-3. - Definitions.

The following definitions shall apply in the interpretation and the enforcement of this chapter. The word "shall" as used herein, indicates a mandatory requirement.

Administrative authority: The director of public health or his designee.

Hydrostatic relief valve: A valve which, when properly installed will relieve underground water pressure caused by high water table under the pool shell.

Maximum load: The number of bathers permitted in the pool area, to be determined by dividing the total water surface area in square feet (or square meters) of the swimming, spa or wading pool water space by twenty-seven (27) feet (8.18 meters).

Operator or manager: The person appointed or engaged to conduct the operation and management of the swimming facility.

Operator's certificate: A certificate that proves competency in pool operation issued by a source approved by the administrative authority.

Owner: The person in whose name the license or use permit is issued.

Pool management company: Any person, firm corporation or association contracting to manage or operate two (2) or more type 2 swimming pools.

Pool permit: a permit issued to the facility by the administrative authority to allow for the operation of the type 2 pool.

Spa and hot tubs: Type 2 pools designed for recreational or quasi-therapeutic use for physiological and psychological relaxation that include but are not limited to: hydrojet circulation, hot water, cold water, mineral baths, air induction systems or any combination of these.

Turnover rate: The time it takes (in a 24-hour period) to circulate an amount of water equivalent to the volume of a swimming pool, wading pool or spa. A swimming pool requires six (6) hours, a wading pool requires two (2) hours and a spa requires thirty (30) minutes.

Type 1 swimming pool: Any structure that contains water over twenty-four (24) inches (610 mm) in depth and which is used, or intended to be used, for swimming or recreational bathing in connection with an occupancy in residential use group R-3 and which is available only to the family and guests of the householder. This includes residential in-ground, aboveground and on-ground swimming pools, hot tubs and spas.

Type 2 swimming pool: Any pool, other than a type 1 swimming pool.

Water slides/rides: Combination of pools and immersion troughs carrying water from pool to pool.

Wading pool. A pool designed for wading or partial immersion of the human body which is capable of impounding water to a depth not greater than twenty-four (24) inches (0.6 meter) and which is separate from any other pool within the facility.

(Ord. No 2351, 10-17-95; Ord. No. 2995, 7-17-07; Ord. No. 3233, 5-22-12)

Sec. 34-4. - Plans, construction and inspection.

(a) A person proposing to construct, reconstruct or alter a swimming pool or auxiliary structure or equipment shall submit legible plans and specifications to the administrative authority for review and written approval prior to the issuance of any building, plumbing or electrical permit.

(b) The administrative authority may require the submission of such additional information as may be required to determine the compliance of plans and specifications submitted for approval.

(c) Within ten (10) days of the receipt of final plans and specifications, the administrative authority shall notify the person submitting the plans and specifications of their approval or disapproval.

In addition to these regulations, all applicable ordinances, including but not limited to plumbing, building, electrical and zoning shall also apply in the construction, maintenance and operation of all type 2 swimming pools.

(Ord. No. 2351, 10-17-95; Ord. No. 2995, 7-17-07)

Sec. 34-5. - License required; fee.

(a) No person shall operate a type 2 swimming pool unless an annual permit has been secured from the administrative authority of the health department. This permit shall be issued only after approval by the administrative authority, submittal of an inspection report by a state registered electrician, certified by the department of professional and occupational regulations, on forms approved by the administrative authority, application and payment to the health department of a fee of one hundred dollars ($100.00). The inspection report shall certify to the health department and the City of Virginia Beach that the type 2 swimming pool has been inspected by a registered electrician and there are no electrical defects that could

affect the type 2 swimming pool's safe operation. The inspection report shall further certify that the type 2 swimming pool is in compliance with all applicable electrical codes. The operation and maintenance of any type 2 swimming pool in a manner not in accordance with the provisions of this chapter will be justification for cancellation of this permit.

(b) A type 2 swimming pool permit shall be posted in view of the public at the swimming pool involved.

(c) No type 2 swimming pool permit shall be transferable and any person holding such a permit shall give notice in writing, to the administrative authority within twenty-four (24) hours after having sold, transferred, given away or otherwise disposed of his interest in or control of the pool involved. Such notice shall include the name and address of the person succeeding to the ownership or control of such pool.

(Ord. No. 2351, 10-17-95; Ord. No. 2625, 4-24-01; Ord. No. 2995, 7-17-07; Ord. No. 3233, 5-22-12)

Sec. 34-6. - Inspections.

(a) The administrative authority shall have the power to enter, at reasonable times, upon any private property for the purpose of inspecting and investigating conditions relating to the enforcement of this chapter or regulations adopted pursuant thereto.

(b) In addition to the inspections required by the department of planning, division of permits and inspections, all piping and appurtenances included in the recirculation and filter system shall be inspected prior to covering. All piping shall be tested at the time of inspection pursuant to the Virginia Uniform Statewide Building Code.

(Ord. No 2351, 10-17-95)

Sec. 34-7. - Owner's certificate.

(a) To secure a pool permit, each type 2 pool shall have a person employed who holds a valid operator's certificate issued by a source approved by the administrative authority. This person is the certified pool operator for this facility. Operator's certificate shall be issued only to an individual over the age of sixteen. An applicant for an operator's certificate shall demonstrate basic knowledge of the water treatment process in type 2 swimming pools. Presentation of a certificate from a swimming pool operator's training course acceptable to the administrative authority shall constitute demonstration of such knowledge. No certified pool operator shall oversee more than one (1) swimming pool facility per certificate. All individuals holding an operator's certificate shall be recertified every five (5) years.

(b) Every type 2 pool shall have a certified operator on premises at all times during periods of operation, who is fully capable of and shall assume responsibility for compliance with all requirements relating to pool operation, maintenance and safety of bathers.

(c) Routine (e.g., daily and weekly) operating procedures shall be permanently posted in a location accessible to and frequented by the operator.

(d) Manufacturer's instructions for operation and maintenance of mechanical and electrical equipment shall be kept available for the operator.

(e) No type 2 pools shall be used or available for use until all requirements of sections 34-5 and 34-7 are complied with.

(Ord. No. 2351, 10-17-95; Ord. No. 2995, 7-17-07; Ord. No. 3233, 5-22-12)

Sec. 34-8. - Suspension or revocation of type 2 pool permit.

(a) If the administrative authority finds that the health and safety of those who utilize a type 2 swimming pool is endangered, due to improper operation or continued or flagrant violation, he may order the immediate suspension or revocation of the pool's permit until such time as he finds that the danger no longer exists. No person shall operate any type 2 swimming pool when subject to an order of suspension or revocation.

(b) The administrative authority shall notify the owner, in writing, stating the reason(s) for the suspension or revocation. The owner shall have the right to appeal the suspension or revocation to the administrative authority. However, such appeal shall not affect the order for suspension or revocation until such time that the appeal is heard and the order changed. The owner may request a reinspection when the condition(s) causing the suspension has been corrected. Upon compliance with the requirements of this chapter, the suspension shall be removed.

(c) Any person aggrieved by the refusal to grant, or by the revocation or suspension of the permit of a swimming pool, shall have the right to appeal therefrom to the circuit court of the City of Virginia Beach after an administrative hearing.

(Ord. No. 2351, 10-17-95; Ord. No. 2995, 7-17-07)

Sec. 34-9. - Violations of provisions governing prosecutions, notice, etc.

The provisions of the Virginia Uniform Statewide Building Code shall govern the prosecution of violations relating to the design and construction of swimming pools and installation of related equipment. A violation of any other provision of this chapter shall constitute a Class 3 misdemeanor: provided, however, that violations of section 34-35 shall be punishable by a fine of not more than three hundred dollars ($300.00) or confinement in jail for not more than thirty (30) days, either or both, and each day's violation shall be deemed a separate offense.

(Ord. No 2351, 10-17-95; Ord. No 2470, 2-10-98; Ord. No. 2866, 4-5-05)

Sec. 34-10. - Pool management companies; duties.

All pool management companies, within ten (10) days after commencing operation of a type 2 pool, shall provide the administrative authority with the names and locations of all type 2 pools they operate in Virginia Beach and the names, telephone numbers and addresses of their operating personnel. Such companies shall be responsible for assuring compliance with sections 34-5 and 34-7 of this chapter. Pool management companies shall not act as the certified pool operator.

(Ord. No. 2351, 10-17-95; Ord. No. 2995, 7-17-07)

Sec. 34-11. - Applicability of chapter to existing pools.

The structural and equipment provisions and requirements of this chapter shall not apply to any type 2 pool constructed prior to the effective date of Ordinance No. 391 from which this chapter was originally derived, except as follows:

(1) Any alteration, placement or replacement of any equipment shall comply with such requirements.

(2) The provisions and requirements of this chapter with respect to operational procedures and standards, chemical feeding equipment, flow meters, pressure gauges and lifeguards shall be complied with by all type 2 swimming pools, regardless of date of construction.

(Ord. No. 2351, 10-17-95; Ord. No. 2995, 7-17-07; Ord. No. 3233, 5-22-12)

Sec. 34-12. - Modifications.

The administrative authority may grant modifications, upon conditions and requirements established by the administrative authority, to any of the provisions of this chapter which are not under the jurisdiction of the Virginia Uniform Statewide Building Code. The administrative authority has the authority to revoke any modifications granted upon good cause, which includes but is not limited to, other violations, violations of conditions of the modification, and any health or safety concerns.

(Ord. No.3233, 5-22-12)

Sec. 34-13. - Severability clause.

Should any article, section, subsection, sentence, clause or phrase of this chapter be declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of the chapter in its entirety or of any part thereof other than that so declared to be invalid.

Secs. 34-14—34-20. - Reserved.

ARTICLE II. - DESIGN AND CONSTRUCTION

Sec. 34-21. - Reserved.

Editor's note— Ord. No. 2995, adopted July 17, 2007, repealed § 34-21, which pertained to location and derived from Ord. No. 2351, 10-17-95.

Sec. 34-22. - Reserved.

Sec. 34-23. - Reserved.

Sec. 34-24. - Reserved.

Sec. 34-25. - Reserved.

Sec. 34-26. - Reserved.

Editor's note— Ord. No. 2995, adopted July 17, 2007, repealed § 34-26, which pertained to shape and derived from Ord.

No. 2351, 10-17-95.

Sec. 34-27. - Reserved.

Sec. 34-28. - Recirculation systems.

(a) *Filter room.* Type 2 pools shall be provided with a structure or room to contain the filtration equipment, pumps and other recirculation system appurtenances, and disinfection equipment. The room shall be finished in a light color and be constructed of materials which are impervious to water and chemicals necessary for the operation of the pool. Adequate illumination of twenty (20) footcandles measured twenty-four (24) inches (61 centimeters) above floor level, shall be provided. The floor of the filter room shall be designed to provide for an adequate drainage with a minimum floor slope of 1:50 and a maximum of 1:24 to the drain and shall be kept dry, particularly in the vicinity of electrical panels. The filter room shall be adequately cross-ventilated, which may, upon the decision of the administrative authority, require mechanical ventilation and all equipment shall be installed so that it is convenient to operate and repair. Adequate headroom shall be provided above all filters. The provision of any facility for discharging filter backwashing water into the filter room floor is prohibited. The room shall be provided with a door(s) of sufficient width to permit the removal of equipment, and shall be capable of being secured against entry by unauthorized persons. The entrance to the filter room shall be adjacent to the pool area or so located that the operator can enter the room without having to exit the enclosed pool area.

(b) *Filters.* The recirculation system shall be equipped with a filtration system that will filter the entire contents of the pool at the required rate. Filtration equipment shall be operated continuously twenty-four (24) hours per day, unless a variance has been granted by the administrative authority to allow the filtration equipment to operate less frequently, as provided in section 34-28.1. Design criteria for the indicated type of filters shall be as follows:

(1) *Rapid sand filter.* A filter utilizing sand as the filter media, with filtration flow rate not exceeding three (3) gallons per minute per square foot (122 liters per minute per square meter) of filter area. The backwash rate of flow shall be three (3) times the filtration rate.

(2) *Anthracite filter.* A filter utilizing anthracite as a filter media, with filtration flow rate not exceeding three (3) gallons per minute per square foot (122 liters per minute per square meter) of filter area. The backwash rate of flow shall be three (3) times the filtration rate.

(3) *High rate filter.* A filter utilizing a media capable of filtration at a high rate of flow. The rate of flow shall be greater than five (5) gallons per minute per square foot (203.7 liters per minute per square meter) of filter area. The backwash rate of flow shall be the same as filtration rate.

(4) *Diatomaceous earth filter.* A filter utilizing diatomaceous earth as a filter media. There are two (2) types of these filters.

a. *Pressure or vacuum-type.* A diatomaceous earth filter through which the rate of flow does not exceed two (2) gallons per minute per square foot (81.5 liters per minute per square meter).

b.

Pressure or vacuum-type with slurry feeder. A filter equipped to continuously feed a diatomaceous earth suspension and having a rate of flow not to exceed three (3) gallons per minute per square foot (122 liters per minute per square meter).

A backwash sump pit with a stand pipe shall be installed to collect spent diatomaceous earth so that it can be collected and disposed of with solid waste. Any other method for accomplishing this may be submitted for consideration. Other filtration systems which are equal to or better than those described above may be used in a pool recirculation system with the approval of the administrative authority.

(c) *Gauges.* Gauges shall be installed as required, on all filter systems to readily indicate the operating pressures of recirculating systems. All gauges shall measure pressure directly in pounds per square inch or kilograms per square meter and shall have an indicator at least two (2) inches (5.08 centimeters) in diameter.

(d) *Rate of flow indicators.* The recirculating system shall be equipped with a rate of flow indicator, which has been approved by the administrative authority, and is located to visibly indicate the rate of flow. The indicator shall read in gallons per minute or liters per minute and shall be located to indicate the rate of flow of filtered water being returned to the pool. The indicator shall be of fixed calibration and properly sized so as to indicate the designed rate of flow at approximately midscale.

(e) *Hair and lint strainer.* At all installations where it is possible for water from the pool to pass through the filters, a strainer shall be provided on the suction side of the pump to prevent hair, lint and other matter from reaching the pump and filters. Strainers shall be corrosion-resistant with openings not over one-eighth (⅛) inch in size providing a free flow area at least four (4) times the area of the pump suction line at the strainer connection and shall be accessible for frequent cleaning.

(Ord. No 2351, 10-17-95; Ord. No. 2995, 7-17-07; Ord. No. 3233, 5-22-12)

Sec. 34-28.1. - Variance procedure for recirculation systems.

Variance procedure for type 2 condominium pools: Owners of type 2 condominium pools may apply for a variance to the recirculation system requirement for continual operation of the filtration system.

(1) Variances to the requirements of this section may be granted by the administrative authority where:

a. The pumps, filters, disinfectant and chemical feeders, flow indicators, gauges and all related parts of the swimming pool purification systems shall be kept in operation whenever the pool is available for use;

b. The pumps, filters, disinfectant and chemical feeders, flow indicators, gauges and all related parts of the swimming pool purification systems shall be kept in operation at all additional times and periods as may be necessary to maintain the water in the swimming pool in a clear and disinfected condition; and

c. The variation in flow during the filtration cycle shall not reduce the flow below sixty-five (65) percent of the required turnover rate; and

d. There is no degradation of public health or safety.

(2) The application for a variance to the administrative authority shall be on forms provided by the administrative authority and must include:

a. A statement indicating that the pool operator understands and agrees to comply with all of the requirements above; and

b. The reasons why the public health and safety will not be jeopardized if the variance is granted.

(3) Within a reasonable time, not to exceed sixty (60) days from the receipt of a complete written application the administrative authority shall grant, deny or grant with conditions such variance. The administrative authority shall consider, in addition to the requirements of subdivision (1), the following factors:

a. Any circumstances unique to the applicant's facility;

b. The effects that the variance would have on the health and safety of the public; and

c. Any other health and safety factors, as determined by the administrative authority.

(4) The administrative authority shall notify the applicant in writing of the approval of the variance, the effective date of the variance and the conditions attached to the approval of the variance. Failure to comply with the conditions or the degradation of disinfection or clarity shall result in the immediate revocation of the variance. A denial of the variance shall also be in writing giving the reasons for the denial.

(5) Each variance approved shall be conspicuously posted in public view in the pool area.

(6) Variances expire on October 1 and must be applied for on a yearly basis.

(Ord. No. 3233, 5-22-12)

Sec. 34-29. - Piping systems.

(a) The piping system for type 2 pools shall be composed of N.S.F.(National Sanitation Foundation) approved materials or equal, designed for the following operations:

(1) Filling the pool;

(2) Washing each filter to waste;

(3) Recirculating the pool water through the treatment equipment;

(4) Backwashing to waste;

(5) Operating suction cleaner;

(6) Emptying the pool; and

(7) Draining the system.

(b) There shall be no direct connections between the pool recirculating system and the sewer or the potable water supply. Fill spouts may be located under diving boards, under guard chairs or adjacent to pool ladder handrails. Fill spouts shall be installed a minimum of two (2) inches (5.08 centimeters) above the coping, or submersed fill spouts shall be equipped with a backflow preventer.

(c) Waste from backwashing shall be discharged into the sanitary sewer or in a manner approved by the administrative authority.

(d) The piping system within the filter room shall be securely anchored and shall be color coded as follows:

Freshwater—Blue (to check valve).

Backwash—Black.

Influent—Yellow.

Effluent—White.

Vacuum—Orange.

(e) All piping shall be designed to reduce friction losses to a minimum and to carry the required quantity of water at a maximum velocity not to exceed ten (10) feet per second (3.05 meters per second) for discharge piping, except for copper wire where the velocity for piping should not exceed eight (8) feet per second (2.44 meters per second). Suction velocity for all piping should not exceed six (6) feet per second (1.83 meters per second). Design system head calculations shall be required to confirm the adequacy of proposed pipe sizing and pump selection.

(f) A permanent specification placard shall be conspicuously displayed on or adjacent to the filter and shall be properly lighted. Specifications, shall be printed or typed and readily legible. The following information shall be included on the placard:

(1) Name and location of facility;

(2) Date of construction;

(3) Capacity in gallons (liters);

(4) Water surface area in square feet (square meters);

(5) Turnover rate in hours; and

(6) Rate of flow in gallons per minute (liters per minute).

(Ord. No 2351, 10-17-95; Ord. No. 2995, 7-17-07)

Sec. 34-30. - Pool outlets.

(a) All pools shall have one (1) or more main outlets in their deepest part for continuous removal of water for treatment and reuse or for emptying the pool. A main outlet shall be no less than three and three-tenths (3.3) feet (1.14 meters) nor more than nineteen and seven-tenths (19.7) feet (6 meters) from another main outlet nor more than sixteen and four-tenths (16.4) feet (5.98) meters from a pool wall.

(b) A main outlet opening shall be covered with a grating which is not hazardous to bathers, is secured in place, and is removable with tools. The grate opening area shall be large enough to have water entrance velocities not exceeding two (2) feet per second (0.6 meter per second).

(Ord. No 2351, 10-17-95)

Sec. 34-31. - Operational safety.

(a) Pumps, filters and other mechanical and electrical equipment for type 2 pools shall be enclosed in such a manner accessible only to authorized persons. Construction and drainage shall be such as to avoid the entrance and accumulation of water in the vicinity of the electrical equipment.

(b) The crossing of outdoor type 2 swimming pools by overhead electrical conductors is prohibited.

(c) All metal barriers or railings on which a broken electrical conductor might fall shall be effectively grounded.

(d) All lighting fixtures shall be prohibited directly above the water surface except as permitted by the Virginia Uniform Statewide Building Code, and shall be protected in a manner which will prevent broken glass from falling on any surface within the pool area. All electrical switches and receptacles shall be of weatherproof construction and resistant to corrosion.

(e) Lights shall be prohibited directly above or within one (1) meter horizontally of the pool rim in any indoor or covered swimming pool except as permitted in the Virginia Uniform Statewide Building Code.

(Ord. No 2351, 10-17-95; Ord. No. 2995, 7-17-07)

Sec. 34-32. - Hydrostatic relief valve requirement.

In all in-ground pools, one (1) or more hydrostatic relief valves shall be installed for the purpose of relieving the water pressure on the pool shell.

(Ord. No 2351, 10-17-95)

Sec. 34-33. - Pool lighting.

(a) Where type 2 swimming pools are to be used after dark, the swimming pool area shall be equipped with lighting fixtures of such number and design as to light all parts of the pool, the water therein, and the entire area. Fixtures should be installed in such a manner as to create no hazard to the bathers. The design and installation of the fixtures should be such that lifeguards can clearly see every part of the swimming pool, including decks, spring board and other appurtenances without being blinded by glare.

(b) Underwater lighting for such pools shall provide nine (9) watts per square yard (8.2 watts per square meter) of water surfaces and shall require ground fault circuit interrupters (GFCI), such that all areas of the pool surface are clearly visible. (See Virginia Uniform Statewide Building Code.)

(Ord. No. 2351, 10-17-95; Ord. No. 2995, 7-17-07; Ord. No. 3233, 5-22-12)

Sec. 34-34. - Decks.

All fill under decks shall be properly tamped and proper supports shall be provided to prevent decks from settling. Roof runoff or other drainage shall not be allowed to drain onto the deck. All areas surrounding the deck shall have surface drainage directed away from the deck area. Decks shall be free of cracks, pooling or standing water and made of non-skid materials. Pool decks shall not create a nuisance or health hazard.

(Ord. No. 2351, 10-17-95; Ord. No. 2995, 7-17-07; Ord. No. 3233, 5-22-12)

Sec. 34-35. - Closure of swimming pool gates.

It shall be unlawful for any person to allow any gate in a fence surrounding an outdoor swimming pool to remain unfastened while the pool is not in use.

(Ord. No. 2866, 4-5-05)

Sec. 34-36. - Swimming pool fences.

(a) It shall be unlawful for any person to own or control any outdoor swimming pool without having a fence surrounding such swimming pool, irrespective of the date on which such swimming pool was constructed. Such fence shall be in compliance with the International Residential Code or any successor provision.

(b) Violations of this section shall be punishable by a fine of not more than three hundred dollars ($300.00) Each day's violation shall be deemed a separate offense. In addition to such penalty, and not in lieu thereof, the city may seek to enjoin a continuing violation of this section by civil action filed in the circuit court.

(c) The provisions of this section shall not apply to any swimming pool operated by or in conjunction with any hotel located on a governmental reservation.

(Ord. No. 3008, 4-22-08; Ord. No. 3233, 5-22-12)

Sec. 34-37. - Reserved.

Sec. 34-38. - Pool inlets.

Where inlets are in pool walls, such inlets shall be spaced not more than nineteen and seven-tenths (19.7) feet (6 meters) on center around the pool perimeter. Where inlets are in the pool bottom, the number of such inlets and location shall be so designed as to ensure the proper distribution of filtered water. All inlets, except freshwater inlets and wading pool inlets, shall be at least fifteen (15) inches (38.1 centimeters) below the overflow level of the pool except for prefabricated gutters with forty-five (45) degree angle inlets in the bottom. Each inlet shall be provided with a means of adjusting flow through a range of at least fifty (50) percent of its design capacity. The control shall be readily accessible.

(Ord. No 2351, 10-17-95)

Sec. 34-39. - Suction cleaner.

A suction cleaner shall be provided. Where a suction cleaner is operated by the recirculating pump, a device shall be provided for throttling the flow(s) from the various pool outlet(s) (main drain, skimmer, surge tank, etc.). The suction cleaner line shall be connected through a hair catcher. Portable vacuum cleaner units shall be provided with outlets near the pool for the discharge of effluent. Hydraulic jet type suction cleaners shall be permitted in lieu of the above where freshwater pressure is thirty (30) psi (2.1 kilograms per centimeter ^{2}) or greater and is provided with an approved backflow prevention or antisiphon device if connected to the public or private potable water supply.

(Ord. No 2351, 10-17-95)

Sec. 34-40. - Reserved.

Sec. 34-41. - Safety and rescue equipment; other safety features.

Every type 2 swimming pool shall be equipped with the following aids to safety and rescue which shall be readily accessible at all times:

(1)

One (1) or more safety tubes recommended by the American Red Cross, YMCA or other accredited agency for lifesaving personnel, to be used by a certified lifesaver. There shall also be available lightweight but strong poles with blunted ends or shepherd's hooks, not less than twelve (12) feet (4 meters) in length.

(2) One (1) or more throwing ring buoys of less than fifteen (15) inches (38 centimeters) in diameter having a one hundred and fifty (150) pound (68.4 kilogram) test line attached of sufficient length to reach twice the width the pool, placed on racks at strategic points adjacent to the pool.

(3) A lifeline shall be provided at the break in grade between the shallow and deep portions of the swimming pool, or six (6) inches (15.2 centimeters) of either shallow side of the break with its position marked with visible floats at not greater than seven-foot (2.10-meter) intervals. The lifeline shall be securely fastened to wall anchors or corrosion-resistant materials and of a type which shall be recessed or have no projection which shall constitute a hazard when the line is removed. The line shall be of sufficient size and strength to offer a good handhold and support loads normally imposed by bathers.

(4) A readily-accessible room or area designated and equipped for emergency care of casualties. Minimum equipment shall be an approved first aid kit meeting Red Cross standards.

(5) A direct-dial telephone with numbers for police, fire and rescue shall be readily accessible at all times.

(6) Approved signs shall be maintained in a legible manner as follows:

a. Occupant load signs. A sign with clearly legible letters, not less than four (4) inches (10.2 centimeters) high shall be posted in a conspicuous place near the main entrance to a pool which shall indicate the number of occupants permitted for each pool.

b. Spa/hot tub pool. The occupant capacity of a spa/hot tub pool shall be based on one (1) bather for every ten (10) square feet (1.9 meters ^{2}) of pool water surface area.

c. The occupant capacity of all other pools shall be based on one (1) bather for every twenty-seven (27) square feet (2.50 meters ^{2}) of pool water surface area. Exception: Occupant capacity requirements do not apply to wading pools.

d. Permanent and conspicuous signs shall be posted indicating the most direct route to the pool for emergency, fire and rescue personnel and vehicles.

(7) In areas so indicated, signs with clearly legible letters not less than four (4) inches (10.2 centimeters) high shall be posted in a conspicuous place and shall state "NO DIVING ALLOWED."

(8) Warning signs for pools using gas chlorine. Pools at which gas chlorine is used for disinfection shall have a conspicuously posted sign on the exterior side of the entry door to the chlorine room, or on the adjacent wall area. In addition to displaying the appropriate hazard identification symbol for gas chlorine, the sign shall state with clearly legible letters not less than four (4) inches (10.16 centimeters) high, "DANGER: GASEOUS OXIDIZER-CHLORINE."

(9) Spa/hot tub warning signs. A precautionary sign with clearly legible letters shall be posted in a prominent place near the entrance to a spa pool which shall contain the following language:

"CAUTION

"a. Elderly persons, pregnant women, infants and those with health conditions requiring medical care should consult a physician before entering the spa.

"b. Unsupervised use by children under the age of fourteen (14) is prohibited.

"c. Hot water immersion while under the influence of alcohol, narcotics, drugs or medicines may lead to serious consequences and is not recommended.

"d. Do not use alone.

"e. Long exposure may result in nausea, dizziness or fainting."

(10) The depth of water in pools shall be marked at one-foot increments (30.48 centimeters) and at least every twenty (20) feet (6.1 meters) on both the horizontal deck surface and vertical surfaces of the pool wall. Numerals and letters shall be at least four (4) inches (10.16 centimeters) in height and have a good contrast with the pool walls and deck.

(11) Fixed and floating platforms in type 2 swimming pools shall be constructed with an air space of at least one (1) foot (0.3 meters) between the water surface and the underside of the platform.

(12) There shall be one (1) elevated lifeguard chair provided for every public pool with a depth of over five (5) feet (1.52 meters) and two thousand (2,000) square feet (202.99 meters ^{2}) of water surface. An additional chair will be required for each additional one thousand (1,000) square feet (92.8 meters ^{2}) of water surface.

(Ord. No. 2351, 10-17-95; Ord. No. 2995, 7-17-07; Ord. No. 3233, 5-22-12)

Sec. 34-42. - Disinfection equipment.

(a) Chemical feeding equipment. Means shall be provided for regulating the feeding of chemicals to the water in the recirculation system. The installation and use of mechanical, automatically operated, positive displacement chemical feeders or dye type chemical feeders is required.

(b) Chlorinating equipment. All type 2 pools shall be provided with approved chlorinating equipment which shall be capable of applying a dose of not less than ten (10) ppm of chlorine within the turnover time.

(c) The use of chlorine gas as a disinfectant shall require the approval of the administrative authority. Such approval will be granted only after it has been demonstrated that the gas chlorinator room or area will be located in a manner which will not adversely affect the safety and health of patrons, pool personnel or the public. Chlorine gas feeding equipment and chlorine gas cylinders and other hazardous chemicals shall be installed in an enclosed space or room, separate from the filter room and electrical panels and shall be equipped with a door capable of being locked. The operating gas cylinder shall be placed on an accurate scale and fastened in place during storage and use. Gas chlorinator rooms shall be equipped with a forced draft fan exhausting to the outside room from the floor level. The exhaust fan shall be capable of providing sixty (60) air changes per hour against the resistance offered by duct work or any other local factors. A fresh air inlet shall be provided near the ceiling. The gas chlorinator shall be protected from direct sunlight.

(d) An approved, self-contained gas mask for chlorine or a gas mask with a supply of oxygen under positive pressure or compressed air, either of which have been approved by the Bureau of Mines, in addition to local approval by the fire department, shall be provided where chlorine gas is being utilized. The mask shall be located accessible to, but outside of, the gas chlorinator room.

(Ord. No 2351, 10-17-95; Ord. No. 2995, 7-17-07)

Sec. 34-43. - Water heating.

Indoor type 2 pools shall be provided with water heating equipment thermostatically controlled and capable of maintaining the entire pool contents between seventy (70) and eighty-five (85) degrees Fahrenheit (twenty-one (21) degrees Centigrade and twenty-nine and forty-eight one hundredths (29.48) degrees Centigrade). All heated pools, spas and hot tubs shall maintain a minimum halogen residual of two (2.0) ppm or mg/l at all times. Spas and hot tubs shall have, on display, a clock and thermometer visible to occupants. Spas and pool water temperature shall not exceed one hundred and four (104) degrees Fahrenheit at any time that is occupied.

(Ord. No. 2351, 10-17-95; Ord. No. 2995, 7-17-07)

Sec. 34-44. - Reserved.

Sec. 34-45. - Showers, water closets, lavatories, etc.

(a) Showers, water closets and lavatories shall be provided for each sex, in accordance with the Virginia Uniform Statewide Building Code. The part of the structure containing the showers, water closets, urinals and lavatories shall be designed so that these facilities shall be in the line of travel used by the patrons prior to entering the pool area and shall be provided with an entrance and a separate exit opening directly to the pool deck; however, such exit shall not be near the deep portion of the pool.

(b) Floor for all dressing rooms, showers, toilets and lavatories shall be smooth but must have nonslip finish and the room shall be ventilated so that the floors do not remain damp or wet. Walls and floors for all dressing rooms, toilet rooms and lavatories shall be of waterproof, easily cleanable materials.

(1) *Dressing rooms.* Separate dressing rooms may be provided for both sexes. When provided, metal lockers, wire baskets, hooks or other sanitary means of storage of clothing and personal accessories shall be provided. All storage containers for clothing shall be kept clean and sanitary.

(2) *Showers.* Showers shall be provided in the proportion of one (1) for each forty (40) persons at the time of maximum load. Each shower shall supply an adequate quantity of tempered water. Water from each shower shall be provided with suitable facilities for making soap available.

(3) *Toilets.* Toilet facilities shall be provided as set forth in the Virginia Uniform Statewide Building Code.

(4) *Lavatories.* Lavatories shall be provided as set forth in the Virginia Uniform Statewide Building Code.

(5) *[Application of items (1) through (4) to certain bathers.]* Items (1) through (4) shall not apply when bathers have access to these facilities either in living quarters located not more than five hundred (500) feet (152.4 meters) in travel distance from the pool or in an adjacent building such as a recreational facility, clubhouse or cabana.

(6) *Mirrors.* Mirrors, if provided, shall be constructed in accordance with the Virginia Uniform Statewide Building Code.

(7) *Baby changing tables.* A baby changing table shall be located in each lavatory.

(8) *Stocked.* All lavatories shall be stocked at all times with hand soap, toilet tissue, and disposable towels or hand dryers.

(Ord. No. 2351, 10-17-95; Ord. No. 3233, 5-22-12)

Sec. 34-46. - Reserved.

Sec. 34-47. - Spectators/spectator areas.

Spectator areas shall be so separated from the pool area that spectators do not have access to the pool area. Spectator balconies shall not overhang any portion of the pool surface.

(Ord. No 2351, 10-17-95)

Sec. 34-48. - Wading pools.

(a) The slope of the bottom of any wading pool shall be no greater than 1:15 nor less than 1:40.

(b) Wading pools shall be so designed that no obstructions are within an area bounded by a line five (5) feet (1.5 meters) outside of the pool perimeter.

(c) Wading pools shall be separated from the main pool by a suitable barrier with a self-closing and self-latching device.

(d) Wading pools shall be provided with their own water return line to provide an adequate flow of chlorinated water, or shall have a filter system completely separate from the main pool with a turnover of two (2) hours or less.

(e) Wading pools shall be required to have a vacuum line.

(Ord. No 2351, 10-17-95)

Secs. 34-49—34-59. - Reserved.

ARTICLE III. - OPERATION

Sec. 34-60. - Conditions and equipment.

All equipment shall be maintained in satisfactory operating condition during operation of a type 2 pool.

(Ord. No. 2351, 10-17-95; Ord. No. 2995, 7-17-07)

Sec. 34-61. - Water supply.

All type 2 pools using well water shall have a satisfactory bacteriological sample taken prior to opening each year.

(Ord. No. 2351, 10-17-95; Ord. No. 2995, 7-17-07)

Sec. 34-62. - Clarity of water.

When a type 2 pool is open and in use, the water shall be sufficiently clear to permit the main drain to be clearly visible from the pool deck at all distances up to ten (10) yards.

(Ord. No. 2351, 10-17-95; Ord. No. 2995, 7-17-07)

Sec. 34-63. - Water treatment.

(a) Chemicals other than chlorine, bromine, hypobromous acid, sodium hypochlorite, calcium hypochlorite, muriatic acid, lime soda ash, sodium bicarbonate, aluminum sulfate (alum), cyanuric acid and sodium bisulfate shall not be used to treat swimming pool water without written permission from the administrative authority.

(b) The impounded water shall at all times be treated in a manner which will prevent the growth of algae and the breeding of mosquitoes or other vermin.

(c) When the unheated swimming pool is open for use, a minimum of one (1.0) ppm (parts per million) free chlorine residual shall be maintained in all parts of the pool.

(d) When the swimming pool is open for use, the pH of the pool water shall be kept between 7.2 and 7.8 with a minimum total alkalinity of eighty (80) ppm, calcium hardness of one hundred fifty (150) ppm.

(e) Approved test kits for all tests required in this article shall be available and in good working condition at all times.

(f) The operator or manager of each type 2 swimming pool shall maintain and operate all mechanical equipment in a safe and proper manner.

(g) Where cyanuric acid is used as a stabilizing agent for residual chlorine, or if the source of residual chlorine is from a chlorinated cyanurate, a chlorine residual of at least one and five-tenths (1.5) ppm shall be maintained with cyanuric acid residuals of at least forty (40) ppm.

(h) The operator or manager of each swimming pool shall cause an adequate supply of chemicals for the proper treatment of pool water to be on hand and available for use at all times.

(i) Protective clothing, i.e., respirators, goggles, eye protection, face masks, rubber gloves and aprons or coveralls, shall be provided for personnel handling chlorine chemical compounds and other caustic chemicals.

(Ord. No. 2351, 10-17-95; Ord. No. 2995, 7-17-07)

Sec. 34-64. - Records.

(a) Record forms supplied by the administrative authority shall be maintained up-to-date and shall be available for inspection while the pool is in use and shall be retained for a period of three (3) months.

(b) Unless otherwise modified by the administrative authority, disinfection tests, i.e., free chlorine residual and pH tests, shall be made and recorded at least once every two (2) hours while the pool is in operation. Alkalinity and calcium hardness tests shall be made and recorded at least weekly.

(Ord. No 2351, 10-17-95)

Sec. 34-65. - Placards.

Placards approved by the administrative authority and covering personal health and safety regulations shall be posted within the swimming facility. Areas restricted to operating personnel shall be prominently identified. Signs warning employees of emergency procedures to be followed in case of exposure or contact with hazardous materials shall be posted in the room or area where such hazardous materials are stored and/or used.

(Ord. No 2351, 10-17-95)

Sec. 34-66. - Food and drink area.

Any person in the process of eating or drinking shall be restricted to the area designated for the preparation and serving of food and drink. This area shall be at least ten (10) feet (3.05 meters) from the pool edge.

(Ord. No 2351, 10-17-95)

Sec. 34-67. - Cleaning and maintenance.

(a) All parts of the pool and related pool facilities and equipment shall be kept clean and maintained in good repair. Floors shall be kept free from cracks and other defects. Walls, ceilings, partitions, doors, lockers and similar surfaces and equipment shall be refinished in a manner acceptable to the administrative authority as often as necessary to be kept in good repair.

(b) Hoses shall be provided for regular flushing and cleaning. The whole pool area shall be kept clean, sanitary, and free of litter and vermin.

(c) Toilets, urinals, showers, wash basins and other plumbing fixture shall be maintained in a clean condition and in good repair.

(d) General housekeeping and health spa facilities. All floors, walls, ceilings, showers, bathtubs, saunas, steam and vapor rooms, cabinets, toilets, stalls and other physical facilities of the health spa must be in good repair and maintained in a clean and sanitary condition. All equipment and fixtures shall be thoroughly cleaned and effectively disinfected as often as needed to prevent the development of algae, fungi, mildew, mold or bacteria which may endanger the public safety or health.

(Ord. No 2351, 10-17-95)

Sec. 34-68. - Precautions relative to communicable diseases.

Any person having an obvious skin disease, nasal or ear discharge, inflamed eyes, or any communicable disease shall be excluded from the type 2 swimming facility pool.

(Ord. No. 2351, 10-17-95; Ord. No. 2995, 7-17-07)

Sec. 34-69. - Security.

Type 2 swimming pools shall be maintained in a manner which will not create a nuisance or hazard to the public safety and well-being when not in use, and the pool shall be adequately secured against entry by the public in general.

(Ord. No. 2351, 10-17-95; Ord. No. 2995, 7-17-07)

Sec. 34-70. - Lifeguards.

(a) There shall be at least one (1) lifeguard on duty at all times when the type 2 pool is of two thousand (2,000) square feet (185.79 square meters) of water surface or more and when open for use.

(b) Type 2 pools which are less than two thousand (2,000) square feet (185.79 square meters) may be used by adults, or children supervised by adults, without a designated lifeguard, provided it is posted as follows: "WARNING: No lifeguard on duty. Children under the age of fourteen (14) should not be allowed to use a pool without an adult in attendance."

(c) Any individual retained as a lifeguard for type 2 pools of two thousand (2,000) square feet (185.79 square meters) or more shall possess a current certification for meeting the standard of a lifesaver as recommended by the American Red Cross, YMCA or other accredited agency for lifesaving personnel.

(d) The ratio of lifeguards to bathers shall be one (1) lifeguard on duty for the first seventy-five (75) bathers and an additional lifeguard for every additional fifty (50) bathers, or fraction thereof. Lifeguards shall wear distinguishing emblems or clothing while on duty.

(e) Variance procedure for type 2 condominium pools: Owners of type 2 condominium pools greater than two thousand (2,000) square feet and less than three thousand (3,000) square feet may apply for a variance to the lifeguard requirements of this section.

(1) Variances to the requirements of this section may be granted by the administrative authority where:

a. The pool area is access controlled;

b. The entrance to and the pool area are under surveillance at all times when the pool is open without a lifeguard;

c. Pool rules, which are distributed to all members of the condominium, state that no minors under the age of 16 shall be in the pool area unless accompanied by an adult when no lifeguard is provided; and

d. There are conspicuously posted legible signs that contain the following language:

WARNING: NO LIFEGUARD ON DUTY.

MINORS UNDER THE AGE OF 16 ARE NOT ALLOWED TO USE THE POOL UNLESS ACCOMPANIED BY A RESPONSIBLE ADULT.

(2) The application for a variance to the administrative authority shall be on forms provided by the administrative authority and must include:

a. A statement requesting specific times for the variance to apply and the reasons for those times; and

b. The reasons why the public health and safety will not be jeopardized if the variance is granted.

(3) Within a reasonable time, not to exceed sixty (60) days from the receipt of a complete written application the administrative authority shall grant, deny or grant with conditions such variance. The administrative authority shall consider, in addition to the requirements of subdivision (e)(1), the following factors:

a. Any circumstances unique to the applicant's facility;

b.

The effects that the variance would have on the health and safety of the public; and

c. Any other health and safety factors, as determined by the administrative authority.

(4) The administrative authority shall notify the applicant in writing of the approval of the variance, the effective date of the variance and the conditions attached to the approval of the variance. Failure to comply with the conditions shall result in the immediate revocation of the variance.

A denial of the variance shall also be in writing giving the reasons for the denial.

(5) Each variance approved shall be conspicuously posted in public view in the pool area.

(6) Variances expire on October 1 and must be applied for on a yearly basis.

(Ord. No. 2351, 10-17-95; Ord. No. 2995, 7-17-07)

Sec. 34-71. - Laundering.

Bathing suits, towels and other reusable cloth materials furnished by a type 2 pool shall be properly laundered so as to be sanitary before being issued to bathers.

(Ord. No. 2351, 10-17-95; Ord. No. 2995, 7-17-07)

Sec. 34-72. - Animals.

Animals, fowl and/or pets shall not be permitted within the type 2 swimming pool. This section shall not apply to working dogs, such as seeing-eye dogs.

(Ord. No. 2351, 10-17-95; Ord. No. 2995, 7-17-07)

Chapter 35 - TAXATION

Footnotes:
*--- (**1**) ---*
Cross reference— *Deduction of taxes due city when paying warrant, § 2-190; dog license tax, § 5-48; license code, Ch. 18; payment of personal property taxes prerequisite to licensing of vehicles, § 21-77; gross receipts tax on bus operators, § 36-19.*
State Law reference— *Taxation, Code of Virginia, title 58.1; city tax levies, § 58.1-3005 et seq.; general authority of city relative to taxes and assessments, § 15.1-841.*

ARTICLE I. - IN GENERAL

Sec. 35-1. - Reserved.

Editor's note— Ord. No. 2441, adopted March 25, 1997, deleted § 35-1, which pertained to the police powers of special tax auditor, and which derived from Code 1965, §§ 33-57, 33-73, and 33-88.

Sec. 35-2. - Payment of taxes by use of credit card.

Any local levies authorized and imposed by this chapter may be paid by use of a credit card approved by the city treasurer. In addition to any penalties and interests arising pursuant to law, there shall be added to such payment a sum not to exceed four (4) percent of the amount of the tax, penalty and interest paid, as a service charge for acceptance of such card. Such service charge shall not exceed the percentage charged to the city by the credit card company.

(Ord. No. 980, 8-20-79)

State Law reference— Authority for above section, Code of Virginia, § 58.1-3013.

Sec. 35-3. - Exoneration from payment or refund in cases of erroneous assessment.

(a) If the commissioner of revenue, or the real estate assessor for real property taxes, is satisfied that an applicant has been erroneously assessed with any local levies, as provided in Code of Virginia, §§ 58.1-3980 and 58.1-3981, he shall certify to the city treasurer the amount erroneously assessed. When the commissioner of revenue or the real estate assessor who made the erroneous assessment has been succeeded by another person, such person shall have the same authority as the commissioner or the real estate assessor making the original erroneous assessment; provided he makes diligent investigation to determine that the original assessment was erroneously made and certifies thereto to the city treasurer and to the city council.

(b) Upon receipt of the certification provided for in subsection (a), above; the city treasurer shall, if the levies have not been paid, exonerate from payment so much thereof as is erroneous, and if such levies have been paid, the city treasurer shall refund to the applicant the amount erroneously paid, together with any penalties and interest paid thereon.

(c) No refund shall be made under this section in any case when application therefor is made more than three (3) years after the last day of the tax year for which such taxes were assessed; provided that, if any tax is declared to be unconstitutional by a court of competent jurisdiction, the city council may grant a refund of such tax hereunder to all taxpayers for those years to which the court proceeding was applicable.

(Code 1965, § 33-1; Ord. No. 3254, § 2, 8-14-12)

State Law reference— Authority for above section, Code of Virginia, § 58.1-3990.

Sec. 35-3.1. - Waiver of penalty and interest.

The commissioner of revenue, or the real estate assessor for real property taxes, is hereby authorized to waive any penalty and interest imposed by law for failure to file a return or to pay a tax provided that he first makes a determination that the failure to file the return or to pay the tax was not in any way the fault of the taxpayer.

Upon making such a determination, the commissioner of revenue or the real estate assessor shall notify the city treasurer in writing of the waiver of penalty and interest. Upon receipt of such letter, the city treasurer shall no longer be responsible for collecting such penalty and interest and shall mark his records accordingly.

(Ord. No. 1473, 7-9-84; Ord. No. 3254, § 2, 8-14-12)

Sec. 35-3.2. - Payment of interest on refunds of erroneously assessed local taxes.

In the event that a taxpayer is owed a refund because of an erroneous assessment of local taxes, interest shall be paid on the refund at the same rate as charged on delinquent payments of such taxes, unless (i) the amount of the refund is ten dollars ($10.00) or less or (ii) the refund is the result of a proration of personal property taxes made pursuant to section 35-6.1 of this article. Unless specifically provided for otherwise, interest on any such refund shall be paid from the date the tax was paid. Any person owed interest pursuant to this section may be required, as a prerequisite to receiving the interest, to provide his or her social security account number or federal tax identification number, along with appropriate documentation to verify such number.

(Ord. No. 2547, 6-22-99; Ord. No. 2592, 6-27-2000)

Sec. 35-4. - Tax, valuation, etc., date for tangible personal property, machinery and tools; date for filing returns; penalties.

(a) Tangible personal property and machinery and tools, except as provided under section 35-6.1, shall be taxed as of January first of each year. The status of all persons, firms, corporations and other taxpayers liable to taxation on any such property shall be fixed as of such date in each year and the value of such property shall be taken as of such date.

(b) (1) Every person owning any tangible personal property or machinery and tools on January first of any year shall file a return thereof with the commissioner of the revenue.

(2) With the exception of any person leasing a motor vehicle that is subject to the tax imposed under Code of Virginia, § 58.1-2402, every person leasing any tangible personal property or machinery and tools from the owner thereof on January first of any year shall file a return with the commissioner of the revenue when such property is located within the city, giving the name and address of the owner.

(3) The returns required by subsections (b)(1) and (b)(2) shall be filed on or before March first of each year. The commissioner of the revenue may grant a reasonable extension of time, not to exceed ninety (90) days, for the filing of a return provided good cause exists. A record shall be kept by the commissioner of every such extension. If any taxpayer who has been granted an extension of time for filing a return fails to file such return within the extended time, such taxpayer shall be treated as if no extension was granted.

(c) (1) If a return for tangible personal property, including machinery and tools, is not filed on or before the due date set forth in subsection (b)(3) above, there shall be added a penalty in the amount of ten (10) percent of the tax assessable on such return or ten dollars ($10.00), whichever is greater; provided, however, that the penalty shall in no case exceed the amount of the tax assessable. Such penalty shall not be assessed until the day after the return is due. Any such penalty, when assessed, shall become part of the tax.

(2) No penalty for failing to file a return shall be assessed if such failure was not the fault of the taxpayer or was the fault of the commissioner of the revenue. The commissioner of the revenue shall make determinations of fault relating to failure to file a return. The failure to file a return due to the death of the taxpayer or a medically determinable physical or mental impairment suffered by the taxpayer on the date the return is due, shall be presumptive proof of lack of fault on the taxpayer's part, provided the

return is filed within thirty (30) days of the due date; however, if there is a committee, legal guardian, conservator or other fiduciary handling the taxpayer's affairs, such return shall be filed within one hundred twenty (120) days after the fiduciary qualifies or begins to act on behalf of the taxpayer. Any such fiduciary shall, on behalf of the taxpayer, by the due date, file any required returns which come due after the 120-day period.

(d) A willful failure or refusal to file any return required by this section, as well as the act of making false statements with intent to defraud in any such return, shall be unlawful. Such an offense shall be punished as a Class 3 misdemeanor if the amount of the tax lawfully assessed in connection with the return is one thousand dollars ($1,000.00) or less, and as a Class 1 misdemeanor if the amount of the tax lawfully assessed in connection with the return exceeds one thousand dollars ($1,000.00).

(Ord. No. 981, 8-20-79; Ord. No. 1347, 12-6-82; Ord. No. 2586, 6-13-2000)

State Law reference— Similar provisions, Code of Virginia, § 58.1-3515.

Sec. 35-5. - When personal property taxes due and payable.

City taxes on personal property, except as provided under section 35-6.1, for each year shall be due and payable on or before June fifth of the year in which the same are assessed, except that, when assessment is made after June fifth, such taxes shall be due and payable on or before December fifth of the year in which the same are assessed.

(Code 1965, § 33-8; Ord. No. 981, 8-20-79; Ord. No. 1347, 12-6-82)

State Law reference— Authority to fix time for payment of taxes, Code of Virginia, § 58.1-39.6.

Sec. 35-6. - Penalty and interest when personal property taxes not paid on time.

(a) In the event any taxes on personal property are not paid on or before the time the same are due and payable as set forth in section 35-5, there shall be added thereto a penalty of ten (10) percent of the amount of such unpaid taxes or the sum of ten dollars ($10.00), whichever shall be greater, and such taxes and penalty shall bear interest commencing on the first day following the day such taxes were due, at the rate of nine and six-tenths (9.6) percent per annum during the first year such taxes are delinquent, and thereafter at the rate of eight and four-tenths (8.4) percent per annum. Provided however, that the penalty shall in no case exceed the amount of the tax due.

(b) The assessment of a penalty under this section shall not be deemed a defense to a criminal prosecution for failing to make such return of taxable property as may be required by law.

(c) No amendment to this section shall reduce the amount of penalty and interest which has been assessed or was assessable on delinquent taxes prior to the date of such amendment.

(d) Pursuant to Code of Virginia, § 58.1-3916, as amended, the city treasurer is hereby authorized, for good cause shown which shall be reflected in a written record, to waive the penalty and interest imposed by this section.

(Code 1965, § 33-9; Ord. No. 1096, 10-6-80; Ord. No. 1338, 11-1-82; Ord. No. 1364, 3-21-83; Ord. No. 1449, 5-7-84; Ord. No. 1610, 6-23-86; Ord. No. 2344, 7-11-95)

State Law reference— Authority for above section, Code of Virginia, § 58.1-3916.

Sec. 35-6.1. - Personal property tax on motor vehicles and trailers; proration thereof.

(a) There shall be a personal property tax at a rate established each year by the city council on motor vehicles and trailers (hereafter referred to in this section as "taxable property") which have a situs within the city on January first of each year and which acquire a situs within the city on or after January the second of each year. When taxable property acquires a situs within the city on or after January second, 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 city. When taxable property with a situs in the city is transferred to a new owner within the city, 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 more than one-half of a month shall be counted as a full month and a period of less than one-half of a month shall not be counted. All taxable property shall be assessed as of January first of each year or, if it acquires situs or has its title transferred after January first, as of the first day of the month in which the taxable property acquires situs within the city or has its title transferred. The owner of taxable property acquiring situs within the city or to whom taxable property is transferred shall file a declaration of property ownership to the commissioner of revenue within thirty (30) days of the date on which such property acquires a situs within the city or has its title transferred to such owner.

(b) When any taxable property loses its situs within the city or its title is transferred to a new owner, the taxpayer shall from that time be relieved from personal property tax on such taxable property and receive a refund of personal property tax already paid, or a credit toward taxable property newly transferred to the taxpayer, or a credit against personal property taxes outstanding against the taxpayer, at the option of the commissioner of revenue, on a monthly prorated basis, upon application to the commissioner of the revenue, provided that application is made within three (3) years from the last day of the tax year during which the taxable property lost situs or had its title transferred. The commissioner of revenue shall make a reasonable effort to ascertain and notify any taxpayer entitled to a prorated refund of personal property taxes pursuant to this subsection. The city treasurer shall stamp or have printed, on the application for a duplicate city decal for new or substitute vehicles as required by section 21-84 of this Code, notification to the applicant that he may be entitled to a prorated refund of personal property taxes assessed against any vehicle which he sold or transferred to a new owner.

(c) Taxes on all taxable property with a situs within the city on January first of each year, shall be paid on or before June fifth of each year. Taxes on all taxable property which acquires situs within the city or has its title transferred after January first and on or before April first of each year shall be paid on or before June fifth of each year. Taxes on all taxable property which acquires a situs within the city or has its title transferred after April first but on or before October first of each year shall be paid on or before December fifth, of the same year. Taxes on all taxable property which acquires situs within the city or has its title transferred after October first but on or before December fifteenth of each year shall be paid on or before March fifteenth of the following year.

(d)

Any person who fails to pay personal property taxes on or before the date due as provided above shall incur a penalty of ten (10) percent of the tax due, or ten dollars ($10.00), whichever is greater, which shall become part of the taxes due. Interest at the rate of nine and six-tenths (9.6) 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.

(e) 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 commissioner of revenue indicating that such tax on the assessed property was paid.

(Ord. No. 1347, 12-6-82; Ord. No. 1509, 1-7-85)

Sec. 35-7. - Exemption of certain household goods and personal effects.

The following household goods and personal effects are exempt from taxation and shall not be assessed for that purpose:

(1) Bicycles.

(2) Household and kitchen furniture, including gold and silver plates, plated ware, watches and clocks, sewing machines, refrigerators, automatic refrigerator machinery of any type, vacuum cleaners and all other household machinery, books, firearms and weapons of all kinds.

(3) Pianos, organs, phonographs and record players and records to be used therewith, and all other musical instruments of whatever kind, radio and television instruments and equipment.

(4) Oil paintings, pictures, statuary, curios, articles of virtu and works of art.

(5) Diamonds, cameos and other precious stones and all precious metals used as ornaments or jewelry.

(6) Sporting and photographic equipment.

(7) Clothing and objects of apparel.

(8) All other tangible personal property used by an individual or a family or household incident to maintaining an abode. The classification above set forth shall apply only to such property owned and used by an individual or by a family or household incident to maintaining an abode.

(Code. 1965, § 33-10)

State Law reference— Authority for above section, Code of Virginia, § 58.1-3504.

Sec. 35-7.1. - Exemption of farm animals, grains, farm machinery and implements, and agricultural products.

Farm animals, grains, farm machinery and implements, and agricultural products, as described in 58.1-3505(A) and (C) of the Code of Virginia, are hereby exempt from personal property taxation and shall not be assessed for that purpose.

(Ord. No. 2676, 12-4-01)

Sec. 35-8. - Service charge on certain real property exempt from taxation—Generally.

(a) A service charge shall be imposed upon and collected from the owners of all real estate within the city which is exempted from taxation under subsection (1) of section 58-12 [58.1-3606] of the Code of Virginia, which is property owned directly or indirectly by the commonwealth or any political subdivision thereof.

(b) The service charge imposed under this section shall be based on the assessed value of the real estate and the amount which the city shall have expended, in the year preceding the year such charge is assessed, for the purpose of furnishing police and fire protection, for the collection and disposal of refuse and the cost of public school education, in the case of faculty and staff housing of an educational institution, excluding any amount received from federal or state grants specifically designated for such purposes. The expenditures for services not provided for certain real estate shall not be applicable to the calculations of the service charge for such real estate, nor shall such expenditures be applicable when a service is currently funded by another service charge. The service charge shall not be applicable to public roadways or property held for future construction of such roadways. The service charge, which shall not exceed twenty (20) percent of the real estate tax rate, shall be fixed by dividing such expenditures by the assessed fair market value of all of the real estate within the city, except real estate owned by the United States Government or any of its instrumentalities, expressed in hundred dollars, including nontaxable property.

(c) The service charges imposed pursuant to this section are to be assessed and collected in the same manner as taxable real estate in the city, pursuant to the various sections of this Code and the Code of Virginia that are applicable thereto.

(Code 1965, §§ 33-7.8, 33-7.9, 33-7.12)

State Law reference— Authority for above section, Code of Virginia, § 58.1-3400.

Sec. 35-9. - Same—When due and payable; penalty and interest on delinquencies.

(a) The service charges imposed pursuant to section 35-8 shall be due and payable during the year for which the same are assessed in two (2) equal installments as follows: One-half (½) on December first and one-half (½) on June first of such year. In the event that the service charges are assessed after December first, such charges shall be due and payable on the following June first of each fiscal year.

(b) In the event any installment of the service charges imposed pursuant to section 35-8 is not paid on or before the time the same is due and payable, as set forth in this section, there shall be added thereto a penalty of five (5) percent of the amount of such unpaid installment and such installment and penalty shall bear interest at the rate of nine and six-tenths (9.6) percent per annum from the end of the sixth month next following the month such installment was due, but not paid, until paid.

(Code 1965, §§ 33-7.10, 33-7.11; Ord. No. 1095, 10-6-80)

Sec. 35-10. - Same—Exemptions.

The real estate lawfully owned by the City of Norfolk, the Hampton Roads Sanitation District Commission and the Chesapeake Bay Bridge Tunnel Commission lying wholly or partly within the corporate limits of the city shall be exempt from the service charge imposed pursuant to section 35-8.

(Code 1965, § 33-7.13)

State Law reference— Authority for above section, Code of Virginia, § 58.1-3400.

Sec. 35-11. - Payment of administrative costs in collection of delinquent taxes or charges.

The treasurer of the city is hereby authorized to impose a fee to cover the administrative cost associated with the collection of delinquent taxes or other delinquent charges. Such fee shall be in addition to all penalties and interests, and shall be thirty dollars ($30.00) for taxes or other charges collected more than thirty (30) days after notice of delinquent taxes or charges has been provided, pursuant to Virginia Code § 58.1-3919, but prior to any judgment. The fee shall be thirty-five dollars ($35.00) for taxes or other charges collected subsequent to judgment.

(Ord. No. 1291, 6-14-82; Ord. No. 2083, 7-9-91; Ord. No. 2595, 6-27-00; Ord. No. 2773, 6-24-03)

Sec. 35-12. - How tax payments credited by treasurer.

Any payment of local levies received by the treasurer shall be credited first against the most delinquent local account of the person making payment unless the treasurer shall deem it appropriate to apply such payment to a local account which is less delinquent in time.

(Ord. No. 1322, 9-13-82)

Sec. 35-13. - Applications for personal property tax relief by elderly or disabled persons.

Any deadline for submission of an affidavit or written statement for relief from personal property taxes by qualifying persons totally and permanently disabled or not less than 65 years old shall be the same as provided in section 35-66.

(Ord. No. 3317, 11-26-13)

Sec. 35-14. - Change in circumstances; proration.

An individual who, based upon the previous year's income limitations or financial worth limitations, does not qualify for the tax rate upon a motor vehicle owned and used primarily by or for someone at least sixty-five years of age or found to be permanently and totally disabled, as authorized by Code of Virginia, § 58.1-3506.1 et seq., may nonetheless qualify for the current year by filing an affidavit that clearly shows a substantial change of circumstances that was not volitional on the part of the individual to become eligible for the tax rate. If the application pursuant to this section is approved, the extension of the preferential tax rate shall be prorated by multiplying the applicable tax due by a fraction, wherein the number of complete months of the year such property would be eligible for the preferential tax rate is the numerator and the number twelve (12) is the denominator. Any extension of the preferential tax rate under this section is conditioned upon the individual filing another affidavit after the end of the year in which the preferential tax rate is provided, within sixty (60) days of the completion of the year showing that the actual income and financial worth levels were within the limitations of the personal property tax levy ordinance. If the actual income and financial worth levels exceeded the limitations, any extension of the preferrable rate shall be nullified for the taxable year subject to treatment under this section and the taxable year immediately following.

(Ord. No. 3744, § 1, 6-20-23)

Secs. 35-15—35-25. - Reserved.

ARTICLE II. - REAL ESTATE TAXES

Footnotes:
*--- (**2**) ---*
***Charter reference—** Assessment of real estate for local taxation, § 8.07; authority of city to levy higher tax in areas receiving additional or more complete governmental services, § 2.02(b).*

DIVISION 1. - GENERALLY

Sec. 35-26. - Office of real estate assessor created; appointment, term and general powers and duties of assessor.

The office of city real estate assessor is hereby created, such office to be filled by the appointment of a single assessor by the city council. The person so appointed shall be known as the city real estate assessor, shall hold office at the pleasure of the council and shall give his entire time to the duties of his office. He shall have all the powers and duties prescribed by the laws of the state for assessors of real estate and all the duties now devolved upon the commissioner of revenue of the city with respect to the assessment of real estate for taxation and assembly of the land book shall be transferred to and devolve upon the city real estate assessor upon his taking the oath of office.

(Code 1965, §§ 33-4.1, 33-4.2; Ord. No. 3254, § 2, 8-14-12)

Charter reference— Appointment and duties of assessors, § 8.07.

Sec. 35-27. - Annual assessments generally.

(a) All real estate in the city not exempted from taxation by the Constitution of the state and not assessable for taxation by the state corporation commission as provided by law shall be assessed annually, by the city real estate assessor, for taxation by the city.

(b) The city real estate assessor shall assess annually for taxation at its fair market value all real estate within the city subject to assessment by him, which shall include all lands, buildings, structures and improvements thereon and all rights thereto and interests therein, and he shall have the right and power to do all things necessary to assess such property. Except with respect to new construction and other cases where such assessments are not practicable, such assessments shall be completed not later than the thirty-first day of January of the year, preceding the year for which such assessments shall be effective, and taxes for each fiscal year on such real estate shall be made on the basis of the last assessment made prior to such fiscal year, subject to such changes as may have been lawfully made.

(Code 1965, §§ 33-4.1, 33-4.3)

State Law reference— Real estate assessments, Code of Virginia, §§ 58.1-3200 et seq.

Sec. 35-28. - Assessment of new buildings substantially completed or fit for use, occupancy or enjoyment; abatement of levies on buildings razed, destroyed, or damaged.

Notwithstanding any other provision of this article, all new buildings substantially completed and fit for use, occupancy and enjoyment shall be assessed in accordance with the provisions of section 58-811.1 [58.1-3292] of the Code of Virginia, as of the first day of each quarter. Likewise, levies on buildings which are razed or destroyed or damaged by a fortuitous happening beyond the control of the owner shall be abated in accordance with the provisions of section 58-811.2 [58.1-3222] of the Code of Virginia, as of the first day of each quarter.

(Code 1965, § 33-4.7)

Sec. 35-29. - Assessment of closed streets and alleys.

Whenever any ordinance shall be passed closing any street, alley or other public place to public use or travel, the city clerk shall send a certified copy of such ordinance to the city real estate assessor and the city real estate assessor shall enter on the land book for the next ensuing year, in the name or names of the abutting owners or persons who may be entitled to such property, the parcels of land formerly occupied by such street, alley or other public place.

(Code 1965, § 33-4.9)

Sec. 35-30. - Notice of change of assessment.

(a) Whenever the assessment of any real estate is changed by the city real estate assessor, he shall cause notice to be given by mail directly to each property owner to whom tax bills are sent, as shown by the land books of the city, whose assessment has been changed. Such notice shall be sent by postpaid mail, at least fifteen (15) days prior to the date of a hearing to protest such change, to the address of the property owner as shown on such land books, but the validity of such assessment shall not be affected by any failure to give or receive notice.

(b) Every notice given pursuant to this section shall, among other matters, show the district in which the real estate is located, the amount and the new appraised value of land, the new appraised value of improvements, the new assessed value of each, if different from the appraised value, and the assessment ratio employed by the city. It shall further set out the time and place at which persons may appear before the city real estate assessor and present objections thereto.

(c) Any person who receives tax bills on behalf of the owner of real property and, as a result thereof, also receives a notice given pursuant to this section shall transmit the notice to such owner, at his last known address, immediately on receipt thereof, and shall be liable to such owner, in an action at law, for liquidated damages in the amount of twenty-five dollars ($25.00), in the event of a failure to so transmit the notice. Mailing such notice to the last known address of the property owner shall be deemed to satisfy the requirements of this subsection.

(d) Notwithstanding the above provisions of this section, if the address of a taxpayer, as shown on the tax record, is in care of a lender, the lender shall, upon request, furnish the real estate assessor the current address of the taxpayer, as it appears on the books of the lender, or the parties may, by agreement, permit

the lender to forward notices provided for in this section to the property owner, with the cost of postage to be paid by the city.

(Code 1965, § 33-4.4; Ord. No. 2500, 8-4-98)

State Law reference— Similar provisions, Code of Virginia, § 58.1-3330.

Sec. 35-31. - Form of completed assessments and extension of taxes thereon; delivery of land book to circuit court clerk; etc.

Upon final completion of assessments pursuant to this article, the city real estate assessor shall make four (4) copies thereof in the form in which the land books are made out, which shall be delivered to the commissioner of revenue of the city and on which the commissioner of revenue shall extend the taxes levied thereon. A copy of the land book containing such assessments shall be delivered to the clerk of the circuit court of the city. The assessor shall, upon the completion of each annual assessment, certify on the land book, on oath, that all real estate subject to taxation by the city has been assessed by him at the fair market value thereof, and that there are no errors on the face of the land book.

(Code 1965, § 33-4.5)

Sec. 35-32. - Effective date of assessments; tax and assessment year.

Each annual assessment shall be effective on the first day of July of the year for which the assessment is made and the taxes and other charges shall be extended on the basis of every such assessment. The beginning of the tax and assessment year for the assessment of taxes on all real estate assessable by the city for taxation shall be July first and the owner of such real estate on that day shall be assumed with taxes for the year beginning on that day.

(Code 1965, § 33-4.6)

Sec. 35-33. - Authority of assessor to direct personal appearance and testimony and production of books and records; remedy for failure to comply with such directive.

(a) The city real estate assessor, in performing his duties, shall have authority to direct taxpayers, their agents and other persons who may have information on the subject to appear and testify under oath concerning the ownership and value of real estate assessable by the city real estate assessor and to require the production of books of account and other papers and records containing such information for inspection by the city real estate assessor.

(b) The city council may, by resolution, apply to the judge of the general district court for a subpoena or subpoena duces tecum against any person refusing to answer a directive of the city real estate assessor or failing or refusing to furnish information or to produce books of account, papers or other records required by the city real estate assessor. Any person failing to comply with any such subpoena shall be subject to punishment for contempt by the court issuing the subpoena.

(Code 1965, § 33-4.8; Ord. No. 1010, 12-3-79)

Sec. 35-34. - Information to be supplied assessor by other city departments and bureaus.

The departments and bureaus of the city having in their possession or under their control data or information which will aid the city real estate assessor in carrying out his duties, shall furnish same to the city real estate assessor on written application therefor.

(Code 1965, 33-4.10)

Sec. 35-35. - Equalization of assessments.

(a) In order to equalize assessments of real estate annually, the city real estate assessor shall hold hearings between March fifteenth and April thirtieth of each year, or as often as may be necessary as determined by the city real estate assessor, for the purpose of receiving such evidence as may be presented to him by any taxpayer with respect to the inequality of his assessment made during the twelve-month period ending January thirty-first last ensuing. Any taxpayer feeling aggrieved by any such assessment of his property may apply to the city real estate assessor for the equalization thereof on forms provided by the city real estate assessor for that purpose.

(b) At least fifteen (15) days before the hearings provided for in this section, notice thereof shall be given by publication one time in one of the newspapers having general circulation in the city. Notwithstanding such notice, such hearings may be granted by the city real estate assessor upon appointments.

(c) After hearing the evidence referred to in subsection (a) above, the city real estate assessor may take such action as he may deem necessary to equalize assessments and shall record the action taken in the land book. Each taxpayer having made application for such hearing and any other taxpayer affected by the action of the city real estate assessor shall be advised of the decision of the city real estate assessor with respect to such assessment.

(d) The city real estate assessor may authorize persons employed in his office who are competent so to do to hold any hearing referred to in this section, provided the evidence presented or a summary thereof is transmitted to the city real estate assessor for action with respect thereto.

(e) The board of equalization shall have the powers to revise, correct and amend any assessment of real estate, other than real estate assessable by the state corporation commission. The board shall begin hearing assessment appeals the first Thursday in July of each year. An application for appeal to the board must be received by August 30 of the year in which the assessment was made. The city real estate assessor shall include this deadline in the notice of assessment.

(Code 1965, §§ 33-4.11—33-4.14; Ord. No. 3144, 7-6-10; Ord. No. 3215, 1-24-12; Ord. No. 3607, 1-7-20)

Charter reference— Board of equalization, § 8.07.

Note— The effective date of this section shall be January 1, 2011.

Sec. 35-36. - When taxes due and payable.

City taxes on real estate for each year shall be due and payable during the year for which the same are assessed in two (2) equal installments, as follows: One-half (½) on December fifth and one-half (½) on June fifth of such year. In the event that such taxes are assessed after December fifth, they shall be due and payable on the following June fifth.

(Code 1965, § 33-2)

State Law reference— Authority for above section, Code of Virginia, § 58.1-3916.

Sec. 35-37. - Penalty and interest when installment not paid on time.

(a) In the event any installment of taxes on real estate is not paid on or before the time the same is due and payable as set forth in section 35-36, there shall be added thereto a penalty of ten (10) percent of the amount of such unpaid installment or the sum of ten dollars ($10.00), whichever shall be greater, and such installment and penalty shall bear interest commencing on the first day following the day such taxes were due, at the rate of nine and six-tenths (9.6) percent per annum during the first year such taxes are delinquent, and thereafter at the rate of eight and four-tenths (8.4) percent per annum. Provided however, that the penalty shall in no case exceed the amount of the tax due.

(b) The assessment of a penalty under this section shall not be deemed a defense to any criminal prosecution for failing to make such return of taxable property as may be required by law.

(c) No amendment to this section shall reduce the amount of penalty and interest which has been assessed or was assessable on delinquent taxes prior to the date of such amendment.

(d) Pursuant to Code of Virginia, § 58.1-3916, as amended, the city treasurer is hereby authorized, for good cause shown which shall be reflected in a written record, to waive the penalty and interest imposed by this section.

(e) Pursuant to Code of Virginia, § 58.1-3916, the city treasurer is hereby authorized, for good cause shown which shall be reflected in a written record, to extend the period of time for a taxpayer to pay real estate taxes, not to exceed ninety (90) days from the due date. If any taxpayer who has been granted an extension of time for filing his return fails to pay the taxes within the extended time, his case shall be treated the same as if no extension had been granted, with the penalty and interest being assessed on the first day following the day the taxes would have been due absent the extension.

(Code 1965, § 33-3; Ord. No. 1094, 10-6-80; Ord. No. 1339, 11-1-82; Ord. No. 1361, 3-21-83; Ord. No. 1450, 5-7-84; Ord. No. 1611, 6-23-86; Ord. No. 2344, 7-11-95; Ord. No. 3034, 6-24-08)

State Law reference— Authority for above section, Code of Virginia, § 58.1-3916.

Sec. 35-38. - Suits in equity to enforce liens for delinquent taxes.

(a) Pursuant to article 8 of chapter 21 of title 58 (Code of Virginia, § 58-1117.1 et seq.) [58.1-3965 et seq.] of the Code of Virginia, the city attorney may institute and conduct, in the name of the city, all necessary and proper suits in equity for the purpose of enforcing all the liens of the city for real estate taxes on any real estate on which taxes are delinquent and unpaid for a period of three (3) years or more, exclusive of the then current year.

(b) The city attorney is hereby authorized to appoint such special assistants to the city attorney as are necessary for the specific purpose of instituting suits for the enforcement of liens of the city of real estate taxes. Such special assistants to the city attorney shall be compensated from the proceeds of the enforcement of the lien.

(c) No less than thirty (30) days prior to the initiation of any legal proceedings under this section, notice shall be mailed by the city treasurer to the record owner of any such real estate at his last known address as listed in the tax records of the city, and to his current address as listed in the telephone directory if it is different from the address listed in the tax records.

(Code 1965, § 33-7; Ord. No. 1341, 11-8-82; Ord. No. 1428, 1-16-84)

Cross reference— City attorney, § 2-166 et seq.

Sec. 35-39. - Apportionment of city taxes when part of real estate becomes separately owned.

Upon application of the owner of the separate part, the circuit court of the city may, when any part of real estate assessed with city taxes has become, since such assessment, separate property of any of the original owners or of any other person in interest, determine the value, as of the date of the original assessment, of any portion of such real estate so separately owned. The court may also determine what part of the whole amount of the taxes, and of the penalties, if penalties have accrued upon the taxes, and of the expenses of the sale, if the property has been sold for the nonpayment of such taxes, may be paid by such owner of such separate part, his heirs or assigns, in order to release or redeem such part from the lien of the taxes originally assessed. The amount so fixed shall bear the same relation to the whole amount of such taxes, penalties and expenses as the value of such part of such real estate bore to the value of the whole, as of the date of the original assessment. The city attorney and the commissioner of revenue shall have at least five (5) days' notice of such application, and the order of the court shall show that fact. Upon the payment of the amount so fixed, including all costs, the owner of any such part, his heirs, or assigns, shall hold the same free from any lien for city taxes for the year or years in question.

(Ord. No. 1510, 1-14-85)

State Law reference— Authority of city to adopt above section, Code of Virginia, § 58.1-3224.

Sec. 35-40. - Release of lien on portion of real estate upon payment of delinquent taxes.

When an individual purchases or acquires a portion of a tract of real estate, the individual or treasurer may apply to the commissioner of revenue, or the real estate assessor, to determine the amount of any tax or assessment that is properly chargeable against such portion of real estate. The treasurer shall release such portion of real estate from any lien for delinquent taxes, upon receipt of payment for the total amount of taxes and penalty and interest due on such portion of real estate.

(Ord. No. 1835, 3-20-89)

Sec. 35-41. - Energy efficient buildings.

(a) In accordance with Code of Virginia, § 58.1-3221.2, as amended, energy-efficient buildings, not including the real estate or land on which they are located, are a separate class of property from other classifications of real property.

(b) The definition of "energy-efficient buildings" and requirements for certification as an "energy-efficient building" shall be in accordance with Code of Virginia, § 58.1-3221.2, as amended.

(c) The owner of an energy-efficient building may apply to the city building official on forms provided by the city building official for certification as an energy-efficient building.

(d) Upon application by the owner of an energy-efficient building, the city building official shall inspect the property and certify that the building meets the technical requirements for classification.

(e) Any appeal of a determination of the city building official under this section shall follow the appeals process provided by local and state law for appeals of determinations under the Virginia Uniform Statewide Building Code.

(f) Upon review and certification by the city building official, the application and certification shall be forwarded to the real estate assessor for purposes of the city land book and assessment.

(Ord. No. 3134, 5-11-10; Ord. No. 3254, § 2, 8-14-12)

Sec. 35-42. - Administration of tax exemption program for disabled veterans, surviving spouses of servicemembers killed in action, and surviving spouses of certain first responders killed in the line of duty; application of exemption programs to special service districts; disabled veteran personal property exemption.

(a) The disabled veteran real property tax exemption, surviving spouse of servicemembers killed in action, and surviving spouse of certain first responders killed in the line of duty programs shall be administered by the commissioner of the revenue. The commissioner of the revenue shall administer these programs in accordance with the Virginia Constitution and the Virginia Code.

(b) For the programs described in subsection (a), the exemption or partial exemption authorized by the General Assembly shall extend in the same manner to any additional levies imposed by special service districts.

(c) The disabled veteran personal property exemption authorized by Virginia Code § 58.1-3668 shall be administered by the commissioner of the revenue. The commissioner of the revenue shall administer this program in accordance with the Virginia Constitution and the Virginia Code. Any applicant seeking such exemption shall make an application to the commissioner of the revenue. The application shall allow the applicant to note which vehicle is owned and used primarily by or for the eligible veteran, and a re-application is required if the veteran desires to change the vehicle subject to the exemption among the vehicles owned and used primarily by or for the eligible veteran. The effect of such re-application and the resulting change of vehicle subject to the exemption shall be prospective only. Such application shall include information sufficient for the commissioner of the revenue to determine initial eligibility, and the commissioner shall confirm continuing eligibility for such exemption every three years thereafter.

(Ord. No. 3254, § 2, 8-14-12; Ord. No. 3504, § 2, 6-6-17, eff. 7-1-17; Ord. No. 3601, 9-17-19; Ord. No. 3651, 4-6-21; Ord. No. 3715, 11-1-22)

Secs. 35-43—35-45. - Reserved.

DIVISION 2. - ASSESSMENT OF LAND DEVOTED TO AGRICULTURAL, HORTICULTURAL, FOREST OR OPEN SPACE USES

Footnotes:

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State Law reference— *Authority of city to adopt ordinance similar to this division, Code of Virginia, § 58.1-3231.*

Sec. 35-46. - Findings of fact.

The city council finds that the preservation of real estate devoted to agricultural, horticultural, forest and open space uses within its boundaries is in the public interest and, having heretofore adopted a land-use plan, hereby ordains that such real estate shall be taxed in accordance with the provisions of article 1.1 of chapter 15 of title 58 (§ 58-769.4 et seq.) [58.1-3229] of the Code of Virginia and of this division.

(Code 1965, § 33-7.1)

Sec. 35-47. - Application for classification and assessment generally.

(a) The owner of any real estate meeting the criteria set forth in sections 58-769.5 [58.1-3230] and 58-769.7(b) [58.1-3233] of the Code of Virginia shall submit an application for taxation on the basis of a use assessment to the city real estate assessor, within thirty (30) days after his notice of increase in assessment is mailed, or by May first, whichever is later. Such application shall be on forms provided by the state department of taxation and supplied by the city real estate assessor and shall include such schedules, photographs, drawings and additional information as may be required by the city real estate assessor. A separate application shall be filed for each use for which qualification is sought.

Applications may be filed no more than sixty (60) days after the filing deadline specified herein, upon the payment of a late filing fee of ten dollars ($10.00).

(b) Those property owners who previously made application or revalidations for 1977 shall be required to revalidate that approved application or revalidation by June 30, 1977. Thereafter, property owners must revalidate annually any previously approved application with the real estate assessor no later than June 5 on forms prepared by the city real estate assessor and approved by the city council.

Revalidation forms may be filed after June 5, but no later than July 1, upon the payment of a late filing fee of ten dollars ($10.00).

(c) An application shall be submitted under this section whenever the use or acreage of such land previously approved changes, except when a change in acreage occurs solely as the result of a conveyance necessitated by governmental action or condemnation of a portion of any land previously approved for taxation on the basis of use assessment.

(Code 1965, § 33-7.2; Ord. No. 1598, 4-28-86)

Sec. 35-48. - Determination by assessor.

(a) Promptly upon receipt of any application under this division, the city real estate assessor shall determine whether the subject property meets the criteria for taxation hereunder. If the assessor shall determine that the subject property does meet such criteria, he shall determine the value of such property for its qualifying use, as well as its fair market value.

(b)

In determining whether the subject property meets the criteria for "forest use," the city real estate assessor may request an opinion from the director of the state department of conservation and economic development and, in determining whether the subject property meets the criteria for "open space use," he may request an opinion from the director of the state commission of outdoor recreation. Upon the refusal of the director of conservation and economic development or the director of the commission of outdoor recreation to issue an opinion or in the event of an unfavorable opinion which does not comport with standards set forth by the respective director, the party aggrieved may seek relief from any court of record wherein the real estate in question is located, and in the event that the court finds in his favor, it may issue an order which shall serve in lieu of an opinion for the purposes of this division.

(Code 1965, § 33-7.3)

Sec. 35-48.1. - Special requirements as to open-space uses.

In addition to all other requirements recited in this division, no property shall qualify for assessment on the basis of an "open-space use" unless the real estate assessor shall first determine that such property is (i) within an agricultural, a forestal, or an agricultural and forestal district entered into pursuant to chapter 36 of title 15.1, Code of Virginia, or (ii) subject to a recorded perpetual easement that is held by a public body, and promotes the open-space use classification, as defined in section 58.1-3230, Code of Virginia, or (iii) subject to a recorded commitment entered into by the landowners with the local governing body not to change the use to a nonqualifying use for a time period stated in the commitment of not less than four (4) years nor more than ten (10) years. Such commitment shall be subject to uniform standards prescribed by the director of the department of conservation and historic resources pursuant to the authority set out in section 58.1-3240, Code of Virginia. Such commitment shall run with the land for the applicable period, and may be terminated in the manner provided in section 15.1-1513, Code of Virginia, for withdrawal of land from an agricultural, a forestal or an agricultural and forestal district.

(Ord. No. 1910, 9-11-89)

Sec. 35-49. - Land book entries; tax to be extended from use value.

The use value and fair market value of any property qualifying under this division shall be placed on the land book before delivery to the city treasurer and the tax for the next succeeding tax year shall be extended from the use value.

(Code 1965, § 33-7.4)

Sec. 35-50. - Roll-back tax when use changes to nonqualifying use or when property is rezoned.

There is hereby imposed a roll-back tax, in such amount as may be determined under Code of Virginia, section 58.1-3237, upon any property as to which either the use changes to a nonqualifying use under this division or for which a change in zoning to a more intensive use at the request of the owner or his agent occurs, plus simple interest on such roll-back taxes at the same interest rate applicable to delinquent real estate taxes pursuant to section 35-37 of this Code. The real estate assessor shall determine and assess the roll-back tax of the owner of any real estate liable for such tax, which shall be paid to the city treasurer within thirty (30) days after the assessment. Failure of the owner to pay such tax within thirty (30) days shall cause the owner to be liable for an additional penalty of ten (10) percent of the amount of the roll-back tax, which penalty shall be collected as part of the tax. In addition to such penalty, there is

hereby imposed interest at the same interest rate applicable to delinquent real estate taxes pursuant to section 35-37 of this Code on the amount of roll-back tax for each month or fraction thereof during which failure to pay continues. For property rezoned after July 1, 1988, but before July 1, 1992, no penalties or interest, except as provided in subsection B of Code of Virginia, section 58.1-3237, shall be assessed, provided the rollback tax is paid on or before October 1, 1992.

(Code 1965, §§ 33-7.5, 33-7.6; Ord. No. 1117, 11-17-80; Ord. No. 1406, 10-3-83; Ord. No. 2164, 7-7-92)

Sec. 35-50.1. - Removal of delinquent parcel from land use program.

If on December first of any year the taxes for any prior fiscal year on any parcel of real property which has a special assessment as provided for in this division are delinquent, the treasurer shall forthwith send notice of that fact and the general provisions of this division to the property owner by first class mail. If after sending such notice, such delinquent taxes remain unpaid on May first, the treasurer shall notify the real estate assessor who shall remove such parcel from the land use program.

(Ord. No. 1117, 11-17-80)

Editor's note— Ord. No. 1117, adopted Nov. 17, 1980, amended Code 1965, § 33-7.6 by adding a new subsection (b), codified at the editor's discretion as § 33-50.1.

Sec. 35-51. - Misstatements in application filed under division.

Any person making a material misstatement of fact in any application filed pursuant to this division shall be liable for all taxes, in such amounts and at such times as if such property had been assessed on the basis of fair market value as applied to other real estate in the taxing jurisdiction, together with interest and penalties thereon, and he shall be further assessed with an additional penalty of one hundred (100) percent of such unpaid taxes.

(Code 1965, § 33-7.6; Ord. No. 1117, 11-17-80)

Sec. 35-52. - Applicability of general tax law.

The provisions of title 58 of the Code of Virginia applicable to local levies and real estate assessment and taxation shall be applicable to assessments and taxation under this article *mutatis mutandis* including, without limitation, provisions relating to tax liens and the correction of erroneous assessments, and for such purposes the roll-back taxes shall be considered to be deferred real estate taxes.

(Code 1965, § 33-7.7)

Secs. 35-53—35-60. - Reserved.

DIVISION 3. - EXEMPTION, DEFERRAL OR FREEZE FOR ELDERLY AND DISABLED PERSONS

Footnotes:
*--- (**4**) ---*

State Law reference— *Authority of city to provide for the exemption provided for in this division and restrictions and conditions for such exemption, Code of Virginia, § 58.1-3210 et seq.*

Sec. 35-61. - Definitions.

(a) For purposes of this division, the term "permanently and totally disabled" means 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.

(b) As used in this division, reference to the "city manager" shall include the city manager's authorized representative, as well as the city manager.

(c) As used in this division, "tax freeze" refers to the total exemption of that portion of the real estate tax which represents the increase in such tax since the taxpayer initially applied or re-applied and qualified for exemption under this division, so that the taxpayer's real estate tax will be frozen at the amount assessed in the fiscal year in which the taxpayer initially applied or re-applied and qualified. If, for any year following the initial qualification of a taxpayer for a tax freeze such taxpayer becomes disqualified, any subsequent application for exemption by such taxpayer shall be treated as an initial application for purposes of determining the tax freeze. An applicant may re-apply if the tax burden decreases from the initial application for any given year, and the amount frozen will be the amount of tax at time of re-application.

(d) As used in this division, the term "tax exemption" shall mean the exemption of that portion of the real estate tax owed by a qualified taxpayer as determined by section 35-67 of this division.

(Code 1965, § 33-2.1[b], [g]; Ord. No. 1424, 12-12-83; Ord. No. 2491, 5-26-98; Ord. No. 3396, § 1, 3-3-15)

Sec. 35-62. - Authorized.

Real estate tax exemption or freeze is provided for qualified property owners, who are not less than sixty-five (65) years of age, or who are permanently and totally disabled, or who jointly hold land with a spouse who is permanently and totally disabled, and who are eligible according to other terms of this division. Persons qualifying for such exemption or freeze are deemed to be bearing an extraordinary real estate tax burden in relation to their income and financial worth.

(Code 1965, § 33-2.1[a]; Ord. No. 1121, 11-24-80; Ord. No. 1274, 5-14-82; Ord. No. 1424, 12-12-83; Ord. No. 3396, § 1, 3-3-15)

Sec. 35-63. - Administration; rules and regulations of city manager.

The exemption or freeze provided for in this division shall be administered by the city manager according to the general provisions contained in this division. The city manager is hereby authorized and empowered to prescribe, adopt and enforce such rules and regulations, including the requirement of answers under oath, as may be reasonably necessary to determine qualifications for the exemption or freeze provided for in this division. The city manager may require the production of certified tax returns, appraisal reports and other certifications to establish income, financial

worth or disability. The city manager has designated the commissioner of the revenue as his agent for purposes of the administration of the exemption or freeze program, and the commissioner of the revenue shall have all of the duties and functions provided herein to the city manager.

(Code 1965, § 33-2.1[b]; Ord. No. 1121, 11-24-80; Ord. No. 1274, 5-14-82; Ord. No. 1424, 12-12-83; Ord. No. 3254, § 2, 8-14-12; Ord. No. 3396, § 1, 3-3-15)

Sec. 35-64. - General prerequisites to grant; effect of residency in hospital, nursing home, etc.

(a) Either the exemption or freeze, but not more than one (1), as provided for in this division shall be granted to persons subject to the following provisions:

(1) The title to the property for which exemption or freeze is claimed is held, or partially held, on June thirtieth immediately preceding the taxable year, by the person or persons claiming exemption, deferral or freeze and is occupied as the sole dwelling of such person or persons.

(2) The head of the household occupying the dwelling and owning title or partial title thereto or either spouse in a dwelling jointly held by married individuals is either permanently and totally disabled or is sixty-five (65) years of age or older on June thirtieth of the year immediately preceding the taxable year; provided, however, that a dwelling jointly held by married individuals may qualify if either spouse is over sixty-five (65) years of age.

(3) For the tax exemption programs, the total combined income received from all sources during the preceding calendar year by: (i) the owner or owners of the dwelling who use it as their principal residence, and (ii) the owner's or owners' relatives who live in the dwelling, shall not exceed seventy-three thousand eight hundred eighty-six dollars ($73,886.00) provided that the first ten thousand dollars ($10,000.00) of income of each relative, other than a spouse of the owner, who is living in the dwelling, shall not be included in such total; and provided further that the first ten thousand dollars ($10,000.00) or any portion thereof of income received by a permanently and totally disabled owner shall not be included in such total.

(4) For the tax freeze program, the total combined income received from all sources during the preceding calendar year by: (i) the owner or owners of the dwelling who use it as their principal residence, and (ii) the owner's or owners' relatives who live in the dwelling, shall not exceed ninety-six thousand four hundred five dollars ($96,405.00) provided that the first ten thousand dollars ($10,000.00) of income of each relative, other than a spouse of the owner, who is living in the dwelling, shall not be included in such total; and provided that the first ten thousand dollars ($10,000.00) or any portion thereof of income received by a permanently and totally disabled owner shall not be included in such total.

(5) For the tax exemption programs, the net combined financial worth, including equitable interests, as of December thirty-first of the year immediately preceding the taxable year, of the owners, and of the spouse of any owner, excluding the value of the dwelling and the land (not exceeding ten acres) upon which it is situated, shall not exceed three hundred and fifty thousand dollars ($350,000.00).

(6) For the tax freeze program, the net combined financial worth, including equitable interests, as of December thirty-first of the year immediately preceding the taxable year, of the owners, and of the spouse of any owner, excluding the value of the dwelling and the land (not exceeding ten acres) upon

which it is situated, shall not exceed three hundred and fifty thousand dollars ($350,000.00).

(7) The dwelling is occupied.

(b) Notwithstanding subdivision (a) of this section, if an owner qualifies for an exemption or freeze under this article, and if the owner can prove by clear and convincing evidence that his 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 person move in and provide care for the owner, and if a person does then move in for that purpose, then none of the income of the person or of the person's spouse shall be counted towards the income limit, provided that the owner of the residence has not transferred assets in excess of ten thousand dollars ($10,000.00) without adequate consideration within a three-year period prior to or after the person moves into such residence.

(c) The fact that owners who are otherwise qualified for tax exemption or freeze pursuant to this division 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 freeze is sought does not continue to be the sole dwelling of such owners during such extended periods of other residence, so long as such real estate is not used by or leased to others for consideration.

(Code 1965, § 33-2.1[c]; Ord. No. 1121, 11-24-80; Ord. No. 1225, 9-28-81; Ord. No. 1274, 5-14-82; Ord. No. 1325, 9-13-82; Ord. No. 1424, 12-12-83; Ord. No. 1692, 4-27-87; Ord. No. 1897, 7-10-89; Ord. No. 1939, 1-22-90; Ord. No. 2181, 10-6-92; Ord. No. 2200, 1-5-93; Ord. No. 2262, 2-22-94; Ord. No. 2491, 5-26-98; Ord. No. 2535, 5-11-99; Ord. No. 2580, 5-9-00; Ord. No. 2639, 5-15-01; Ord. No. 2695, 5-14-02; Ord. No. 2746, 5-13-03; Ord. No. 2818, 5-11-04; Ord. No. 2836, 8-10-04; Ord. No. 2871, 5-10-05; Ord. No. 2941, 5-9-06; Ord. No. 2978, 5-15-07; Ord. No. 3023, 5-13-08; Ord. No. 3044, 7-8-08; Ord. No. 3133, 5-11-10; Ord. No. 3350, 5-13-14, eff. 7-1-14; Ord. No. 3363, 7-1-14; Ord. No. 3396, § 1, 3-3-15; Ord. No. 3454, 6-21-16, eff. 7-1-16; Ord. No. 3500, 5-9-17, eff. 7-1-17; Ord. No. 3555, 5-15-18, eff. 7-1-18; Ord. No. 3586, 5-14-19, eff. 7-1-19; Ord. No. 3615, 5-12-20, eff. 7-1-20; Ord. No. 3655, 5-11-21, eff. 7-1-21; Ord. No. 3699, 5-10-22; Ord. No. 3731, § 1, 5-9-23, eff. 7-1-23)

Sec. 35-64.1. - Income exclusions.

For purposes of calculating income in accordance with this article, the Commissioner of the Revenue shall not include:

(a) Payments from a bank or other financial institution that result from a reverse mortgage or similar instrument, provided the reverse mortgage is an encumbrance upon the applicant's sole dwelling;

(b) Disability payments from a governmental entity or agency;

(c) Payments made to foster care providers for or regarding the care of children in foster care.

(Ord. No. 3429, § 1, 10-20-15; Ord. No. 3573, § 1, 12-4-18)

Sec. 35-65. - Mobile home as real estate for purposes of division.

For purposes of this division, a mobile home shall be real estate if the owner's intention that it be permanently affixed is shown by the fact that:

(1)

It is located on land belonging in whole or in part to the owner of the mobile home, his spouse, parent or child, and is connected to permanent water or sewage lines or facilities; or

(2) Whether or not it is located on land belonging to persons described in subsection (1) above, it rests on a permanent foundation and consists of two (2) or more mobile units which are connected in such a manner that they cannot be towed together on a highway, or consists of a mobile unit and other connected rooms or additions which must be removed before the mobile unit can be towed on a highway.

(Code 1965, § 33-2.1[i])

Sec. 35-66. - Application for exemption; certificate of disability.

(a) Each person (or persons) claiming an exemption or freeze under this division shall file a real estate tax exemption/freeze affidavit or written statement with the city manager. The affidavit or written statement shall be filed between January 1 and June 30 preceding the tax year for which relief is sought. Such affidavit or written statement shall set forth, in a manner prescribed by the city manager, the location and assessed value of the property and the names of the related persons occupying the dwelling for which exemption or freeze is claimed, their gross combined income and their net combined financial worth. The affidavit or written statement shall also include indication as to whether the person or persons claim either the exemption or freeze option. Each affidavit or written statement filed pursuant to this section shall be deemed valid for a period of three (3) years; provided, however, that each year during the three-year period and within the time requirement for filing affidavits or written statements, the person or persons claiming exemption or freeze shall file with the city manager a certification that the information contained on the affidavit or written statement has not changed or that, if any change has occurred, that such change does not serve to violate the limitations and conditions provided in this division.

(b) If the applicant is under sixty-five (65) years of age, the affidavit or written statement required by subsection (a) above shall have attached thereto a certification by the Social Security Administration, the Veterans Administration or the Railroad Retirement Board, or if such person is not eligible for certification by any of these agencies, a sworn affidavit by two (2) medical doctors licensed to practice medicine in the commonwealth, to the effect that such person is permanently and totally disabled, as defined in section 35-61. The affidavit of at least one of such doctors shall be based upon a physical examination of the applicant by such doctor. The affidavit of one of such 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 section 35-61.

(c) The city manager is hereby authorized to accept and process late filings of the affidavits or written statements described in subsections (a) and (b) above until July 31 of the tax year for which exemption or freeze is sought. The city manager shall accept and process such late filings in cases of (1) first time applicants, or (2) where he determines that the failure to grant the exemption or freeze would serve to create an extreme hardship for the applicant.

(d) The city manager may accept applications after the July 31 date but before March 31 of a given fiscal year when the applicant provides, to the satisfaction of the city manager, that the failure to apply during the applicable period of time was due to medical emergency or other exigent circumstance. The reason for such

waiver of the application deadline shall be reduced to writing, and the city manager shall retain such writings and make them available for inspection by the city council.

(Code 1965, § 33-2.1[c], [d]; Ord. No. 1121, 11-24-80; Ord. No. 1274, 5-14-82; Ord. No. 1424, 12-12-83; Ord. No. 1573, 1-6-86; Ord. No. 1897, 7-10-89; Ord. No. 2431, 11-26-96; Ord. No. 3396, § 1, 3-3-15; Ord. No. 3512, 6-20-17)

State Law reference— Authority for subsection (c), above, Code of Virginia, § 58.1-3213.

Sec. 35-67. - Amount of exemption.

When a person claiming exemption under this division conforms to the standards and does not exceed the limitations contained in this division, the tax exemption shall be as shown on the following schedule:

Total income, All Sources	Tax Exemption
$0.00—$56,386.00	100%
$56,386.01—$60,762.00	80%
$60,762.01—$65,136.00	60%
$65,136.01—$69,512.00	40%
$69,512.01—$73,886.00	20%

No lien shall accrue as a result of the amount certified as exempt.

(Code 1965, § 33-2.1[e]; Ord. No. 1164, 4-20-81; Ord. No. 1274, 5-14-82; Ord. No. 1424, 12-12-83; Ord. No. 1692, 4-27-87; Ord. No. 1939, 1-22-90; Ord. No. 2200, 1-5-93; Ord. No. 2491, 5-26-98; Ord. No. 2535, 5-11-99; Ord. No. 2580, 5-9-00; Ord. No. 2639, 5-15-01; Ord. No. 2695, 5-14-02; Ord. No. 2746, 5-13-03; Ord. No. 2818, 5-11-04; Ord. No. 2871, 5-10-05; Ord. No. 2941, 5-9-06; Ord. No. 2978, 5-15-07; Ord. No. 3023, 5-13-08; Ord. No. 3133, 5-11-10; Ord. No. 3350, 5-13-14, eff. 7-1-14; Ord. No. 3396, § 1, 3-3-15, eff. 7-1-15; Ord. No. 3454, 6-21-16, eff. 7-1-16; Ord. No. 3500, 5-9-17, eff. 7-1-17; Ord. No. 3555, 5-15-18, eff. 7-1-18; Ord. No. 3586, 5-14-19, eff. 7-1-19; Ord. No. 3615, 5-12-20, eff. 7-1-20; Ord. No. 3655, 5-11-21, eff. 7-1-21; Ord. No. 3699, 5-10-22, eff. 7-1-22; Ord. No. 3731, § 1, 5-9-23, eff. 7-1-23)

Sec. 35-67.1. - Reserved.

Editor's note— Ord. No. 3396, § 1, adopted March 3, 2015, repealed § 35-67.1, which pertained to amount of deferral; payment of accumulated deferred taxes. See Code Comparative Table for complete derivation.

Sec. 35-67.2. - When amount of exemption/freeze exceeds amount appropriated.

In any tax year in which the amount appropriated by the city council for the purpose of providing real estate tax exemption and/or freeze under this division is not sufficient to afford the entire exemption and/or freeze allowable under the provisions of this division, the amount of exemption and/or freeze shall be computed as a fraction of that allowable under the provisions of this division, the numerator of the fraction to be the amount of the appropriation for the tax year and the denominator of the fraction to be the total amount of all allowable exemptions and/or freezes qualified for under the provisions of this division.

(Ord. No. 1274, 5-14-82; Ord. No. 1424, 12-12-83; Ord. No. 3396, § 1, 3-3-15)

Sec. 35-68. - Nullification; change in circumstances.

(a) Changes in respect to income, financial worth, ownership of property, disability or other factors occurring during the taxable year for which the affidavit mentioned in section 35-66 is filed, and having the effect of exceeding or violating the limitations or conditions provided in this division shall nullify any relief of real estate tax liability for the then current taxable year and the taxable year immediately following.

(b) Notwithstanding the provisions of subsection (a), a change in ownership to a spouse, when such change resulted solely from the death of the qualifying individual, or a sale of such property shall result in a prorated exemption or freeze for the then current taxable year. The proceeds of the sale which would result in the prorated exemption or freeze shall not be included in the computation of net worth or income as provided in subsection (a). Such prorated portion shall be determined by multiplying the amount of the exemption or freeze by a fraction, wherein the number of complete months of the year such property was properly eligible for such exemption or freeze is the numerator and the number twelve (12) is the denominator.

(c) An individual who does not qualify for the exemption or freeze under this division based upon the previous year's income limitations or financial worth limitations may nonetheless qualify for the current year by filing an affidavit that clearly shows a substantial change of circumstances that was not volitional on the part of the individual to become eligible for the exemption or freeze and will result in income and financial worth levels that are within the limitations of this division. If the application pursuant to this subsection is approved, the exemption or freeze shall be prorated by multiplying the amount of the exemption or freeze by a fraction, wherein the number of complete months of the year such property would be eligible for such exemption or freeze is the numerator and the number twelve (12) is the denominator. Any exemption or freeze under this subsection is conditioned upon the individual filing another affidavit after the end of the year in which the exemption or freeze is granted, within sixty (60) days of the completion of the year showing that the actual income and financial worth levels were within the limitations of this division. If the actual income and financial worth levels exceeded the limitations, any exemption or freeze shall be nullified for the taxable year subject to treatment under this subsection and the taxable year immediately following.

(Code 1965, § 33-2.1[f]; Ord. No. 1692, 4-27-87; Ord. No. 3396, § 1, 3-3-15; Ord. No. 3600, 9-17-19)

Sec. 35-69. - False claims.

Any person falsely claiming an exemption or deferral or freeze under this division shall be guilty of a Class 1 misdemeanor.

(Code 1965, § 33-2.1[h]; Ord. No. 1274, 5-14-82; Ord. No. 1424, 12-12-83)

Sec. 35-69.1. - Prorated tax exemption for partial ownership.

To the extent allowed by Code of Virginia, § 58.1-3211.1, the whole or partial exemption from real property taxes authorized by the division may be extended to dwellings jointly held by two or more individuals not all of whom are at least 65 or permanently and totally disabled, provided that the dwelling is occupied as the sole dwelling by all such joint owners. The proportional amount of such exemption shall by determined as provided in Code of Virginia, § 58.1-3211.1.

(Ord. No. 3731, § 2, 5-9-23, eff. 7-1-23)

DIVISION 3.1. - EXEMPTION FOR CERTAIN REHABILITATED, RENOVATED OR REPLACEMENT COMMERCIAL OR INDUSTRIAL STRUCTURES

Sec. 35-70. - Partial tax exemption for certain substantially rehabilitated, renovated or replaced commercial or industrial structures; policy and intent.

It is the purpose of this division to implement the provisions of Article 3, Chapter 32 of Title 58.1 of the Code of Virginia to permit the city to allow a partial tax exemption for certain substantially rehabilitated, renovated or replaced commercial or industrial structures. The exemption will (1) provide an economic incentive for improvement of real estate and (2) prevent deterioration and decay that is harmful to the health and welfare of the city and its residents. This division establishes a procedure for property owners within certain designated areas in the City of Virginia Beach to obtain partial real estate tax exemptions for certain substantially rehabilitated, renovated or replaced commercial or industrial structures. The eligibility criteria and the term of the exemption shall be established by ordinance for each district and may vary to reflect different property and economic conditions in the city.

(Ord. No. 2786, 9-23-03)

Sec. 35-71. - Definitions.

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

Assessor: Real estate assessor for the City of Virginia Beach.

Base value: The assessed value of the structure as of July 1 during the tax year in which the rehabilitation, renovation or replacement of the structure begins.

Exemption: The real estate taxes resulting from the increase in the assessed value of a commercial or industrial structure that is determined by the assessor to be directly attributable to the substantial rehabilitation, renovation or replacement of the structure.

Exemption districts: Described zones or districts with boundaries determined by the city council in which qualifying property may be partially exempted from real estate pursuant to the terms of this division or as provided for the district.

Owner: All persons or entities holding title to real estate with a commercial or industrial structure or structures thereon for which an exemption is requested, including persons or entities with a leasehold interest as defined by § 58.1-3203 of the Code of Virginia.

Rehabilitated structure: An existing commercial or industrial structure, no less than twenty (20) years of age, located in an exemption district that has been substantially rehabilitated or renovated, or a replacement commercial or industrial structure located in an exemption district that replaces an existing structure of no less than twenty (20) years of age. Each district shall have criteria established for the level of improvements required for the structure(s) that will be rehabilitated, renovated or replaced.

Rehabilitation: Rehabilitation, renovation or replacement of an eligible structure.

(Ord. No. 2786, 9-23-03)

Sec. 35-72. - Partial exemption from taxation for certain rehabilitated, renovated or replacement structures.

(a) *Exemption authorized amount.* Partial exemption from real estate taxes is hereby authorized for qualifying property rehabilitated in accordance with the criteria set out in Article X, Section 6, Paragraph (h) of the Constitution of Virginia and §§ 58.1-3220.1 and 58.1-3221 of the Code of Virginia of 1950, and this division. The partial exemption shall be an amount equal to the increase in assessed value resulting from rehabilitation of an eligible commercial or industrial structure as determined by the assessor.

(b) *Procedure to obtain exemption.*

(1) The application shall be on a form created and supplied by the assessor. Applications must be filed with the assessor prior to the commencement of any rehabilitation for which an exemption is sought. No structure shall be eligible for exemption unless the appropriate building permits have been obtained.

(2) Upon receipt of an application for partial tax exemption, the assessor shall determine the base value of the existing structure.

(3) The application to qualify for tax exemption shall be effective until June 30 of the second calendar year following the year in which application is submitted. Except for properties located in the APZ-1 Property Tax Exemption District, if by such expiration date rehabilitation has not progressed to such a point that the assessed value of the structure is at least forty (40) percent greater than the base value of such structure to retain such eligibility, a new application to qualify for tax exemption must be filed and a new base value established. For properties located in the APZ-1 Property Tax Exemption District, if by such expiration date rehabilitation has not progressed to such a point that the assessed value of the structure is at least twenty (20) percent greater than the base value of such structure to retain such eligibility, a new application to qualify for tax exemption must be filed and a new base value established.

(4) The initial application to qualify for the rehabilitated structure tax exemption, and any subsequent application, must be accompanied by a payment of a fee of one hundred dollars ($100.00), which shall be applied to offset the cost of processing the application, making required assessments, and inspecting the progress of the work.

(5)

During the period between the receipt of the application and the time the assessor ascertains that the structure has increased so that it qualifies for the exemption authorized by this article, the property shall be subject to taxation upon the full value of the existing improvements to the property.

(6) Any tax exemption shall become effective on the date of the next deadline for pay ment of real estate taxes following completion of the rehabilitation, renovation or replacement.

(c) *Vacant land.* Improvements on vacant land are not eligible.

(d) *Credit on tax bill.* The owner or owners of property qualifying for partial exemption of real estate taxes under this division shall be credited on the tax bill for the property in the amount of the difference between the taxes computed upon the base value and the initial rehabilitated assessed value of the property for each year of the partial exemption from real estate taxes. The amount of this credit shall not increase, even if the assessed value later increases.

(e) *Decrease in assessment.* If a qualifying property's assessed value decreases after the first year of any rehabilitation, the amount of the exemption shall be reduced to the difference between taxes computed on the base value and the decreased assessed value of the property.

(f) *Exemption to run with land.* The exemption from taxation authorized by this division shall run with the land.

(Ord. No. 2786, 9-23-03; Ord. No. 2932, 3-28-06)

Sec. 35-72.1. - Same—Accident Potential Zone 1 (APZ-1).

(a) *District established.* The Accident Potential Zone 1 (APZ-1) Property Tax Exemption District (the "District") is hereby established.

(b) *Purpose.* The purpose of the District shall be to encourage the redevelopment and revitalization of real property in APZ-1 by converting nonconforming uses, as determined pursuant to Section 1804 of the City Zoning Ordinance, to conforming uses.

(c) *District boundaries.* The District shall consist of all areas within APZ-1, as shown on the official zoning map of the City.

(d) *Eligibility criteria; duration of exemption.* Property qualifying for an exemption pursuant to this section shall meet the following criteria:

(1) The assessed value after the rehabilitation, renovation, or replacement of the structure shall be at least twenty (20) percent greater than the base assessed value;

(2) The property shall undergo rehabilitation, renovation, or replacement for commercial or industrial use;

(3) The plan shall be consistent with the City's comprehensive plan and zoning ordinances;

(4) The rehabilitation, renovation, or replacement shall result in the conversion of a nonconforming use to a conforming use; and

(5) Any partial exemption of property in the District shall be subject to and comply with the provisions of Virginia Code Sections 58.1-3220.1 and 58.1-3221 and City Code Sections 35-70 through 35-74, as applicable.

(e) *Duration of exemption.* Any partial exemption of property in the District shall run with the real estate for a period of fifteen (15) years from the date of the completion of the rehabilitation, renovation, or replacement.

(Ord. No. 2932, 3-28-06)

Sec. 35-73. - Assessor to provide exemption information; exemptions not to be set out in land book.

(a) By August 15 of each year of the period of exemption from real estate taxes, the assessor shall notify the city treasurer of the exemption and the amount to be credited to the owner's tax bill.

(b) Pursuant to Code of Virginia § 58.1-3221(C), the real estate assessor shall not list or display any exemption provided by this division in the land book.

(c) The assessor shall make available application forms in the assessor's office, in the office of the permits and inspections division of the planning department and on the city's website for use by property owners who propose to rehabilitate qualifying structures.

(Ord. No. 2786, 9-23-03; Ord. No. 3254, § 2, 8-14-12)

Sec. 35-74. - Forfeiture of exemption; penalty and interest.

(a) The partial exemption for each tax year shall be conditioned upon the payment of the nonexempt amount of real estate taxes on the property on the payment deadlines of each tax year; if, through the fault of the owner, these real estate taxes are not paid on or before these deadlines, the partial exemption for that tax year shall be forfeited.

(b) Late payments shall be subject to the penalty and interest provisions of section 35-37 of this Code, with penalty and interest calculated on the total amount of taxes due as if the property were not exempt.

(Ord. No. 2786, 9-23-03)

Secs. 35-75—35-80. - Reserved.

DIVISION 4. - EXEMPTION FOR REHABILITATED RESIDENTIAL REAL ESTATE

Sec. 35-80.1. - Exemption for historically significant rehabilitated structures.

(a) *Finding; purpose.* The city council hereby recognizes the educational and cultural value of the city's historically significant structures. The purpose of this section is to assist in the preservation of such structures, and to that end, the substantial rehabilitation of historically significant structures shall entitle the owner to a partial exemption from real estate taxes or real estate tax credit, subject to the terms and conditions set forth in this section. The real estate assessor shall administer this section with guidance from the director of planning as to the effect of rehabilitation projects on the historical significance of structures.

(b) *Eligibility for exemption.* To be eligible for the partial exemption from real estate taxation or tax credit provided by this section, a structure shall be historically significant and no less than fifty (50) years of age at the time the application is made. Any such exemption shall only apply to rehabilitated existing structures, and shall not apply to new construction. For the purpose of this section:

(1)

"Rehabilitation" shall mean the process of returning a property to a state of utility, through repair or alteration, which makes possible an efficient contemporary use while preserving those portions and features of the property which are significant to its historic, architectural, and cultural values;

(2) *"Historically significant structure"* shall mean a structure listed on the Virginia Beach Historical Register, as established in section 8-91 of this Code, or a structure eligible for listing on the register, and for which an application for inclusion on the register is pending at the time rehabilitation commences; and

(3) *"Qualifying costs"* include the costs of all work done to the structural components, heating, plumbing and electrical systems of the building, work done to update kitchens and bathrooms, work necessary for compliance with the Americans With Disabilities Act, the installation of fire suppression systems and fire escapes, reasonable architectural and engineering fees, construction period interest and taxes, and construction management costs. Acquisition costs, site work and landscaping elements and any expenses attributable to additions or enlargements of the building shall not be included.

Structures rehabilitated for residential use, hotel or motel structures, and commercial or industrial structures, as provided by Code of Virginia §§ 58.1-3220, 58.1-3220.1, 58.1-3220.01, and 58.1-3221, respectively, shall be eligible for the partial exemption provided by this section. The tax credit provided by this section shall be available only to those property owners who, in addition to meeting the foregoing requirements, meet the requirements set forth in subsection (f)(2).

(c) *Application for exemption; base value.* To qualify for a partial tax exemption for the rehabilitation of a historically significant structure, the owner(s) of such structure shall, at the same time an application is made for a building permit to rehabilitate such structure, file with the real estate assessor an application and construction plans. The application shall be on a form created and supplied by the real estate assessor. Among the other information supplied, the applicant shall estimate on the application form the qualifying costs of the rehabilitation project and any increase in value of the structure that may result. Such application must be filed prior to the commencement of any rehabilitation work for which an exemption is sought. No structure shall be eligible for such exemption unless the appropriate building permit(s) have been acquired.

(d) *Review of application and plans.* The director of planning or his designee shall review all applications, plans and other information submitted that relate to a rehabilitation project for which the exemption provided by this section is sought. If, after reviewing the application and plans for a proposed rehabilitation project, the director of planning determines in writing that the proposed project will diminish the historical significance of the structure, the real estate assessor shall, by certified mail, inform the applicant that the exemption will be denied for the proposed rehabilitation. If the director of planning determines in writing that a proposed rehabilitation project will restore or maintain the historical significance of the structure, the real estate assessor shall notify the applicant that the project has been approved for the exemption, subject to compliance with the terms of this section. The assessment of the structure for the current tax year, prior to commencement of the rehabilitation, shall constitute the base value of the structure. The director of planning shall endeavor to make a determination within thirty (30) days from the date a completed application is received, and all applications, plans or other materials submitted by the applicant shall be returned to the real estate assessor after the review and inspection process is completed.

(e)

Inspection; effective date. Within thirty (30) days of the rehabilitation project's completion, the owner shall notify the real estate assessor in writing that the project has been completed. The real estate assessor shall transmit this notice to the director of planning, which shall then inspect the rehabilitated structure to verify that the work has been completed as described in the previously filed application and plans. If the director of planning verifies in writing that such rehabilitation project has been satisfactorily completed, the real estate assessor shall so notify the applicant. The real estate assessor shall then reassess the rehabilitated structure, and record the new value as provided by law. Such verification and re-assessment shall be performed within sixty (60) days after such written notice of completion is received. Any tax exemption shall become effective on July 1 of the year following completion of the rehabilitation project. No structure shall be eligible for the partial exemption provided by this section unless the director of planning verifies that the rehabilitation work described on the application and plans has been completed in substantially the same manner described in the previously filed application and plans. In any case where the work performed substantially varies from the work described in the application and plans, the real estate assessor shall notify the applicant that the exemption will be denied.

(f) *Exemption and tax credit for rehabilitated historically significant structures for residential use.* The exemption for rehabilitated historically significant structures for residential use shall be calculated and applied as set forth below:

(1) For rehabilitated historically significant structures for residential use, the exemption shall be in an amount equal to the greater of the initial increase in assessed value of the structure resulting from the rehabilitation of the structure, as determined by the real estate assessor, or an amount equal to fifty (50) percent of the qualifying costs of the rehabilitation, as defined in subsection (b)(3), not to exceed the amount of the assessment of the structure at any time after its rehabilitation. The applicant shall submit to the real estate assessor documentation of all qualifying costs incurred as a basis for the exemption, and shall execute an affidavit stating that all such costs were incurred as part of the project. The exemption shall run with the land for fifteen (15) years. No increase in assessment occurring after the first year of such rehabilitation exemption shall qualify for an increase in such exemption. In the event of a decrease in the property's assessed value after the first year of any rehabilitation exemption, the exemption shall be based on the difference in taxes computed on the base value and the decreased assessed value of the property.

(2) In addition to the exemption provided for in this subsection, there shall also be a real estate tax credit for rehabilitated historically significant structures for residential use for those property owners who have purchased and rehabilitated, in accordance with the provisions of this section, a historically significant structure for residential use which at the time of purchase was encumbered by local property tax liens exceeding fifty (50) percent of the assessed value of the property. Such tax credit shall be in an amount equal to the total amount of the tax liens, not to exceed the amount by which the local property tax liens exceeded fifty (50) percent of the assessed value of the property at the time of purchase. The credit shall be applied upon completion of the rehabilitation and may be allocated by the property owner over a period of no longer than ten (10) years.

(3) By August 15 of each year of the period of exemption from real estate taxes, the real estate assessor shall notify the city treasurer of the exemption and tax credit, if any, and the amount to be credited to the property owner's tax bill.

(g) *Exemption for rehabilitated historically significant commercial or industrial structures.* The exemption for rehabilitated historically significant commercial or industrial structures shall be calculated and applied as set forth below:

(1) For rehabilitated historically significant commercial or industrial structures, the exemption shall be an amount equal to the greater of the initial increase in assessed value of the structure above its base value resulting from the rehabilitation of the structure, as determined by the real estate assessor, or an amount equal to fifty (50) percent of the qualifying costs of rehabilitating the structure; provided, however, that the amount of the exemption provided by this subsection shall not exceed the amount of the assessment of the structure at any time after its rehabilitation. This exemption shall run with the land for fifteen (15) years. No increase in assessment occurring after the first year of such rehabilitation exemption shall qualify for an increase in such exemption. In the event of a decrease in the property's assessed value after the first year of any rehabilitation exemption, the exemption shall be based on the difference in taxes computed on the base value and the decreased assessed value of the property. The applicant shall submit to the real estate assessor documentation of all qualifying costs incurred as a basis for the exemption, and shall execute an affidavit stating that all such costs were incurred as part of the project.

(2) By August 15 of each year of the period of exemption from real estate taxes, the real estate assessor shall notify the city treasurer of the exemption and the amount to be credited to the property owner's tax bill.

(h) *Exemption for rehabilitated historically significant hotel or motel structures.* The exemption for rehabilitated historically significant hotel or motel structures shall be calculated and applied as set forth below:

(1) For rehabilitated historically significant hotel or motel structures, the exemption shall be in an amount equal to ninety (90) percent of the total assessed value of the rehabilitated structure, not to exceed the increase in the assessed value resulting from the rehabilitation of the structure as determined by the real estate assessor. The exemption shall commence upon completion of the rehabilitation, renovation or replacement and shall run with the real estate for a period of twenty-five (25) years. No increase in assessment occurring after the first year of such rehabilitation exemption shall qualify for an increase in such exemption. In the event of a decrease in the property's assessed value after the first year of any rehabilitation exemption, the exemption shall be based on the difference in taxes computed on the base value and the decreased assessed value of the property.

(2) By August 15 of each year of the period of exemption from real estate taxes, the real estate assessor shall notify the city treasurer of the exemption and the amount to be credited to the property owner's tax bill.

(i) *Land book.* The real estate assessor shall not list or display any exemption provided by this section as a reduced value in the land book.

(j) *Ineligibility for exemption or tax credit; termination of same.* Improvements made upon vacant land, demolition or total replacements of historically significant structures, and rehabilitation efforts that the planning director has determined, in writing, will diminish the historical significance of a structure shall not be eligible for the partial exemption from real estate taxation or tax credit provided by this section. Failure to

comply with any provision of this section or the making of false statements in applying for the exemption or tax credit provided by this section shall constitute grounds for denial of the exemption or tax credit. Changes to a structure that, after a rehabilitation project has been completed and an exemption or tax credit granted, cause it to be removed from the Virginia Beach Historical Register, shall terminate the exemption and tax credit provided by this section, effective July 1 of the next tax year.

(Ord. No. 1964, 6-4-90; Ord. No. 2567, 11-23-99; Ord. No. 3022, 5-13-08; Ord. No. 3254, § 2, 8-14-12; Ord. No. 3301, 8-13-13)

ARTICLE III. - RETAIL SALES TAX

> *Footnotes:*
> *--- (**5**) ---*
> ***State Law reference—** Retail sales and use tax, Code of Virginia, § 58.1-600 et seq.*

Sec. 35-81. - Levied; rate; price brackets; no discount.

There is hereby levied and imposed, in addition to all other taxes and fees of every kind now imposed, a general retail sales tax at the rate of one percent to provide revenue for the general fund of the city. The rate of tax shall be added to the rate of the retail sales tax imposed by chapter 8.1 of title 58 [chapter 6 of title 58.1] of the Code of Virginia (Virginia Retail Sales and Use Tax) and such tax shall be subject to all of the provisions of such chapter and all amendments thereof and the rules and regulations published with respect thereto, except that the applicable brackets of prices shall be as prescribed in sections 58-441.50 and 58-441.51 [58.1-628] of the Code of Virginia for the combined tax, and except that no discount under section 58-441.25 [58.1-622] of the Code of Virginia shall be allowed on the tax levied by this section. This tax shall not apply to artificial or propane gas, firewood, coal or home heating oil used for domestic consumption as defined in section 58-441.6(g1) [58.1-608(9)] of the Code of Virginia.

(Code 1965, § 33-92; Ord. No. 1233, 11-2-81)

Sec. 35-82. - Purpose.

It is the purpose and intent of the city council, in adopting this article, to levy the general retail sales tax authorized to be levied by section 58-441.49 [58.1-605] of the Code of Virginia.

(Code 1965, § 33-91)

Sec. 35-83. - Administration and collection.

The general retail sales tax imposed and levied by this article shall be administered and collected by the state tax commissioner, as provided by law.

(Code 1965, § 33.93)

State Law reference— Similar provisions, Code of Virginia, § 58.1-605D.

Secs. 35-84—35-95. - Reserved.

ARTICLE IV. - TAX ON NET CAPITAL OF BANKS

Sec. 35-96. - Definitions.

For the purposes of this article, the following words shall have the meanings ascribed to them by this section:

Bank shall be defined as in section 58-485.01 [58.1-1201] of the Code of Virginia.

Net capital shall mean a bank's net capital computed pursuant to section 58-485.07 [58.1-1205] of the Code of Virginia.

(Ord. No. 1050, § 33-41, 6-16-80)

Sec. 35-97. - Levied; amount.

(a) Pursuant to the provisions of chapter 10.01 of title 58 [chapter 12 of title 58.1] of the Code of Virginia, there is hereby levied and imposed, for the calendar year beginning January 1, 1980 and ending December 31, 1980, and for each and every calendar year thereafter, unless otherwise changed by the council, upon each bank located within the city, a tax on net capital equaling eighty (80) percent of the state rate of the franchise tax set forth in section 58-485.06 [58.1-1204] of the Code of Virginia.

(b) There is also levied and imposed, in the same manner and at the same rate, a tax on the capital of any bank located within the boundaries of the city which is not the principal office, but is a branch extension or affiliation of the principal office. The tax upon such branch shall be apportioned as provided by section 58-485.012 [58.1-1211] of the Code of Virginia.

(Ord. No. 1050, § 33-40, 6-16-80)

Sec. 35-98. - Bank's return and schedules.

(a) On or after the first day of January of each year, but not later than March first of any such year, all banks whose principal offices are located within the city shall prepare and file with the commissioner of revenue a return, as provided by section 58-485.013 [58.1-1207] of the Code of Virginia, in duplicate, which shall set forth the tax on net capital computed pursuant to chapter 10.01 of title 58 [chapter 12 of title 58.1] of the Code of Virginia. The commissioner of revenue shall certify a copy of such filing of the bank's return and schedules and shall forthwith transmit such certified copy to the state department of taxation.

(b) In the event that the principal office of a bank is located outside the city and such bank has branch offices located within the city, in addition to the filing requirements set forth above in subsection (a), any bank conducting such branch business shall file with the commissioner of revenue a copy of the real estate deduction schedule, apportionment and other items which are required by sections 58-485.012 [58.1-1211], 58-485.013 [58.1-1207] and 58-485.014 [58.1-1212] of the Code of Virginia.

(Ord. No. 1050, § 33-42, 6-16-80)

Sec. 35-99. - Payment.

Each bank, on or before the first day of June of each year, shall pay into the treasurer's office of the city all taxes imposed pursuant to this article.

(Ord. No. 1050, § 33-42, 6-16-80)

Sec. 35-100. - Failure or neglect of bank to comply with article.

Any bank which shall fail or neglect to comply with any provision of this article shall be fined not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00), which fine shall be recovered, upon motion, after five (5) days' notice, in the circuit court of the city. The motion shall be in the name of the city and shall be presented by the city attorney.

(Ord. No. 1050, § 33-43, 6-16-80)

Secs. 35-101—35-113. - Reserved.

ARTICLE V. - TAX ON PURCHASERS OF UTILITY SERVICES

> *Footnotes:*
> *--- (**6**) ---*
> ***Note—** This Ord. No. 2615 shall be effective on January 1, 2001, and the conversion of tax to either monthly CCF delivered (in the case of natural gas) or monthly kWh delivered (in the case of electricity) shall not be effective before the first meter reading after December 31, 2000, prior to which time the tax previously imposed shall be in effect.*

Sec. 35-114. - Definitions.

Except where the context clearly indicates a different meaning, the following words and phrases, when used in this article, shall, for the purposes of this article, have the meanings ascribed to them in this section:

CCF means a volume of gas at standard pressure and temperature in units of one hundred (100) cubic feet.

Consumer means every person who, individually or through an agent, employee, officer, representative or permittee, makes a taxable purchase of water, electricity, natural gas or other utility service in the City of Virginia Beach.

Gas utility means a public utility authorized to furnish natural gas service in Virginia.

Kilowatt hours (kWh) delivered means one thousand (1,000) 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.

Master-metered means one metered utility service point serving more than one residential consumer.

Person includes any individual, firm, partnership, association, corporation, limited liability company or partnership, and any combination of individuals of whatever form and character.

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 by-products 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 as classified by the utility service provider.

Service provider means a person who delivers utility services to consumers, including a person who delivers electricity, a gas utility or pipeline distribution company that delivers natural gas, or a person who delivers water.

Used primarily relates to the larger portion of the use for which electric, natural gas or other utility service is furnished.

Utility service includes electric service, water service and gas service, whether generally termed a utility service or not, for which the consumer is rendered a separate invoice by the service provider, furnished in the corporate limits of the city.

(Code 1965, § 33-11; Ord. No. 1227, 9-28-81; Ord. No. 2323, 5-9-95; Ord. No. 2615, 10-24-00)

Sec. 35-115. - Levy of water utility consumer tax.

(a) In accordance with Code of Virginia § 58.1-3814, as amended, there is hereby imposed and levied by the city, upon each residential consumer of water utility service, a tax in the amount of twenty (20) percent of the charge, exclusive of any federal tax thereon, made by the service provider against the consumer with respect to such water utility service. There is excluded from the tax imposed and levied by this section so much of the charge, exclusive of any federal tax thereon, made by the service provider against the consumer of water utility service in excess of fifteen dollars ($15.00) for any single-family unit for any month or part of a month. Where more than one single-family unit is served by one meter, in computing such maximum of fifteen dollars ($15.00), the same shall be multiplied by the number of single-family units served by such meter.

(b) In accordance with Code of Virginia § 58.1-3814, as amended, there is hereby imposed and levied by the city, upon each commercial or industrial consumer of water utility service, a tax in the amount of fifteen (15) percent of the first six hundred twenty-five dollars ($625.00) of the monthly charge and five (5) percent on the amount between six hundred twenty-five dollars ($625.00) and two thousand dollars ($2,000.00) of the monthly charge for any single billing for water utility service, exclusive of any federal tax thereon, made by the service provider against the consumer with respect to such utility service. The tax imposed by this section shall not be applied to any portion of a monthly charge for any single water utility service to a commercial or industrial consumer that exceeds two thousand dollars ($2,000.00).

(c) For the purposes of this section, the words "commercial or industrial consumer" shall not be construed to include a consumer in the business of renting apartments or other such dwelling units as to utility service furnished directly to an apartment or other such dwelling unit; provided, however, that utility services purchased by such consumer through separate meters for hallways, swimming pools, outside lighting and other accessory uses shall be deemed commercial or industrial consumption.

(Code 1965, §§ 33-12, 33-20—33-21.2; Ord. No. 1178, 5-15-81; Ord. No. 1227, 9-28-81; Ord. No. 1535, 5-10-85; Ord. No. 2323, 5-9-95; Ord. No. 2443, 5-13-97; Ord. No. 2615, 10-24-00)

Sec. 35-115.1. - Levy of 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 by a service provider to the following classes of consumers, such classes to be defined by the service provider, as set forth below:

(1) Residential consumers, including residential consumers receiving service from a master meter, shall pay a minimum tax of one dollar and forty cents ($1.40), plus a tax at the rate of $0.014771 per kWh delivered monthly, with the total tax not to exceed three dollars ($3.00) per month.

(2) Non-residential consumers shall pay, for each meter, a monthly tax at the rates per month for the classes of non-residential consumers as set forth below:

(i) Commercial consumers shall pay a minimum tax of one dollar and seventy-two cents ($1.72), plus a tax at the rate of $0.010057 per kWh on the first nine thousand one hundred fifty-one (9,151) kWhs delivered monthly, and at the rate of $0.002831 per kWh on all remaining kWhs delivered monthly; provided, however, that the total monthly tax shall not exceed one hundred sixty-two dollars and fifty cents ($162.50).

(ii) Industrial consumers shall pay a minimum tax of one dollar and seventy-two cents ($1.72), plus a tax at the rate of $0.009253 per kWh on the first nine thousand nine hundred forty-six (9,946) kWhs delivered monthly, and at the rate of $0.001190 per kWh on all remaining kWhs delivered monthly; provided, however, that the total monthly tax shall not exceed one hundred sixty-two dollars and fifty cents ($162.50).

(b) Bills shall be considered as monthly bills for the purposes of this section if they are submitted twelve (12) times per year and cover periods of approximately thirty (30) days each. Accordingly, the tax for a bi-monthly bill (approximately sixty (60) days) shall be determined as follows:

(i) The kWh will be divided by 2;

(ii) A monthly tax will be calculated using the rates set forth above;

(iii) The tax determined by (ii) shall be multiplied by 2; and

(iv) The tax in (iii) may not exceed twice the monthly "maximum tax."

(Ord. No. 2615, 10-24-00)

Note— This Ord. No. 2615 shall be effective on January 1, 2001, and the conversion of tax to either monthly CCF delivered (in the case of natural gas) or monthly kWh delivered (in the case of electricity) shall not be effective before the first meter reading after December 31, 2000, prior to which time the tax previously imposed shall be in effect.

Sec. 35-115.2. - Levy of 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 set forth

below:

(1) Residential consumers, including residential consumers receiving service from a master meter, shall pay a minimum tax of one dollar and ninety-eight cents ($1.98), plus a tax at the rate of $0.162451 on each CCF delivered monthly, with the total tax not to exceed three dollars ($3.00) per month.

(2) Non-residential consumers shall pay, for each meter, a monthly tax at the rates per month for the classes of non-residential consumers as set forth below:

(i) Commercial consumers shall pay a minimum tax of one dollar and ninety-four cents ($1.94), plus a tax at the rate of $0.097668 per CCF on the first nine hundred sixty-one (961) CCFs delivered monthly, and at the rate of $0.031362 per CCF on all remaining CCFs delivered monthly; provided, however, that the total monthly tax shall not exceed one hundred sixty-two dollars and fifty cents ($162.50).

(ii) Industrial consumers shall pay a minimum tax of one dollar and ninety-four cents ($1.94), plus a tax at the rate of $0.097668 per CCF on the first nine hundred sixty-one (961) CCFs delivered monthly, and at the rate of $0.031362 per CCF on all remaining CCFs delivered monthly; provided, however, that the total monthly tax shall not exceed one hundred sixty-two dollars and fifty cents ($162.50).

(b) Bills shall be considered as monthly bills for the purposes of this section if they are submitted twelve (12) times per year and cover periods of approximately thirty (30) days each. Accordingly, the tax for a bi-monthly bill (approximately sixty (60) days) shall be determined as follows:

(i) The CCF will be divided by 2;

(ii) A monthly tax will be calculated using the rates set forth above;

(iii) The tax determined by (ii) shall be multiplied by 2; and

(iv) The tax in (iii) may not exceed twice the monthly "maximum tax".

(Code 1965, §§ 33-12, 33-20—33-21.2; Ord. No. 1178, 5-15-81; Ord. No. 1227, 9-28-81; Ord. No. 1535, 5-10-85; Ord. No. 2323, 5-9-95; Ord. No. 2443, 5-13-97; Ord. No. 2615, 10-24-00)

State Law reference— Authority for above tax, Code of Virginia, § 58.1-3812, 58.1-3814.

Sec. 35-116. - Reserved.

Editor's note— Ord. No. 2323, adopted May 9, 1995, deleted provisions formerly codified as § 35-116, which pertained to the applicability of the tax levied by this article to telephone service, and which was derived from Code 1965, § 33-18.

Sec. 35-117. - Exemptions.

The United States of America and the state, together with the boards, commissions and authorities thereof, are hereby exempt from the payment of the tax imposed and levied by this article with respect to the purchase of utility services used by such governmental agencies.

(Code 1965, § 33-17)

Sec. 35-118. - Computation when service provider collects charges periodically.

Except as provided otherwise in this article, when the service provider collects the price for utility services periodically, the tax imposed and levied by this article may be computed on the aggregate amount of purchases or consumption, as applicable, during such period; provided, that the amount of the tax to be collected shall be the nearest whole cent to the amount computed.

(Code 1965, § 33-19; Ord. No. 2615, 10-24-00)

Sec. 35-119. - Duty of service provider to collect, report and remit; penalty and interest.

(a) The service provider shall bill the utility tax to all consumers who are subject to the tax and to whom it delivers utility service, and shall report and remit taxes collected each month to the city treasurer on or before the last day of the succeeding month of collection. The required report shall be in such form as may be prescribed by the commissioner of the revenue. Such taxes shall be paid by the service provider to the city in accordance with Code of Virginia § 58.1-3814(F) and (G), and Code of Virginia § 58.1-2901. If any consumer receives and pays for utility service but refuses to pay the tax imposed by this section, the service provider shall notify the city treasurer 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 utility service and the tax and remit the tax portion to the city. Any tax paid by the consumer to the service provider shall be deemed to be held in trust by such provider until remitted to the city.

(b) Failure to remit the taxes so collected to the city treasurer on or before the due date set forth in subsection (a) of this section shall result in a penalty of ten (10) percent of the amount due or ten dollars ($10.00), whichever is greater, which shall be added to the amount due. In addition, interest at the rate of ten (10) percent annually from the first day following the last day the taxes are due to be remitted may be added to the overdue principal and penalty, and collected from the delinquent seller.

(Code 1965, §§ 33-12, 33-13, 33-15; Ord. No. 1178, 5-15-81; Ord. No. 2323, 5-9-95; Ord. No. 2615, 10-24-00)

Sec. 35-120. - Service provider's records.

Each service provider shall keep complete records showing all purchases and consumption of utility services in the city, which records shall show the price charged against each consumer with respect to each purchase and amounts of service consumed, the date thereof and the amount of tax imposed under this article. Such records shall be kept open for inspection by the duly authorized agents of the city at reasonable times for a period of three (3) years from the date such records were created. The duly authorized agents of the city may make such transcripts thereof during such times as they may desire.

(Code 1965, § 33-16; Ord. No. 2615, 10-24-00)

Sec. 35-121. - Duties of city treasurer and commissioner of the revenue.

(a) The city treasurer shall be charged with the collection of the taxes levied and imposed by this article and shall cause the same to be paid into the general treasury of the city.

(b) The commissioner of the revenue shall be charged with registering service providers for collection of the taxes levied by this article and periodically auditing their reports of taxes collected.

(Code 1965, § 33-14; Ord. No. 2615, 10-24-00)

Sec. 35-122. - Failure of consumer to pay; violations of article by seller.

Any consumer failing, refusing or neglecting to pay the tax imposed or levied by this article and any service provider or officer, agent or employee of any service provider violating the provisions of this article, shall be guilty of a Class 2 misdemeanor. Each failure, refusal, neglect or violation thereof shall constitute a separate offense. Conviction for such violation shall not relieve any such person from the payment, collection and remittance of the tax as provided in this article.

(Code 1965, § 33-22; Ord. No. 2615, 10-24-00)

Sec. 35-123. - Reserved.

Editor's note— Ord. No. 2323, adopted May 9, 1995, deleted § 35-123, which pertained to the utility tax for the E-911 telephone system, and which derived from Ord. No. 1562, adopted Oct. 14, 1985; and Ord. No. 2215, adopted May 11, 1993.

Secs. 35-124—35-135. - Reserved.

ARTICLE VI. - TAX ON MEALS

Footnotes:
*--- (**7**) ---*
***Editor's note—** Ord. No. 2791, adopted Dec. 9, 2003, changed the title of Art. VI of this chapter from "Tax on Purchase of Food at Restaurants" to "Tax on Meals."*
***Cross reference—** Food establishments, Ch. 13.*

Sec. 35-136. - Definitions.

Except where the context clearly indicates a different meaning, the following words and phrases, when used in this article, shall, for the purpose of this article, have the meanings ascribed to them in this section:

Cater means the furnishing of food, beverages, or both on the premises of another, for compensation.

City treasurer means the treasurer of the city and any of his duly authorized deputies, assistants or other employees.

Commissioner of the revenue means the commissioner of the revenue of the city and any of his duly authorized deputies, assistants or other employees.

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 city, including, but not limited to, any restaurant, dining room, grill, coffee shop, cafeteria, café, snack bar, lunch counter, movie theater, delicatessen, confectionery, bakery, eating house, eatery, drugstore, ice cream or yogurt shop, lunch wagon or truck, pushcart or other mobile facility from which food is sold, public or private club, resort, bar, brewery, winery, distillery, lounge, or other similar establishment, public or private. The term "food establishment" shall include private property outside of and contiguous to a building or structure operated as a food establishment at which food is sold for immediate consumption. A grocery store or similar establishment may be included in the definition of "food establishment" subject to the application of section 35-138(c).

Meal means any prepared food or beverages, ready for immediate consumption, offered or held out for sale by a food establishment. All such food or beverages, 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.

Person means:

(a) Where the food establishment is a corporation, the president or managing agent of such corporation.

(b) Where the food establishment is an unincorporated partnership or association, the general partner, partners, or managing agent of such unincorporated partnership or association.

(c) Where the food establishment is a sole proprietorship, the owner or managing agent of such sole proprietorship.

(Code 1965, § 33-75; Ord. No. 1316, 8-9-82; Ord. No. 2441, 3-25-97; Ord. No 2475, 2-24-98; Ord. No. 2601, 7-11-2000; Ord. No. 3505, § 1, 6-20-17; Ord. No. 3515, 8-1-17)

Sec. 35-137. - Levied; amount.

There is hereby imposed and levied on each person a tax equivalent to five and one-half (5.5) percent on the total amount paid for any meal purchased from any food establishment, whether prepared in such food establishment or not and whether consumed on the premises or not. The tax shall be computed at a straight five and one-half (5.5) percent, any fraction of one-half or more being treated as one cent ($0.01). The revenue from two (2) percent of this levy is hereby dedicated as follows, one and six hundredths of a percent (1.06%) to the Tourism Investment Program, fifty hundredths of a percent (0.50%) to the Tourism Advertising Program, and forty-four hundredths of a percent (0.44%) to the Open Space Program.

(Code 1965, § 33-76; Ord. No. 1181, 5-15-81; Ord. No. 1275, 5-14-82; Ord. No. 1371-1, 5-12-83; Ord. No. 1824, 12-19-88; Ord. No. 2020, 12-6-90; Ord. No. 2194, 11-24-92; Ord. No 2475, 2-24-98; Ord. No. 2601, 7-11-00; Ord. No. 2637, 5-15-01; Ord. No. 3698, § 1, 5-10-22, eff. 7-1-22)

Editor's note— Ord. No. 2637, adopted May 15, 2001, which amended § 35-137 above, shall be effective July 1, 2001.

Sec. 35-138. - Exemptions; limits on application.

(a) The tax imposed under this article shall not be levied on 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, crackers, chips, cookies, and other factory-prepackaged items of essentially the same nature. Such items that are not factory-prepackaged are subject to the tax imposed under this article provided the items are not sold in quantities that are exempted by subsection (b)(2).

(2) Food sold in bulk. For the purposes of this article, 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 or a gallon of ice cream); a bulk sale shall not include any food or beverage that is catered or delivered by a food establishment for off-premises consumption.

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

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

(5) Any food or food product purchased for home consumption, as defined in the federal Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended, except hot food or hot food products ready for immediate consumption. The following items, whether or not purchased for immediate consumption, are excluded from the federal Food Stamp Act definition and are thus subject to the tax imposed under this article: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and nonfactory-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 be subject to the tax imposed under this article for prepackaged sandwiches and wraps, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, non-factory-sealed beverages, pizza slices, and non-factory-prepackaged items included in subsection (b)(1).

(d) The tax imposed under this article shall not be levied on the following purchases of food and beverages:

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

(2) Food and beverages sold by a day care center, public or private elementary or secondary school, or any college or university to its students or employees.

(3) Food and beverages purchased for use or consumption by, 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, or other extended care facility to patients or residents thereof.

(5) Food and beverages furnished by a nonprofit charitable organization to elderly, infirm, handicapped, or needy persons in their homes or at central locations.

(6) Food and beverages sold on an occasional basis, not exceeding three (3) times per calendar year, 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 non-profit educational, charitable, benevolent, or religious purposes.

(7) Food and beverages sold through vending machines.

(8) Other food and beverages exempted by Code of Va., § 58.1-3840.

(Code 1965, §§ 33-77, 33-86; Ord. No. 2475, 2-24-98; Ord. No. 2601, 7-11-2000; Ord. No. 3165, 4-12-11; Ord. No. 3515, 8-1-17)

Sec. 35-138.1. - Gratuities and service charges.

(a) Where a purchaser provides a gratuity for an employee of a seller, and the amount of the gratuity is wholly in the discretion of the purchaser, the gratuity is not subject to the tax imposed by this 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, that the full amount of the gratuity is turned over to the employee by the seller.

(b) An amount or percent, whether designated as a gratuity, tip, or service charge, that is added to the price of the meal by the seller, and required to be paid by the purchaser, to the extent that such mandatory gratuity, tip or service charge does not exceed twenty (20) percent of the sales price, is not subject to the tax imposed by this article.

(Ord. No. 2475, 2-24-98; Ord. No. 2601, 7-11-2000; Ord. No. 2967, 1-9-07)

Sec. 35-139. - Collection.

(a) Every person receiving any payment for a meal subject to the tax levied under this article shall collect the amount of tax imposed under this article from the purchaser on whom the same is levied, or from the purchaser paying for such meal, at the time payment for such meal, is made. The taxes so collected shall be held in trust for the city by the person required to collect such taxes until remitted as provided in this article. The wrongful and fraudulent use of such collections other than remittance as provided by this article constitutes embezzlement, as provided by Code of Virginia § 58.1-3833.

(b) No blind person operating a vending stand or other business enterprise under the jurisdiction of the Department of the Visually Handicapped and located on property acquired and used by the United States for any military purpose shall be required to collect or remit such taxes.

(Code 1965, §§ 33-79, 33-80; Ord. No. 1316, 8-9-82; Ord. No 2475, 2-24-98; Ord. No. 2601, 7-11-00; Ord. No. 2791, 12-9-03)

Sec. 35-140. - Reports and remittances generally.

(a) The person collecting any tax as provided in section 35-139 shall make out a report, upon forms created by the treasurer that shall request all information that the commissioner of the revenue and the treasurer may require, and shall sign and deliver such report to the city treasurer with a remittance of such tax. Such

reports and remittances shall be made on or before the twentieth day of each month, covering the amount of tax collected during the preceding month.

(b) Late filing penalty.

(1) If a report is not filed on or before the due date set forth in subsection (a) above, there shall be added a penalty in the amount of ten (10) percent of the tax assessable on such return or ten dollars ($10.00), whichever is greater; provided, however, that the penalty shall in no case exceed the amount of the tax assessable. Such penalty shall not be assessed until the day after the report is due. Any such penalty, when assessed, shall become part of the tax.

(2) No penalty for failing to file a report shall be assessed if such failure was not the fault of the taxpayer or was the fault of the commissioner of the revenue. The commissioner of the revenue shall make determinations of fault relating to failure to file a report.

(c) The treasurer shall provide the commissioner of the revenue by the fifteenth of each month with copies of all reports submitted in the preceding month by persons required to collect the tax levied by this article.

(Code 1965, § 33-81; Ord. No. 1316, 8-9-82; Ord. No 2475, 2-24-98; Ord. No. 2601, 7-11-00; Ord. No. 2791, 12-9-03)

Sec. 35-141. - Collectors' records.

It shall be the duty of every person liable for the collection and payment to the city of any tax imposed by this article to keep and preserve, for a period of five (5) years, records showing all purchases taxable under this article, the amount charged the purchaser for each such purchase, the date of each purchase, the taxes collected thereon, the amount of tax required to be collected by this article, and such other information as may be determined by the commissioner of the revenue to be necessary to assess the amount of tax such person may have been responsible for collecting and paying to the city. The commissioner of revenue shall have the power to inspect and make copies of such records at all reasonable times for the purpose of administering and enforcing the provisions of this article.

(Code 1965, § 33-84; Ord. No. 2475, 2-24-98)

Sec. 35-142. - Duty of collector when going out or disposing of business.

Whenever any person required to collect and pay to the city a tax under this article shall cease to operate or otherwise dispose of his business, any tax payable under this article to the city shall become immediately due and payable and such person shall immediately make a report and pay the tax due.

(Code 1965, § 33-85)

Sec. 35-143. - Penalty for late remittance.

If any person, whose duty it is so to do, shall fail to remit to the city treasurer the tax required to be collected and paid under this article within the time and in the amount specified in this article, there shall be added to such tax by the city treasurer a penalty of ten (10) percent of the amount due or ten dollars ($10.00), whichever is greater; provided, however, that the penalty shall not exceed the amount due. A penalty for failure to pay the tax due under this article shall not be imposed if it was not the fault of the taxpayer or was the fault of the treasurer.

(Code 1965, § 33-82; Ord. No 2475, 2-24-98; Ord. No. 2800, 3-9-04)

Sec. 35-143.1. - Willful failure to file returns or collect or truthfully account for tax.

(a) Any corporate, partnership or limited liability company officer who willfully fails to pay, collect, or truthfully account for and pay over the tax imposed under this article, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties imposed 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.

(b) Any corporate, partnership or limited liability company officer as defined in this section, or any other person required to collect, account for, or pay over the tax imposed under this article, who willfully fails to collect or truthfully account for such tax, or who willfully evades, or attempts to evade such tax, shall, in addition to any other penalties imposed by law, be guilty of a Class 1 misdemeanor.

(c) The term "corporate, partnership or limited liability company officer" as used in this section means an officer or employee of a corporation, a member or employee of a partnership or a 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 (i) had actual knowledge of the failure or attempt as set forth herein, and (ii) had authority to prevent such failure or attempt.

(Ord. No. 2475, 2-24-98; Ord. No. 2601, 7-11-00; Ord. No. 2791, 12-9-03; Ord. No. 3505, § 1, 6-20-17)

Sec. 35-144. - Procedure upon failure to report, etc.

(a) If any person, whose duty it is so to do, shall fail or refuse to collect the tax imposed under this article and to make, within the time provided in this article, the reports and remittances mentioned in this article, the commissioner of the revenue shall obtain facts and information necessary to create an estimate of the tax due. Within ten (10) days from the date the tax was due, he shall proceed to determine and assess against such person the tax and late filing penalty established at section 35-140(b), and shall notify such person, by hand delivery, facsimile, first-class or electronic mail, of the total amount of such tax and penalties; a copy of the assessment shall be delivered simultaneously to the treasurer. The total amount thereof shall be payable immediately, and the treasurer shall proceed to collect same as authorized by law.

(b) It shall be the duty of the commissioner of revenue to ascertain the name of every person operating a food establishment in the city, liable for the collection of the tax levied by this article, who fails, refuses or neglects to collect such tax or to make, within the time provided by this article, the reports or remittances required by this article. The treasurer may apply for the issuance of a warrant or summons for such person, or, in the case of violations of Code of Virginia § 58.1-3833, request the assistance of the commonwealth's attorney, as provided by law.

(c) Any person issued an estimated assessment as described in subsection (a), who is aggrieved by the assessment, may apply to the commissioner of the revenue for correction as provided by Code of Virginia § 58.1-3980.

(Code 1965, §§ 33-83, 33-87; Ord. No. 2441, 3-25-97; Ord. No 2475, 2-24-98; Ord. No. 2791, 12-9-03; Ord. No. 3652, 4-20-21)

Sec. 35-145. - Food establishment operator not to advertise that he will pay or absorb tax.

No person operating a food establishment shall advertise in any manner, directly or indirectly, that he will absorb or pay all or any part of the tax levied by this article.

(Code 1965, § 33-78; Ord. No 2475, 2-24-98)

Sec. 35-146. - Violations of article.

Any person violating or failing to comply with any provision of this article shall be guilty of a Class 1 misdemeanor. Each violation of, or failure to comply with, this article shall constitute a separate offense. Conviction of such violation shall not relieve any person from the payment, collection or remittance of the taxes provided for in this article. An agreement by any person to pay the taxes provided for in this article by a series of installment payments shall not relieve such person of criminal liability for violation of this article until the full amount of taxes agreed to be paid by such person is received by the treasurer.

(Code 1965, § 33-89; Ord. No. 1316, 8-9-82; Ord. No 2475, 2-24-98)

Sec. 35-147. - Duties of commissioner of the revenue and city treasurer.

(a) The commissioner of the revenue shall be charged with auditing the reports required by this article, ensuring that food establishments are registered to collect the tax levied by this article, and responding to all inquiries that may be made by taxpayers or persons operating food establishments.

(b) The city treasurer shall be charged with the receipt and collection of the taxes imposed and levied by this article, and shall cause the same to be paid into the general treasury of the city.

(Ord. No. 2791, 12-9-03)

Secs. 35-148—35-157. - Reserved.

ARTICLE VII. - TAX ON TRANSIENTS OBTAINING LODGING

Footnotes:
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***Editor's note—** Ord. No. 1185, adopted May 18, 1981, amended Art. VII (title) and Code 1965, § 33-47, deleting "board and" from the phrase "board and lodging." Following the apparent intent of the ordinance, after consultation with the city, the editor has deleted "board" wherever it appears in §§ 35-159—35-167.*
***Cross reference—** Hotels and similar establishments, Ch. 15.*

Sec. 35-158. - Definitions.

Except where the context clearly indicates a different meaning, the following words and phrases, when used in this article shall, for the purposes of this article, have the meanings ascribed to them in this section:

Accommodations. "Accommodations" means any room or space for which tax is imposed on the retail sale of the same pursuant to this article.

Accommodations fee. "Accommodations fee" means the room charge less the discount room charge, if any, provided that the accommodations fee shall not be less than $0.00.

Accommodations intermediary. "Accommodations intermediary" means any person other than an accommodations provider that: (i) facilitates the sale of an accommodation; and (ii) either: (a) charges a room charge to the customer, and charges an accommodations fee to the customer, which fee it retains as compensation for facilitating the sale; (b) collects a room charge from the customer; or (c) charges a fee, other than an accommodations fee, to the customer, which fee it retains as compensation for facilitating the sale. For purposes of this definition, "facilitates the sale" includes brokering, coordinating, or in any other way arranging for the purchase of the right to use accommodations via a transaction directly, including via one or more payment processors, between a customer and an accommodations provider. "Accommodations intermediary" does not include a person: (1) if the accommodations are provided by an accommodations provider operating under a trademark, trade name, or service mark belonging to such person; (2) who facilitates the sale of an accommodation if: (i) the price paid by the consumer to such person is equal to the price paid by such person to the accommodations provider for the use of the accommodations; and (ii) the only compensation received by such person for facilitating the sale of the accommodations is a commission paid from the accommodations provider to such person; or (3) who is licensed as a real estate licensee pursuant to Article 1 of Chapter 21 of Title 54.1, when acting within the scope of such license.

Accommodations provider. "Accommodations provider" means any person that furnishes accommodations to the general public for compensation. The term "furnishes" includes the sale of use or possession or the sale of the right to use or possess. An Accommodations provider may be any public or private hotel, inn, hostelry, tourist home or house, tourist camp, tourist cabin, camping grounds, motel, rooming house or other lodging place within the city offering lodging, for compensation, to any transient.

Affiliate. "Affiliate" means with respect to any person, any other person directly or indirectly controlling, controlled by, or under common control with such person. For purposes of this definition, "control" (including controlled by and under common control with) shall mean the power, directly or indirectly, to direct or cause the direction of the management and policies of such person through ownership or voting securities or by contract or otherwise.

City treasurer. "City treasurer" means the treasurer of the city and any of his or her duly authorized deputies and agents.

Commissioner of revenue. "Commissioner of revenue" means the commissioner of revenue of the city and any of his or her duly authorized deputies and agents.

Discount room charge. "Discount room charge" means the full amount charged by the accommodations provider to the accommodations intermediary, or an affiliate thereof, for furnishing the accommodations.

Retail sale. "Retail sale" means a sale to any person for any purpose other than for resale.

Room charge. "Room charge" means the full retail price charged to the customer for the use of the accommodations before taxes. "Room charge" includes any fee charged to the customer and retained as compensation for facilitating the sale, whether described as an accommodations fee, facilitation fee, or any other name. The room charge shall be determined in accordance with 23VAC10-210-730 and the related rulings of the Virginia Department of Taxation on the same.

Transient. "Transient" means any person who, for any period of not more than ninety (90) consecutive days, either at his own expense or at the expense of another, obtains accommodations from any accommodations provider.

The commissioner of the revenue may rely upon the processes and procedures promulgated by the Virginia Department of Taxation to implement 2021 Acts of Assembly Special Session c. 383 or 2022 Acts of Assembly cs. 7 and 640 in the construction or interpretation of any of the above definitions and the incidence of the tax authorized by this article VII of chapter 35 of the City Code.

(Code 1965, § 33-47; Ord. No. 1185, 5-18-81; Ord. No. 2298, 11-1-94; Ord. No. 2441, 3-25-97; Ord. No. 3671, § 1, 8-17-21; Ord. No. 3711, § 1, 9-20-22)

Sec. 35-159. - Levied; amount.

(a) There is hereby levied and imposed on each transient a tax equivalent to eight (8) percent of the total amount paid for lodging, by or for any such transient, to any lodging place, plus a flat tax of two dollars ($2.00) for each night of lodging at any lodging place other than a campground. One dollar ($1.00) of the flat tax dedicated to the Tourism Advertising Program, and the remaining one dollar ($1.00) dedicated to the Tourism Investment Program. The revenue from five (5) percent of this levy, less the five (5) percent generated within the Sandbridge Special Service District retained by the Sandbridge Special Service District, is hereby dedicated to the Tourism Investment Program, and the revenue from one (1.0) percent of this levy is hereby dedicated to the Tourism Advertising Program.

(b) There is hereby levied and imposed on each transient within the Sandbridge Special Service District (district) a tax, in addition to that levied in subsection (a) hereof, equivalent to one and one-half percent of the total amount paid for accommodations within the district, by or for any such transient to any accommodations provider, excluding hotels, motels and travel campgrounds.

(c) The tax levied herein does not include the regional transient occupancy tax imposed by the General Assembly and codified as § 58.1-1743 of the Code of Virginia. Code of Virginia § 58.1-1743, Subsection D requires the collection of the regional transient occupancy tax to be collected in the same manner as a local transient occupancy tax.

(Code 1965, § 33-48; Ord. No. 1825, 12-19-88; Ord. No. 2019, 12-6-90; Ord. No. 044, 3-12-91; Ord. No. 2108, 12-3-91; Ord. No. 2192, 11-21-92; Ord. No. 35-159, 2-2-93; Ord. No. 2298, 11-1-94; Ord. No. 2347, 8-22-95; Ord. No. 2383, 5-24-96; Ord. No. 2447, 5-13-97; Ord. No. 2577, 5-9-00; Ord. No. 2635, 5-15-01; Ord. No. 2819, 5-11-04; Ord. No. 3010, 5-13-08; Ord. No. 3273, 5-14-13; Ord. No. 3408, § 1, 5-12-15; Ord. No. 3430, § 1, 11-3-15; Ord. No. 3557, 5-15-18; Ord. No. 3657, 5-11-21; Ord. No. 3671, § 1, 8-17-21; Ord. No. 3698, § 1, 5-10-22, eff. 7-1-22)

Editor's note— Section 2 of Ord. No. 3408 states, "Subject to appropriation by the City Council, such revenues generated by the flat tax enacted above shall be dedicated to the Tourism Investment Program."

Sec. 35-160. - Exemptions.

No tax shall be payable under this article in any of the following instances:

(1) On charges for lodging paid by any official or employee of the federal government or of this state or city, when on official business.

(2) On charges for lodging paid to any hospital, medical clinic, convalescent home or home for aged people.

(Code 1965, § 33-55)

Sec. 35-161. - Collection.

(a) For any retail sale of accommodations not facilitated by an accommodations intermediary, the accommodations provider shall collect the tax imposed pursuant to this article, computed on the total price paid for the use or possession of the accommodations, and shall remit the same to the city and shall be liable for the same.

(b) For any retail sale of accommodations facilitated by an accommodations intermediary, the accommodations intermediary shall be deemed under this article as a facility making a retail sale of an accommodation. The accommodations intermediary shall collect the tax imposed pursuant to this article, computed on the room charge and shall remit the same to the locality and shall be liable for the same.

(c) For any transaction for the retail sale of accommodations involving two or more parties that meet the definition of accommodations intermediary, nothing in this section shall prohibit such parties from making an agreement regarding which party shall be responsible for collecting and remitting the tax, so long as the party so responsible is registered with the locality for purposes of remitting the tax. In such event, the party that agrees to collect and remit the tax shall be the sole party liable for the tax, and the other party to such agreement shall not be liable for such tax.

(d) In any retail sale of any accommodations in which an accommodations intermediary does not facilitate the sale of the accommodations, the accommodations provider shall separately state the amount of the tax in the bill, invoice, or similar documentation and shall add the tax to the total price paid for the use or possession of the accommodations. In any retail sale of any accommodations in which an accommodations intermediary facilitates the sale of the accommodation, the accommodations intermediary shall separately state the amount of the tax on the bill, invoice, or similar documentation and shall add the tax to the room charge; thereafter, such tax shall be a debt from the customer to the accommodations intermediary, recoverable at law in the same manner as other debts.

(e) The taxes required to be collected under this section shall be deemed to be held in trust by the person required to collect such taxes, until remitted as required in this article.

(f) Any accommodations intermediary conducting transactions within the city shall submit to the commissioner of the revenue the property addresses and gross receipts for all accommodations facilitated by the accommodations intermediary in the city on forms promulgated by the commissioner of the revenue. A copy

of this report containing only the property addresses shall be separately submitted by the accommodations intermediary to the department of planning. Such information shall be submitted monthly.

(Code 1965, § 33-49; Ord. No. 3671, § 1, 8-17-21; Ord. No. 3711, § 1, 9-20-22)

Sec. 35-162. - Reports and remittances generally.

(a) The person collecting any tax as provided in section 35-139 shall make out a report, upon forms created by the treasurer that shall request all information that the commissioner of the revenue and the treasurer may require, and shall sign and deliver such report to the city treasurer with a remittance of such tax. Such reports and remittances shall be made on or before the twentieth day of each month, covering the amount of tax collected during the preceding month.

(b) Late filing penalty.

(1) If a report is not filed on or before the due date set forth in subsection (a) above, there shall be added a penalty in the amount of ten (10) percent of the tax assessable on such return or ten dollars ($10.00), whichever is greater; provided, however, that the penalty shall in no case exceed the amount of the tax assessable. Such penalty shall not be assessed until the day after the report is due. Any such penalty, when assessed, shall become part of the tax.

(2) No penalty for failing to file a report shall be assessed if such failure was not the fault of the taxpayer or was the fault of the commissioner of the revenue. The commissioner of the revenue shall make determinations of fault relating to failure to file a report.

(c) The treasurer shall provide the commissioner of the revenue by the fifteenth of each month with copies of all reports submitted in the preceding month by persons required to collect the tax levied by this article.

(Code 1965, § 33-50; Ord. No. 2791, 12-9-03)

Sec. 35-163. - Collector's records.

It shall be the duty of every person liable for the collection and payment to the city of any tax imposed by this article to keep and to preserve, for a period of five (5) years, such suitable records as may be necessary to determine the amount of such tax as he may have been responsible for collecting and paying to the city. The commissioner of revenue may inspect such records at all reasonable times.

(Code 1965, § 33-53; Ord. No. 2966, 1-9-07)

Sec. 35-164. - Duty of collector going out or disposing of business.

Whenever any person required to collect and pay to the city a tax under this article shall cease to operate or otherwise dispose of his business, any tax payable under this article to the city shall become immediately due and payable and such person shall immediately make a report and pay the tax due.

(Code 1965, § 33-54)

Sec. 35-165. - Penalty for late remittance or false return.

(a) If any person, whose duty it is so to do, shall file or refuse to remit to the city treasurer the tax required to be collected and paid under this article, within the time and in the amount specified in this article, there shall be added to such tax by the city treasurer a penalty of ten (10) percent of the amount due or ten dollars ($10.00), whichever is greater; provided, however, that the penalty shall not exceed the amount due.

(b) A penalty for failure to pay the tax due under this article shall not be imposed if it was not the fault of the taxpayer or was the fault of the treasurer.

(Code 1965, § 33-51; Ord. No. 2800, 3-9-04)

Sec. 35-166. - Procedure upon failure to report, etc.

(a) If any person, whose duty it is so to do, shall fail to make, within the time provided in this article, any report required by this article, the commissioner of the revenue shall obtain facts and information necessary to create an estimate of the tax due. Within ten (10) days from the date the tax was due, he shall proceed to determine and assess against such person the tax and the late filing penalty established at section 35-162(b), and shall notify such person, by hand delivery, facsimile, first-class or electronic mail, of the total amount of such tax and penalties, and a copy of the assessment shall be delivered simultaneously to the treasurer. The total amount thereof shall be payable immediately, and the treasurer shall proceed to collect same as authorized by law.

(b) It shall be the duty of the commissioner of the revenue to ascertain the name of every person operating a hotel in the city, liable for the collection of the tax levied by this article, who fails, refuses or neglects to collect such tax or make, within the time provided by this article, the reports or remittances required in this article. The treasurer may apply for the issuance of a warrant or summons for such person in the manner provided by law.

(c) Any person issued an estimated assessment as described in subsection (a), who is aggrieved by the assessment, may apply to the commissioner of the revenue for correction as provided by Code.

(Code 1965, § 33-52; Ord. No. 2441, 3-25-97; Ord. No. 2791, 12-9-03; Ord. No. 3652, 4-20-21)

Sec. 35-167. - Violations of article.

Any person violating or failing to comply with any provision of this article shall be guilty of a Class 1 misdemeanor. Conviction of such violation shall not relieve any person from the payment, collection or remittance of the taxes provided in this article.

(Code 1965, § 33-58)

Sec. 35-168. - Duties of commissioner of the revenue and city treasurer.

(a) The commissioner of the revenue shall be charged with auditing the reports required by this article, ensuring that lodging places are registered to collect the tax levied by this article, and responding to all inquiries that may be made by taxpayers or persons operating lodging places.

(b)

The city treasurer shall be charged with the receipt and collection of the taxes imposed and levied by this article, and shall cause the same to be paid into the general treasury of the city.

(Ord. No. 2791, 12-9-03)

Sec. 35-169. - Short-term rental registry.

(a) For purposes of this section only:

(1) *"Operator"* means the proprietor of any dwelling, lodging, or sleeping accommodations offered as a short-term rental, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, license, or any other possessory capacity;

(2) *"Short-term rental"* means the provision of a room or space that is suitable or intended for occupancy for dwelling, sleeping, or lodging purposes, for a period of fewer than thirty (30) consecutive days, in exchange for a charge for the occupancy.

(b) An operator of a short-term rental is required to register with the commissioner of the revenue annually. The registration shall be ministerial in nature and shall require operators to provide the complete name of the operator and the address of each property in the city offered for short-term rental by the operator.

(c) For purposes of defraying the costs of establishing and maintaining the registry set forth in subsection (b), the commissioner of the revenue shall collect a fee of fifty dollars ($50.00). The commissioner of the revenue shall track the costs associated with establishing and maintaining the registry, and through the annual budget process, the commissioner may request the fee be adjusted to reflect such actual costs.

(d) Registration is not required if the operator or short-term rental is exempted from registration by Code of Virginia § 15.2-983(B)(2).

(e) The penalty for offering a property for short-term rental that is not registered in accordance with this section shall be a penal fine of five hundred dollars ($500.00) per violation. Each day a property is offered for short-term rental that is not registered in accordance with this section is a separate violation.

(f) Unless and until an operator pays a penalty authorized by this section and registers such property, the operator may not offer such property for short-term rental.

(g) Upon repeated violations of this section as it relates to a specific property, an operator may be prohibited from registering and offering that property for short-term rental. Notice of such prohibition shall be sent to the specific property, and a copy may be provided to an alternate address if the commissioner believes such alternate address is the residence of the operator. The notice of prohibition is effective on the date received or three business days after mailing by the commissioner of the revenue, whichever is sooner.

(h) An operator may be prohibited from offering a specific property for short-term rental in the city upon conviction of three or more violations of one or more state or local laws, ordinances, or regulations that relate to the short-term rental. The notice of prohibition shall be sent in the same manner as the notice described in subsection (g).

(i) The commissioner of the revenue is directed to request contact information from each operator of a short-term rental that includes a person or agent designated to respond to calls or complaints received by the city's 311 Service. Such person or agent should be able to respond to such calls by providing in-person assistance and remediation within thirty (30) minutes of such call for service or assistance.

(j) The commissioner of the revenue shall monthly report to the department of planning the registry information and a list of those operators of a short-term rental that decline to provide the information described in subsection (i). The department of planning shall provide such information to the planning commission to assist in the development of appropriate land use controls for short-term rentals.

(Ord. No. 3461, § 1, 8-16-16; Ord. No. 3507, §§ 1—3, 6-20-17, eff. 7-1-17)

Secs. 35-170—35-180. - Reserved.

ARTICLE VIII. - ADMISSIONS TAX

Footnotes:
*--- (**9**) ---*
Cross reference— *Amusements, Ch. 4.*
State Law reference— *Admissions tax, Code of Virginia, §§ 58-404.1, 58-404.2.*

Sec. 35-181. - Definitions.

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

Admission charge means the amount paid for admission to any event which is open to the general public and to which admission is charged, exclusive of any federal tax thereon, including a charge made for season tickets. In the case of season tickets, the basis for the admissions tax shall be the price of comparable tickets or seats; provided, however, that if there are no comparable tickets or seats, the basis for the admissions tax shall be the price of a season ticket divided by the number of events the season ticket holder is entitled to attend. If an event is comprised of several performances, and an admission charge must be paid for each separate performance, each performance shall constitute an "event" for purposes of this article. "Admission charge" shall not include the registration fee paid by persons who attend a conference, convention, seminar, symposium or similar event provided a majority of the attendees are, prior to registration, members of the organization conducting the event.

City treasurer means the treasurer of the city and any of his duly authorized deputies and agents.

Commissioner of the revenue means the commissioner of the revenue of the city and any of his duly authorized deputies and agents.

Event promoter means a person or business entity that registers an admissions tax account with the commissioner of the revenue and such person or business entity does not meet the definition of a "place of amusement."

Place of amusement has the meaning provided by section 35-182(a)(4).

(Code 1965, § 33-59; Ord. No. 1202, 7-6-81; Ord. No. 1532, 5-13-82; Ord. No. 2193, 11-24-92; Ord. No. 2199, 1-5-93; Ord. No. 2441, 3-25-97; Ord. No. 2556, 7-13-99; Ord. No. 2622, 3-13-01; Ord. No. 3295, 6-25-13)

Sec. 35-182. - Levy of taxes; classification; amount; administration.

(a) Classifications. Pursuant to Code of Virginia § 58.1-3817, events to which admission is charged are divided into the following classes, and there are hereby imposed and levied the following taxes with such revenues being dedicated to the Tourism Investment Program fund:

(1) School-sponsored events. No tax shall be imposed or levied on the admission charge to attend any event at a public or private elementary, secondary, or college school-sponsored event, including any event sponsored by a school-recognized student organization.

(2) Museums, gardens and zoos. A tax of ten (10) percent of the admission charge for entry into museums, botanical or other similar gardens, and zoos.

(3) Participatory sports. A tax of five (5) percent of the amount charged to persons actively participating in sporting events or athletic contests or activities. Admission charges for spectators who observe, but do not participate in, sporting events or athletic contests or activities shall be taxed at the rate imposed and levied by subsection 35-182(a)(4).

(4) Admissions generally. A tax of ten (10) percent of the admission charge for all other admissions, including admissions to any place of amusement or entertainment. As used in this section, "place of amusement or entertainment" shall mean any place or event open to the public and located in the city where amusements and entertainments, including but not limited to the following, are located, performed, exhibited or conducted:

(i) Any motion picture, play, concert, dance or stageshow;

(ii) Any sporting or athletic contest, exhibition or event;

(iii) Any circus, carnival, fair or amusement park;

(iv) Any sporting or recreational activity, except where the person admitted is participating in the sporting or recreational activity;

(v) Any lecture, speech or dissertation;

(vi) Any show, display or exhibition (e.g., antique show, art exhibition, boat show, car show, computer show, craft show, wine tasting, etc.); and

(vii) Any restaurant, tavern, lounge, bar, cabaret or club.

(b) Admissions; gross receipts to charities. Subject to the conditions set forth below in subsection (d), no tax shall be imposed or levied on the admission charge to attend an event if, as described in Code of Virginia section 58.1-3817, the gross receipts from the event go wholly to charitable purposes.

(c) Admissions; net proceeds to charities. Subject to the conditions set forth below in subsection (d), no tax shall be levied on an event if, as described in Code of Virginia section 15.2-1104.1, its purpose is solely to raise money for charitable purposes and the net proceeds derived from the event are transferred to an entity exempt from sales and use tax pursuant to Code of Virginia § 58.1-609.11. For purposes of this subsection, "net proceeds" means the gross receipts derived from an event less the direct, ordinary and necessary costs associated with conducting the event. The phrase "direct, ordinary and necessary costs," as used herein, shall not include any allocable costs attributable to the event organizer's ongoing expenses, such as accounting fees, insurance premiums or the salaries of officers and staff.

(d)

Conditions and procedures relating to subsections (b) and (c). An "event", as described in preceding subsections (b) and (c), is an occasional or irregular fund-raising activity, not exceeding forty-eight (48) hours in length, the gross receipts or net proceeds of which go wholly to "charitable purposes" as defined in Code of Virginia § 57-48. The following conditions and administrative procedures shall apply to all such events:

(1) The gross receipts or net proceeds must go to an entity (i) organized exclusively for charitable purposes, as reflected in its articles of incorporation, charter or bylaws, (ii) designated by the Internal Revenue Service as a 501(c)(3) organization to which contributions are tax deductible under 26 U.S.C. § 7701, or is a civic organization with a charitable purpose designated by the Internal Revenue Services as a 501(c)(4) organization, and (iii) registered with, or granted an exemption from registration by, the Virginia Department of Agriculture and Consumer Services, Division of Consumer Affairs, Charitable Solicitation Section. Furthermore, any professional solicitor conducting or promoting any such event shall also be required to provide evidence of registration with, or exemption from registration by, the Virginia Department of Agriculture and Consumer Services, Division of Consumer Affairs, Charitable Solicitation Section. As part of substantiation of the chartable status of the organization, the commissioner of the revenue may request current certification of exemption from sales tax pursuant to Virginia Code § 58.1-609.11.

(2) All determinations concerning the taxable status of events described in this subsection shall be made by the commissioner of the revenue on an event-by-event basis.

(3) Any person or organization seeking a determination that an event is not subject to taxation pursuant to this subsection shall apply to the commissioner of the revenue's office at least thirty (30) days prior to such event. All such determinations shall be made only by the commissioner of the revenue. The applicant shall supply, on forms provided by the commissioner of the revenue, a description of the event, the cost of admissions to the event, documentation of the charitable purpose(s) for which the proceeds will be used, a copy of any exemption from sales and use tax (if applicable), evidence of compliance with Code of Virginia § 57-49, and such other information as may be required by the commissioner of the revenue. Within fifteen (15) days of receipt of an application, the commissioner of the revenue shall make a preliminary determination as to whether the proposed event is subject to the admissions tax. Within forty-five (45) days of conclusion of the event, the applicant shall provide documentation that the gross receipts or net proceeds of the event have been utilized in accordance with the requirements of subsection (b). The failure of any person to obtain a determination that an event is not subject to taxation, to supply evidence of compliance with Code of Virginia § 57-49, or to otherwise fail to comply with the requirements of this subsection, shall subject the event to being taxed at the rate provided by subsection (a)(4).

(4) Within sixty (60) days after the end of each fiscal year, the commissioner of the revenue shall provide the city manager a list of all events benefiting charity for which no admissions tax was paid, and an estimate of the total amount of tax that would have otherwise been paid.

(e) All taxes levied by this section shall be paid by the person who pays the charge for admission or participation.

(f)

All determinations concerning the classification of events and the applicable tax rate shall be made by the commissioner of the revenue. A request for a determination of classification of events shall be made in writing to the commissioner of the revenue on forms approved by the commissioner of the revenue. Upon such request, the commissioner of the revenue shall undertake an investigation of such activity, contest, or event to determine the appropriate classification among those classifications provided in subsection (a). Except for school-sponsored events, unless and until a determination concerning the classification of an event is made by the commissioner of the revenue, it shall be classified as general admissions and subject to the general admissions' tax rate as provided in subsection (a)(4), above.

(g) The commissioner of the revenue shall keep a list of all activities, contest, and events that have been determined to be "participatory sports." If a request for determination of classification is for an event that is identical to a previously determined "participatory sport," the commissioner of the revenue shall apply the "participatory sports" classification and tax rate to such events. Should the commissioner of the revenue determine the event is not identical to a previously determined "participatory sport," the commissioner shall undertake an investigation to make a determination as provided in subsection (f).

(Ord. No. 3086, 6-23-09; Ord. No. 3160, 1-25-11; Ord. No. 3434, 1-5-16; Ord. No. 3698, § 1, 5-10-22, eff. 7-1-22)

Sec. 35-182.1. - Tax on amounts paid for refreshments, service or merchandise; events subject to tax.

A tax equivalent to the rate charged for the appropriate classification is hereby imposed on all amounts paid for refreshments, service or merchandise at any place to which admission is charged or any place of amusement or entertainment, if the purchase of such refreshments, service or merchandise is made in lieu of an admission charge and required for the privilege of being admitted.

(Ord. No. 2199, 1-5-93; Ord. No. 2622, 3-13-01)

Sec. 35-182.2. - Barter or exchange.

(a) The tax levied in section 35-182 is also levied on the fair market value of any admission or right to participate that is bartered or exchanged for compensation paid other than in cash, if such non-cash compensation is taxable as gross income to the person providing the admission or right to participate, pursuant to Treasury Regulations sections 1.61-1 and 1.61-2(d)(1) in effect on July 1, 1999.

(b) For the purposes of this section, the term "fair market value" shall mean the face value of tickets or the posted price to attend an event, be admitted to a place of amusement or entertainment, or participate in a sport enumerated in subsection (a)(8).

(Ord. No. 2556, 7-13-99; Ord. No. 2622, 3-13-01)

Sec. 35-183. - Reserved.

Editor's note— Ord. No. 2556, adopted July 13, 1999, repealed § 35-183, which contained an exception for certain free admissions and which was derived from Code 1965, § 33-67.

Sec. 35-183.1. - Reserved.

Editor's note— Section 35-183.1 was repealed by Ord. No. 2199, adopted Jan. 5, 1993. The section was formerly derived from Ord. No. 1532, adopted May 13, 1985, and Ord. No. 2193, adopted and dealt with exception from taxation for certain participating sports. See § 35-182.1.

Sec. 35-184. - Exception if admission charge is ten cents or less.

Where the admission charge is ten cents ($0.10) or less, no tax shall be payable under this article. Amounts paid for admission by season tickets or subscription shall be exempt only if the amount to be charged the holder or subscriber for a single admission is ten cents ($0.10) or less.

(Code 1965, § 33-69)

Sec. 35-185. - Federal tax excluded from amount paid for admission.

The amount paid for admission on which the tax imposed by this article is based shall be the amount paid for admission exclusive of any federal tax thereon.

(Code 1965, § 33-71)

Sec. 35-186. - Collection.

Every person receiving any payment, or any type of compensation other than cash, for any admission, participation in any sport or refreshments, service or merchandise, on which a tax is levied under this article, shall be responsible for collecting the amount of tax imposed by this article from the person making the payment at the time of the payment or compensation for such admission, participation or purchase, and shall be responsible for the payment of such tax if he or she fails to collect same. If tickets or cards of admission are issued, the tax shall be collected at the time for the issuance of such tickets or cards. The taxes required to be collected under this section shall be deemed to be held in trust by the person required to collect the same until remitted as provided in this article. The operator of the "place of amusement" shall be ultimately responsibility for the collection of the tax required by this section and the commissioner of the revenue shall assess such persons or businesses accordingly.

(Code 1965, § 33-61; Ord. No. 2556, 7-13-99; Ord. No. 2622, 3-13-01; Ord. No. 3288, § 1, 5-28-13)

Sec. 35-186.1. - Requirement of bond or other form of security for restaurants and similar businesses that collect a cover charge; requirement of bond for event promoters.

(a) The commissioner shall require all restaurants, clubs, or any other similar businesses that desire to collect an admission charge commonly referred to as a "cover charge" to post annually a bond with corporate surety to insure faithful performance of the business's duties to the city as to admissions taxes collected and held in trust for the city. The bond, including the corporate surety thereon, shall be in a form deemed satisfactory to the city attorney. The bond shall be in an amount not less than the largest monthly admissions tax collection by the business during the previous tax year or, for a new business, an amount based upon the maximum occupancy of the place of amusement. Notwithstanding the foregoing provisions, no such bond shall be issued or accepted in an amount less than one thousand dollars ($1,000.00).

(b) The commissioner shall require any "event promoter" that desires to collect an admission charge commonly referred to as a "cover charge" to post a bond for each event with corporate surety to insure faithful performance of the event promoter's duties to the city as to admissions taxes collected and held in trust for the city. The bond, including the corporate surety thereon, shall be in a form deemed satisfactory to the city attorney. The bond shall be in an amount not less than the anticipated cover charge multiplied by the maximum occupancy of the location of the event utilizing a ten percent hourly turn-over multiplier. Notwithstanding the foregoing provisions, no such bond shall be issued or accepted in an amount less than one thousand dollars ($1,000.00).

(c) The commissioner of the revenue may accept an irrevocable letter of credit in lieu of the bond required by this section, provided that the letter must be reviewed and approved by the city attorney.

(d) The commissioner of the revenue shall provide evidence of compliance with this section to the operator of a place of amusement or the event promoter. The operator of a place of amusement or event promoter shall produce the receipt or evidence of compliance with this section upon demand by an agent of the commissioner of the revenue or any law enforcement officer of the city during the operation of the place of amusement or the duration of an event where a cover charge is collected. The operator of the place of amusement or the event promoter shall be guilty of a Class 1 misdemeanor for the failure to produce the evidence of compliance when demand for same has been made by either an agent of the commissioner of the revenue or any law enforcement officer.

(e) Any person who accepts payment for an admission charge or "cover charge" shall be guilty of a Class 2 misdemeanor for the failure to produce the evidence of compliance referenced in subsection (d) when demand for the same has been made by either an agent of the commissioner of the revenue or any law enforcement officer.

(Ord. No. 3295, 6-25-13)

Sec. 35-187. - Reports and remittances generally.

(a) The person collecting any tax as provided in section 35-186 shall make out a report, upon forms created by the treasurer that shall request all information that the commissioner of the revenue and the treasurer may require, and shall sign and deliver such report to the city treasurer with a remittance of such tax. Such reports and remittances shall be made on or before the twentieth day of each month, covering the amount of tax collected during the preceding month.

(b) Late filing penalty.

(1) If a report is not filed on or before the due date set forth in subsection (a) above, there shall be added a penalty in the amount of ten (10) percent of the tax assessable on such return or ten dollars ($10.00), whichever is greater; provided, however, that the penalty shall in no case exceed the amount of the tax assessable. Such penalty shall not be assessed until the day after the report is due. Any such penalty, when assessed, shall become part of the tax.

(2) No penalty for failing to file a report shall be assessed if such failure was not the fault of the taxpayer or was the fault of the commissioner of the revenue. The commissioner of the revenue shall make determinations of fault relating to failure to file a report.

(c) The treasurer shall provide the commissioner of the revenue by the fifteenth of each month with copies of all reports submitted in the preceding month by persons required to collect the tax levied by this article.

(d) If the remittance under this section is by check or money order, such check or money order shall be payable to the city treasurer.

(Code 1965, § 33-62; Ord. No. 2791, 12-9-03)

Sec. 35-188. - Reports, remittances and deposits by temporary or transient places of amusement or entertainment.

(a) Whenever any place of amusement or entertainment of a temporary or transitory nature makes an admission charge which is subject to the tax levied by this article, or does not make such an admission charge but does sell refreshments, services or merchandise which is subject to the tax levied by this article, the treasurer may require the report and remittance of the requisite tax to be made on the day following its collection, or on the day following the conclusion of a series of performances or exhibitions, or at such other reasonable time or times as he shall determine. Failure to comply with any such requirement of the treasurer as to the report and remittance of the tax so required shall be unlawful.

(b) Before any temporary or transient place of amusement or entertainment mentioned in subsection (a) above shall begin operation and before any license shall be issued therefor, if a license is required, the person operating the same may be required by the treasurer to deposit a sum of money, to be estimated by the commissioner of the revenue sufficient to cover the tax required to be collected by such person under the provisions of this article, as security for the collection and payment to the city of such tax. At the conclusion of such temporary or transient operation in the city, such person shall file with the treasurer the report required by this article and pay such tax collected to the city. Upon the filing of such report and the making of such payment, the city treasurer shall refund such deposit. Should any such person fail to file such report and pay such amount of tax collected within five (5) days from the termination of the operation of such amusement or entertainment, the commissioner of revenue may thereupon assess such person with such tax at the amount of such deposit and the city treasurer shall retain such deposit in full payment of the tax collected by and due the city by such person.

(Code 1965, § 33-68; Ord. No. 2622, 3-13-01; Ord. No. 2791, 12-9-03)

Sec. 35-189. - Collector's records.

It shall be the duty of every person liable for the collection and payment to the city of any tax imposed by this article to keep and to preserve, for a period of five (5) years, such suitable records as may be necessary to determine the amount of such tax he may have been responsible for collecting and paying to the city. The commissioner of revenue may inspect such records at all reasonable times.

(Code 1965, § 33-65; Ord. No. 2966, 1-9-07)

Sec. 35-190. - Duty of collector going out or disposing of business.

Whenever any person required to collect and pay to the city a tax under this article shall quit business or otherwise dispose of his business, any tax payable under this article to the city shall become immediately due and payable and such person shall immediately make a report and pay the tax due.

(Code 1965, § 33-66)

Sec. 35-191. - Penalty for late remittance or false return.

(a) If any person, whose duty it is so to do, shall fail or refuse to remit to the city treasurer the tax required to be collected and paid under this article, there shall be assessed a penalty of ten (10) percent of the amount due or ten dollars ($10.00), whichever is greater; provided, however, that the penalty shall not exceed the amount due.

(b) A penalty for failure to pay the tax due under this article shall not be imposed if it was not the fault of the taxpayer or was the fault of the treasurer.

(Code 1965, § 33-63; Ord. No. 2800, 3-9-04)

Sec. 35-192. - Procedure upon failure to collect, report, etc., taxes.

(a) If any person, whose duty it is so to do, shall fail to make, within the time provided in this article, any report required by this article, the commissioner of the revenue shall proceed in such manner as he may deem best to obtain facts and information necessary to create an estimate of the tax due. Within ten (10) days from the date the tax was due, he shall proceed to determine and assess against such person the tax and the late filing penalty established at section 35-187(b) and shall notify such person, by hand delivery, facsimile, first-class or electronic mail, of the total amount of such tax and penalties, and a copy of the assessment shall be delivered simultaneously to the treasurer. The total amount thereof shall be payable immediately, and the treasurer shall proceed to collect same as authorized by law.

(b) It shall be the duty of the commissioner of the revenue to ascertain the name of every person operating a place of amusement or entertainment in the city, liable for the collection of the tax levied by this article, who fails, refuses or neglects to collect the tax or to make, within the time provided by this article, the reports or remittances required in this article. The treasurer may apply for the issuance of a warrant or summons for such person in the manner provided by law.

(c) Any person issued an estimated assessment as described in subsection (a), who is aggrieved by the assessment, may apply to the commissioner of the revenue for correction as provided by Code of Virginia § 58.1-3980.

(Code 1965, §§ 33-64, 33-72; Ord. No. 2441, 3-25-97; Ord. No. 2791, 12-9-03; Ord. No. 3652, 4-20-21)

Sec. 35-193. - Violations of article.

Any person violating or failing to comply with any provision of this article shall be guilty of a Class 1 misdemeanor. Each such violation or failure to pay shall constitute a separate offense, but conviction thereof shall not relieve any person from the payment, collection or remittance of the taxes provided for in this article.

(Code 1965, § 33-74)

Sec. 35-194. - Duties of commissioner of the revenue and city treasurer.

(a) The commissioner of the revenue shall be charged with auditing the reports required by this article, ensuring that persons charging for admissions to events are registered to collect the tax levied by this article, and responding to all inquiries that may be made by taxpayers or persons charging for admissions to events.

(b) The city treasurer shall be charged with the receipt and collection of the taxes imposed and levied by this article, and shall cause the same to be paid into the general treasury of the city.

(Ord. No. 2791, 12-9-03)

Secs. 35-195—35-205. - Reserved.

ARTICLE IX. - CIGARETTE TAX

Footnotes:
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***State Law reference—** Authority of city to levy cigarette tax and permitted provisions of ordinance providing for administrative and enforcement of such tax, Code of Virginia, §§ 58-757.27, 58-757.29.*

Sec. 35-206. - Definitions.

Except where the context clearly indicates a different meaning, the following words and phrases, when used in this article, shall, for the purpose of this article, have the meanings ascribed to them in this section:

Commissioner of revenue. "Commissioner of the revenue" means the commissioner of revenue of the city and any of his duly authorized deputies and agents.

Dealer. "Dealer" means any manufacturer, jobber, wholesale dealer or other person who supplies a seller with cigarettes.

Package. "Package" means any package, box, can or other container of any cigarettes, irrespective of the material from which such container is made, to which the internal revenue stamp of the United States government is required to be affixed by and under federal statues and regulations and in which retail sales of such cigarettes are normally made or intended to be made.

Person. "Person" means any individual, partnership, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals.

Purchaser. "Purchaser" means any person to whom title to any cigarettes is transferred by a seller within the corporate limits of the city.

Sale. "Sale" means any 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, as defined in this section, to any other person within the corporate limits of the city.

Seller. "Seller" means any person who transfers title to any cigarettes, other than by gift, or in whose place of business title to any cigarettes is transferred, within the corporate limits of the city, for any purpose other than resale.

Stamp. "Stamp" means a small gummed piece of paper or decalcomania to be sold by the commissioner of revenue and to be affixed to every package of cigarettes sold at retail in the city, and also any insignia or symbols printed by a meter machine upon any such package under the authorization of the commissioner of revenue.

(Code 1965, § 33-23; Ord. No. 1218, 8-24-81; Ord. No. 3406, 5-12-15, eff. 7-1-15)

Sec. 35-207. - Levied; amount.

There is hereby levied and imposed by the city, upon each sale of cigarettes, a tax equivalent to thirty-seven and fifty (37.50) mills per cigarette sold within the city, the amount of such tax to be paid by the seller, if not previously paid, in the manner and at the time provided for in this article. There shall be a penalty for late payment of the tax imposed herein in the amount of ten (10) per centum per month, and interest in the amount of three-quarters of-one (0.75) per centum per month, upon any tax found to be overdue and unpaid. The revenues from two and one-half (2.5) mills per cigarette is hereby dedicated to the Tourism Investment Program.

(Code 1965, § 33-24; Ord. No. 1179, 5-15-81; Ord. No. 1218, 8-24-81; Ord. No. 1454, 5-14-84; Ord. No. 1779, 5-16-88; Ord. No. 2239, 6-22-93; Ord. No. 2638, 5-15-01; Ord. No. 2732, 1-7-03; Ord. No. 3011, 5-13-08; Ord. No. 3127, 5-11-10; Ord. No. 3271, 5-14-13, eff. 7-1-13; Ord. No. 3409, 5-12-15, eff. 7-1-15; Ord. No. 3698, § 1, 5-10-22, eff. 7-1-22)

Sec. 35-208. - Method of payment.

(a) The tax imposed by this article shall be paid by affixing or causing to be affixed a stamp or stamps, of proper denominational or face value, to every package of cigarettes sold within the city, in the manner and at the time or times provided for in this article. Every dealer and every seller in the city shall have the right to buy such stamps from the commissioner of revenue and to affix the same to packages of cigarettes as provided in this article.

(b) The commissioner of revenue may permit the payment in advance of the tax levied and imposed by this article by the method of placing imprints of the 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 may 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.

(Code 1965, §§ 33-26, 33-30; Ord. No. 1218, 8-24-81; Ord. No. 3406, 5-12-15, eff. 7-1-15)

Sec. 35-209. - Preparation and sale of stamps generally.

For the purpose of making stamps available for use, the commissioner of revenue shall 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 commissioner of revenue shall allow a discount of eight (8) percent of the denominational

or face value thereof to cover the costs which will be incurred in affixing the stamps to packages of cigarettes. In the event the printing by an authorized meter machine is used in lieu of gummed stamps, there shall be allowed a discount of ten (10) 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.

(Code 1965, § 33-28; Ord. No. 1218, 8-24-81; Ord. No. 3406, 5-12-15, eff. 7-1-15)

Sec. 35-210. - General duties of dealers and sellers with respect to stamps.

(a) Every local dealer in cigarettes shall purchase such stamps, at the office of the commissioner of revenue as shall be necessary to pay the tax levied and imposed by this article and shall affix, or cause to be affixed a stamp or stamps of the monetary value prescribed by this article to each package of cigarettes prior to delivery or furnishing of such cigarettes to any seller. Nothing herein contained shall preclude any dealer from using a stamp meter machine in lieu of gummed stamps to effectuate the provisions of this article.

(b) Every seller shall examine each package of cigarettes prior to exposing the same for sale, for the purpose of ascertaining whether such package has the proper stamps affixed thereto or imprinted thereon, as provided by this article. 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 thereon.

(c) Should a seller obtain or acquire possession from any person other than a local dealer, of any unstamped or improperly stamped cigarettes, such seller shall forthwith, before selling, offering or exposing such cigarettes for sale in the city, purchase and affix or cause to be affixed to such packages of cigarettes the proper stamps, covering the tax imposed by this article.

(Code 1965, § 33-27; Ord. No. 1218, 8-24-81; Ord. No. 3406, 5-12-15, eff. 7-1-15)

Sec. 35-211. - Visibility of stamps or meter markings.

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.

(Code 1965, § 33-27; Ord. No. 1218, 8-24-81)

Sec. 35-212. - Altering design of stamps.

The commissioner of revenue may, from time to time, and as often as he 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.

(Code 1965, § 33-29; Ord. No. 1218, 8-24-81)

Sec. 35-213. - Use by wholesaler of dual die to evidence payment.

The commissioner of revenue 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.

(Code 1965, § 33-31; Ord. No. 1218, 8-24-81)

Sec. 35-214. - Refund for unused stamps or meter imprints.

Should any person, after acquiring from the commissioner of revenue any stamps provided for in this article, cease to be engaged in a business necessitating the use thereof, or should any such stamps become mutilated and unfit for use, other than by cancellation as provided in this article, such person shall be entitled to a refund of the denominational or face amount of stamps so acquired and not used by him, less eight (8) percent of the denominational or face amount thereof, upon presenting such stamps to the commissioner of revenue and furnishing the commissioner of revenue with an affidavit showing, to his satisfaction, that such stamps were acquired by such person and have not in any manner been used and the reason for requesting such refund. In the case of any authorized meter machine, should any imprints of such machine theretofore paid for not be used, such person shall, upon furnishing the commissioner of revenue with a similar affidavit, be entitled to a refund of the denominational or face amount thereof, less ten (10) percent of the denominational or face amount of such imprints of such machine not so used.

(Code 1965, § 33-32; Ord. No. 1218, 8-24-81; Ord. No. 3406, 5-12-15, eff. 7-1-15)

Sec. 35-215. - Seizure and sale of unstamped cigarettes.

(a) Whenever the commissioner of revenue shall discover cigarettes in quantities more than six (6) cartons within the city which are 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 thereon by the printed markings of an authorized meter machine, as in this article required, such cigarettes shall be conclusively presumed for sale or use within the city and the commissioner of revenue may forthwith seize and confiscate such cigarettes, if:

(1) They are in transit, and are not accompanied by a bill of lading or other document indicating the true name and address of the cosigner or seller and of the cosignee or purchaser, and the brands and quantity of tobacco products so transported; or are in transit and accompanied by bill of lading or other document which is false or fraudulent in whole or in part; or

(2) They are in transit and are accompanied by a bill of lading or other documents indicating:

a. A cosignee or purchaser in another state or the District of Columbia who is not authorized by the law of such other jurisdiction to receive or possess such tobacco products on which the taxes imposed by such other jurisdiction have not been paid, and unless the tax of the state or district of destination has been paid and the said products bear the tax stamp of that state or district; or

b.

A cosignee or purchaser in the Commonwealth of Virginia but outside the city who does not possess a Virginia sales and use tax certificate, a Virginia retail tobacco license and where applicable, both a business license and retail tobacco license issued by the local jurisdiction of destination; or

(3) They are not in transit and the tax has not been paid, nor have approved arrangements for payment been made, provided that this subparagraph shall not apply to cigarettes in the possession of distributors or public warehouses which have filed notice and appropriate proof with the commissioner of the revenue that those cigarettes are temporarily within the city and will be sent to cosignees or purchasers outside the city in the normal course of business.

(b) All cigarettes seized and confiscated according to paragraph (a) above shall thereupon be deemed to be forfeited to the city and may be sold within a reasonable time thereafter, after proper notice of such seizure is given to the known holders of property interests in the cigarettes. Such notice shall be given to known holders of property interests, if any, by certified mail and by written notice posted on the bulletin of the court house of the circuit court of Virginia Beach at least seven (7) days before the date of sale. Such notice shall contain the time and place at which the sale is to occur and procedures for administrative appeal as well as affirmative defenses which may be asserted by such holders. All monies collected under this section shall be paid to the commissioner of revenue and treated as other taxes collected under this article. No credit from any sale or other disposition shall be allowed toward any tax or penalties owed.

(Code 1965, § 33-33; Ord. No. 1218, 8-24-81; Ord. No. 3406, 5-12-15, eff. 7-1-15)

Sec. 35-215.1. - Seizure and sale of coin-operated vending machines and counterfeit stamp or impression devices.

(a) Any coin-operated vending machine, in which any cigarettes are found, stored or possessed bearing a counterfeit or bogus tobacco tax stamp or impression or any unstamped cigarettes, or any cigarettes upon which the tax has not been paid, may be declared contraband property and be subject to confiscation and sale as provided in section 35-215(b). When any such vending machine is found containing such cigarettes, it shall be presumed that such cigarettes were intended for distribution, sale or use therefrom. In lieu of immediate seizure and confiscation of any vending machine used in an illegal evasion of the tax, it may be sealed by appropriate enforcement authorities to prevent continued illegal sale or removal of any cigarettes, and may be left unmoved until other civil and criminal penalties are imposed or waived. Notice requirements shall be the same as if the machine had been seized. Such seal may be removed and the machine declared eligible for operation only by authorized enforcement authorities. Nothing in this section shall prevent seizure and confiscation of a vending machine at any time after it is sealed.

(b) Any counterfeit stamps or counterfeit impression devices found may also be seized and confiscated and sold as provided in section 35-215(b).

(Ord. No. 1218, 8-24-81)

Cross reference— Coin-operated vending machine's license tax § 18-73.

Sec. 35-216. - Dealers' and sellers' records generally.

Every local dealer and seller shall maintain and keep, for a period of two (2) years, such records of cigarettes sold and delivered by him as may be required by the commissioner of revenue and shall make all such records available for examination by the commissioner of revenue, upon demand, at all reasonable times.

(Code 1965, § 33-35; Ord. No. 1218, 8-24-81)

Sec. 35-217. - Rules and regulations for enforcement and administration of article; examination of books, records, etc.

(a) The commissioner of revenue may prescribe, adopt, promulgate and enforce rules and regulations relating to the method and means to be used in the cancellation of stamps and to all other matters pertaining to the administration and enforcement of the provisions of this article. It shall be unlawful for any person to fail, neglect or refuse to comply with such rules and regulations.

(b) The commissioner of revenue may examine books, records, invoices, papers and all cigarettes in and upon any premises where the same are placed, stored, sold, offered for sale or displayed for sale by a seller.

(Code 1965, §§ 33-36, 33-37; Ord. No. 1218, 8-24-81)

Sec. 35-218. - Tax is in addition to other taxes.

The tax levied and imposed by this article shall be construed to be in addition to all other taxes of every kind levied and imposed by any other ordinance or law.

(Code 1965, § 33-25; Ord. No. 1218, 8-24-81)

Sec. 35-219. - Violations of article—Generally.

(a) Any person violating any of the provisions of this article shall be guilty of a Class 1 misdemeanor. In addition, any person who shall perform any fraudulent act or fail to perform any act for the purpose of evading the payment of any tax imposed by this article shall be required to pay a penalty in the amount of fifty (50) per centum and interest not to exceed three quarters (.75) of one per centum per month upon any tax found to be overdue and unpaid. Conviction and payment of a fine for such violation shall not relieve any person from the payment of any tax imposed by this article.

(b) Each violation of, or noncompliance with, any of the provisions of this article shall be and constitute a separate offense and shall subject every person convicted thereof to the penalties prescribed.

(Code 1965, § 33-39; Ord. No. 1218, 8-24-81)

Sec. 35-220. - Same—Prohibited acts enumerated.

It shall be unlawful and a violation of this article for any person:

(1) To perform any act or fail to perform any act for the purpose of evading the payment of any tax imposed by this article or of any part thereof; or 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 which the commissioner of revenue may issue under this article.

(2) To 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) To sell any cigarettes upon which the tax imposed by this article has not been paid and upon which evidence of payment thereof is not shown on each package of cigarettes.

(4) To reuse or refill with cigarettes any package from which cigarettes, for which the tax imposed has been theretofore paid, have been removed.

(5) To remove from any package any stamp or the printed markings of a meter machine with intent to use or cause the same to be used after the same 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 have theretofore been used for evidence of the payment of any tax prescribed by this article, or, except as to the commissioner of revenue, to sell, or offer to sell, any stamp or printed markings of a meter machine provided for this article.

(Code 1965, § 33-38; Ord. No. 1218, 8-24-81; Ord. No. 3406, 5-12-15, eff. 7-1-15)

Sec. 35-221. - Same—Presumption of violation by seller.

In the event any package of cigarettes is found in the possession of a seller without the proper stamps being affixed thereto or without authorized printed markings of a meter machine thereon, and the seller shall be unable to submit evidence establishing that he received such package within the immediately preceding forty-eight (48) hours, and that he has not offered the same 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 for such violation.

(Code 1965, § 33-34; Ord. No. 1218, 8-24-81)

Secs. 35-222—35-235. - Reserved.

ARTICLE X. - RECORDATION TAX

Sec. 35-236. - Imposed.

Pursuant to section 58-65.1 of the Code of Virginia, there is hereby imposed a city recordation tax, in an amount equal to one-third of the amount of the state recordation tax collectible for the state, on the first recordation of each taxable instrument in this city; provided, however, that, except in a case in which the state recordation tax is fifty cents ($0.50) specifically, where a deed or other instrument conveys, covers or relates to property located in this city and also to property located in another city or county or in other counties or cities, the tax imposed under the authority of this section shall be computed only with respect to the property located in this city.

(Code 1965, § 33-90)

Secs. 35-237—35-250. - Reserved.

ARTICLE XI. - TAX ON PROBATE OF WILLS OR GRANT OF ADMINISTRATION

Sec. 35-251. - Imposed.

(a) Pursuant to Code of Virginia § 58.1-3805 there is hereby imposed, on the probate of every will or grant of administration not exempt by law, a city tax in the amount of one-third of the state tax on such probate of a will or grant of administration, as set forth in Code of Virginia § 58.1-1712.

(b) Pursuant to Code of Virginia §§ 58.1-1718 and 58.1-3805 a twenty-five dollars ($25.00) fee shall be charged on the recordation of a list of heirs pursuant to Code of Virginia § 64.1-134 or an affidavit pursuant to Code of Virginia § 64.1-135 unless a will has been probated for the decedent or there has been a grant of administration on the decedent's estate.

(Code 1965, § 33-90.1; Ord. No. 3143, 7-6-10)

ARTICLE XII. - SHORT-TERM RENTAL TAX

Sec. 35-252. - Short-term rental tax.

(a) *Levied; amount.* Pursuant to Code of Virginia § 58.1-3510.6, there is hereby assessed and imposed on every person engaged in the short-term rental business a tax of one (1) percent on the gross proceeds of such business defined in subsection (c)(1) and one and one-half (1½) percent of such business defined in subsection (c)(2). Such tax shall be in addition to the tax levied pursuant to Code of Virginia § 58.1-605. For purposes of this section, "gross proceeds" means the total amount charged to each person for the rental of short-term rental property, excluding any state and local sales tax paid pursuant to the Virginia Retail Sales and Use Tax Act.

(b) *Short-term rental property defined.* For purposes of this section, "short-term rental property" means all tangible personal property held for rental and owned by a person engaged in the short-term rental business, except trailers, as defined in Code of Virginia § 46.2-100 and other tangible personal property required to be licensed or registered with the department of motor vehicles, department of game and inland fisheries, or the department of aviation.

(c) *Short-term rental business defined.* A person is engaged in the short-term rental business if:

(1) Not less than eighty (80) percent of the gross rental receipts of such business during the preceding year arose from transactions involving the rental of short-term rental property, other than heavy equipment property as defined in subdivision (2), for periods of ninety-two (92) consecutive days or less, including all extensions and renewals to the same person or a person affiliated with the lessee; or

(2)

Not less than sixty (60) percent of the gross rental receipts of such business during the preceding year arose from transactions involving the rental of heavy equipment property for periods of two hundred seventy (270) consecutive days or less, including all extensions and renewals to the same person or a person affiliated with the lessee. For purposes of this subdivision, "heavy equipment property" means rental property of an industry that is described under code 532412 or 532490 of the 2002 North American Industry Classification System as published by the United States Census Bureau, excluding office furniture, office equipment, and programmable computer equipment and peripherals as defined in Code of Virginia § 58.1-3503(A)(16).

For purposes of determining whether a person is engaged in the short-term rental business as defined in subdivisions (1) and (2), a person is "affiliated" with the lessee of rental property if such person is an officer, director, partner, member, shareholder, parent or subsidiary of the lessee, or if such person and the lessee have any common ownership interest in excess of five (5) percent; any rental to a person affiliated with the lessee shall be treated as rental receipts but shall not qualify for purposes of the eighty (80) percent requirement of subdivision (1) or the sixty (60) percent requirement of subdivision (2); and any rental of personal property which also involves the provision of personal services for the operation of the personal property rented shall not be treated as gross receipts from rental, provided however that the delivery and installation of tangible personal property shall not mean operation for the purposes of this subdivision.

A person who has not previously been engaged in the short-term rental business who applies for a certificate of registration pursuant to subsection (j) shall be eligible for registration upon his certification that he anticipates meeting the requirements of subdivision (1) or (2), designated by the applicant, during the year for which registration is sought.

In the event that the commissioner of the revenue makes a written determination that a rental business previously certified as short-term rental business pursuant to subsection (j) has failed to meet either of the tests set forth in subdivision (1) or (2) during a preceding tax year, such business shall lose its certification as a short-term rental business and shall be subject to the business personal property tax with respect to all rental property for the tax year in which such certification is lost and any subsequent tax years until such time as the rental business obtains recertification pursuant to subsection (j). In the event that a rental business loses its certification as a short-term rental business pursuant to this subsection, such business shall not be required to refund to customers daily rental property taxes previously collected in good faith and shall not be subject to the assessment for business personal property taxes with respect to rental property for tax years preceding the year in which the certification is lost unless the commissioner makes a written determination that the business obtained its certification by knowingly making materially false statements in its application, in which case the commissioner may assess the taxpayer the amount of the difference between the short-term rental property taxes remitted by such business during the period in which the taxpayer wrongfully held certification and the business personal property taxes that would have been due during such period but for the certification obtained by the making of the materially false statements. Any such assessment, and any determination not to certify or to decertify a rental business as a short-term rental business as defined in this subsection, may be appealed pursuant to the procedures and requirements set forth in Code of Virginia § 58.1-3983.1 for appeals of local business taxes, which shall apply mutatis mutandis to such assessment and certification decisions.

A rental business that has been decertified pursuant to the provisions of this subsection shall be eligible for recertification for a subsequent tax year upon a showing that it has met one of the test provided in subdivisions (1) and (2) for at least ten (10) months of operations during the present tax year.

(d) *Taxation of rental property that is not short term rental property.* Except for short-term rental passenger cars, rental property that is not short-term rental property shall be classified for taxation pursuant to Code of Virginia § 58.1-3503.

(e) *Collection, return and remittance of tax.* Any person engaged in the short-term rental business, as defined by subsection (c), shall collect such tax from each lessee of rental property at the time of the rental. The lessor of the short-term rental property shall transmit a quarterly return, not later than the fifteenth day following the end of each calendar quarter, to the treasurer, reporting the gross rental proceeds derived from the short-term rental business. The commissioner of the revenue shall assess the tax due, and the short-term rental business shall pay the tax so assessed to the treasurer not later than the last day of the month following the end of the calendar quarter. The calendar quarters end on March 31, June 30, September 30 and December 31. The return shall be upon such forms, approved by the commissioner of the revenue and the treasurer, setting forth such information as the commissioner of revenue may require, showing the amount of gross receipts and the tax required to be collected. The taxes required to be collected under this article shall be deemed to be held in trust by the person required to collect such taxes until remitted as required in this article.

(f) *Procedure upon failure to collect, report or remit taxes.* If any person, whose duty it is so to do, shall fail or refuse to collect the tax imposed under this article and to make, within the time provided in this article, the returns and remittances required in this article, the commissioner of the revenue shall obtain facts and information necessary to create an estimate of the tax due. Within ten (10) days from the date the tax was due, he shall proceed to determine and assess against such person the tax and the late filing penalty established in subsection (g) below, and shall notify such person, by hand-delivery, facsimile or certified mail, of the total amount of such tax and penalty; a copy of the assessment shall be delivered simultaneously to the treasurer. The total amount thereof shall be payable immediately, and the treasurer shall proceed to collect same as authorized by law.

(g) *Failure or refusal to remit tax; penalty.* If any person, whose duty it is so to do, shall fail or refuse to remit the tax required to be collected and paid under this article within the time specified in the article, there shall be added to such tax a penalty in the amount of ten (10) percent of the tax past due or the sum of ten dollars ($10.00), whichever is the greater. The assessment of such penalty shall not be deemed a defense to any criminal prosecution for failing to make any return or remittance as required in this article. Penalty for failure to pay the tax assessed pursuant to this article shall be assessed on the first day following the day such quarterly installment payment is due.

(h) *Late filing penalty.*

(1) If a report is not filed on or before the due date set forth in subsection (a) above, there shall be added a penalty in the amount of ten (10) percent of the tax assessable on such return or ten dollars ($10.00), whichever is greater; provided, however, that the penalty shall in no case exceed the amount of the tax

assessable. Such penalty shall not be assessed until the day after the report is due. Any such penalty, when assessed, shall become part of the tax.

(2) No penalty for failing to file a report shall be assessed if such failure was not the fault of the taxpayer or was the fault of the commissioner of the revenue. The commissioner of the revenue shall make determinations of fault relating to failure to file a report.

(i) *Exclusions and exemptions.* No tax shall be collected or assessed on (i) rentals by the commonwealth, any political subdivision of the commonwealth or the United States, or (ii) any rental of durable medical equipment as defined in Code of Virginia § 58.1-608(22). Additionally, all exemptions applicable in the Code of Virginia Title 58.1, Ch. 6 (section 58.1-600 et seq.) shall apply mutatis mutandis to the short-term rental property tax.

(j) *Renter's certificate of registration.* Every person engaging in the business of short-term rental of tangible personal property shall file an application for a certificate of registration with the commissioner of the revenue. The application shall be on a form prescribed by the commissioner of revenue and shall set forth the name under which the applicant intends to operate the rental business, the subdivision of subsection (c) under which the business asserts that it is qualified for classification as a short-term rental business, the location and such other information as the commissioner may require.

Each applicant shall sign the application as owner of the rental business. If the rental business is owned by an association, partnership, limited liability company, or corporation, the application shall be signed by a member, partner, executive officer or other person specifically authorized by the association, partnership, limited liability company, or corporation to sign.

Upon approval of the application by the commissioner of the revenue, a certificate of registration shall be issued. The certificate shall be conspicuously displayed at all times at the place of business for which it is issued.

The certificate is not assignable and shall be valid only for the person in whose name it is issued and the place of business designated.

(k) *Criminal penalties for violation of article.* Any person violating or failing to comply with any provision of this article shall be guilty of a Class 3 misdemeanor. Provided however, if the amount of tax due and unpaid for any quarterly installment exceeds one thousand dollars ($1,000.00), any person failing to remit payment when due shall be guilty of a Class 1 misdemeanor. The treasurer may apply for the issuance of a warrant or summons for such person in the manner provided by law.

(l) *Copies of reports; appeal of estimated assessment.* (i) The treasurer shall provide the commissioner of the revenue by the fifteenth of each month with copies of all reports submitted in the preceding month by persons required to collect the tax levied by this article, and (ii) any person issued an estimated assessment as described in subsection (f), who is aggrieved by the assessment, may apply to the commissioner of the revenue for correction as provided by Code of Virginia § 58.1-3980.

(m) *Duties of the commissioner of the revenue.* The commissioner of the revenue shall be charged with auditing the reports required by this article, ensuring that short-term rental businesses are registered to collect the tax levied by this article, and responding to all inquiries that may be made by taxpayers or rental businesses.

(n) *Duties of the city treasurer.* The city treasurer shall be charged with the receipt and collection of the taxes imposed and levied by this article, and shall cause the same to be paid into the general treasury of the city.

(Ord. No. 1876, 5-15-89; Ord. No. 2791, 12-9-03; Ord. No. 3113, § 1, 1-12-10)

ARTICLE XIII. - LOCAL TELECOMMUNICATION SERVICE TAXES

Sec. 35-253. - Definitions.

Except where the context clearly indicates a different meaning, in this article definitions of words and phrases related to telecommunication or enhanced 911 service shall be provided by the provisions of Code of Virginia §§ 58.1-648 and 58.1-1730.

(Ord. No. 2321, 5-9-95; Ord. No. 2719, 9-3-02; Ord. No. 3735, § 1, 5-9-23)

Sec. 35-254. - Imposed.

(a) Pursuant to Code of Virginia § 58.1-648, as amended, there is levied and imposed, in addition to all other taxes and fees of every kind imposed by law, a sales or use tax on the customers of communications services in the amount of five (5) percent of the sales price of each communications service. Such amounts are billed and collected by the Commonwealth.

(Ord. No. 2321, 5-9-95; Ord. No. 2443, 5-13-97; Ord. No. 2529, 5-11-99; Ord. No. 2719, 9-3-02; Ord. No. 2749, 5-13-03; Ord. No. 3735, § 2, 5-9-23)

Sec. 35-255. - Applicability to local telephone service.

The taxes imposed by this article on consumers of local telephone service shall apply to all charges made for local telephone service except local messages which are paid for by inserting a coin or coins in coin-operated telephones.

(Ord. No. 2321, 5-9-95)

Sec. 35-256. - Exemptions.

The United States of America and the Commonwealth of Virginia, together with all agencies thereof, are hereby exempt from the payment of the taxes imposed by this article with respect to the purchase of services used by such governmental agencies.

(Ord. No. 2321, 5-9-95)

Sec. 35-257. - Computation when service provider collects charges periodically.

In all cases where a service provider collects charges for services periodically, the taxes imposed by this article may be computed on the aggregate amount of purchases during such period; provided, that the amount of the taxes to be collected shall be the nearest whole cent to the amount computed.

(Ord. No. 2321, 5-9-95)

Sec. 35-258. - Duty of service provider to collect, report and remit; penalty and interest.

(a) Before engaging in business in the city, every service provider shall register with the commissioner of the revenue and provide, on a form prescribed by the commissioner of the revenue, sufficient information about the service provider and its manner of doing business to ensure that the taxes imposed and levied by this article will be properly assessed.

(b) It shall be the duty of every service provider, in acting as the tax collection medium or agency for the city, to collect from each consumer, for the use of the city, the taxes imposed and levied by this article at the time of collecting the purchase price charged for the service. The taxes so collected during each calendar month shall be reported and remitted by each service provider to the treasurer on or before the fifteenth day of the second calendar month thereafter. The required report shall be created by the treasurer and request all information that may be required by the commissioner of the revenue.

(c) Failure to report or remit the taxes so collected on or before the due date set forth in subsection (b) of this section shall result in a penalty of ten (10) percent of the amount due or ten dollars ($10.00), whichever is greater, which shall be added to the amount due; provided, however, that the penalty shall not exceed the amount due.

(d) The treasurer shall provide the commissioner of the revenue by the fifteenth of each month with copies of all reports submitted in the preceding month by persons required to collect the tax levied by this article.

(Ord. No. 2321, 5-9-95; Ord. No. 2719, 9-3-02; Ord. No. 2791, 12-9-03)

Sec. 35-258.1. - Procedure upon failure to collect, report, etc.

(a) It shall be the duty of the commissioner of the revenue to ascertain the name of every service provider liable for the collection of the tax imposed and levied by this article, as well as the name of every service provider that fails, refuses or neglects to collect such tax or to make, within the time provided by this article, the reports and remittances required by this article.

(b) If any service provider, whose duty it is so to do, shall fail, refuse or neglect to collect the tax imposed and levied under this article or to make, within the time provided in this article, the reports and remittances required by this article, the commissioner of the revenue shall obtain the facts and information necessary to make an estimate of the tax due. As soon as the commissioner of the revenue has procured such facts and information, he shall proceed to determine and assess the tax imposed and levied by this article and shall notify such service provider, by certified mail, sent to its last known place of business, of the total amount of such tax, penalties and interest; at the same time, a copy of this notice shall be provided to the city treasurer. The total amount of this assessment shall be payable within ten (10) days from the date of such notice.

(Ord. No. 2719, 9-3-02)

Sec. 35-259. - Service provider's records.

Each service provider shall keep complete records showing all purchases of local telecommunication service in the city, which records shall show the date of each bill, the price each consumer is charged with respect to each purchase, and the amount of taxes imposed by this article. Such records shall be made maintained for a period of five (5) years and shall be made available for inspection by the commissioner of the revenue or his duly authorized agents at reasonable times during normal business hours. The commissioner of the revenue or his duly authorized agents shall have the authority to make such transcripts thereof during such times as they may deem necessary and appropriate.

(Ord. No. 2321, 5-9-95; Ord. No. 2719, 9-3-02)

Sec. 35-260. - Duties of commissioner of the revenue and city treasurer.

(a) The commissioner of the revenue shall be charged with auditing the reports required by this article, ensuring that service providers are registered to collect the tax levied by this article, and responding to all inquiries that may be made by taxpayers or service providers.

(b) The city treasurer shall be charged with the receipt and collection of the taxes levied by this article, and shall cause the same to be paid into the general treasury of the city.

(Ord. No. 2321, 5-9-95; Ord. No. 2719, 9-3-02; Ord. No. 2791, 12-9-03)

Sec. 35-261. - Refund.

Any consumer shall be entitled to a refund from the city equal to the amount of any local telecommunication service tax the consumer paid to a jurisdiction outside of the commonwealth if such tax was legally imposed in such other jurisdiction; however, the amount of credit or refund shall not exceed the tax paid to the city.

(Ord. No. 2321, 5-9-95)

Sec. 35-262. - Failure of consumer to pay; violations of article by service provider.

Any consumer failing, refusing or neglecting to pay the tax imposed by this article and any service provider violating the provisions of this article, and any officer, agent or employee of any service provider violating the provisions of this article, shall be guilty of a Class 3 misdemeanor. Each failure, refusal, neglect or violation and each day's continuance thereof shall constitute a separate offense. Conviction for such violation shall not relieve any such person from the payment, collection and remittance of the tax as provided in this article, and any penalty and interest associated therewith.

(Ord. No. 2321, 5-9-95)

Sec. 35-263. - Compensation for collection of E-911 tax.

Pursuant to section 58.1-3813.1 of the Code of Virginia, as amended, whenever the tax imposed by section 35-254(d) of this article is collected by the service provider acting as the tax collection medium or agency for the city, such service provider shall be allowed as compensation for the collection and remittance of the tax three (3) percent of the amount

of tax due and accounted for. The service provider shall deduct this compensation from the payments reported and remitted to the treasurer in accordance with section 35-258(b).

(Ord. No. 2321, 5-9-95; Ord. No. 2719, 9-3-02; Ord. No. 2791, 12-9-03)

Sec. 35-264. - Reserved.

Editor's note— Ord. No. 2529, adopted May 11, 1999, deleted § 35-264, which pertained to a reduction of E-911 tax and which derived from Ord. No. 2321, adopted May 9, 1995.

ARTICLE XIV. - VIDEO PROGRAMMING EXCISE TAX

Sec. 35-265. - Definitions.

Except where the context clearly indicates a different meaning, the following words and phrases, when used in this article, shall, for purposes of this article, have the meanings ascribed to them in this section:

Cable operator means any person or group of persons (i) that provides cable service over a cable system and directly or through one or more affiliates owns an interest in such cable system or (ii) that otherwise controls or is responsible for, through any arrangement, the management and operation of a cable system.

End-user subscriber means the ultimate consumer of the video programming provided by video programmers over any means of transmission. End-user subscriber does not include a video programmer that purchases a common carrier's video dialtone transport service to provide video programming over the common carrier's video dialtone system.

Gross receipts means the amount charged for or received by (i) video programmers from sales of video programming and (ii) persons from sales of access to video programming, by any means of transmission, directly to end-user subscribers with service addresses in the city. Gross receipts shall not include: (i) amounts charged for or received by persons from sales of telephone access or service that entitles the subscriber to the privilege of interactive telephonic quality telecommunications with substantially all persons having telephone or radio telephone stations constituting a part of a particular system or in a specified area; (ii) the excise tax imposed pursuant to this section if the tax is shown as a separate line charge to end-user subscribers; (iii) any other taxes, fees or surcharges on services furnished by common carriers or video programmers which are imposed on subscribers by the commonwealth, counties, cities or towns pursuant to statute, ordinance, resolution or regulation and which are collected on behalf of said governmental unit by the provider of the services; or (iv) any portion of a debt related to the sale of video programming or the sale of access to a video network, the gross charges for which are not otherwise deductible or excludable, that have 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 video programmer or person shall report and pay the excise tax on that portion during the reporting period in which the payment is made.

Local jurisdiction means a county, city or town located in Virginia.

Person means an individual, partnership, association, joint stock company, trust, corporation, governmental entity, limited liability company, or any other entity.

Video dialtone service means a common carrier service for the transport of video programming to end-user subscribers.

Video programmer means an individual, partnership, association, joint stock company, trust, corporation, governmental entity, limited liability company, or any other entity that sells video programming to end-user subscribers.

Video programming means video and/or information programming provided by, or generally considered comparable to programming provided by, a cable operator. Video programming does not include online, interactive, information services to the extent access to such services is accomplished via a dial-up or private telephone line.

(Ord. No. 2320, 5-9-95)

Sec. 35-266. - Imposed.

Pursuant to section 58.1-3818.3 of the Code of Virginia, as amended, there is hereby imposed and levied on any person that sells video programming to end-user subscribers located within the city by any means of transmission, or provides such end-user subscribers with access to video programming by any means of transmission, with or without the use of wires, an excise tax of five (5) percent on the gross receipts received from the provision of cable service or video programming services to customers in the city, and that is not otherwise subject to local fees or taxes (other than generally applicable taxes) on the gross receipts received from the provision of cable service or video programming services to customers in the city.

(Ord. No. 2320, 5-9-95)

Sec. 35-267. - Payment; pass-through; penalty and interest.

(a) The tax imposed by this article shall be paid to the city treasurer by each person quarterly on or before March 31, June 30, September 30, and December 31 and shall be calculated based on the gross receipts of each person during the three (3) months prior to the month of payment. Any payment of tax shall be considered as timely made if the payment which has been received by the city treasurer is postmarked by the United States Postal Service on or prior to the final day on which payment is to be received.

(b) Any person subject to tax imposed pursuant to this article may elect at any time to pass through to end-user subscribers, as a separate, itemized line charge on the end-user subscriber's bill, the excise tax imposed hereunder. If this tax is passed through to and collected from end-user subscribers, the taxes collected shall be deemed to be held in trust for the city until remitted.

(c) Failure to pay the taxes to the city treasurer on or before the due date set forth in subsection (a) of this section shall result in a penalty of ten (10) percent of the amount due or ten dollars ($10.00), whichever is lesser, which shall be added to the amount due. In addition, interest at the rate of ten (10) percent annually from the first day following the last day the taxes are due to be paid may be added to the overdue principal and penalty.

(Ord. No. 2320, 5-9-95)

Sec. 35-268. - Records.

Each person subject to the tax imposed pursuant to this article shall maintain records of its gross receipts, and any other records associated with such person's payment of the tax. Such records shall be maintained for a period of three (3) years and shall be made available for inspection by the duly authorized agents of the city at reasonable times during normal business hours. The duly authorized agents of the city shall have the authority to make such transcripts thereof during such times as they may deem necessary and appropriate.

(Ord. No. 2320, 5-9-95)

Sec. 35-269. - Duties of city treasurer.

The city treasurer shall be charged with the collection of the taxes imposed by this article and shall cause the same to be paid into the general treasury of the city.

(Ord. No. 2320, 5-9-95)

Sec. 35-270. - Credit.

Any person subject to the tax imposed by this article shall be entitled to a credit against such taxes equal in amount to any communications industry or similar taxes imposed on gross receipts from interstate video programming activity (other than sales or use tax or a generally applicable corporate income tax) that such person has paid to another state or political subdivision thereof under a lawful requirement of such state or political subdivision on sales by such person of the same video programming or sales of access to such video programming to end-user subscribers located within the city. The amount of the credit shall not exceed the tax imposed by this article on such sales of video programming or sales of access to video programming for which the tax is claimed. If the tax imposed by this article is passed through to and collected from end-user subscribers, any tax credit permitted hereunder shall also be passed through to and credited against taxes collected from end-user subscribers.

(Ord. No. 2320, 5-9-95)

Sec. 35-271. - Violations of article by service provider.

Any person violating the provisions of this article, and any officer, agent or employee of any person violating the provisions of this article, shall be guilty of a Class 3 misdemeanor. Each failure, refusal, neglect or violation and each day's continuance thereof shall constitute a separate offense. Conviction for such violation shall not relieve any such person from the payment of the tax as provided in this article, and any penalty and interest associated therewith.

(Ord. No. 2320, 5-9-95)

Sec. 35-272. - Effective date.

Pursuant to section 58.1-3818.3.B. of the Code of Virginia, as amended, this article shall become effective on September 1, 1995.

(Ord. No. 2320, 5-9-95)

Secs. 35-273, 35-274. - Reserved.

ARTICLE XV. - LOCAL VEHICLE LICENSE

Sec. 35-275. - Local vehicle license term; definition.

(a) After the transition period described in this Article, the term for the license for motor vehicles, trailers and semitrailers required by this Article shall be one (1) year, which shall correspond to the identical period for the state vehicle registration for that vehicle, trailer or semitrailer. Every local vehicle license term shall begin at the time when the vehicle, trailer or semitrailer is registered by the State Department of Motor Vehicles, and shall expire at the same time the state registration expires, which is the last day of the twelfth month next succeeding the date of registration, as provided by Code of Virginia § 46.2-646. Every local vehicle license, unless otherwise provided, shall be renewed annually on application by the owner and by payment of the fees required by law, with the renewal to take effect on the first day of the month succeeding the date of expiration. If the State Department of Motor Vehicles offers a quarterly or multi-year registration option and if the vehicle owner chooses this option, then the local vehicle license term shall match the term chosen by the owner for the state vehicle registration, with the annual fee prorated as necessary.

(b) As used in this Article, "local vehicle license" shall mean the license authorized by Code of Virginia § 46.2-752 to be required for motor vehicles, trailers and semitrailers.

(c) Notwithstanding the provisions of subsection (a), if the State Department of Motor Vehicles offers a permanent registration option and if the vehicle owner chooses this option, then the term of the local vehicle license for this vehicle shall correspond to the period for which the state registration is valid, subject to payment of the fee established in Section 35-280 of this Article. No further fee shall be required as long as the title for the vehicle remains vested in the owner. Furthermore, no fee shall be charged for any vehicle permanently licensed by the state prior to January 1, 2003.

(Ord. No. 2903, 12-13-05)

Sec. 35-276. - Applicability of Article.

The requirements of this Article shall be applicable to any motor vehicle, trailer or semitrailer normally garaged, stored or parked in this City. If it cannot be determined where any vehicle is normally garaged, stored or parked, or if the owner of any vehicle is a student attending an institution of higher education, then the requirements of this Article shall be applicable if the owner of such vehicle is domiciled in this City.

(Ord. No. 2903, 12-13-05)

Sec. 35-277. - General procedure.

(a) Pursuant to a contractual arrangement with the City, the State Department of Motor Vehicles shall collect the local vehicle license fees required by this article, or portions thereof, for the City, as authorized by Code of Virginia, § 46.2-756. Local vehicle license fees shall be collected at the same time state vehicle registration

fees are remitted.

(b) No vehicle shall be subject to a local vehicle license tax or fee in more than one (1) jurisdiction for the same time period.

(c) The following shall govern situations in which a vehicle acquires situs in the City after a local vehicle license has been issued by a jurisdiction that does not participate in the department of motor vehicles' local vehicle registration program:

(1) If the state registration expires before the local vehicle license, then a prorated portion of the local license fee, giving credit for the months paid in the other non-participating jurisdiction, shall be due when the state registration is renewed; and

(2) If the state registration expires after the local vehicle license, no local vehicle license fee shall be charged for the time period between the expiration of the local vehicle license issued by the non-participating locality and the expiration of the state registration.

(d) Proration of the vehicle license fee shall not be required when a vehicle acquires situs in the City after a local vehicle license for this vehicle has been purchased through the Department of Motor Vehicles' local vehicle registration program.

(Ord. No. 2903, 12-13-05)

Sec. 35-278. - Exemptions.

(a) No person shall be required to pay the local vehicle license fee prescribed by this Article on any vehicle for which a registration certificate and license is not required by Code of Virginia, Title 46.2, on any vehicle specifically exempt under the provisions of Code of Virginia, § 46.2-755, or on any vehicle owned solely by a person in active military service, who is in the City solely by reason of military orders and who has a legal residence in a state other than Virginia.

(b) Upon presentation to the Commissioner of the Revenue of proof that the vehicle is exempted under this Section, the commissioner of the revenue shall notify the State Department of motor vehicles that no fee is required for such vehicle; provided, however, that military personnel exempt from this section who register a vehicle in Virginia for the first time must initially report this status to the Department of Motor Vehicles. The form of this proof shall be a military leave and earnings statement current within ninety (90) days.

(c) In the event that the status of the owner of the vehicle changes so as to no longer qualify the vehicle for the exemption provided herein, the owner shall notify the Commissioner of the Revenue within ten (10) days of the date of such change in status, and shall comply with all other provisions of this Article. The Commissioner of the Revenue shall notify the State Department of Motor Vehicles of each such change in status.

(Ord. No. 2903, 12-13-05)

Sec. 35-279. - Application.

The local vehicle license application shall be combined with the state vehicle registration application in a form satisfactory to the City Manager and the State Department of Motor Vehicles. Each local vehicle license fee shall be paid to the State Department of Motor Vehicles at the same time as the state vehicle registration fee is collected, as authorized by Code of Virginia, § 46.2-756.

(Ord. No. 2903, 12-13-05)

Sec. 35-280. - License requirement; imposition of fee.

(a) There is hereby imposed a requirement for a local vehicle license, for the terms as established by this Article, on motor vehicles, trailers and semitrailers, regularly kept in the City and used upon public roadways of the City. The amount of the fee for this license shall be as set forth in the following subsections of this Section, and shall be due annually at the same time the state registration is obtained, unless specifically provided for otherwise. A valid vehicle registration, issued by the State Department of Motor Vehicles after April 21, 2003, shall, as necessary, document compliance with the local vehicle license requirements imposed by this ordinance and serve as a license.

(b) The license fee on a motor vehicle, designed and used for the transportation of passengers, which is self-propelled or designed for self-propulsion, shall be, except as otherwise specifically provided in this Section, imposed in accordance with the following schedule:

(1) Motor vehicles weighing four thousand (4,000) pounds or less, and pickup trucks with a gross weight of four thousand (4,000) pounds or less $30.00

(2) Motor vehicles weighing more than four thousand (4,000) pounds, and pickup trucks with a gross weight from four thousand and one (4,001) pounds to seven thousand five hundred (7,500) pounds 35.00

(3) Motorcycle 23.00

(4) Antique motor vehicles licensed permanently pursuant to Code of Virginia, § 46.2-730 (motorcycles or cars) 13.50

(5) Any motor vehicle, trailer or semitrailer upon which well-drilling machinery is attached and which is permanently used solely for transporting such machinery and any specialized mobile equipment as defined by Code of Virginia, § 46.2-700 .....15.00

(c) (1) Unless otherwise specified in this Article, the license fees for trailers and semitrailers not designed and used for the transportation of passengers on the highways in the commonwealth shall be as follows:

Registered Gross Weight	Annual Fee	Permanent Fee
0—1,500 lbs.	$7.50	$52.00
1,501—4,000	18.00	52.00
4,001 lbs. and above	25.50	52.00

(2) The license fee for each trailer or semitrailer designed for use as living quarters for human beings shall be twenty-five dollars ($25.00). .....

(3) The license fee for all trailers designed exclusively to transport boats or horses shall be seven dollars and fifty cents ($7.50). .....

(d) There is hereby imposed a license fee, to be paid by the owner, upon each motor vehicle not designed and used for the transportation of passengers, whether operated under lease or not. The amount of the license fee shall be determined by the gross weight of the vehicle or combination of vehicles of which it is a part, when loaded to the maximum capacity for which it is registered and licensed by the state, according to the following schedule: .....

Pounds *Fee*

4,000 or less $24.00

4,001—16,000 .....29.00

16,001—17,000 .....30.80

17,001—18,000 .....32.10

18,001—19,000 .....33.40

19,001—20,000 .....34.70

20,001—21,000 .....36.00

21,001—22,000 .....37.30

22,001—23,000 .....38.60

23,001—24,000 .....39.90

24,001—25,000 .....41.20

25,001—26,000 .....42.50

26,001—27,000 .....43.80

27,001—28,000 .....45.10

28,001—29,000 .....46.40

29,001—30,000 .....47.70

30,001—31,000 .....49.00

31,001—32,000 .....50.30

32,001—33,000 .....51.60

33,001—34,000 .....52.90

34,001—35,000 .....54.20

35,001—36,000 .....55.50

36,001—37,000 .....56.80

37,001—38,000 .....58.10

38,001—39,000 .....59.40

39,001—40,000 .....60.70

40,001—41,000 .....62.00

41,001—42,000 .....63.30

42,001—43,000 .....64.60

43,001—44,000 .....65.90

44,001—45,000 .....67.20

45,001—46,000 .....68.50

46,001—47,000 .....69.80

47,001—48,000 .....71.10

48,001—49,000 .....72.40

49,001—50,000 .....73.70

50,001—51,000 .....75.00

51,001—52,000 .....76.30

52,001—53,000 .....77.60

53,001—54,000 .....78.90

54,001—55,000 .....80.20

55,001—56,000 .....81.50

56,001—56,800 .....82.80

56,801 and over 85.00

(e) In the case of a combination of a truck or tractor truck and a trailer or semitrailer, each vehicle constituting a part of such combination shall be registered as a separate vehicle, and a separate local vehicle license fee shall be imposed thereon, but, for the purpose of determining the gross weight group into which any such vehicle falls pursuant to subsection (d) of this Section, the combination of vehicles of which such vehicle constitutes a part shall be considered a unit, and the aggregate gross weight of the entire combination shall determine such gross weight group. In determining the fee to be paid for the local license for a truck or tractor truck constituting a part of such combination, the fee shall be assessed on the total gross weight of the combination when loaded to the maximum capacity for which it is registered and licensed. However, there shall be no deduction from this fee for the local vehicle license fee of the trailer or semitrailer in the combination.

(Ord. No. 2903, 12-13-05; Ord. No. 2939, 5-9-06; Ord. No. 3285, 5-14-13, eff. 7-1-13; Ord. No. 3405, 5-12-15, eff. 7-1-15)

Sec. 35-281. - Transition period, billing and schedule.

(a) A transition period, with prorated license fees, as authorized by Code of Virginia, § 46.2-752, will be necessary to adjust to a system in which the term of each local vehicle license conforms to state registration renewal periods. The transition period shall cover the time from January 1, 2003, through June 30, 2005; the transition billing shall be administered by the Department of Motor Vehicles during 2003.

(b) The transition billing shall modify the local vehicle license term from the twelve-month period to correspond to the date that the state registration period for that vehicle expires. During this period, the local vehicle license fee amount shall equal one-twelfth of the annual fee required for that vehicle, trailer or semitrailer, multiplied by the number of months from January 1, 2003 until the state registration for the vehicle must be renewed; this determination shall be made on the day preceding the implementation of local vehicle licensing through the department of motor vehicles.

(Ord. No. 2903, 12-13-05)

Sec. 35-282. - Proration of fee.

If proration is necessary in any case, a license fee equal to one-twelfth of all fees required for that vehicle, trailer or semitrailer, multiplied by the number of months for which a local registration fee is owed within the state registration period, shall be collected. The fee shall be computed to the nearest cent.

(Ord. No. 2903, 12-13-05)

Sec. 35-283. - Payment of personal property taxes and local vehicle license fees prerequisite to state licensing; duties of City Treasurer.

(a) Pursuant to Code of Virginia, § 46.2-752(J), the Commissioner of the State Department of Motor Vehicles shall not issue or renew any state vehicle registration of any applicant therefor who owes the City any local vehicle license fees or delinquent personal property tax. Before being issued any state vehicle registration or renewal of such license or registration by the Commissioner of the State Department of Motor Vehicles, the applicant must first pay all such local vehicle license fees and delinquent personal property taxes and present satisfactory evidence that all such local vehicle license fees and delinquent personal property taxes have been paid in full.

(b) The Treasurer shall have the duty of transmitting all necessary information about unpaid delinquent personal property taxes to the State Department of Motor Vehicles required to ensure that no license is issued to any person with delinquent personal property taxes. If a license is denied by the Department of Motor Vehicles due to unpaid personal property taxes, the Treasurer shall update records of the Department of Motor Vehicles after such taxes have been paid or exonerated by the Commissioner of the Revenue.

(Ord. No. 2903, 12-13-05)

Sec. 35-284. - Vehicle license at no charge for members of volunteer fire companies or emergency medical services agencies, auxiliary police officers, volunteer police chaplains, auxiliary deputy sheriffs, disabled veterans and surviving spouses of disabled veterans.

For members of the various volunteer fire companies and emergency medical services agencies in the City, auxiliary police officers serving the City, volunteer police chaplains of the City, auxiliary deputy sheriffs serving the City, disabled veterans as exempted by Code of Virginia, § 46.2-756(B) there shall be no charge for local vehicle licenses, in accord with the following provisions:

(1) No license fee shall be charged for one (1) vehicle owned by each active member of the various volunteer fire companies and emergency medical services agencies, each active auxiliary police officer, each active volunteer police chaplain, and each active auxiliary deputy sheriff, and each such volunteer who, although presently inactive, has completed ten (10) or more years of active service in the City. Such persons shall submit a letter to the Commissioner of the Revenue from the Chief of his fire company or emergency medical services agency or, in the case of auxiliary police officers and volunteer police chaplains, from the Chief of Police, or in the case of auxiliary deputy sheriffs, from the Sheriff, stating that he is an active member of the company or squad or is an active auxiliary police officer, volunteer police chaplain or auxiliary deputy sheriff, or that, if inactive, he has completed ten (10) or more years of active service. The preceding exemption from the license fee shall apply to active members of volunteer fire companies and emergency medical services agencies, and each active auxiliary police officer, volunteer police chaplain and auxiliary deputy sheriff, regardless of whether the volunteer owns or leases the vehicle for which the exemption is requested.

(2) Each such volunteer fire company or emergency medical services agency member, auxiliary police officer, volunteer police chaplain and auxiliary deputy sheriff shall, at the time the license fee is exempted, agree to notify the Commissioner of the Revenue, if and when such volunteer becomes inactive prior to completing ten (10) or more years of active service.

(3) The Chief of each volunteer fire company and emergency medical services agency, the Chief of Police, and the Sheriff shall submit to the Commissioner of the Revenue the names and length of active volunteer service of members, auxiliary police officers and police chaplains and auxiliary deputy sheriffs who become inactive.

(4) No local vehicle license fee shall be charged for one (1) motor vehicle owned and personally used by any disabled veteran and each surviving spouse of a disabled veteran exempted from paying an annual registration fee by Code of Virginia, § 46.2-739(B).

(Ord. No. 2903, 12-13-05; Ord. No. 3432, 11-17-15)

Sec. 35-285. - Disposition of taxes generally.

All local vehicle license fees collected under this Article by the State Department of Motor Vehicles shall be deposited into a fiduciary account and held in trust for the City. Each month, such fees shall be delivered to the City Treasurer, who shall credit such fees to the general fund of the City.

(Ord. No. 2903, 12-13-05)

Sec. 35-286. - Refund for unused portion of license fee.

Any person who has paid a current license fee, and who moved out of state, or who disposes of the vehicle for which it was paid or otherwise surrenders its registration, may inform the State Department of Motor Vehicles, and request a refund for the unused portion of the license fee paid under this Article. The State Department of Motor Vehicles shall refund to the applicant a prorated portion, in six-month increments, of the local vehicle license fee, if application for the refund is made when six (6) or more months are remaining in the license period, in the same manner as provided by Code of Virginia, § 46.2-688.

(Ord. No. 2903, 12-13-05)

Secs. 35-287—35-299. - Reserved.

Chapter 35.1 - SANDBRIDGE SPECIAL SERVICE DISTRICT

Sec. 35.1-1. - Creation of the Sandbridge Special Service District.

Pursuant to the authority contained in Code of Virginia, section 15.1-18.3, there is hereby created a Special Service District at Sandbridge for the purposes set forth in Code of Virginia, section 15.1-18.2(c)(1).

(Ord. No. 2297, 11-1-94)

Sec. 35.1-2. - Name of district.

The service district shall be known as the Sandbridge Special Service District.

(Ord. No. 2297, 11-1-94)

Sec. 35.1-3. - Boundaries of the Sandbridge Special Service District.

The Sandbridge Special Service District shall be known and described as follows:

That property located in Sandbridge and bounded on the north by the USN Fleet Combat Training Center Atlantic; on the south by the Little Island Park; on the east by the Atlantic Ocean; and on the west, north of Sandbridge Road, by the western boundary of the subdivision known as "Sandbridge North Area," and south of Sandbridge Road, by the property of the United States of America and the Back Bay National Wildlife Refuge, as depicted on the map entitled "Sandbridge" dated June 17, 1994, prepared by the department of public works and recorded in Map Book 240, Pgs. 81—84.

(Ord. No. 2297, 11-1-94)

Sec. 35.1-4. - Facilities and services to be provided within the Sandbridge Special Service District.

The Sandbridge Special Service District is created for the purpose of providing financing for the local share of any beach and shoreline management and restoration project for the construction, maintenance, replenishment and restoration of the beach and shoreline on the Atlantic Ocean within the service district. This purpose shall include

maintenance of the recreational amenity that is the Sandbridge beach including services required to provide beautification, access, and upkeep of the beach. Toward that end, there shall be provided within the Sandbridge Special Service District those facilities and services necessary or desirable to accomplish the purpose of the service district, including, without limitation, administrative, engineering and other professional services, sand dredging, pumping, grading and hauling facilities and equipment and such other equipment and facilities as may, from time to time, be needed to accomplish the purpose of the service district.

(Ord. No. 2297, 11-1-94; Ord. No. 3502, 5-9-17)

Sec. 35.1-5. - Proposed plan for providing facilities and services within the Sandbridge Special Service District.

The plan is to accumulate dedicated revenue generated for use within the Sandbridge Special Service District to fund the creation and maintenance of a beach berm having an elevation approximately six (6) feet above mean sea level and a width of approximately fifty (50) feet from the nourishment line with a slope of approximately twenty to one (20:1) to the Atlantic Ocean. Implementation of the plan is expected to produce a designed dry beach area of approximately one hundred and twenty (120) feet, which in combination with the fifty-foot berm will yield a dry beach of approximately one hundred and seventy (170) feet at mean tide level. Actual or planned elevations, slopes and beach area may vary from time to time as determined by the district engineer of the Army Corp of Engineers, Norfolk District, and the city's director of public works. In addition to nourishment activities, the Special Service District shall also provide services for the beautification, access, and upkeep of the beach berm.

(Ord. No. 2297, 11-1-94; Ord. No. 3502, 5-9-17)

Sec. 35.1-6. - Benefits expected to be realized from the provision of facilities and services within the Sandbridge Special Service District.

Through the provision of the facilities and services described in section 35.1-4, an attempt will be made to stabilize, maintain and restore the sand beach on the Atlantic Ocean within the service district. Left unattended, the sand beach will suffer the effects of erosion occasioned by the forces of nature. The facilities and services to be provided are expected to benefit owners of property within the service district, as well as residents and visitors, through preservation and enlargement of the sand beach, protect and maintain public recreation areas and public infrastructure and, thereby, protecting life, property and property values within the Sandbridge Special Service District.

(Ord. No. 2297, 11-1-94)

Sec. 35.1-7. - Levy of additional taxes to pay, either in whole or part, the expenses and charges for providing additional governmental services with the Sandbridge Special Service District.

Pursuant to the authority contained in Code of Virginia, section 15.1-18.2(c), within the Sandbridge Special Service District, the city council may levy and provide for the collection of additional taxes to fund the city's obligations to pay, either in whole or part, the expenses and charges for providing and maintaining facilities and services incident to beach and shoreline management and restoration on the Atlantic Ocean within the service district. Such additional taxes may include an annual tax upon any property in the service district which is subject to local taxation. The additional taxes

may also include a tax on the base transient room rentals, excluding hotels, motels, and travel campgrounds, within the service district at a rate of percentage not higher than five (5) percent which is in addition to any other transient room rental tax imposed city-wide.

(Ord. No. 2297, 11-1-94)

Sec. 35.1-8. - Limitation on purposes for which additional taxes levied and collected within the Sandbridge Special Service District may be used.

All taxes levied and collected pursuant to this chapter within the Sandbridge Special District shall only be used to pay, either in whole or part, the expenses and charges for providing and maintaining facilities and services incident to beach and shoreline management and restoration within the special service district. No additional tax shall be levied for or used to pay for schools, police or general government services not authorized by Code of Virginia, section 15.1-18.2. The proceeds from all such additional taxes as may be levied and collected shall be a special fund and shall be so segregated as to enable the same to be expended within the service district.

(Ord. No. 2297, 11-1-94)

Chapter 35.2 - TECHNOLOGY ZONES

ARTICLE I. - IN GENERAL

Sec. 35.2-1. - Purpose and intent.

The city council of the City of Virginia Beach finds that the development of its commercial and industrial tax base requires incentives, and determines that an appropriate method of offering incentives for the areas described below is to create technology zones as guided and authorized by section 58.1-3850 of the Code of Virginia. The city council finds that the establishment of technology zones will foster development of commercial and industrial businesses engaged in technological research, design and manufacturing to the benefit of the public health, safety, welfare and convenience through the enhancement of public revenues and the creation of employment opportunities.

(Ord. No. 2682, 1-22-02)

Sec. 35.2-2. - Administration.

This article shall be administered and enforced by the city manager or his designee. The city manager, together with the department of economic development will review the criteria and incentives for the technology zone program annually to assure alignment with the city strategy and economic development strategy.

(Ord. No. 2682, 1-22-02)

Sec. 35.2-3. - Definitions.

For purposes of this article, the following words and phrases shall have the meanings below, unless otherwise expressly indicated to the contrary:

(a) *Qualified technology business* means a business which derives its gross receipts from the design, development or manufacturing of technology-based products, processes or related services for lease, sale or license. Technology-based products, processes or related services means engaging in the activity of research, development, or manufacture of commodities used in factory automation, biotechnology, biomedical research, chemicals, electronics, computer hardware, computer software, defense, energy, environmental, manufacturing equipment, advanced materials, medical applications, pharmaceuticals, photonics, electronic based subassemblies and components, testing and measurements, telecommunications, systems integration, multi-media, e-commerce, Internet services, and transportation, including training in the aforementioned areas.

In no case shall the use of computers or telecommunications services by a business in its internal operations qualify or be considered in qualifying the business as a technology business.

A qualified technology business shall provide a minimum capital investment of tweny million dollars ($20,000,000.00) in personalty and/or improved real estate (exclusive of raw land cost) or provide for the creation of three hundred (300) new full time employees. Additionally, such business must pay its employees average salaries, including benefits, of at least fifty thousand dollars ($50,000.00) annually. All businesses, whether newly located or existing within the boundaries of a technology zone, which qualify under the criteria set out above may be considered for qualified technology business status. Qualification shall be granted and certified in writing by the city manager or his designee.

(b) *Qualified zone resident* means an owner or tenant of real property located in a technology zone who expands or rehabilitates such property to locate the operation of a qualified technology business within the technology zone. The term property means a parcel, lot or unit for which a site plan or building permit application has been submitted for approval. Qualification of a zone resident shall be granted and certified in writing by the city manager or his designee.

(Ord. No. 2682, 1-22-02)

Sec. 35.2-4. - Boundaries of technology zones.

(a) The technology zones shall be established by city council by ordinance upon findings that the incentives provided herein will enhance the establishment and growth of technology businesses within the area under consideration.

As technology zones are established by city council, they shall be further identified by reference to the map entitled "Virginia Beach Technology Zones" which shall be incorporated into and made a part of this chapter and all future ordinances establishing a technology zone.

(b) Qualified technology businesses, and, where applicable, qualified zone residents located in a designated technology zone shall be entitled to the incentives offered in this article.

(Ord. No. 2682, 1-22-02)

Sec. 35.2-5. - Business tax rebate.

(a) All qualified technology businesses shall be entitled to a rebate of business, professional and occupational license taxes imposed by Chapter 18 of the Virginia Beach City Code as follows:

(1) One hundred (100) percent rebate in year one (1);

(2) Eighty (80) percent rebate in year two (2);

(3) Sixty (60) percent rebate in year three (3);

(4) Forty (40) percent rebate in year four (4); and

(5) Twenty (20) percent rebate in year five (5).

Year one (1) is the first full calendar year in which a business operates as a qualified technology business. However, if a business operates as a qualified technology business for a period of less than six (6) months in the calendar year, such qualified technology business may elect to designate the following calendar year as year one (1) for purposes of obtaining the business tax rebate.

(b) The rebate shall apply for a period of five (5) calendar years or until such time that the business no longer operates as a qualified technology business, whichever is the first to occur. If a business ceases to be a qualified technology business, ceases to meet the minimum criteria for a qualified technology business or removes its operation from the City of Virginia Beach during a year in which the rebate applies, supplemental prorated business license tax shall be prorated for the months the business was a qualified technology business.

(c) If more than one-half (½) of the gross receipts of a qualified technology business are derived from a licensable activity that qualifies the business, the business license tax assessed on all gross receipts of such licensable activity shall be subject to the graduated rebates described above. If one-half (½) or less of the gross receipts of a particular licensable activity of a qualified technology business is derived from qualifying operations, the graduated rebates shall be applied only to the amount of tax attributable to the gross receipts earned from the qualifying business activity.

(d) In order to qualify for a business license tax rebate under this article, during the first twelve (12) months of operation within the technology zone, a qualified technology business must apply to the department of economic development who will investigate and forward the application to the city manager or his designee to determine if the business is a qualified technology business. The qualified technology business shall have the burden of demonstrating, to the satisfaction of the city manager, that it meets the definition of a qualified technology business and that it meets all applicable criteria for a business license tax rebate. The qualified technology business shall also file an annual business license application with the commissioner of the revenue and shall provide the commissioner with certification from the city manager that the business is a qualified technology business. The amount of gross receipts to be earned shall be set out in the license application and shall be subject to verification by the commissioner of the revenue by audit or inspection of documents. The qualified technology business shall also provide the commissioner with proof that no local taxes or fees are outstanding at the time of application for the business license tax rebate.

(e) Failure of a qualified technology business to pay in full by the due date any taxes imposed by the city shall result in the denial or revocation of the tax rebate for the remainder of the current calendar year.

(f) All business license tax rebates are subject to adjustment by the commissioner of the revenue based on actual gross receipts earned from qualifying technology business activities. Any additional business license tax assessed due to such adjustments, or due to revocation of the tax rebate, shall be subject to collection and delinquency provisions set out in Chapter 18 of the City Code.

(Ord. No. 2682, 1-22-02)

Sec. 35.2-6. - Fee reimbursements under city ordinances.

The fee reimbursements provided below shall apply to qualified technology businesses and, where applicable, qualified zone residents, for new construction, alterations and rehabilitation, provided (i) that at least one hundred (100) percent of the total cost of the construction is expended on facilities which will house or directly accommodate a qualified technology business; and (ii) that the application for fee reimbursements is submitted to the director of economic development within eighteen (18) months from the date a certificate of occupancy is issued . Fees reimbursed pursuant to this article shall be paid out by the city.

(a) *Fees imposed under the building code.* Applications for reimbursement of all fees imposed under Chapter 8 of the City Code entitled "Buildings and Building Regulations" shall be made to the director of economic development along with a certification from the city manager that the applicant is a qualified technology business or a qualified zone resident and evidence that the proposed construction will meet the criteria set out above for fee reimbursement. All building code fees must be paid by the qualified technology business or qualified zone resident prior to receiving reimbursement from the department of economic development.

(b) *Fees imposed under the zoning ordinance.* Applications for reimbursement for fees imposed for rezonings and conditional rezonings under section 107 of the city zoning ordinance (Appendix A) and for fees imposed for conditional use permits under section 221(b) of the city zoning ordinance (Appendix A) shall be made to the director of economic development. Such application shall include certification from the city manager that the applicant is a qualified technology business or a qualified zone resident and evidence that the proposed land use and/or construction activities will meet the criteria set out above for fee reimbursement. All land use application fees must be paid by the qualified technology business or qualified zone resident prior to receiving reimbursement from the department of economic development.

(c) *Fees imposed under subdivision regulations and site plan ordinance.* Application for reimbursement of fees imposed for subdivision and site plan review under the city's subdivision regulations (Appendix B) and the city's site plan ordinance (Appendix C) shall be made to the director of economic development. Such application shall include certification from the city manager that the applicant is a qualified technology business or a qualified zone resident and evidence that the proposed land use and /or construction activities will meet the criteria set out above for fee reimbursement. All subdivision and/or site plan review fees must be paid by the qualified technology business or qualified zone resident prior to receiving reimbursement from the department of economic development.

(d) *Water and sewer connection fees.* Application for reimbursement of water and sewer connection fees imposed under Chapter 37 of the City Code shall be made to the director of economic development. Applications shall include certification from the city manager that the applicant is a qualified technology business or a qualified zone resident and evidence that the utility connections and related construction will meet the criteria set out above for fee reimbursement. All water and sewer connection fees must be paid by the qualified technology business or qualified zone resident prior to receiving reimbursement from the department of economic development.

(Ord. No. 2682, 1-22-02)

Sec. 35.2-7. - Non-waiver.

Unless expressly stated herein, this article shall not be construed to waive the requirement of any ordinance, regulation or policy of the City of Virginia Beach, including, but not limited to, those ordinances, regulations and policies which require permits and approvals for land use and construction. Additionally, unless stated otherwise herein, nothing in this article shall be construed as waiving the right of the City of Virginia Beach to enforce its ordinances, regulations or policies to collect any taxes, fees, fines, penalties, or interest imposed by law on a qualified technology business or qualified zone resident or upon real or personal property owned or leased by a qualified technology business or qualified zone resident. The City of Virginia Beach reserves the right to remove qualified technology business or qualified zone resident status for any business that is not compliant with any city ordinance, regulation, policy or other legal requirement.

(Ord. No. 2682, 1-22-02)

Sec. 35.2-8. - Education and promotion.

The city manager or his designee shall develop programs to educate the public and potential businesses of the benefits of technology zones.

(Ord. No. 2682, 1-22-02)

Sec. 35.2-9. - Restrictions.

No qualified technology business or qualified zone resident may apply for or receive a tax or fee rebate or reimbursement under this article on the basis of a building permit issued on construction commenced prior to the establishment of the technology zone in which the property lies.

(Ord. No. 2682, 1-22-02)

ARTICLE II. - APZ-1 TECHNOLOGY/BUSINESS OPPORTUNITY ZONE.

Sec. 35.2-10. - Intent; findings.

(a) It is the intent of the City Council in establishing the Accident Potential Zone 1 (APZ-1) Technology/Business Opportunity Zone to:

(1) Facilitate the establishment and growth of businesses that are compatible with flight operations at Naval Air Station Oceana, as determined pursuant to Section 1804 of the City Zoning Ordinance, in areas within Accident Potential Zone 1 (APZ-1); and

(2) Preserve and protect the health, safety and quality of life of persons who work or reside in APZ-1 and not adversely affect established residential neighborhoods.

(b) The City Council hereby finds that:

(1) The establishment of a technology/business opportunity zone in APZ-1 will foster the development of businesses in APZ-1 that are compatible with aircraft operations at Naval Air Station Oceana and other uses in APZ-1, to the benefit of the public health, safety, welfare and convenience through the enhancement of public revenues and the creation of employment opportunities.

(Ord. No. 2931, 3-28-06)

Sec. 35.2-11. - Establishment of APZ-1 Technology/Business Opportunity Zone.

(a) The APZ-1 Technology/Business Opportunity Zone is hereby established. The zone shall consist of all areas within APZ-1, as shown on the official zoning map of the City of Virginia Beach.

(b) Notwithstanding the other provisions in this chapter, all qualifying businesses located in APZ-1 shall be entitled to a rebate of ninety (90) percent of business, professional and occupational license taxes imposed by Chapter 18 of the City Code.

(c) Notwithstanding the other provisions in this chapter, fee reimbursements for fees imposed under the building code, fees imposed under the zoning ordinance, fees imposed under subdivision regulations and the site plan ordinance, and water and sewer connection fees, shall be provided to all qualifying businesses for new construction, alterations, and rehabilitation in APZ-1.

(d) A "qualifying business" for purposes of this section is defined as any business that conforms to the requirements of Section 1804, Table 2, of the City Zoning Ordinance that is located or locates in the APZ-1 Technology/Business Opportunity Zone and complies with and continuously maintains such compliance with the development standards set forth in Section 1810 of the City Zoning Ordinance. Qualifying businesses may include businesses currently located in APZ-1, businesses relocating to APZ-1 and new businesses locating in APZ-1.

(e) The tax rebate provided under this section shall be available to any qualifying business for a period of fifteen (15) years from the date of the approval of its application pursuant to Section 1810 of the City Zoning Ordinance, so long as the business remains in compliance with the development standards set forth in Section 1810 of the City Zoning Ordinance.

(Ord. No. 2931, 3-28-06)

Chapter 35.3 - NEIGHBORHOOD DREDGING SPECIAL SERVICE DISTRICTS

Sec. 35.3-1. - Creation of Neighborhood Dredging Special Service Districts.

This chapter shall provide for the establishment of Neighborhood Dredging Special Service Districts, hereinafter "Neighborhood Dredging SSD" or "Service District," pursuant to the authority contained in the Code of Virginia, section 15.2-2400, et seq.

(Ord. No. 3199, § 1, 9-13-11)

Sec. 35.3-2. - Facilities and services to be provided within Neighborhood Dredging Special Service Districts.

Each Neighborhood Dredging SSD is created for the purpose of providing financing for any dredging of creeks and rivers to maintain existing uses within the Service District. Toward that end, there shall be provided within the Service District financing for all expenses for those facilities and services necessary or desirable to accomplish the purpose of the Service District, including, without limitation, administrative, engineering, legal, permitting, and any other professional services, dredging, grading and hauling facilities and equipment and such other equipment, mitigation costs, if any, and facilities, including real property acquisition, as may, from time to time, be needed to accomplish the purpose of the service districts.

(Ord. No. 3199, § 1, 9-13-11)

Sec. 35.3-3. - Proposed plan for providing funding for facilities and services within the Neighborhood Dredging Special Service Districts.

(a) Each Neighborhood Dredging SSD project shall have three types or levels of dredging: city spur channel dredging; neighborhood channel dredging; and property access channel dredging.
(b) The city spur channel dredging is supported by city funds.
(c) The neighborhood channel dredging is supported by revenue generated by the Service District taxes as provided herein.
(d) The property access channel dredging is supported by individual contributions paid from Service District property owners for purposes of funding those services set forth in section 35.3-2.

(Ord. No. 3199, § 1, 9-13-11)

Sec. 35.3-4. - Benefits expected to be realized from the provision of facilities and services within the Neighborhood Dredging Special Service Districts.

Through the provision of the facilities and services described in section 35.3-2, an attempt will be made to dredge certain creeks and rivers to maintain existing uses. The facilities and services to be provided are expected to benefit owners of property within the service districts, as well as residents and visitors, through preservation and enlargement of the navigable waters of the city, enhance and improve storm water capacity and water quality, protect and maintain public recreation areas and public infrastructure and, thereby, protecting life, property and property values within the special service districts.

(Ord. No. 3199, § 1, 9-13-11)

Sec. 35.3-5. - Levy of additional taxes to pay, either in whole or part, the expenses and charges for providing additional services with the Neighborhood Dredging Special Service Districts.

Pursuant to the authority contained in Code of Virginia, section 15.2-2403(6), within each Neighborhood Dredging SSD, the city council may levy and provide for the collection of additional taxes to fund the city's obligations to pay, either in whole or part, the expenses and charges for providing and maintaining facilities and services within the Service Districts. Such additional taxes may include an annual tax upon any property in the service district which is subject to local taxation.

(Ord. No. 3199, § 1, 9-13-11)

Sec. 35.3-5.1. - Deferral of dredging special services district taxes for qualifying senior and disabled persons.

(a) For those special service districts established in this chapter 35.3 of the Code of the City of Virginia Beach, the council finds that the additional levies may be a burden that certain qualifying senior and disabled persons are unable to bear.

(b) Any owner of property subject to additional levy of Neighborhood Dredging Special Service District Taxes may, by the application procedure set forth in section 35-66, apply for a deferral of such additional levies.

(c) The deferral of such taxes requires the applicant meet the age or disability criteria and net worth qualifications for the deferral of general real estate taxes as authorized by section 35-61, et seq. The applicant may defer the same percentage of SSD levies that the applicant would be eligible for exemption pursuant to the income requirements in section 35-67.

(d) The accumulated amount of such taxes deferred shall be paid, to the treasurer of the city or the clerk of the circuit court, as the case may be, by the vendor upon the sale of the dwelling, or from the estate of the decedent within one year from the death of the last owner thereof who qualifies for tax deferral by the provision of this section. Such deferred special service district taxes shall be paid without penalty and without interest. The deferred special service district taxes shall constitute a lien upon the real estate as if they had been assessed without regard to the deferral permitted by this section; provided, however, that such lien shall, to the extent that they exceed the aggregate ten (10) percent of the price for which such real estate may be sold, be inferior to all other liens of record.

(e) No later than the first day of August on the third anniversary of the original due date had such special service district taxes not been deferred as provided herein, the treasurer shall certify to the clerk of the circuit court a list of all real estate against which deferred special service district taxes are still outstanding, and the clerk shall cause such deferred taxes to be recorded as a lien against the respective real estate as liens are customarily recorded and to be marked as deferred.

(f) Any deferred amounts outstanding after the dissolution of any special service district established by this chapter shall be paid notwithstanding such dissolution and such amounts shall be directed to the city's general fund.

(Ord. No. 3304, § 1, 9-10-13)

Sec. 35.3-6. - Limitation on purposes for which additional taxes levied and collected within the Neighborhood Dredging Special Service Districts may be used.

All taxes levied and collected, and any property access channel contribution, pursuant to this chapter within a Neighborhood Dredging SSD shall only be used to pay, either in whole or part, the expenses and charges for providing and maintaining facilities and services within the Service District. No additional tax shall be levied for or used to pay for schools, police or general government services not authorized by Code of Virginia, section 15.2-2403. The proceeds from all such additional taxes as may be levied and collected shall be a special fund and shall be so segregated as to enable the same to be expended within the service districts. Any property access channel contribution shall be separately accounted within the Service District Fund or Capital Improvement Program, whichever applies.

(Ord. No. 3199, § 1, 9-13-11)

Sec. 35.3-7. - Creation of the Old Donation Creek Area Dredging Special Services District.

(a) There is hereby created the Old Donation Creek Area Dredging Special Service District for the purposes set forth in this chapter and those set forth in Code of Virginia, section 15.2-2403.

(b) The boundaries of the Old Donation Creek Area Dredging Special Service District shall be described in detail by the map attached to this ordinance. [A copy can be found in the city offices.]

(c) The Old Donation Creek Area Dredging Special Service District shall dissolve on July 1, 2028, if not sooner.

(Ord. No. 3199, § 1, 9-13-11)

Sec. 35.3-8. - Creation of the Bayville Creek Area Dredging Special Services District.

(a) There is hereby created the Bayville Creek Area Dredging Special Service District for the purposes set forth in this chapter and those set forth in Code of Virginia, § 15.2-2403.

(b) The boundaries of the Bayville Creek Area Dredging Special Service District shall be described in detail by the map attached to this ordinance.

(c) The Bayville Creek Area Dredging Special Service District shall dissolve on July 1, 2028, if not sooner.

(Ord. No. 3226, § 1, 3-27-12)

Note— Ordinance No. 3226, § 2, effective July 1, 2012, states there shall be levied and collected beginning in fiscal year 2013, taxes for the special purpose of providing neighborhood dredging on all real estate within and pursuant to the Bayville Creek Area Dredging Special Service District at the rate of 36.3 cents ($0.363) on each one hundred dollars ($100) of assessed value thereof. This real estate tax rate shall be in addition to the real estate tax rate set forth by the General Real Estate Tax Levy adopted by City Council. This tax rate shall apply without reduction to any properties subject to ad valorem taxes including those properties enrolled in the Exemption, Deferral or Freeze for Elderly and Disabled Persons, City Code §§ 35-61, et seq. As set forth in Code of Virginia, § 15.2-2403(6), written consent is required to apply this tax rate to the full assessed value of properties subject to special use value assessment. The real estate tax rate imposed herein shall be applied on the basis of one hundred percentum (100%) of the fair market value of such real property except for public service real property, which shall be on the basis as provided in Code of Virginia, § 58.1-2604.

Note— Ordinance No. 3226, § 3, effective March 27, 2012, states the City Manager or designee is hereby authorized to enter into contracts and to perform other actions consistent with this ordinance.

Sec. 35.3-9. - Creation of the Shadowlawn Area Dredging Special Services District.

(a) There is hereby created the Shadowlawn Area Dredging Special Service District for the purposes set forth in this chapter and those set forth in Code of Virginia, section 15.2-2403.

(b) The boundaries of the Shadowlawn Area Dredging Special Service District shall be described in detail by the map attached to this ordinance [Ord. No. 3267].

(c) The Shadowlawn Area Dredging Special Service District shall dissolve on July 1, 2029, if not sooner.

(Ord. No. 3267, 3-12-13, eff. immediately)

Note— There shall be levied and collected beginning in fiscal year 2014, taxes for the special purpose of providing neighborhood dredging on all real estate within and pursuant to the Shadowlawn Area Dredging Special Service District at the rate of 15.94 cents ($0.1594) on each one hundred dollars ($100) of assessed value thereof. This real estate tax rate shall be in addition to the real estate tax rate set forth by the General Real Estate Tax Levy adopted by City Council. Except as provided explicitly in Chapter 35.3 of the Code of the City of Virginia Beach, this tax rate shall apply without reduction to any properties subject to ad valorem taxes including those properties enrolled in the Exemption, Deferral or Freeze for Elderly and Disabled Persons, City Code §§ 35-61, et seq. As set forth in Code of Virginia, section 15.2-2403(6), written consent is required to apply this tax rate to the full assessed value of properties subject to special use value assessment. The real estate tax rate imposed herein shall be applied on the basis of one hundred percentum (100%) of the fair market value of such real property except for public service real property, which shall be on the basis as provided in Section 58.1-2604 of the Code of Virginia. This paragraph is effective July 1, 2013.

The City Manager or designee is hereby authorized to enter into contracts and to perform other actions consistent with this ordinance. This paragraph is effective immediately.

Sec. 35.3-10. - Creation of the Chesopeian Colony Area Dredging Special Services District.

(a) There is hereby created the Chesopeian Colony Area Dredging Special Service District for the purposes set forth in this chapter and those set forth in Code of Virginia, § 15.2-2403.

(b) The boundaries of the Chesopeian Colony Area Dredging Special Service District shall be described in detail by the map attached to Ordinance No. 3300.

(c) The Chesopeian Colony Area Dredging Special Service District shall dissolve on July 1, 2034, if not sooner. Such date shall allow for the completion of the third dredge cycle and the accounting of all revenues and expenditures during the duration of the Chesopeian Colony Area Dredging Special Service District.

(Ord. No. 3300, § 1, 8-13-13; Ord. No. 3753, 10-17-23)

Note— Ordinance No. 3300, § 2, effective January 1, 2014, states there shall be levied and collected taxes for the special purpose of providing neighborhood dredging on all real estate within and pursuant to the Chesopeian Colony Area Dredging Special Service District at the rate of 29.13 cents ($0.2913) on each one hundred dollars ($100.00) of assessed value thereof. This real estate tax rate shall be in addition to the real estate tax rate set forth by the General Real Estate Tax Levy adopted by City Council. Except as provided explicitly in Chapter 35.3 of the Code of the City of Virginia Beach,

this tax rate shall apply without reduction to any properties subject to ad valorem taxes including those properties enrolled in the Exemption, Deferral or Freeze for Elderly and Disabled Persons, City Code §§ 35-61, et seq. As set forth in Code of Virginia, section 15.2-2403(6), written consent is required to apply this tax rate to the full assessed value of properties subject to special use value assessment. The real estate tax rate imposed herein shall be applied on the basis of one hundred percentum (100%) of the fair market value of such real property except for public service real property, which shall be on the basis as provided in Section 58.1-2604 of the Code of Virginia.

Note— Ordinance No. 3300, § 3, effective August 13, 2013 states the City Manager or designee is hereby authorized to enter into contracts and to perform other actions consistent with this ordinance.

Sec. 35.3-11. - Creation of the Harbour Point Area Dredging Special Services District.

(a) There is hereby created the Harbour Point Area Dredging Special Service District for the purposes set forth in this chapter and those set forth in Code of Virginia, § 15.2-2403.

(b) The boundaries of the Harbour Point Area Dredging Special Service District shall be described in detail by the map attached to this section.

(c) The Harbour Point Area Dredging Special Service District shall dissolve on July 1, 2030, if not sooner.

(Ord. No. 3321, 1-14-14)

Note— Ordinance No. 3321, § 2, effective July 1, 2014, states there shall be levied and collected taxes for the special purpose of providing neighborhood dredging on all real estate within and pursuant to the Harbour Point Area Dredging Special Service District at the rate of 7.9 cents ($0.079) on each one hundred dollars ($100.00) of assessed value thereof. This real estate tax rate shall be in addition to the real estate tax rate set forth by the General Real Estate Tax Levy adopted by City Council. Any deferral of such levies for elderly or disabled persons shall be subject to § 35.3-5.1. As set forth in Code of Virginia, § 15.2-2403(6), written consent is required to apply this tax rate to the full assessed value of properties subject to special use value assessment. The real estate tax rate imposed herein shall be applied on the basis of one hundred percentum (100%) of the fair market value of such real property except for public service real property, which shall be on the basis as provided in Code of Virginia § 58.1-2604.

Note— Ordinance No. 3321, § 3, effective January 14, 2014 states the City Manager or designee is hereby authorized to enter into contracts and to perform other actions consistent with this ordinance.

Sec. 35.3-12. - Creation of the Gills Cove Area Dredging Special Services District.

(a) There is hereby created the Gills Cove Area Dredging Special Service District for the purposes set forth in this chapter and those set forth in Code of Virginia, § 15.2-2403.

(b) The boundaries of the Gills Cove Area Dredging Special Service District shall be described in detail by the map attached to this Ord. No. 3335. [A copy can be found in the city offices.]

(c) The Gills Cove Area Dredging Special Service District shall dissolve on July 1, 2030, if not sooner.

(Ord. No. 3335, § 1, 3-25-14)

Note— Ordinance No. 3335, § 2, effective July 1, 2014, states, "There shall be levied and collected taxes for the special purpose of providing neighborhood dredging on all real estate within and pursuant to the Gills Cove Area Dredging Special Service District at the rate of 6.3 cents ($0.063) on each one hundred dollars ($100) of assessed value thereof. This real estate tax rate shall be in addition to the real estate tax rate set forth by the General Real Estate Tax Levy adopted by City Council. Any deferral of such levies for elderly or disabled persons shall be subject to § 35.3-5.1. As set forth in Code of Virginia § 15.2-2403(6), written consent is required to apply this tax rate to the full assessed value of properties subject to special use value assessment. The real estate tax rate imposed herein shall be applied on the basis of one hundred percentum (100%) of the fair market value of such real property except for public service real property, which shall be on the basis as provided in Code of Virginia § 58.1-2604."

Note— Ordinance No. 3335, § 3, effective March 25, 2014 states, "The City Manager or designee is hereby authorized to enter into contracts and to perform other actions consistent with this ordinance."

Sec. 35.3-13. - Creation of the Hurd's Cove Area Dredging Special Services District.

(a) There is hereby created the Hurd's Cove Area Dredging Special Service District for the purposes set forth in this chapter and those set forth in Code of Virginia, § 15.2-2403.

(b) The boundaries of the Gills Cove Area Dredging Special Service District shall be described in detail by the map attached to this Ordinance No. 3394. [A copy can be found in the city offices.]

(c) The Hurd's Cove Area Dredging Special Service District shall dissolve on July 1, 2031, if not sooner.

(Ord. No. 3394, § 1, 1-20-15)

Note— Ordinance No. 3394, § 2, adopted January 20, 2015, states, "There shall be levied and collected taxes for the special purpose of providing neighborhood dredging on all real estate within and pursuant to the Hurd's Cove Area Dredging Special Service District at the rate of 43.8 cents ($0.438) on each one hundred dollars ($100.00) of assessed value thereof. This real estate tax rate shall be in addition to the real estate tax rate set forth by the General Real Estate Tax Levy adopted by City Council. Any deferral of such levies for elderly or disabled persons shall be subject to § 35.3-5.1. As set forth in Code of Virginia § 15.2-2403(6), written consent is required to apply this tax rate to the full assessed value of properties subject to special use value assessment. The real estate tax rate imposed herein shall be applied on the basis of one hundred percentum (100%) of the fair market value of such real property except for public service real property, which shall be on the basis as provided in Code of Virginia § 58.1-2604."

Note— Ordinance No. 3394, § 3, adopted January 20, 2015 states, "The City Manager or designee is hereby authorized to enter into contracts and to perform other actions consistent with this ordinance."

Sec. 35.3-14. - Creation of the Schilling Point Area Dredging Special Services District.

(a) There is hereby created the Schilling Point Area Dredging Special Service District for the purposes set forth in this chapter and those set forth in Code of Virginia, § 15.2-2403.

(b) The boundaries of the Schilling Point Area Dredging Special Service District shall be described in detail by the map attached to Ordinance No. 3595.

(c) The Schilling Point Area Dredging Special Service District shall dissolve on July 1, 2035, if not sooner.

(Ord. No. 3595, § 1, 6-18-19)

Chapter 35.4 - TOURISM ZONES

ARTICLE I. - IN GENERAL

Sec. 35.4-1. - Purpose and intent.

The city council of the City of Virginia Beach finds that the development of its tourism related tax base requires the establishment of tourism zones as guided and authorized by Code of Virginia, § 58.1-3851. The city council finds that the establishment of tourism zones will foster the development of tourism related businesses, which will increase capital investment and create jobs.

(Ord. No. 3220, 3-13-12)

Sec. 35.4-2. - Administration.

This article shall be administered and enforced by the city manager or his designee. Any application required by this chapter shall be on forms approved by the city manager or his designee.

(Ord. No. 3220, 3-13-12)

Sec. 35.4-3. - Burden.

Any business applying for the benefits afforded by this chapter shall have the burden of proving qualification.

(Ord. No. 3220, 3-13-12)

Sec. 35.4-4. - Boundaries of tourism zones.

The tourism zones shall be established by city council by ordinance upon findings that the incentives provided therein will enhance the establishment and growth of tourism related businesses within the area under consideration. As tourism zones are established by city council, they shall be further identified by reference to the map entitled "Virginia Beach Tourism Zones" which shall be incorporated into and made a part of this chapter and all future ordinances establishing a tourism zone.

(Ord. No. 3220, 3-13-12)

Sec. 35.4-5. - Incentives.

(a) Any ordinance establishing a tourism zone may provide incentives authorized by Code of Virginia, § 58.1-3851 and qualification for such incentives by tourism businesses. Any incentive provided within a tourism zone shall be for a period not to exceed ten years from the date of application.

(b)

The entitlement to any incentive authorized by this chapter shall be conditioned upon the applicant paying any tax imposed by the city including but not limited to business license taxes, business personal property, meals, transient occupancy and admissions taxes by the date upon which the tax is due. In the event a business is 30 or more days delinquent on any local tax, such business forfeits any entitlement to any incentive authorized by this chapter.

(Ord. No. 3220, 3-13-12)

Secs. 35.4-6—35.4-9. - Reserved.

ARTICLE II. - RESORT AREA TOURISM ZONE

Sec. 35.4-10. - Intent; findings.

(a) It is the intent of the city council in establishing the Resort Area Tourism Zone to:

(1) Facilitate the establishment and growth of businesses that increase capital investment and create jobs; and

(2) Increase the inventory of tourism related businesses, with the goal of extending the length of stay of visitors to the city.

(b) The city council finds that:

(1) The establishment of a tourism zone in the Resort Area will foster the development of business and benefit the public health, safety, welfare and convenience through the enhancement of public revenues and the creation of employment opportunities.

(Ord. No. 3220, 3-13-12)

Sec. 35.4-11. - Establishment of the resort area tourism zone.

The Resort Area Tourism Zone is hereby established. The zone shall consist of the area described in detail by the map attached to this ordinance [Ord. No. 3220].

(Ord. No. 3220, 3-13-12)

Chapter 35.5 - COMMERCIAL PROPERTY ASSESSED CLEAN ENERGY (C-PACE) FINANCING AND RESILIENCY PROGRAM

ARTICLE I. - IN GENERAL

Sec. 35.5-1. - Purpose.

The purpose of this chapter is to create a "The City of Virginia Beach Commercial Property Assessed Clean Energy (C-PACE) Financing Program," to operate in coordination with the statewide C-PACE program, all in accordance with the Commonwealth of Virginia's Clean Energy Financing Law, Va. Code § 15.2-958.3 (hereinafter the "C-PACE Act"). The local and statewide C-PACE Programs, working together, will facilitate Loans made by Capital Providers to Property Owners

to finance Eligible Improvements thereon. Subject to the limitations set forth in this Chapter, the C-PACE Act, or other applicable law, each C-PACE Loan, inclusive of principal, interest, and any financed fees, costs, or expenses, will be secured by a voluntary special assessment lien on the property that is the subject of such Loan.

(Ord. No. 3676, 10-5-21; Ord. No. 3724, 2-21-23)

Sec. 35.5-2. - Definitions.

Assessment payment schedule means the schedule of installments of C-PACE Payments to be made in the repayment of the C-PACE Loan, which shall be attached as Exhibit B to the C-PACE Program Agreement.

Capital Provider means (i) a private lending institution that has been approved by the Program Administrator in accordance with the Program Guide to originate a C-PACE Loan and its successors and assigns; or (ii) the current holder of a C-PACE Loan.

City means the City of Virginia Beach, Virginia.

Clerk's office means the Office of the Clerk of the Circuit Court of the City of Virginia Beach, Virginia.

Commonwealth means the "Commonwealth of Virginia."

Council means the City Council of the City of Virginia Beach, Virginia.

C-PACE means Commercial Property Assessed Clean Energy.

C-PACE Act means Virginia's "financing clean energy programs" law, § 15.2-958.3 of the Va. Code.

C-PACE Amendment means an amendment of the C-PACE Lien executed by capital provider, the property owner and the program manager, as permitted in the C-PACE Documents, which C-PACE Amendment shall be recorded in the clerk's office to evidence each amendment to the C-PACE Loan.

C-PACE Assignment (CP) means a written assignment by one capital provider to another capital provider of the C-PACE Payments and/or C-PACE Lien pursuant to the terms of the assignment document.

C-PACE Assignment (Locality) means a written assignment by the city to the capital provider to whom the C-PACE Loan is then due, wherein the city relinquishes and assigns its right to enforce the C-PACE Lien to the Capital Provider, substantially in the form attached as Addendum 1 to the C-PACE Lien Certificate.

C-PACE Documents means the C-PACE Program Agreement, Financing Agreement, C-PACE Lien Certificate, C-PACE Assignment (CP) (if any), C-PACE Assignment (Locality) (if any), C-PACE Amendment (if any), and any other document, agreement, or instrument executed in connection with a C-PACE Loan.

C-PACE Lien or *lien* means the voluntary special assessment lien levied against the property as security for the C-PACE Loan.

C-PACE Lien Certificate means the voluntary special assessment lien document duly recorded among the land records against an eligible property to secure a C-PACE Loan.

C-PACE Loan or *loan* means a loan from a capital provider to finance a project, in accordance with the program guidelines.

C-PACE Payment means the periodic installment payments of the C-PACE Loan by a property owner, due and payable to the capital provider or program administrator as permitted by the C-PACE Act in such amounts and at such times as described in the assessment payment schedule.

C-PACE Program or *program* means the program established by the city through this chapter, in accordance with the C-PACE Act, that in coordination with the statewide program facilitates the financing of eligible improvements and provides for a C-PACE Lien to be levied and recorded against the property to secure the C-PACE Loan.

C-PACE Program Agreement means the agreement executed between the property owner, the treasurer, and the capital provider, and their respective successors and assigns, which includes the terms and conditions for participation in the C-PACE Program and the property owner's acknowledgment and consent for the city to impose a voluntary special assessment, record a C-PACE Lien Certificate against the property owner's eligible property and, if the city so determines, assign the rights to enforce the C-PACE Lien and C-PACE Lien Certificate to the capital provider (and if so assigned, also a consent of the treasurer to such assignment). The C-PACE Program Agreement shall be substantially in the form attached hereto as Appendix A.

Delinquent payment means any C-PACE Payment that was not paid by a property owner in accordance with the C-PACE Documents.

Eligible improvement means the initial acquisition and installation of any of the following improvements made to eligible properties:

(1) Energy efficiency improvements;

(2) Water efficiency and safe drinking water improvements;

(3) Renewable energy improvements;

(4) Resiliency improvements;

(5) Stormwater management improvements;

(6) Environmental remediation improvements; and

(7) Electric vehicle infrastructure improvements.

Eligible improvements may be made to both existing properties and new construction, as further prescribed in this chapter and the program guidelines. The eligible improvements shall include types of authorized improvements enacted by the General Assembly to the C-PACE Act after the date of adoption of this chapter, without need for a conforming amendment of this chapter. In addition to the elaboration on the types of eligible improvements provided in section 35.5-4, below, a program administrator may include in its program guidelines or other administrative documentation definitions, interpretations, and examples of eligible improvements.

Eligible property or *property* means all assessable commercial real estate located within the city, with all buildings located or to be located thereon, whether vacant or occupied, improved or unimproved, and regardless of whether such real estate is currently subject to taxation by the city, excluding i) a residential dwelling with fewer than five (5) units, and (ii) a residential condominium as defined in Code of Virginia, § 55.1-2100. Common areas of real estate owned by a cooperative or a property owners' association described in Code of Virginia, Title 55.1, Subtitle IV (§ 55.1-1800 et seq.), that have a separate real property tax identification number are eligible properties. Eligible properties shall be eligible to participate in the C-PACE Program.

Financing agreement means the written agreement, as may be amended, modified, or supplemented from time to time, between a property owner and a capital provider, regarding matters related to the extension and repayment of a C-PACE Loan to finance eligible improvements. The financing agreement may contain any lawful terms agreed to by the capital provider and the property owner.

Land records means the land records of the clerk's office.

Lender consent means a written subordination agreement executed by each mortgage or deed of trust lienholder with a lien on the property that is the subject of a C-PACE Loan, which allows the C-PACE Lien to have senior priority over the mortgage or deed of trust liens.

Loan amount means the original principal amount of the C-PACE Loan.

Locality agreement means the Virginia Energy-Locality Commercial Property Assessed Clean Energy Agreement between Virginia Energy and the city pursuant to which the city elects to participate in the statewide program. The locality agreement shall be substantially in the form attached hereto as Exhibit B.

Program administrator means the private third party retained by Virginia Energy to provide professional services to administer the statewide program in accordance with the requirements of the C-PACE Act, this chapter, the locality agreement and the program guidelines.

Program fee(s) means the fee(s) authorized by the C-PACE Act and charged to participating property owners to cover the costs to design and administer the statewide program, including, without limitation, compensation of the program administrator. While capital providers are required to service their C-PACE Loans, if a capital provider does not do so and the program administrator assumes the servicing responsibilities and charges a servicing fee, the servicing fee shall also be included among the program fees.

Program guidelines means a comprehensive document setting forth the procedures, eligibility rules, restrictions, program fee(s), responsibilities, and other requirements applicable to the governance and administration of the statewide program.

Program manager means the city manager or such person designated in writing by the city manager to (i) supervise the city's C-PACE Program, (ii) act as liaison with the program administrator, and (iii) advise the program administrator as to who will sign the C-PACE Documents to which the locality is a party on the locality's behalf. If the employee of the city who customarily signs agreements for the locality is not the person designated as program manager, then references in this chapter and in the C-PACE Documents to the program manager signing certain C-PACE Documents on behalf of the locality shall be construed to also authorize such customary signatory for the city to execute such C-PACE Documents.

Project means the construction or installation of eligible improvements on eligible property.

Property owner means (i) the property owner(s) of eligible property who voluntarily obtain(s) a C-PACE Loan from a capital provider in accordance with the program guidelines; or (ii) a successor in title to the property owner.

Property owner certification means a notarized certificate from property owner, certifying that (i) property owner is current on payments on loans secured by a mortgage or deed of trust lien on the property and on real estate tax payments, (ii) that the property owner is not insolvent or in bankruptcy proceedings, and (iii) that the title of the

property is not in dispute, as evidenced by a title report or title insurance commitment from a title insurance company acceptable to the program administrator and capital provider.

Statewide program means the statewide C-PACE financing program sponsored by Virginia Energy, established to provide C-PACE Loans to property owners in accordance with the C-PACE Act, this chapter, the locality agreement, the C-PACE Documents and the program guidelines.

Useful life means the normal operating life of the fixed asset.

Virginia Code or *Va. Code* means the Code of Virginia of 1950, as amended.

Virginia Energy means the Virginia Department of Energy.

(Ord. No. 3676, 10-5-21; Ord. No. 3724, 2-21-23)

Sec. 35.5-3. - Effective date.

This chapter shall become effective immediately following its adoption.

(Ord. No. 3676, 10-5-21; Ord. No. 3724, 2-21-23)

ARTICLE II. - PROGRAM STRUCTURE

Sec. 35.5-4. - C-PACE Program; eligible improvements.

(a) *C-Pace Program.* The C-PACE Program shall be available throughout the City of Virginia Beach, provided that the property owner, the property, the proposed eligible improvements, the capital provider and the principal contractors all qualify for the statewide program. The following types of eligible improvements may be financed with a C-PACE Loan:

(1) Renewable energy production and distribution facilities (e.g., solar photovoltaic, fiber optic solar, solar thermal, wind, wave and/or tidal energy, biomass, combined heat and power, geothermal and fuel cells), whether attached to a building or sited on the ground, and the storage and/or distribution of the energy produced thereby, whether for use on-site or sale or export to a utility or pursuant to a power purchase agreement with a non-utility purchaser;

(2) Energy usage efficiency systems (e.g., high efficiency lighting and building systems, heating, ventilation, and air conditioning (HVAC) upgrades, air duct sealing, high efficiency hot water heating systems, building shell or envelope improvements, reflective roof, cool roof, or green roof systems, and/or weather-stripping), or other capital improvements or systems which result in the reduction of consumption of energy over a baseline established in accordance with program guidelines;

(3) Water usage efficiency and safe drinking water improvements (e.g., recovery, purification, recycling, and other forms of water conservation), or other capital improvements or systems which result in the reduction of consumption of water over a baseline established in accordance with program guidelines;

(4)

Resiliency improvements which increase the capacity of a structure or infrastructure to withstand or recover from natural disasters, the effects of climate change, and attacks and accidents, including, but not limited to:

a. Flood mitigation or the mitigation of impacts of flooding;

b. Inundation adaptation;

c. Natural or nature-based features and living shorelines, as defined in Code of Virginia, § 28.2-104.1;

d. Enhancement of fire or wind resistance, including but not limited to reinforcement and insulation of a building envelope to reduce the impacts of excessive heat or wind;

e. Microgrids;

f. Energy storage; and

g. Enhancement of resilience capacity of a natural system, structure, or infrastructure;

(5) Stormwater management improvements that reduce onsite stormwater runoff into a stormwater system, such as reduction in the quantity of impervious surfaces or providing for the onsite filtering of stormwater;

(6) Environmental remediation improvements, including but not limited to:

a. Improvements that promote indoor air and water quality;

b. Asbestos remediation;

c. Lead paint removal; and

d. Mold remediation;

(7) Soil or groundwater remediation;

(8) Electric vehicle infrastructure improvements such as charging stations;

(9) Construction, renovation, or retrofitting of a property directly related to the accomplishment of any purpose listed in subsections (1)—(8), above, whether such eligible improvement was erected or installed in or on a building or on the ground; it being the express intention of the city to allow eligible improvements that constitute, or are a part of, the construction of a new structure or building to be financed with a C-PACE Loan; and

(10) Any other category of improvement (i) approved by the program administrator with the consent of the program manager as qualifying for financing under the statewide program, in accordance with the C-PACE Act (including amendments thereto which authorize additional types of eligible improvements), or (ii) added by the general assembly to the C-PACE Act after the date of adoption of this chapter, without need for a conforming amendment of this chapter. In addition, a program administrator may include in its program guidelines or other administrative documentation definitions, interpretations and examples of these categories of eligible improvements.

(b) *Use of C-PACE Loan proceeds.* The proceeds of a C-PACE Loan may be used to pay for the construction, development, and consulting costs directly related to eligible improvements, including without limitation, the cost of labor, materials, machinery, equipment, plans, specifications, due diligence studies, consulting services (e.g., engineering, energy, financial, and legal), program fees, C-PACE Loan fees, capitalized interest, interest reserves, and C-PACE transaction underwriting and closing costs.

(c) *Program applications; prioritization.* The program administrator shall make available the statewide program's program application process, to provide for the review and approval of proposed eligible improvements and C-PACE Documents. Program applications will be processed by the statewide program in accordance with the eligibility requirements and procedures set forth in the program guidelines.

(Ord. No. 3676, 10-5-21; Ord. No. 3724, 2-21-23)

Sec. 35.5-5. - C-PACE Loan requirements; program fees; reporting; program administrator; program guide.

(a) *Source of loans.* C-PACE Loans shall be originated by capital providers. The city and/or its respective governmental entities shall have no obligation to originate or guarantee any C-PACE Loans.

(b) *C-PACE Loan amount thresholds.* The minimum loan amount that may be financed for each project is fifty thousand dollars ($50,000). There is no maximum aggregate amount that may be financed with respect to an eligible property, except as stipulated in the program guidelines. There shall be no limit on the total value of all C-PACE Loans issued under the C-PACE Program.

(c) *C-PACE Loan refinancing or reimbursement.* The program administrator may approve a loan application submitted within two years of the city's issuance of a certificate of occupancy or other evidence that the eligible improvements comply substantially with the plans and specifications previously approved by the city and that such loan may refinance or reimburse the property owner for the total costs of such eligible improvements.

(d) *C-PACE Loan interest.* The interest rate of a C-PACE Loan shall be as set forth in the C-PACE Documents.

(e) *C-PACE Loan term.* The term of a C-PACE Loan shall not exceed the weighted average useful life of the eligible improvements, as determined by the program administrator.

(f) *Apportionment of costs.* All of the costs incidental to the financing, administration, collection, and/or enforcement of the C-PACE Loan shall be borne by the property owner.

(g) *Financing agreements.* Capital providers may use their own financing agreements for C-PACE Loans, but the financing agreement may not conflict with the provisions of this chapter, the C-PACE Act, or the C-PACE Program Agreement. To the extent of any conflict, this chapter, the C-PACE Act, and the C-PACE Program Agreement shall prevail.

(h) *C-PACE Program Agreement.* In order to participate in the C-PACE Program, property owner and capital provider shall enter into a C-PACE Program Agreement, which sets forth certain terms and conditions for participation in the city's C-PACE Program. The program manager is authorized to approve the C-PACE Loan and execute the C-PACE Program agreement on behalf of the city without further action by the city council. The treasurer is also authorized to execute the C-PACE Program agreement without further action by the city council. The C-PACE Program Agreement shall be binding upon the parties thereto and their respective successors and assigns until the C-PACE Loan is paid in full. The program administrator may modify the C-PACE Program Agreement as necessary to further the statewide program's purpose and to encourage program participation, so long as such modifications do not conflict with the program guidelines, this chapter, the locality agreement or the C-PACE Act.

(i)

Repayment of C-PACE Loan; collection of C-PACE Payments. C-PACE Loans will be repaid by the property owner through C-PACE Payments made in the amounts and at such times as set forth in the Assessment Payment Schedule, the C-PACE Documents and program guidelines. The capital provider shall be responsible, subject to and in accordance with the terms of the C-PACE Program Agreement and other C-PACE Documents, for the servicing of the C-PACE Loans and the collection of C-PACE Payments. If a capital provider fails to service a C-PACE Loan, such C-PACE Loan shall be serviced by the program administrator. Nothing herein shall prevent the capital provider or program administrator from directly billing and collecting the C-PACE Payments from the property owner to the extent permitted by the C-PACE Act or other applicable law. The enforcement of C-PACE Loans and their C-PACE Documents during an event of default thereunder is governed by section 35.5-6.

(j) *C-PACE Loan assumed.* A party which acquires a property which is subject to a C-PACE Lien, whether it obtained ownership of the property voluntarily or involuntarily, becomes the property owner under the C-PACE Documents and, by virtue of the C-PACE Lien running with the land, assumes the obligation to repay all remaining unpaid C-PACE Payments which are due and which accrue during such successor property owner's period of ownership. Only the current C-PACE Payment and any delinquent payments, together with any penalties, fees and costs of collection, shall be payable at the settlement of a property upon sale or transfer, unless otherwise agreed to by the capital provider.

(k) *Transfer of C-PACE Loans.* C-PACE Loans may be transferred, assigned, or sold by a capital provider to another capital provider at any time until the C-PACE Loan is paid in full provided that capital provider shall (i) notify the property owner and program administrator prior to the billing date of the next C-PACE Payment due (and within thirty (30) days if the C-PACE Loan is serviced by the program administrator), (ii) record a C-PACE Loan Assignment (CP) among the land records, and (iii) deliver a copy of the recorded C-PACE Assignment (CP) to the property owner, city, and program administrator. Recordation of the C-PACE Assignment (CP) shall constitute an assumption by the new capital provider of the rights and obligations of the original capital provider contained in the C-PACE Documents.

(l) *Program fees.* The statewide program will be self-financed through program fees charged to participating property owners together with any funds budgeted by the general assembly to support the statewide program. The program fees are established to cover the actual and reasonable costs to design and administer the statewide program, including the compensation of a third-party program administrator. The amount(s) of the program fees shall be set forth in the program guidelines. Program fees may be changed by the program administrator from time to time and shall only apply to C-PACE Loans executed after the date the revised fees are adopted.

(m) *Locality Agreement.* The city shall opt into the statewide program by entering into the Locality Agreement, adopting the statewide program as the city's own C-PACE Program. In accordance with the C-PACE Act, opting into the C-PACE Program shall not require the city to conduct a competitive procurement process. The program manager is authorized to execute the Locality Agreement on behalf of the city without further action by the city council.

(n) *Program guidelines.* The program administrator, under the direction of and in consultation with Virginia Energy, has designed the program guidelines to create an open, competitive, and efficient C-PACE Program. The program administrator may modify the program guidelines from time to time provided such

amendments are (i) consistent with the C-PACE Act, and (ii) approved by Virginia Energy before taking effect.

(o) *Indemnification.* The program administrator shall indemnify, defend and hold the city harmless against any claim brought against the city or any liability imposed on the city as a result of any action or omission to act by the program administrator.

(Ord. No. 3676, 10-5-21; Ord. No. 3724, 2-21-23)

Sec. 35.5-6. - Levy of assessment; recordation; priority; amendment; enforcement and collection costs.

(a) *Levy of voluntary special assessment lien.* Each C-PACE Loan made under the C-PACE Program shall be secured by a voluntary special assessment lien (i.e. a C-PACE Lien) levied by the city against each property benefitting from Eligible Improvements financed by such C-PACE Loan. The C-PACE Lien shall be in the loan amount, but shall secure not only the principal of the C-PACE Loan, but also all interest, delinquent interest, late fees, penalties, program fees, and collection costs (including attorneys' fees and costs) payable in connection therewith.

(b) *Recordation of C-PACE Lien Certificate.* Each C-PACE Lien shall be evidenced by a C-PACE Lien Certificate in the loan amount, but shall also expressly state that it also secures all interest, delinquent interest, late fees, penalties and collection costs (including attorneys' fees and costs) payable in connection therewith, and a copy of the Assessment Payment Schedule shall be attached thereto as an exhibit. The program manager is hereby authorized to, and shall promptly, execute the C-PACE Lien Certificate on behalf of the city and deliver it to the capital provider, without further action by the city council. Upon the full execution of the C-PACE Documents and funding of the C-PACE Loan, capital provider shall cause the recordation of the C-PACE Lien Certificate in the land records of the clerk's office.

(c) *Priority.* The C-PACE Lien shall have the same priority as a real property tax lien against real property, except that it shall have priority over any previously recorded mortgage or deed of trust lien on the property only if prior to the recording of the C-PACE Lien, (i) property owner has obtained a written lender consent, in a form and substance acceptable to the holder of such prior mortgage or deed of trust in its sole and exclusive discretion, executed by such lienholder and recorded with the C-PACE Lien Certificate in the land records; and (ii) prior to the recording of the C-PACE Lien Certificate, property owner has delivered an executed property owner certification to the city in connection with the C-PACE Loan closing. Only the current C-PACE Payment and any delinquent payments shall constitute a first lien on the property. The C-PACE Lien shall run with the land and that portion of the C-PACE Lien under the C-PACE Program Agreement that has not yet become due shall not be eliminated by foreclosure of a real property tax lien.

(d) *Amendment of lien.* Upon written request by a capital provider in accordance with the program guidelines, the program manager without further action by the city council, shall join with the capital provider and the property owner in executing a C-PACE Amendment of the C-PACE Loan and the C-PACE Lien after the closing of the C-PACE Loan. The C-PACE Amendment shall be recorded in the land records.

(e) *Enforcement and collection costs.* In the event of property owner's default under the terms of the C-PACE Documents, the city, acting by and through the treasurer, may enforce the C-PACE Lien for the amount of the delinquent payments, late fees, penalties, interest, and any costs of collection in the same manner that a property tax lien against real property may be enforced under Code of Virginia, Title 58.1, Chapter 39, Article 4. If the city elects not to enforce the C-PACE Lien, which election shall be made within thirty (30) days of

receipt by the city from the capital provider of notice of the property owner's default under the terms of the C-PACE Documents, then the city, acting by and through the treasurer, shall, within fifteen (15) days of the city's determination not to enforce the C-PACE Lien, assign the right to enforce the C-PACE Lien in accordance with the terms of the C-PACE Documents to the capital provider by executing a C-PACE Lien Assignment (Locality) and delivering such instrument to the capital provider for recordation in the land records. The preceding sentence notwithstanding, a C-PACE Assignment (Locality) may be executed and recorded at any time during the term of the C-PACE Loan, including the C-PACE Loan's closing, regardless of whether the C-PACE Loan is then in default. Upon such assignment and recordation, the capital provider is authorized to and shall enforce the C-PACE Lien according to the terms of the C-PACE Documents in the same manner that a property tax lien against real property may be enforced under Code of Virginia, Title 58.1, Chapter 39, including the institution of suit in the name of the city and its treasurer, and this right to enforce expressly includes the authorization for the capital provider to engage legal counsel to advise the capital provider and conduct all aspects of such enforcement. Such legal counsel, being authorized to institute suit in the name of the city and its treasurer, shall have the status of "special counsel to the city and its treasurer" and an "attorney employed by the governing body," and possess all the rights and powers of an attorney employed under Code of Virginia, §§ 58.1-3966 and 58.1-3969, with the express authority to exercise for the benefit of the capital provider every power granted to a local government and/or its treasurer and its or their attorneys for the enforcement of a property tax lien under, or in connection with, any provision contained in Code of Virginia, Title 58.1, Chapter 4. The city, on its behalf and on behalf of its treasurer, waives its right to require such legal counsel to post the optional bond described in Code of Virginia, § 58.1-3966. All collection and enforcement costs and expenses (including legal fees and costs), interest, late fees, other types of fees, and penalties charged by the city or capital provider, as applicable and consistent with the C-PACE Act and the Virginia Code, shall (i) be added to the Delinquent Payments being collected, (ii) become part of the aggregate amount sued for and collected, (iii) be added to the C-PACE Loan, and (iv) be secured by the C-PACE Lien. Nothing herein shall prevent the Capital Provider to which the C-PACE Lien has been assigned from enforcing the C-PACE Lien to the fullest extent permitted by the C-PACE Documents, the C-PACE Act, or general law. The property owner of a property being sold to pay delinquent payments, or other interested party, may redeem the property at any time prior to the property's sales, in accordance with Code of Virginia, §§ 58.1-3974 and 58.1-3975.

(Ord. No. 3676, 10-5-21; Ord. No. 3724, 2-21-23)

Sec. 35.5-7. - Role of the city; limitation of liability.

Property owners and capital providers participate in the C-PACE Program and the statewide program at their own risk. By executing the C-PACE Documents including the C-PACE Program Agreement, or by otherwise participating in the C-PACE Program and the statewide program, the property owner, capital provider, contractor, or other party or participant acknowledge and agree, for the benefit of the city and as a condition of participation in the C-PACE Program and the statewide program, that: (i) the city undertakes no obligations under the C-PACE Program and the statewide program except as expressly stated herein or in the C-PACE Program Agreement; (ii) in the event of a default by a property owner, the city has no obligation to use city funds to make C-PACE Payments to any capital provider including, without limitation, any fees, expenses, and other charges and penalties, pursuant to a financing agreement between

the property owner and capital provider; (iii) no C-PACE Loan, C-PACE Payment, C-PACE Lien, or other obligation arising from any C-PACE Document, the C-PACE Act, or this chapter shall be backed by the credit of the city, the commonwealth, or its political subdivisions, including, without limitation, city taxes or other city funds; (iv) no C-PACE Loan, C-PACE Payment, C-PACE Lien or other obligation arising from any C-PACE Document, the C-PACE Act, or this chapter shall constitute an indebtedness of the city within the meaning of any constitutional or statutory debt limitation or restriction; (v) the city has not made any representations or warranties, financial or otherwise, concerning a property owner, eligible property, project, capital provider, or C-PACE Loan; (vi) the city makes no representation or warranty as to, and assumes no responsibility with respect to, the accuracy or completeness of any C-PACE Document, or any assignment or amendment thereof; (vii) the city assumes no responsibility or liability in regard to any project, or the planning, construction, or operation thereof; (viii) each property owner or capital provider shall, upon request, provide the city with any information associated with a project or a C-PACE Loan that is reasonably necessary to confirm that the project or C-PACE Loan satisfies the requirements of the program guidelines; and (ix) each property owner, capital provider, or other participant under the program, shall comply with all applicable requirements of the program guidelines.

(Ord. No. 3676, 10-5-21; Ord. No. 3724, 2-21-23)

Sec. 35.5-8. - Severability.

As provided by section 1-13 of the City Code of the City of Virginia Beach, the provisions of this chapter are severable. If a court of competent jurisdiction determines that a word, phrase, clause, sentence, paragraph, subsection, section, or other provision is invalid, or that the application of any part of the chapter or provision to any person or circumstance is invalid, the remaining provisions of this chapter shall not be affected by that decision and continue in full force and effect.

(Ord. No. 3676, 10-5-21; Ord. No. 3724, 2-21-23)

Chapter 36 - VEHICLES FOR HIRE

> *Footnotes:*
> *--- (**1**) ---*
> ***Cross reference—** Emergency medical vehicles, Ch. 10.5; motor vehicle and traffic code, Ch. 21; use of tow truck service to enforce parking restrictions on private property, § 21-419 et seq.; disorderly conduct in public conveyances, § 23-14; streets and sidewalks, Ch. 33.*

ARTICLE I. - IN GENERAL

Sec. 36-1. - Violations of chapter.

Unless otherwise specifically provided, a violation of any provision of this chapter shall constitute a Class 1 misdemeanor.

Secs. 36-2—36-15. - Reserved.

ARTICLE II. - FIXED-ROUTE BUSES

Footnotes:

*--- (**2**) ---*

***Editor's note—** In order to facilitate the codification of provisions relative to charter buses, the editor, with the permission of the city, has retitled Art. II from "Buses" to read as set out above. Art. II was, in essence, re-enacted by Ord. No. 1187, adopted June 8, 1981, with no substantive changes, in view of incorporating the material on charter buses as Art. II of Ch. 9 of the 1965 Code. The editor has also renumbered former Art. III, concerning taxicabs, as Art. IV, and has corrected references to this article where they appear throughout this chapter.*

DIVISION 1. - GENERALLY

Sec. 36-16. - Authority for article; article does not grant franchise or vested rights.

(a) This article is adopted under the general police power granted to the city by its Charter. It is not intended hereby to grant or offer any franchise.

(b) No person operating buses under this article shall acquire any vested right thereunder in the streets of the city or any vested right to use the same.

(Code 1965, §§ 9-14, 9-26)

Sec. 36-17. - Application of article.

The operation of motor bus passenger transportation for hire within the city shall be subject to the provisions of this article and regulations made pursuant thereto; provided, however, that this article shall not apply to school buses, interurban buses, rental vehicles, including charter buses, or taxicabs and for-hire cars regulated by article IV of this chapter.

(Code 1965, § 9-26)

Sec. 36-18. - Compliance with article.

All of the provisions of this article imposing obligations or requirements on any person operating under this article shall be deemed to be mandatory and any violation of any such obligation or requirement shall be unlawful.

(Code 1965, § 9-25)

Sec. 36-19. - Gross receipts tax on operator.

Any person operating buses under this article shall pay into the treasury of the city two (2) percent on the first one hundred thousand dollars ($100,000.00) per annum of gross receipts from intracity bus operations and one percent on all such gross receipts in excess of one hundred thousand dollars ($100,000.00) per annum. Such sum so paid shall be in lieu of all city license taxes in connection with bus operations of any person operating under this article within the

city. Payments of the amounts due under this section shall be made by the operator on or before July tenth and January tenth of each calendar year for the preceding six (6) month period. Any sums due to the city under this section may be collected by legal procedure.

(Code 1965, § 9-10)

Cross reference— License code, Ch. 18.

Sec. 36-20. - Books and records of operator.

A standard book of accounts and system of bookkeeping, in accordance with general accepted bookkeeping practice, shall be kept and maintained by each person operating buses under this article, insofar as the system of accounts and bookkeeping applies to bus transportation. The director of finance or some accountant duly authorized by the council may, at any time, examine the books of such operator in order to verify or, if need be, to correct the same or any returns and reports made by the operator therefrom.

(Code 1965, § 9-11)

Sec. 36-21. - Operator's quarterly reports.

Complete quarterly reports, in a form approved by the director of finance, shall be made to the city manager by persons operating buses under this article. Such report, for each quarter, shall be delivered to the city manager not later than the twenty-fifth day of the month after the end of the quarter.

(Code 1965, § 9-12)

Sec. 36-22. - Indemnity for injuries or damages; liability insurance.

Any person operating buses under this article shall, by acceptance in writing of the terms and conditions of this article, agree and bind himself to indemnify and save harmless the city or any person from any and all claims, demands or judgments on account of injuries or damages occasioned by the negligence of such person, growing out of the construction of the operator's works or out of the operation of his vehicles under this article. Such person shall carry public liability insurance to provide insurance coverage in amounts of at least twenty-five thousand dollars ($25,000.00) for personal injury to one person, three hundred thousand dollars ($300,000.00) for personal injuries in one accident and ten thousand dollars ($10, 000.00) for property damage.

(Code 1965, § 9-19)

Sec. 36-23. - General standards of operation.

Any person operating buses under this article shall maintain an adequate and efficient public service at the rates specified. Such person shall maintain and operate his transportation system in accordance with the most approved methods and by the use of the most approved means of surface transportation, without and otherwise than by, the construction or use of railway tracks or the erection of poles and wires. Such person shall maintain all of the physical property used and operated by him at the highest practical standard of efficiency.

(Code 1965, § 9-16)

Sec. 36-24. - Operating schedules.

Any person operating buses under this chapter shall operate and maintain regular schedules so as to render reasonable service on each route served by him.

(Code 1965, § 9-7)

Sec. 36-25. - Suspension of operations.

Any person operating buses under this article shall operate his vehicles regularly over the authorized routes, unless prevented from so doing by act of God or other causes not reasonably preventable. Should it be necessary, in the prosecution of any public work, to stop temporarily the operation of such buses, the city shall not be liable and such person shall be held free from all claims of the city for damages or penalties by reason of the delay or suspension of such business or traffic.

(Code 1965, § 9-6)

Sec. 36-26. - Maintenance and safety standards of vehicles.

All vehicles and the equipment used in connection therewith operated under this article shall, at all times, be kept clean and in proper physical condition and shall conform to the safety standards established by the interstate commerce commission or the state, so as to render safe, adequate and proper public service and so as not to be a menace to the safety of the occupants or of the general public.

(Code 1965, §§ 9-17, 9-18)

Sec. 36-27. - Minimum seating capacity.

No bus of a seating capacity of less than twenty-five (25) passengers shall be operated on the streets of the city in service under this article.

(Code 1965, § 9-2)

Sec. 36-28. - Ventilation and heating.

Any person operating buses under this article shall, at all times, keep all buses operated by him sufficiently ventilated and adequately heated with safe and convenient appliances whenever the weather is such that heating is essential to the comfort of the passengers.

(Code 1965, § 9-18)

Sec. 36-29. - Interior lighting.

No bus operated under this article shall be operated between one-half hour after sunset and one-half hour before sunrise, except in case of emergency, unless sufficient light is provided to adequately light the interior of such vehicle.

(Code 1965, § 9-23)

Sec. 36-30. - Routes—Generally.

(a) The routes over which buses shall be operated under this article shall be the routes described in the certificate issued pursuant to division 2 of this article or such routes as may be authorized by the council pursuant to section 36-34. Not more than one operator of buses shall operate over any one authorized route.

(b) Except as otherwise provided in section 36-31, no deviation from an authorized route shall be practiced or permitted, except in the following instances:

(1) In case any authorized routes are obstructed on any block, drivers may make a detour by the nearest streets around the block on which such obstruction exists, returning to the prescribed route as soon as the obstruction has been passed.

(2) Where buses are operated over other streets in order to get from the garage to the regular routes by the most convenient streets.

(Code 1965, §§ 9-3—9-5)

Sec. 36-31. - Same—Modification by city manager.

(a) The city manager may, in all cases of fires, accidents, parades, obstructions, breaks in or repairs to streets or any other emergency requiring such action, temporarily modify the routes authorized in certificates issued under division 2 of this article until the emergency calling for such action has terminated.

(b) The city manager may issue, at the request of any person operating under a certificate issued pursuant to this article, a temporary permit to operate on routes in addition to those authorized by such certificate, for a length of time not exceeding sixty (60) days, which permit may be renewed by the city manager from time to time for additional sixty (60) day periods, for the purpose of gathering data by actual operation as to whether public convenience requires such additional routes and whether such routes may be profitably operated.

(Code 1965, § 9-8)

Sec. 36-32. - Passenger stops.

All buses operated under this article shall stop for the purpose of taking on or letting off passengers at such points or places as may be designated by schedules filed with the city manager.

(Code 1965, § 9-20)

Cross reference— Designation of bus stops, § 21-63; manner of using bus stops, § 21-374; establishment of bus stops in parking meter zones, § 21-400.

Sec. 36-33. - Fares generally.

Fares to be charged by any person operating buses under this article shall be as set forth in a tariff filed with the city manager. A tariff shall be filed with the application provided for in section 36-47. The operator may change any fares by filing a new tariff with the city manager and the fares prescribed in such new tariff shall become effective at the expiration of sixty (60) days after such new tariff is filed, unless the city council, proceeding under section 36-34, proposes to consider changing the fares prescribed in the new tariff.

(Code 1965, § 9-9)

Sec. 36-34. - Reservation of council's rights; changing fares, routes, etc.

(a) The city council expressly reserves the right to pass at any time, in addition to the provisions of this article, any amendments thereto and any and all ordinances deemed necessary by it in the reasonable exercise of its police power, for the safety, welfare and convenience of the public and for the regulation and control of bus transportation within the city.

(b) The city council reserves its right to determine the adequacy of fares charged by persons operating buses under this article and to regulate the service rendered by such persons, but recognizes that in its action on any of such matters the ability of the person operating under this article to earn a reasonable return on the operation should be respected, using the operating ratio method of determining the adequacy of earnings.

(c) Whenever the city council proposes to consider the question of changing any schedule or fare of the holder of a certificate issued under this article, it shall adopt a resolution so stating and give at least fifteen (15) days' notice of the time and place when such change will be considered to such certificate holder and an opportunity to be heard at such hearing shall be granted such certificate holder.

(d) Whenever any holder of a certificate issued under this article wishes to appear before the city council to obtain permission to make any change in his routes or service, he shall notify the city manager of the changes he seeks, at least ten (10) days prior to the time when application will be made to the council for such changes. A like notice shall also be served upon any and all other certificate holders operating under this article.

(e) The notice required in subsections (c) and (d) of this section may be waived by mutual consent of the council and the certificate holder.

(Code 1965, §§ 9-13, 9-15)

Sec. 36-35. - Discontinuance of operations because of dissatisfaction with established fares.

In the event any person operating buses under this article is unwilling to continue to operate at the fares established by the council, such person may surrender his certificate and cease operating only upon giving to the city manager ninety (90) days' notice of his intention to do so.

(Code 1965, § 9-24)

Sec. 36-36. - Disposition of property left on bus.

The driver or other person in charge of any bus operated under this article shall carefully preserve any money or other property left in such bus by any passenger and the same shall be promptly deposited with the person owning or operating such bus and shall be kept by him at some convenient point where the same may be called for by the owner. When such money or property has been identified and ownership established, the same shall be promptly delivered to such owner. Any such money or other property which is not called for within three (3) months shall be disposed of according to law.

(Code 1965, § 9-22)

Secs. 36-37—36-45. - Reserved.

DIVISION 2. - OPERATING CERTIFICATE

Sec. 36-46. - Required.

It shall be unlawful for any person to operate any bus within the city, unless he has a valid certificate issued pursuant to this division authorizing such operation.

(Code 1965, § 9-1)

Sec. 36-47. - Application generally.

Application for a certificate required by this division shall be filed with the city manager on forms provided for that purpose. Such application shall specify the route or routes over which the applicant proposed to operate.

(Code 1965, § 9-1)

Sec. 36-48. - Applicant's agreement to comply with article.

Each application for a certificate under this division shall have attached thereto a written agreement, in form approved by the city attorney, that the applicant will conform to and comply with, all provisions of this article.

(Code 1965, § 9-1)

Sec. 36-49. - Council action on application.

(a) The city manager shall notify the city council when he receives an application for a certificate under this division. Within a reasonable time thereafter, the council shall fix a time and place for a hearing on such application. Notice of the time and place of such hearing shall be given to the public, by publication in a newspaper published in the city once a week for two (2) successive weeks, the last publication to appear at least three (3) days before the day of such hearing. Notice shall also be given to all existing certificate holders, which notice may be served on, or acknowledged by, any resident official or attorney of such certificate holders.

(b) After the hearing provided for in subsection (a) above, the council shall either approve or disapprove the application. The council shall not approve the application, unless it finds that the public convenience and necessity require and justify the operation for which the certificate is sought and unless it is satisfied as to the applicant's financial responsibility and ability to conform to, and comply with, the conditions and provisions of this article.

(Code 1965, § 9-1)

Sec. 36-50. - Issuance; form.

Upon approval, by the city council, of an application for a certificate under this division, the city manager shall issue the certificate, in form approved by the city attorney, authorizing the applicant to operate buses under this article.

(Code 1965, § 9-1)

Sec. 36-51. - Term.

Certificates issued under this division shall be effective from the date specified therein and shall remain in effect until terminated as provided in section 36-52.

(Code 1965, § 9-1)

Sec. 36-52. - Suspension, revocation, alteration or amendment.

(a) The city council may, upon its own motion or upon complaint of any person, hold a hearing to determine whether or not a certificate issued under this division should be suspended, revoked, altered or amended. The holder of such certificate shall be given at least thirty (30) days' notice of the time and place of such hearing and shall be granted an opportunity to be heard at such hearing.

(b) After the hearing provided for in subsection (a) above, the council may suspend, revoke, alter or amend the certificate, if it has been shown, to the satisfaction of the council, that the holder of the certificate has wilfully made any misrepresentation of material facts in obtaining the certificate or has repeatedly violated or refused to observe the provisions of this article or any terms of the certificate or any of the council's proper orders, rules or regulations imposed under authority of this article.

(Code 1965, § 9-1)

Secs. 36-53—36-55. - Reserved.

ARTICLE III. - CHARTER BUSES

Footnotes:

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Editor's note— *Ord. No. 1172, adopted May 11, 1981, added an Art. II to Ch. 9 of the 1965 Code. At the editor's discretion, it has been included as Art. III, §§ 36-56—36-62 hereof. See also the editor's note to Art. IV of this chapter.*

Sec. 36-56. - Definitions.

The following term, when used in this article, shall, for the purpose of this article, have the meaning ascribed to it in this section, except in those instances where the context clearly indicates a different meaning:

Charter bus: Any motor vehicle having a seating capacity in excess of six (6) passengers which undertakes to transport people for compensation; provided, however, that such a motor vehicle operated by a public service company or the city on regular schedule and regular route and which charges individual or separate fares for such transportation shall not be included in this definition.

(Ord. No. 1172, 5-11-81)

Sec. 36-57. - Parking or stopping of charter buses.

(a) Except as otherwise provided herein, the parking of any charter bus or stopping of any charter bus for the purpose of picking up or discharging passengers shall be prohibited between the Friday immediately preceding Memorial Day and the Tuesday immediately following Labor Day, inclusive, of every calendar year on all municipal parking lots and all public streets in the following areas:

(1) An area bounded on the west by Birdneck Road, on the south by Rudee Inlet and Lake Rudee, and on the east and north by the boundaries of the Beach District, except that charter buses may stop for no more than fifteen (15) minutes to pick up or discharge passengers on 19th Street at Arctic Avenue in a zone designated "15 Minute Charter Bus Loading and Unloading." Furthermore, the 4th Street Public Parking Lot located by Rudee Inlet Loop has been designated as a pickup and discharge zone with fee parking for charter buses on a first-come, first-served basis.

(2) An area bounded on the south by Bay Colony Drive, on the west by the Linkhorn Bay and Seashore State Park, on the north by 89th Street, and on the east by the Atlantic Ocean; including but not limited to those communities denoted as North Virginia Beach, Princess Anne Hills, Bay Colony and Cavalier Park.

(3) An area bounded on the south by Camp Pendleton, on the west by Lake Rudee, on the north by Rudee Inlet, and on the east by the Atlantic Ocean; including but not limited to those communities denoted as Southside, Harbor Point and Croatan Beach.

(b) The city manager or his designee may authorize the parking or stopping of charter buses in locations and at times otherwise prohibited by subsection (a). Such authorization, if granted, shall be in writing, a copy of which shall be in the possession of the charter bus driver.

(Ord. No. 1172, 5-11-81; Ord. No. 1475, 8-6-84; Ord. No. 1719, 7-13-87; Ord. No. 1729, 8-24-87; Ord. No. 1838, 3-20-89; Ord. No. 2500, 8-4-98; Ord. No. 2765, 6-3-03; Ord. No. 2878, 5-10-05)

Sec. 36-58. - Parking and discharge of passengers at Virginia Beach Convention Center.

All charter buses may park in the designated bus parking spaces at the east end of the parking lot of the Virginia Beach Convention Center by first obtaining a permit from the security office of the Virginia Beach Convention Center. All charter buses parking at the Virginia Beach Convention Center must have such permit prominently displayed on the left side of the windshield at all times while parked within the parking lot of the Virginia Beach Convention Center.

The number of permits issued shall be determined by the number of available spaces for buses at the Virginia Beach Convention Center, and shall be allotted on a first-come, first-served basis.

All charter buses may pick up or discharge passengers in the parking lot of the Virginia Beach Convention Center without obtaining a permit provided that such charter bus does not remain parked in the parking lot in excess of fifteen (15) minutes.

(Ord. No. 1172, 5-11-81; Ord. No. 1547, 7-8-85; Ord. No. 2878, 5-10-050)

Sec. 36-59. - Enforcement.

The police department shall be empowered to carry out the provisions of this article and it shall be the responsibility of the police department to take all reasonable steps to prevent the parking of charter buses and the stopping of charter buses for the purpose of picking up and discharging passengers in the prohibited areas denoted in section 36-57.

(Ord. No. 1172, 5-11-81)

Sec. 36-60. - Buses transporting parade participants.

Nothing herein shall be construed as prohibiting buses transporting participants in a parade from discharging and picking up said participants in designated areas, provided a permit has been issued for the respective parade.

(Ord. No. 1172, 5-11-81)

Sec. 36-61. - Exemptions.

Charter buses that provide transportation to and from convention hotels to the Convention Center are exempt.

(Ord. No. 1172, 5-11-81; Ord. No. 2878, 5-10-05)

Sec. 36-62. - Violations and penalties.

Any person, persons, firm, corporation or unincorporated association violating any of the terms or provisions of this article shall, upon conviction, be punished by a fine of at least fifty dollars ($50.00) and not more than five hundred dollars ($500.00). Each reoccurrence of a prohibited act and each day a prohibited act continues shall be construed as a separate offense.

(Ord. No. 1172, 5-11-81)

Secs. 36-63—36-66. - Reserved.

ARTICLE IV. - TAXICABS

Footnotes:
*--- (**4**) ---*
Cross reference— *License tax for taxicabs and for-hire cars, § 18-105.*
State Law reference— *Authority of city to regulate taxicabs and similar for-hire vehicles, Code of Virginia, § 46.1-353.*

DIVISION 1. - GENERALLY

Sec. 36-67. - Definitions.

The following words and terms, when used in this article, shall have the meanings set forth in this section:

City manager means the city manager or his or her duly authorized designee.

Chief of police means the chief of police or his or her duly authorized designee.

Certificate means a certificate of public convenience and necessity issued under this article.

Owner includes the purchaser of any taxicab under a reserve title contract and the lessee of any taxicab.

Taxicab means any motor-driven vehicle used for the transportation for hire of passengers and equipped with a taximeter.

Taximeter means any mechanical or electronic instrument or device by which taxicab fares are computed and plainly indicated.

(Code 1965, § 34-1; Ord. No. 2576, 4-25-2000)

Sec. 36-68. - Application of and compliance with article.

The operation of taxicabs upon the streets of the city shall be subject to the conditions, regulations and restrictions set forth in this article. It shall be unlawful for any person to operate, or cause to be operated, within the city, any taxicab, unless the conditions, regulations and restrictions set forth and prescribed in this article have been and are complied with by the owner and driver thereof.

(Code 1965, § 34-5; Ord. No. 2576, 4-25-2000)

Sec. 36-69. - Liability insurance.

No taxicab shall be operated within the city unless the owner and driver thereof are protected by liability insurance, issued by a company authorized to do business in this state, in the sum of at least one hundred thousand dollars ($100,000.00) for injury to or death of any one person, three hundred thousand dollars ($300,000.00) for injury to or death of more than one person in any one accident, and twenty-five thousand dollars ($25,000.00) for property damage. Satisfactory evidence shall be filed with the commissioner of the revenue establishing that such insurance is in effect.

(Code 1965, § 34-4; Ord. No. 2576, 4-25-2000)

Sec. 36-70. - Business telephone required.

Every holder of a certificate issued under this article shall provide and maintain at all times a listed telephone, in the name under which the certificate holder is doing business in the city, to which calls may be made for service.

(Code 1965, § 34-2)

Sec. 36-71. - False, etc., calls for or in regard to service.

It shall be unlawful for any person to make improper, false or unauthorized calls for, or in regard to, the services of any taxicab.

(Code 1965, § 34-2.1; Ord. No. 2576, 4-25-2000)

Sec. 36-72. - Maintenance and inspection.

(a) Every taxicab operated in the city shall be kept in good, clean, neat and safe condition and appearance.

(b) It shall be the duty of the chief of police to make inspections of taxicabs operated in the city and to maintain records of his or her findings.

(c) To defray the cost of performing such inspections, the owner of each vehicle shall pay an annual inspection fee of fifty dollars ($50.00) per vehicle.

(Code 1965, §§ 34-47, 34-48; Ord. No. 2576, 4-25-2000; Ord. No. 3132, 5-11-10)

Note— The effective date of this section shall be July 1, 2010.

Sec. 36-73. - Reserved.

Editor's note— Ord. No. 3703, adopted July 12, 2022, repealed § 36-73, which pertained to domelights for taxicabs and derived from § 34-49 of the 1965 Code.

Sec. 36-74. - Reserved.

Sec. 36-75. - Reserved.

Editor's note— Ord. No. 2576, adopted Apr. 25, 2000, deleted § 36-75, which provided authority for the chief of police to prescribe the wearing of caps, uniforms and emblems for drivers and derived from Code 1965, § 34-20.

Sec. 36-76. - Reserved.

Sec. 36-77. - Taxicabs to use most direct route; use of toll facilities.

Every driver of a taxicab shall transport each passenger from the place the passenger is received in the taxicab to the destination of the passenger by the most direct route. When such route requires the use of a toll facility, the driver shall transport the passenger by way of the toll facility when the passenger agrees to pay the toll charge incurred with respect to the trip.

(Code 1965, § 34-50.2)

Sec. 36-78. - Taxicab stands generally.

The chief of police shall recommend to the city manager, with the approval of the city council, public and private stands or parking places for taxicabs. Public taxicab stands or taxicab stands situated on city property shall be open for use by all taxicabs duly licensed in the city. Approved private taxicab stands shall be occupied only by the taxicab company obtaining the stand and it shall be unlawful for any taxicab driver to park in or use any such stand other than that assigned to him.

(Code 1965, § 34-3)

Sec. 36-79. - Driver to be near taxicab while awaiting passengers at stand.

Drivers of taxicabs awaiting passengers at a taxicab stand shall at all times be within three (3) feet of the front door of their taxicabs.

(Code 1965, § 34-29; Ord. No. 2576, 4-25-2000)

Sec. 36-80. - Parking or stopping on public property while awaiting employment.

It shall be unlawful for the driver of any taxicab to park or stop such taxicab on any public street for the purpose of picking up or discharging a passenger(s) if doing so would create a potential safety hazard for other motorists, pedestrians or the taxicab's passenger(s), or would otherwise violate state or local traffic laws.

(Code 1965, § 34-28; Ord. No. 2576, 4-25-00)

Sec. 36-81. - Limitation on carrying passengers.

No more than one passenger shall be transported in a taxicab at one time, without the consent of the person first engaging the taxicab, and nonpaying passengers shall not be transported with paying passengers.

(Code 1965, § 34-27; Ord. No. 2576, 4-25-00)

Sec. 36-82. - Refusal of passengers.

Drivers of taxicabs shall not refuse to carry an orderly person anywhere within the city, unless previously engaged or unable to do so and except as provided in section 36-176.

(Code 1965, § 34-24; Ord. No. 2576, 4-25-00)

Sec. 36-83. - Reserved.

Sec. 36-84. - Permitting passengers to enter or leave on traffic side of taxicab.

No driver of a taxicab shall willfully permit any passenger to enter or leave the taxicab on a public way on the left side of the taxicab, except on one-way streets when the taxicab 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

the taxicab on a public way on the right side of the taxicab, except when the taxicab is lawfully stopped on the right side of the street for the purpose of taking on or discharging a passenger.

(Code 1965, § 34-26; Ord. No. 2576, 4-25-00)

Sec. 36-85. - Driver's trip records.

Each driver of a taxicab shall keep a clear, neat record of the origin and destination of all trips or calls, the time thereof and the fare paid therefor, which records shall be open at all times to any law-enforcement officer and shall be kept for a period of one year. A record required by this section may be kept or maintained in a written or electronic format.

(Code 1965, § 34-23; Ord. No. 2576, 4-25-00; Ord. No. 3584, 3-5-19)

Sec. 36-86. - Central dispatch records or manifests.

Every certificate holder operating a taxicab or taxicabs under this article shall keep and maintain in the city, at the place of his or her registered office location, a manifest or permanent record, written or printed in ink, in a form prescribed by the chief of police, or in a comparable electronic format, showing for each day the number of taxicabs operated, the driver of each taxicab, the origin and destination of each trip made by each taxicab, the time of each such trip and the amount charged for each such trip. The manifests or records shall be delivered to the police department, upon demand of the chief of police, for inspection by the chief of police or any member of the police department. All such manifests and records shall be maintained for at least twelve (12) months and shall be available for inspection at all reasonable times by the chief of police or any member of the police department.

(Code 1965, § 34-23.1; Ord. No. 2576, 4-25-00; Ord. No. 2897, 10-4-05; Ord. No. 3584, 3-5-19)

Secs. 36-87—36-95. - Reserved.

DIVISION 2. - CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

Sec. 36-96. - Required; reciprocity.

(a) It shall be unlawful for any person to operate or cause to be operated, within the city, any taxicab, unless a certificate thereof has been issued to the owner thereof in accordance with the provisions of this division. Nothing contained herein shall prohibit a taxicab duly licensed in another city or county from delivering a passenger to some location in this city, provided the passenger was picked up outside the limits of this city and the taximeter is in operation while any such taxicab is in operation in this city.

(b) Notwithstanding the provisions of the prior subsection, any taxicab that is duly licensed in one of the reciprocity-providing localities listed below may, after delivering a passenger to a location within the city, pick up a passenger in the city and deliver the passenger to the locality in which the taxicab is licensed. The reciprocity-providing localities are:

Newport News

Portsmouth

Suffolk

(Code 1965, § 34-7; Ord. No. 1188, 6-8-81; Ord. No. 2576, 4-25-00; Ord. No. 2951, 6-27-06; Ord. No. 2977, 5-8-07)

Sec. 36-97. - Application generally.

Any person desiring a certificate shall make written application therefor to the chief of police upon a form approved by the chief of police, giving the name, age, business address and residence of the applicant and such additional information as may be required concerning the make, description and condition of the taxicab proposed to be operated and the character and responsibility of the applicant.

(Code 1965, § 34-8; Ord. No. 1046, 6-9-80; Ord. No. 2576, 4-25-00)

Sec. 36-98. - Applicant's qualifications.

No certificate required by this division shall be granted to a person who is under eighteen (18) years of age, who has been a repeated and persistent violator of the traffic and safety provisions of this Code and other ordinances of the city, or who has been determined by the chief of police to be morally or mentally unfit to receive a certificate. To assist the chief of police in making the determination required herein, each applicant for a certificate shall authorize the chief of police, in writing, to obtain information concerning the applicant's criminal history and driving record.

(Code 1965, § 34-6; Ord. No. 1046, 6-9-80; Ord. No. 2576, 4-25-00)

Sec. 36-99. - Financial information to be submitted for rate increases.

For use in considering requested increases in taxi rates or charges, the city manager or his designee may require any owner or operator to submit such supporting financial data as may be necessary, including federal or state income tax returns for the two (2) years preceding; provided, however, that income tax returns submitted shall be used only for consideration of such rates or charges and shall be kept confidential.

(Code 1965, § 34-8.1; Ord. No. 2576, 4-25-00; Ord. No. 2801, 3-23-04)

Sec. 36-100. - Issuance of certificate.

(a) The chief of police shall consider each application for a certificate. If the chief of police determines that the applicant meets the criteria set forth in this division and deems that the public convenience and necessity will be served by the proposed taxicab, he or she shall issue such certificate for a period not to exceed one (1) year.

(b) Any applicant who is denied a certificate by the chief of police may appeal such decision to the city manager.

(c) If the decision of the chief of police to deny a certificate is upheld by the city manager, an applicant may appeal the decision of the city manager to the city council.

(Code 1965, § 34-9; Ord. No. 1110, 10-27-80; Ord. No. 2576, 4-25-00)

Sec. 36-101. - Reserved.

Sec. 36-102. - Transfer.

Certificates shall be transferable, with the approval of the chief of police, provided that the person to whom a certificate is transferred and the taxicab(s) to which it applies shall, in all respects, be in compliance with the provisions of this article.

(Code 1965, § 34-11; Ord. No. 2576, 4-25-00)

Sec. 36-103. - Revocation or suspension

Any certificate may be revoked or suspended, at any time, by the chief of police for any of the following causes:

(1) Failure to operate the taxicab specified in the certificate.

(2) Failure to maintain taxicabs in good order and repair.

(3) Failure to pay the personal property tax or other taxes due to the city or the state.

(4) Failure to maintain insurance as required by section 36-69.

(5) Failure to report any accident as required by law.

(6) Repeated failure of the drivers of taxicabs covered by the certificate to be courteous or to stay neat in appearance.

(7) Repeated failure of the drivers of taxicabs covered by the certificate to respond to calls for service in a timely manner.

(8) Failure of drivers of taxicabs covered by the certificate to have and exhibit the taxicab driver's permit in the taxicab, as required by this article.

(9) Repeated violations, by drivers, of state and local laws relative to traffic and safety.

(10) Employing or leasing a taxicab to a driver who does not meet the qualifications set forth in section 36-98.

(11) Wilful or continued failure to comply with any provision of this article or any other law or ordinance regulating the operation of taxicabs within the city.

(Code 1965, § 34-12; Ord. No. 2576, 4-25-00)

Secs. 36-104—36-110. - Reserved.

DIVISION 3. - VEHICLE LICENSE

Sec. 36-111. - Required.

Except as provided in section 36-96, it shall be unlawful for any person to operate or cause to be operated, within the city, any taxicab unless a current city license therefor has been issued to the owner thereof.

(Code 1965, § 34-13; Ord. No. 2576, 4-25-00)

Sec. 36-112. - Payment of tax.

The owner of a taxicab shall pay a city license tax thereon as provided in section 18-105 of this Code.

(Code 1965, § 34-14; Ord. No. 2576, 4-25-00)

Sec. 36-113. - Prerequisites to issuance.

No license for a taxicab shall be issued unless the applicant presents, to the commissioner of the revenue, his or her state motor vehicle registration card, a certificate issued pursuant to division 2 of this article and evidence of insurance meeting the requirements of section 36-69.

(Code 1965, § 34-15; Ord. No. 2576, 4-25-00)

Sec. 36-114. - Issuance and contents of decal.

(a) Upon the payment of the prescribed license tax and compliance with section 36-113, the commissioner of the revenue shall furnish the owner of the taxicab in question with a license decal for such taxicab. The license decal shall have displayed upon it the license number assigned to the particular taxicab, the name of the city, which may be abbreviated, and the year for which issued.

(b) Any person holding a current certificate may obtain licenses for additional or replacement taxicabs; provided, however, that prior to the issuance of any such license, the commissioner of the revenue shall require proof that each taxicab has been certified by the chief of police to be in good order and repair, and that each taximeter has been certified by the chief of police to be properly calibrated.

(Code 1965, § 34-16; Ord. No. 2576, 4-25-00)

Sec. 36-115. - Issuance, contents and exhibition of tax assessment slip.

The commissioner of the revenue shall issue, with each license decal issued under this division, a tax assessment slip showing the name and address of the owner, the year, make, model and motor number of the taxicab for which it was issued, and the number of such license decal. Such slip shall be receipted by the city treasurer, when the tax is paid.

(Code 1965, § 34-19; Ord. No. 2576, 4-25-00; Ord. No. 2897, 10-4-05)

Sec. 36-116. - Display of decal.

A license decal issued under this division shall be securely attached to the rear bumper of the taxicab for which it was issued. It shall be unlawful for any person to knowingly use any such license decal on any motor vehicle other than the taxicab for which it was issued or to which it has been transferred as provided in section 36-117.

(Code 1965, §§ 34-16, 34-18; Ord. No. 2576, 4-25-00)

Sec. 36-117. - Transfer of decal.

A license decal issued under this division may be transferred by an owner from one vehicle owned by him to another vehicle owned by him, upon the payment of a one dollar ($1.00) transfer fee.

(Code 1965, § 34-17; Ord. No. 2576, 4-25-00)

Sec. 36-118. - Replacement of lost or destroyed decal.

Any person whose original license decal is lost or destroyed may secure a new decal by making affidavit to the commissioner of the revenue that the original decal has been lost or destroyed and that the chief of police has been notified of such loss or destruction, and by paying a fee of one dollar ($1.00).

(Code 1965, § 34-16; Ord. No. 2576, 4-25-00)

Secs. 36-119—36-135. - Reserved.

DIVISION 4. - TAXICAB DRIVER'S PERMIT

Sec. 36-136. - Required.

(a) It shall be unlawful for any person to drive any taxicab unless a current taxicab driver's permit has been issued to such person under the provisions of this division.

(b) It shall be unlawful for the owner of any taxicab to permit such taxicab to be driven by any person who does not have a valid and effective taxicab driver's permit issued pursuant to the provisions of this division.

(Code 1965, §§ 34-31, 34-46; Ord. No. 2576, 4-25-00)

State Law reference— Authority of city to license drivers of taxicabs and similar for-hire vehicles, Code of Virginia, § 46.1-353.

Sec. 36-137. - Filing and contents of taxicab driver's permit application.

Any person desiring a taxicab driver's permit required by this division shall make application therefor in writing to the chief of police, upon forms to be provided by the chief of police, giving the name, sex, date of birth and address of the applicant.

(Code 1965, § 34-32; Ord. No. 2576, 4-25-00)

Sec. 36-138. - Application fee.

Each person filing an application pursuant to section 36-137 shall pay to the city treasurer an application fee of fifty dollars ($50.00). The fee for processing such application is non-refundable. Upon completion of the application, an approved permitee is issued a printed permit card, and the cost of such printed card is five dollars ($5.00).

(Code 1965, § 34-35; Ord. No. 2094, 8-27-91; Ord. No. 3132, 5-11-10; Ord. No. 3479, 12-13-16)

Sec. 36-139. - Qualifications of applicant generally.

A taxicab driver's permit required by this division shall not be granted to any person who does not meet the qualifications set forth in section 36-98. To assist the chief of police in making a determination whether the qualifications set forth in section 36-98 have been met, each applicant for a taxicab driver's permit shall authorize the chief of police, in writing, to obtain information concerning the applicant's criminal history and driving record.

(Code 1965, § 34-37; Ord. No. 2576, 4-25-00)

Sec. 36-140. - Information as to applicant's character and responsibility.

Any person filing an application for a permit under this division shall furnish to the chief of police such information as may be required as to his character and responsibility.

(Code 1965, § 34-34)

Sec. 36-141. - Photographs of applicant.

Before a taxicab driver's permit is issued under this division, two (2) photographs of the applicant therefor shall be furnished the chief of police, one of which shall be filed in the office of the chief of police and one of which shall be attached to the permit in such a manner that it cannot be removed and another photograph substituted without detection.

(Code 1965, § 34-36; Ord. No. 2576, 4-25-00)

Sec. 36-142. - Valid operator's license required.

Any person filing an application for a permit under this division shall possess a valid operator's license issued by the Commonwealth of Virginia.

(Code 1965, § 34-33; Ord. No. 2576, 4-25-00)

Sec. 36-143. - Issuance or refusal.

The chief of police shall issue a taxicab driver's permit to any applicant who is in compliance with the requirements set forth in sections 36-137 through 36-142 and shall refuse to issue a permit to any applicant who fails to meet all such requirements.

(Code 1965, §§ 34-38, 34-39; Ord. No. 2576, 4-25-00)

Sec. 36-144. - Form and contents.

A taxicab driver's permit issued under this division shall be in such form as the chief of police may prescribe and shall contain the photograph and signature of the permittee in question.

(Code 1965, § 34-41; Ord. No. 2576, 4-25-00)

Sec. 36-145. - Posting and display.

The driver of a taxicab shall keep the taxicab driver's permit issued to him or her under this division posted and displayed inside his or her taxicab so as to be plainly visible to all passengers in the taxicab. The printed permit card provides the name of the driver and the taxicab company. If a driver is employed by more than one taxicab company or operates a taxicab on behalf of more than one taxicab company, the driver is required to obtain a permit card for each company. If a driver terminates employment or his operational relationship with the listed taxicab company and obtains employment with a different taxicab company or operates a taxicab on behalf of a different taxicab company, the driver may obtain a replacement card from the police department with the current taxicab company. The cost to re-issue the printed card is five dollars ($5.00).

(Code 1965, § 34-45; Ord. No. 2576, 4-25-00; Ord. No. 3479, 12-13-16)

Sec. 36-146. - Term.

A taxicab driver's initial permit issued under this division shall be effective for a period of one (1) year from the date of issue, unless sooner suspended or revoked.

(Code 1965, § 34-40; Ord. No. 2576, 4-25-00; Ord. No. 3479, 12-13-16)

Sec. 36-147. - Renewal.

After completion of the initial term, described in section 36-146, a taxicab driver's subsequent permit issued under this division may be renewed every two years by the chief of police, if the applicant for such renewal is, at the time thereof, qualified under the provisions of this division to have issued to him or her an original taxicab driver's permit. At the time of such renewal, two (2) recent photographs of the applicant shall be filed with the chief of police, to be used for the same purpose that photographs filed with an original application are used, along with a renewal fee of fifty dollars ($50.00) made payable to the city treasurer. Such renewal application shall include a review of the applicant's criminal history and driving record. The police department may undertake a review of the applicant's criminal history and driving record at the one year anniversary of the submission of the application or at other times in the discretion of the police department.

(Code 1965, § 34-42; Ord. No. 2094, 8-27-91; Ord. No. 2576, 4-25-00; Ord. No. 3132, 5-11-10; Ord. No. 3479, 12-13-16)

Sec. 36-148. - Replacement when lost or destroyed.

In the event a taxicab driver's permit issued under this division is lost or destroyed, the person entitled thereto may make application for and obtain a duplicate thereof, upon furnishing information of such fact, by affidavit or in a manner otherwise satisfactory to the chief of police, and upon paying to the city treasurer a fee of five dollars ($5.00).

(Code 1965, § 34-43; Ord. No. 2094, 8-27-91; Ord. No. 2576, 4-25-00; Ord. No. 3479, 12-13-16)

Sec. 36-149. - Revocation or suspension.

A taxicab driver's permit issued under this division may be revoked or suspended by the chief of police for any of the following causes:

(1) Failure to report any accident as required by law.

(2) Repeated and persistent violations of state or local law relative to traffic.

(3) Conviction of driving under the influence of drugs or alcohol, refusal to take a blood or breath test, reckless driving, racing, eluding police or leaving the scene of an accident.

(4) Conviction of any felony or misdemeanor crime of moral turpitude.

(5) Suspension or revocation of a driver's state operator's license.

(6) Falsification of the application for the permit.

(7) Failure to comply with any provisions of this article.

(Code 1965, § 34-44; Ord. No. 1046, 6-9-80; Ord. No. 2576, 4-25-00; Ord. No. 3479, 12-13-16)

Secs. 36-150—36-155. - Reserved.

DIVISION 5. - TAXIMETERS

Sec. 36-156. - Required.

All taxicabs operated in this city shall be equipped with a taximeter which shall be in operation during the time when passengers are transported and which shall be used to compute fares. A taxicab operator may charge a flat rate for a fare provided the meter is running and the flat rate charged does not exceed the rates listed in section 36-172.

(Code 1965, § 34-56; Ord. No. 2897, 10-4-05)

Sec. 36-157. - Reserved.

Editor's note— Ord. No. 3718, adopted January 17, 2023, repealed § 36-157, which pertained to identification light and derived from § 34-49.1 of the 1965 Code; Ord. No. 2897, 10-4-05.

Sec. 36-158. - Maintenance, inspection, testing and sealing.

(a) Taximeters installed on taxicabs operated under this article shall all be maintained in good and accurate working order and shall be subject to inspection and testing, by police officers or other persons designated by the city manager, at the time of installation and periodically thereafter. The inspector shall seal each taximeter with a wire lead seal after each inspection and test. Such sealing shall not be required for taximeters that use only Global Positioning System (GPS) software to determine distance traveled.

(b) It shall be unlawful for any person to operate, or for any owner to permit any person to operate, any taxicab with a taximeter which has not been inspected and sealed in accord with the section.

(Code 1965, § 34-57; Ord. No. 2576, 4-25-2000; Ord. No. 3584, 3-5-19)

Sec. 36-159. - Use when excessive fare is computed.

No person shall accept payment of a fare after knowing use of a taximeter which computes a fare in excess of rates permitted by division 6 of this article. A violation of this section shall be deemed larceny and punishable as a class I misdemeanor.

(Code 1965, § 34-59; Ord. No. 2897, 10-4-05)

Sec. 36-160. - Unlawful tampering with or manipulating.

It shall be unlawful for any person to tamper with or manipulate any taximeter or seal thereto for the purpose of falsifying its calculations or readings.

(Code 1965, § 34-58)

Secs. 36-161—36-170. - Reserved.

DIVISION 6. - FARES

Sec. 36-171. - Definitions.

For the purpose of this division, the term "waiting time" shall include the time consumed while a taxicab is stopped or moving at a speed less than twelve (12) miles per hour. "Waiting time" shall also include the time when a taxicab is not in motion, beginning with the time of arrival at the place to which it is called. There shall be excluded time consumed by the premature response to calls or the inefficiency of the taxicab or its operation.

(Code 1965, § 34-50)

Sec. 36-172. - Maximum rates for taxicabs.

(a) No person owning, operating, controlling or driving a taxicab within the city shall charge an amount to exceed the following rates of fare:

(1) For the first one-eighth of a mile or fraction thereof $6.00

(2) For each succeeding one-eighth of a mile or fraction thereof 0.30

(3) Trunk charge 0.50

(4) For each minute of waiting time 0.30

(b) Notwithstanding the provisions of this section, any person who, pursuant to section 36-96 of this Code, operates in the city a taxicab that is duly licensed in another locality while: (i) transporting a fare from outside of the city into the city; or (ii) transporting a fare from the city directly to a destination outside of the city shall charge the rates prescribed by the city or county in which they are licensed.

(c)

Any application for a fare increase under this section shall include justification for such fare increase and such financial and operating information as may be requested by the city manager. The city council shall hold a public hearing before acting on any such application for a fare increase, after public notice for at least ten (10) days.

(d) Notwithstanding the above provisions of this section, a taxicab owner or operator may enter into written contracts with businesses, non-profits, or governmental entities to provide services on a negotiated basis with a fare schedule agreed upon in the contract, and the rates to be charged for services under such contracts may differ from the rates set forth in this section.

(Code 1965, § 34-50; Ord. No. 975, 8-6-79; Ord. No. 1147, 2-9-81; Ord. No. 1497, 11-5-84; Ord. No. 1831, 2-27-89; Ord. No. 2212, 4-20-93; Ord. No. 2576, 4-25-00; Ord. No. 2733, 1-14-03; Ord. No. 2897, 10-4-05; Ord. No. 2902, 12-6-05; Ord. No. 2923, 2-14-06; Ord. No. 2977, 5-8-07; Ord. No. 3045, 7-8-08; Ord. No. 3100, 8-25-09; Ord. No. 3703, 7-12-22)

Sec. 36-173. - Reserved.

Editor's note— Ord. No. 2576, adopted Apr. 25, 2000, deleted § 36-173, which contained the maximum rates for for-hire cars and was derived from Code 1965, § 34-52.

Sec. 36-174. - Receipts for payment.

The driver in charge of a taxicab shall, upon request, deliver to the person paying the fare a receipt, in legible type or writing, showing the charges and the amount paid, the date of payment, the names of the owner and driver of the taxicab and the city license number thereof.

(Code 1965, § 34-53; Ord. No. 2576, 4-25-00)

Sec. 36-175. - Posting of information in vehicle.

There shall be posted, in a conspicuous place in each taxicab operated in the city, a card, in legible type or print, showing the rates of fare prescribed to be charged for the use thereof and stating that, upon request of a passenger, a receipt will be given for the fare paid. Such cards shall be approved by the chief of police.

(Code 1965, § 34-54; Ord. No. 2576, 4-25-00)

Sec. 36-176. - Agreement to pay may be required.

The driver of a taxicab may refuse to carry a passenger if, upon request, the passenger refuses to agree to pay the legal fare for the proposed trip.

(Code 1965, § 34-24; Ord. No. 2576, 4-25-00)

Sec. 36-177. - Failure to pay.

It shall be unlawful for any person to engage or ride in a taxicab without paying the legal fare therefor. A violation of this section shall be deemed larceny and punishable as a class I misdemeanor.

(Code 1965, § 34-55; Ord. No. 2576, 4-25-00; Ord. No. 2897, 10-4-05)

Sec. 36-178. - Penalty for violation.

Any owner or operator of a taxicab operated on any highway, street, road, lane or alley in this city who violates any provision of this article shall be guilty of a misdemeanor and upon conviction therefor shall be fined not more than one hundred dollars ($100.00) for a first offense and not more than five hundred dollars ($500.00) for each subsequent offense.

(Ord. No. 2576, 4-25-00)

Chapter 37 - WATER SUPPLY

> *Footnotes:*
> *--- (**1**) ---*
> ***Cross reference—** Building regulations, Ch. 8; fire prevention and protection, Ch. 12; housing code, Ch. 16; license tax for water companies, § 18-115; water utilities to maintain employees on call for emergencies, § 23-52; sewers, Ch. 28; installation or repair of underground utilities prior to street improvements, § 33-86 et seq.; water supply at public swimming pools, § 34-24; tax on purchasers of water, § 35-114 et seq.; water supply in subdivisions, App. B, § 5.8.*
> ***State Law reference—** Similar provisions, public water supply, Code of Virginia, § 62.1-45 et seq.; authority of city to acquire, establish, maintain and operate waterworks, §§ 15.1-292, 15.1-335, 15.1-875.*

ARTICLE I. - IN GENERAL

Sec. 37-1. - Definitions.

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

Consumer: Any person to whom water from the city water system is supplied directly, either as owner, agent or tenant of the premises to which water service is provided through a city meter, and who is responsible for the payment of charges for the consumption of water so supplied.

Director: The director of public utilities or his designee.

Water service: The delivery of city water to a building, lot or premises at the curb; provided, that when any lot contains more than one building, or any building is divided into separate functional units, such building or lot, as the case may be, shall not be an additional service if it is owned by one person and all water so used is paid for by one person; and further provided, that the director of public utilities may specify, for any lot or building, the number of separate water services which is deemed necessary to meet the requirements for water supply.

Water usage: The use or the right to use city water delivered through a city meter into the building or dwelling to be serviced.

(Code 1965, § 37-1; Ord. No. 3182, 5-24-11)

Sec. 37-2. - Violations of chapter generally.

Unless otherwise specifically provided, any person who shall violate any of the provisions of this chapter shall be guilty of a Class 3 misdemeanor and each day's continuation of a violation shall be considered a separate offense. Any such person shall, furthermore, be liable for all damage, loss and expense suffered or incurred by the city as a result of such violation.

(Code 1965, § 37-23)

Sec. 37-3. - Application for consumer service.

The director of public utilities is hereby authorized to furnish water service to consumers upon application of the owner, agent or tenant of the premises connected to city water.

(Code 1965, § 37-2; Ord. No. 1140, 12-16-80)

Sec. 37-3.1. - Wheeling contracts for military installations.

The director of public utilities is hereby authorized to contract with the United States Government to wheel water from Norfolk to military installations located within Virginia Beach, subject to approval of the terms of such contract by the city manager and city council.

(Ord. No. 1381, 6-27-83)

Sec. 37-4. - Each meter considered separate service.

If any consumer is supplied through more than one water meter, each meter shall be considered as a separate service both as to water usage charges and as to meter maintenance charges and as to all other provisions of this chapter, including application requirements and deposit fees.

(Code 1965, § 37-3)

Sec. 37-5. - Mandatory connections.

(a) The owner of any dwelling or other building in which human beings live or congregate shall, whenever a public water line is made available by the city, connect such building or dwelling with such water line within one year after such line becomes available. The date of availability shall be that on which notice is given by any publication or by mailing or delivering notice to the affected property. However, the director of public health may require connection within sixty (60) days if, in his opinion, a health hazard exists.

(b) It shall be unlawful for any person to occupy, lease or rent any premises which is not connected to a water line as required by this section. Each day of occupancy or use of any premises in violation of this section shall constitute a separate and distinct offense.

(c) The fees prescribed by this article shall be due from the date the water connection is required pursuant to this section, and no connection shall be made to the public water system until such fees have been paid.

(Code 1965, § 37-28; Ord. No. 1342, 11-8-82)

State Law reference— Authority of city to require water connections, Code of Virginia, § 15.1-875.

Sec. 37-6. - Connections to be made by city.

No person, except the properly authorized agents of the director of public utilities, shall tap or make any connection with the main or distributing pipes of the city waterworks system.

(Code 1965, § 37-18)

Sec. 37-7. - Water tap and meter installation fees.

The following fees shall be paid for connections to a city water line and for the installation of water meters:

(a) Except as provided in City Code section 37-7.01, actual cost to the City of installation.

(b) "Actual cost" shall mean the average installation cost determined by the Department of Public Utilities annually based upon contract unit bid prices and contract administration cost.

(Code 1965, § 37-29; Ord. No. 1140, 12-16-80; Ord. No. 1161, 4-14-81; Ord. No. 1381, 6-27-83; Ord. No. 1575, 1-6-86; Ord. No. 2928, 3-7-06; Ord. No. 3052, 9-9-08)

Cross reference— Plumbing permit fees. § 8-32.

Sec. 37-7.01. - Same—Existing dwellings (mandatory connections).

(a) Installation fees for existing dwellings qualifying under section 37-5, pertaining to mandatory connections to the public water system, shall be as follows:

(1) Tap and meter fees:

a. ⅝-inch and ¾-inch tap:

Tap and meter: $1,014.00 effective July 1, 2023; and $1,073.00 effective July 1, 2024; and $1,138.00 effective July 1, 2025; and $1,210.00 effective July 1, 2026; and $1,289.00 effective July 1, 2027.

Meter only: $592.00 effective July 1, 2023; and $651.00 effective July 1, 2024; and $716.00 effective July 1, 2025; and $788.00 effective July 1, 2026; and $867.00 effective July 1, 2027.

b. One inch tap:

Tap and meter: $1,094.00 effective July 1, 2023; and $1,161.00 effective July 1, 2024; and $1,235.00 effective July 1, 2025; and $1,316.00 effective July 1, 2026; and $1,406.00 effective July 1, 2027.

Meter only: $672.00 effective July 1, 2023; and $739.00 effective July 1, 2024; and $813.00 effective July 1, 2025; and $894.00 effective July 1, 2026; and $984.00 effective July 1, 2027.

c. One and one-half-inch or larger tap and/or meter, or where the installation requires a different size tap and meter than set forth above: actual cost to the city of installation.

(b) "Actual cost" shall mean the average installation cost determined by the department of public utilities annually based upon contract unit bid prices and contract administration cost.

(Ord. No. 2928, 3-7-06; Ord. No. 3411, § 1, 5-12-15, eff. 7-1-15; Ord. No. 3737, § 4, 5-9-23, eff. 7-1-23)

Sec. 37-7.1. - Water capital recovery fee generally.

(a) The fees prescribed by this section shall be paid as the property owner's share of the cost of water resource development and associated distribution facilities. Such fees shall be known as "water capital recovery fees" and shall be deemed system revenues, as defined in the Master Water and Sewer Revenue Bond Resolution adopted February 11, 1992. Such fees shall be applicable to a use or structure not presently connected to the water system when such use or structure connects and as otherwise provided in this article. If a property owner has paid water resource recovery fees in effect as of June 30, 2014, but has not obtained a building permit for the building or structure to which such fees apply, the property owner may, through December 31, 2014, elect to pay water capital recovery fees in the amount specified by this article, less a credit of any water resource recovery fees previously paid. Any property owner who pays such fees between July 1, 2014 and December 31, 2014 may choose to pay water capital recovery fees in the prescribed amount or the applicable amount of water resource recovery fees in effect as of June 30, 2014.

(b) The water capital recovery fee shall be determined as follows:

(1) For single-family and duplex dwellings and triplexes where the dwelling units are separately-metered (per dwelling unit) and for all non-residential uses:

Meter Size (in inches)	Water Capital Recovery Fee
⅝	$2,900.00
1	$7,251.00
1.5	$14,502.00
2	$23,203.00
3	$43,506.00
4	$72,509.00
6	$145,019.00
8	$232,030.00
10	$333,543.00

(2)

For multiple-family dwellings, the fee shall be in an amount equal to seventy (70) percent of the applicable water capital recovery fee, per dwelling unit.

(3) For irrigation meters, the fee shall be in an amount equal to twenty-five (25) percent of the applicable water capital recovery fee for the equivalent size meter.

(4) For mixed-use and other buildings containing both residential and non-residential uses, separate meters shall be required to serve the residential and non-residential components of the property. Fees shall be payable for each meter serving the property in accordance with this section.

(5) Where a use or structure connected to the public water system is reconstructed, expanded or modified so as to result in an increase in water meter size, the water capital recovery fee shall in an amount equal to the difference between the fee corresponding to the size of new water meter installed to serve such use or structure and the fee corresponding to the size of the water meter replaced.

(c) In the event of a dispute as to the amount of fees owed, the property owner may appeal the department of public utilities' decision to the city manager or his designee and, thereafter, to city council.

(d) No building or plumbing permit shall be issued for any property unless the fees provided for in this section have been paid in full.

(e) Existing contractual agreements between property owners and the city regarding water capital recovery fees or their equivalent and waiver of such fees shall remain in effect.

(Ord. No. 1575, 1-6-86; Ord. No. 1587, 2-10-86; Ord. No. 1665, 12-22-86; Ord. No. 1749, 11-23-87; Ord. No. 3020, 5-13-08; Ord. No. 3346, 5-13-14, eff. 7-1-14; Ord. No. 3732, § 1, 5-9-23, eff. 7-1-23; Ord. No. 3737, § 5, 5-9-23, eff. 7-1-23)

Sec. 37-8. - Water capital recovery fee account.

All moneys collected as water capital recovery fees shall be deposited into a special account to be known as the "water capital recovery fee account." Moneys shall be disbursed from this account to pay costs of projects designed to develop sources of water supply and distribution facilities for the city.

(Ord. No. 1575, 1-6-86; Ord. No. 1587, 2-10-86; Ord. No. 3346, 5-13-14, eff. 7-1-14)

Sec. 37-9. - Installment, etc., payment of water capital recovery fees.

(a) The director of public utilities is hereby authorized to accept, on behalf of the city, notes for the payment of the fees due under section 37-7.1 for single-family residences and duplexes. The terms of such note shall be all tap and meter fees, given as a down payment, with the full remaining fees to be paid within four (4) years. Installment payments must be made at least annually in four (4) installments during the four-year period, but may be made more frequently if agreed to by the owner and the director of public utilities. Interest shall be charged at a rate equal to the Prime Rate for U.S. Banks, as published in the Wall Street Journal, when the installment contract is executed, plus three (3) percentage points, not to exceed twelve (12) percent per annum.

(b) When a hardship exists, the director of public utilities may allow the down payment prescribed in paragraph (a) above, to be paid by installments over a one-year period; or, if the property is being offered for sale, the director of public utilities may enter into an agreement on behalf of the city whereby all fees shall be paid

from the proceeds of the sale or within ninety (90) days of the date of the agreement, whichever shall be the sooner.

(Code 1965, § 37-29; Ord. No. 1015, 1-14-80; Ord. No. 1210, 8-3-81; Ord. No. 1575, 1-6-86; Ord. No. 1587, 2-10-86; Ord. No. 2185, 10-13-92; Ord. No 2486, 4-28-98; Ord. No. 3346, 5-13-14, eff. 7-1-14)

Sec. 37-10. - Water capital recovery fee exemptions—Certain elderly or disabled persons.

(a) Exemption or partial exemption from payment of the water capital recovery fees prescribed by section 37-7.1 is provided for owners of single-family dwellings and duplexes who qualify under this section. The exemption is to be administered by the city manager or his authorized designee, herein referred to as the administrator. The administrator is hereby authorized and empowered to prescribe such rules as may be reasonably necessary to determine qualifications for exemption. The administrator may require the production of certified tax returns and appraisal reports to establish income and financial worth.

(b) Exemptions shall be granted under this section subject to the following provisions:

(1) Title to the property for which the exemption is sought must be held or partially held by the applicant continuously for at least one hundred twenty (120) days prior to the installation, or scheduled date of installation, whichever comes first, of the water line;

(2) The owner of the title or partial title must be sixty-five (65) years of age or older at least one hundred twenty (120) days prior to the installation or scheduled installation date, whichever comes first, of the water line. If such person is under sixty-five (65) years of age, he or she shall have been determined by the social security administration, the veterans administration, or the railroad retirement board to be totally disabled, as defined in the regulations of the agency making such determination. Such determination shall be filed with the administrator at such time as the applicant files an application for exemption;

(3) The dwelling to be connected to the water line must be the sole dwelling of the applicant claiming exemption;

(4) The total combined income during the immediately preceding calendar year from all sources of the owners of the dwelling living therein and of the owner's relatives living in the dwelling does not exceed twenty-three thousand five hundred dollars ($23,500.00); provided that the first five thousand dollars ($5,000.00) of income of each relative, other than spouse or spouses of the owner or owners living in the dwelling, shall not be included in such total; and provided further that the first seven thousand five hundred dollars ($7,500.00) or any portion thereof of income received by a permanently and totally disabled owner shall not be included in such total; and

(5) The net combined financial worth of the owners of the property shall not exceed eighty thousand dollars ($80,000.00), excluding the fair market value of the property to be connected to the water line. Net combined financial worth shall include the value of all assets, including equitable interests, of the owner and of the spouse of the owner.

(c) Persons applying for recovery fee exemption under this section must file with the administrator a recovery fee exemption affidavit, setting forth, in a manner prescribed by the administrator, the location and value of the property to be connected to the water line, the names of the persons related to the owner and occupying

the dwelling, their gross combined income and their net combined financial worth. If such applicant is under sixty-five (65) years of age, a copy of the determination of disability, as set forth in subsection (b)(2) of this section, shall also be filed with the administrator.

(d) Where the person claiming an exemption conforms to the standards and does not exceed the limitations contained in this section, the exemption shall be as shown in the following schedule:

Total income, all sources	Exemption
$ 00.00—15,000.00	100%
15,000.01—17,000.00	80%
17,000.01—19,000.00	60%
19,000.01—21,000.00	40%
21,000.01—23,500.00	20%

(e) If, within twelve (12) months after the fee exemption is obtained under this section, the financial position of the person receiving the exemption changes, such that he or she no longer meets the criteria for qualification under this section, the amount of the exemption shall become due and payable to the city.

(f) Any person falsely claiming an exemption or violating any provision of this section shall be guilty of a Class 1 misdemeanor.

(Code 1965, § 37-30; Ord. No. 1210, 8-3-81; Ord. No. 1441, 3-5-84; Ord. No. 1575, 1-6-86; Ord. No. 1587, 2-10-86; Ord. No. 1694, 4-27-87; Ord. No. 1899, 7-10-89; Ord. No. 1940, 1-22-90; Ord. No. 2457, 8-26-97; Ord. No. 2493, 6-9-98; Ord. No. 3346, 5-13-14, eff. 7-1-14)

Sec. 37-11. - Same—Certain financially disadvantaged persons generally.

(a) Exemption from payment of the fees prescribed by section 37-7.1 is provided for financially disadvantaged owners of single-family or duplex dwellings who qualify under this section. The exemption is to be administered by the city manager or his authorized designee, herein referred to as the administrator. The administrator is hereby authorized and empowered to prescribe such rules as may be reasonably necessary to determine qualifications for exemption. The administrator may require the production of certified tax returns and appraisal reports to establish income and financial worth.

(b) Exemptions shall be granted under this section subject to the following provisions:

(1) Title to the property for which the recovery fee exemption is sought must be held or partially held by the applicant at least one hundred twenty (120) days prior to the installation, or scheduled date of installation, whichever comes first, of the water line.

(2) The dwelling to be connected to the water line must be the sole dwelling of the applicant claiming the exemption.

(3) The total combined income of the owner and the owner's relatives living in the household during the year immediately preceding the installation shall not exceed the most recent federally established poverty thresholds.

(4) The net combined financial worth of the owner shall not exceed twenty thousand dollars ($20,000.00), excluding the fair market value of the house to be connected to the water line. Net combined financial worth shall include the value of all assets, including equitable interests, of the owner and of the spouse of the owner.

(c) Persons applying for a recovery fee exemption under this section must file, with the administrator, a recovery fee exemption affidavit setting forth, in a manner prescribed by the administrator, the location and value of the property to be connected to the line, the names of the persons related to the owner and occupying the dwelling and their gross combined income and their net combined financial worth.

(d) Where the person claiming an exemption conforms to the standards and does not exceed the limitations contained in this section, the exemption shall be one hundred (100) percent of the water capital recovery fee.

(e) If, within twelve (12) months after the fee exemption is obtained under this section, the financial position of the person receiving the exemption changes, such that he or she no longer meets the criteria for qualification under this section, the amount of the exemption shall become due and payable to the city.

(f) Any person falsely claiming an exemption or violating any provision of this section shall be guilty of a Class 1 misdemeanor.

(Code 1965, § 37-31; Ord. No. 1575, 1-6-86; Ord. No. 1587, 2-10-86; Ord. No. 1694, 4-27-87; Ord. No. 1899, 7-10-89; Ord. No. 3346, 5-13-14, eff. 7-1-14)

Sec. 37-12. - Reserved.

Editor's note— Ord. No. 3346, adopted May 13, 2014, effective July 1, 2014, repealed § 37-12, which pertained to recovery fee exemptions—families in community development target areas. See Code Comparative Table for complete derivation.

Sec. 37-13. - Relocation of tap and meter.

(a) Whenever a city water main is constructed or extended into a street upon which an abutting parcel is being provided water service or usage by a service line to a nonabutting street, the department of public utilities may require the water meter and tap to be relocated from its previous location to a new connection with the abutting water main or extension thereof. Whenever the city effects such relocation, the consumer shall pay the cost of labor, material and equipment, plus twenty-five (25) percent for administration.

(b) In any case where a customer desires that an existing water tap or meter be moved, the cost of moving the tap or meter shall be based on the cost of labor, materials and equipment, plus twenty-five (25) percent for administration. A deposit shall be placed in escrow in advance of the estimated cost, as determined by the department of public utilities.

(c)

No person, except employees of the department of public utilities, shall move any water meter or meter box from the location in which it is placed by the department of public utilities.

(Code 1965, §§ 37-17, 37-29, 37-36; Ord. No. 1140, 12-16-80)

Sec. 37-14. - Meters to remain property of city; repair and replacement of meters.

All water meters installed by the department of public utilities or at the request of the department of public utilities shall be, at all times, the property of the city and shall be maintained and repaired, when rendered unserviceable through wear and tear, and renewed by the city; provided, that where replacement, repairs or adjustments of any meter are rendered necessary by causes other than ordinary wear and tear, the expense caused to the city thereby shall be paid by and collected from the consumer responsible for the meter at the premises.

(Code 1965, § 37-8)

Sec. 37-15. - Connection in or outside meter box where meter removed; changing service pipe from one tap or meter to another.

(a) It shall be unlawful for any person to install a straight water connection in or outside of meter boxes where meters have been removed, or to change any service pipe from one tap or meter to another, without first obtaining permission in writing from the department of public utilities.

(b) It shall be unlawful for any person to use water obtained by methods enumerated in this section and such consumption shall be billed to such unauthorized user by determining the estimated actual consumption and charging therefor at the regular water usage rates set forth in article II of this chapter.

(Code 1965, § 37-20)

Sec. 37-16. - Account initiation and reestablishment charges.

(a) For each new account established, there shall be a twenty dollar ($20.00) fee charged to cover administrative costs connected with establishing a water account with the city.

(b) When the account is discontinued or a service is inactivated for any reason, there shall be a twenty dollar ($20.00) charge for re-establishing the account or services.

(c) All owners or their authorized agents, after knowledge that their premises have been vacated, shall promptly notify the department of public utilities to shut off the supply of water thereto. Upon receipt of such notification, the department of public utilities shall effectually shut off the water to such premises and at the same time record the reading of the meter. When the service is so shut off, there shall be a twenty dollar ($20.00) charge for restoring such service.

(d) Any customer may keep his water service intact during the vacancy of any premises by paying the minimum meter maintenance charges and minimum water usage charges set forth in Article II of this chapter.

(e) Where it is necessary to remove a meter, or where the removal of a meter is requested by the owner of the premises or his authorized agent, the charge for reinstallation of the meter shall be twenty-five dollars ($25.00) for all meters up to two (2) inches and, for all meters two (2) inches or greater, the charge shall include the cost in labor, materials and equipment, plus twenty-five (25) percent.

(f) Whenever water service is abandoned, the charges for reconnection of service shall be as provided for in section 37-7.

(Code 1965, § 37-5; Ord. No. 1381, 6-27-83; Ord. No. 1711, 7-6-87; Ord. No. 2827, 6-8-04)

Sec. 37-17. - Maximum flow rate or water usage for fixtures or trim.

Maximum water consumption flow rates and quantities for all plumbing fixtures and fixture fittings for which a plumbing permit is issued after July 1, 1993, shall be in accordance with the applicable provisions of the Virginia Uniform Statewide Building Code.

(Code 1965, §§ 8-15.1, 8-15.2; Ord. No. 2218, 5-11-93; Ord. No 2470, 2-10-98)

Sec. 37-17.1. - Ultra low-flush toilets; rebates.

(a) The purpose of this section is to reduce demand upon the public water supply by encouraging voluntary conservation through the use of ultra low-flush toilets, and to that end, to provide a program of incentives for the voluntary replacement of existing toilets by ultra low-flush toilets.

(b) As used in this section, the term "ultra low-flush toilet" shall mean a toilet which is designed to use no more than one and six-tenth (1.6) gallons of water per flush.

(c) Any water service customer of the department of public utilities who meets the requirements set forth in subsection (d) shall receive a rebate from the city in the amount of seventy-five dollars ($75.00) for each toilet, other than an ultra low-flush toilet, which is replaced by such customer by an ultra low-flush toilet.

(d) The following requirements shall be met in order for any person to receive a rebate:

(1) A plumbing permit has been obtained from the permits and inspections division of the department of planning prior to the removal of the existing toilet and the installation of the ultra low-flush toilet;

(2) The permits and inspections division of the department of planning has verified that all applicable requirements of law pertaining to such installation have been met and that the replacement toilet is designed to use no more than one and six-tenth (1.6) gallons of water per flush;

(3) The person entitled to the rebate has agreed to respond to subsequent surveys conducted by the department of public utilities;

(4) The replacement has occurred at a property served by the city water supply system; and

(5) The permit authorizing the installation of the replacement toilet has been issued no earlier than July 1, 1993.

(e) Any person who is denied a rebate after making application therefor may appeal such denial by letter to the director of public utilities, stating the reasons for such appeal.

(Ord. No. 2219, 5-11-93; Ord. No. 3182, 5-24-11)

Sec. 37-18. - Recycling system required for certain installations.

(a) All car wash installations connected to the city's water system shall be equipped with an approved water recycling system.

(b) In all new construction and all repair or replacement of continuous flow devices, any water connector device or appliance requiring a continuous flow of five (5) gallons per minute or more and not covered by section 37-17 or subsection (a) of this section, shall be equipped with an approved water recycling system.

(Code 1965, §§ 8-15.2, 8-15.4)

Sec. 37-19. - Penalty for violation of section 37-17 or 37-18.

Any person convicted of violating any of the provisions of section 37-17 or 37-18 shall be punished by a fine of not more than one thousand dollars ($1,000.00).

(Code 1965, § 8-15.5)

Sec. 37-19.1. - Aquifer recharge system required for water-to-air heat pumps.

(a) Unless the owner is the holder of a properly issued national pollution discharge elimination system (NPDES) permit from the Virginia Water Control Board, all water-to-air heat pumps and/or other devices which utilize groundwater for purposes of heating and cooling shall be equipped and installed in such a manner as to return all such groundwater, after usage, in an unaltered biological and chemical condition to the aquifer from which it was originally withdrawn.

No such water-to-air heat pump or other device which utilizes groundwater shall be approved for installation unless it is so designed or equipped. The site and design of all wells (intake or discharge) utilized by any such water-to-air heat pump or other device which utilizes groundwater shall be subject to approval of the local health department, where septic tank systems are involved.

(b) No property owner, lessee or other person who is in control of premises upon which any such water-to-air heat pump or other device which utilizes groundwater is located shall allow operation of any such pump or device in a manner inconsistent with the provisions of paragraph (a) above.

(c) The provisions of this section shall be administered and enforced by the department of permits and inspections. Any violation of this section shall constitute a Class 3 misdemeanor. Each day any violation of this section shall continue shall constitute a separate offense.

(Ord. No. 1257, 3-1-82; Ord. No. 1617, 8-4-86)

Editor's note— Ord. No. 1257, adopted March 1, 1982, added § 37-18.1 to the Code. In order to keep related sections together, the editor has redesignated the section as § 37-19.1.

Sec. 37-20. - Waste of water generally; repair of leaking pipes, etc.

No person shall permit the water to run from any hydrant, meter, cock or fixture without proper care to prevent waste. If any pipe, hydrant, meter, cock or other fixture is found leaking, the owner of the premises shall have the necessary repairs made immediately upon notice from the department of public utilities so to do, and failure to repair shall require the discontinuance of the water supply until repairs are made.

(Code 1965, § 37-10)

Sec. 37-21. - Conservation of the public water supply.

(a) Whenever the city manager or director of public utilities finds that a water supply emergency arising out of a shortage of the public water supply may occur if water conservation measures are not taken, he shall, through appropriate means, call upon the general population of the city to employ prudent restraint in water usage and to conserve water voluntarily by whatever means available.

(b) Should the city council, declare there to be an emergency existing in the city arising, either wholly or substantially, out of a shortage of the public water supply, the city manager or the director of public utilities is hereby authorized to order the restriction or prohibition of any or all of the following uses of the water supply:

(1) Watering of shrubbery, trees, lawns, grass, plants or other vegetation, except from a watering can or other container not exceeding three (3) gallons in capacity.

(2) Washing of automobiles, trucks, trailers or any other type of mobile equipment, except in facilities operating with a water recycling system approved by the city, or except from a bucket or other container not exceeding three (3) gallons in capacity; provided, further, that any facility operating with an approved water recycling system must prominently display, in public view, a sign stating that such a recycling system is in operation.

(3) Washing of sidewalks, streets, driveways, parking areas, service station aprons, exteriors of homes, apartments, commercial or industrial buildings or any other outdoor surface, except from a bucket or other container not exceeding three (3) gallons in capacity.

(4) The operation of any ornamental fountain or other structure making a similar use of water.

(5) The filling of swimming or wading pools or the refilling of swimming or wading pools which were drained after the effective date of the order.

(6) The use of water from fire hydrants for any purpose other than necessary governmental operations.

(7) The serving of drinking water in restaurants, cafeterias or any other establishment, unless requested to do so by the individual being served.

The above restrictions, or any of them, shall become effective upon their being printed in any newspaper of general circulation in the city, or broadcast upon any radio or television station serving the city.

(c) Should the implementation of all of the measures provided for in subsections (a) and (b) fail to preserve sufficient supplies of water for the citizens of the city, the city manager or director of public utilities is hereby authorized, in addition, to order the imposition of specific allotments of water supply to each customer, both residential and commercial, and to provide for a surcharge of up to twenty dollars ($20.00) per one thousand (1,000) gallons of water consumed in excess of such allocation. Such allotment and surcharge shall be subject to ratification, within ten (10) days, by the city council and shall remain in effect until removed by like councilmanic action.

(1) Upon implementation of the measures set forth in subsections (b) or (c), the city manager shall appoint an appeals board consisting of three (3) representatives, of which one (1) shall be from the city manager's office, one (1) from the health department, and one (1) from the finance department. The city attorney or his designee shall serve as legal counsel to the board.

(2) The appeals board shall be empowered to review customer applications for exemptions from the provisions of subsections (b) and (c) on a case-by-case basis and, if warranted, to make equitable adjustments to such provisions. The board shall also be empowered to establish regulations governing the granting of temporary exemptions applicable to all or some of the uses of the water supply set forth in subsection (b). The board shall, in deciding applications, balance economic and other hardships to the applicant resulting from the imposition of water use restrictions or allocations against the individual and cumulative impacts to the water supply resulting from the granting of exemptions. Individual applications shall be decided by the board within two (2) weeks of receipt of an application in proper form and containing all necessary information.

(d) Should all of the measures taken pursuant to subsections (b) and (c) fail to preserve sufficient supplies of water for the general population of the city, the city manager or the director of public utilities is hereby further authorized to restrict or discontinue the supply of water to any industrial or commercial activity which uses water beyond the sanitary and drinking needs of its employees and invitees.

(e) Any person violating any provision of this section or any order of the city manager or director of public utilities issued pursuant to the authority granted hereunder shall be guilty of a Class 3 misdemeanor. In addition, the city manager or director of public utilities is hereby authorized to terminate the water service, for the duration of the emergency, to any person convicted of such violation.

(f) Nothing in this section shall be construed to prohibit the city manager or the director of public utilities from rescinding any orders issued hereunder when the conditions creating the need for such orders have abated.

(Code 1965, § 37-11; Ord. No. 947, 6-18-79; Ord. No. 1105, 10-13-80; Ord. No. 1293, 6-28-92; Ord. No. 2113, 3-3-92; Ord. No. 3091, 6-23-09)

Sec. 37-22. - Use of fire hydrants generally.

(a) Fire hydrants are provided for the primary purpose of extinguishing fires, and all persons, except authorized employees or agents of the fire department and the department of public utilities or such persons as may be specifically authorized by the director of public utilities, are hereby prohibited from opening or using such hydrants.

(b) Any person authorized to open fire hydrants shall use only an appropriate spanner wrench and shall replace the caps on the outlets when not in use from the same.

(Code 1965, § 37-13; Ord. No. 3433, 12-1-15)

Cross reference— Fire prevention and protection, Ch. 12.

Sec. 37-22.1. - Diverting or wasting water from fire hydrant.

Any person who shall willfully and maliciously divert or waste any public water supply by tampering with any fire hydrant shall be guilty of a Class 2 misdemeanor.

(Ord. No. 1082, 8-18-80; Ord. No. 3433, 12-1-15)

Sec. 37-23. - Use of water for private fire protection systems.

(a) No city water shall be used for private fire protection systems, unless the customer installs, at his cost, a detector check valve and by-pass meter of a type and at a location approved by the department of public utilities.

(b) The customer shall pay the cost of all labor, materials and equipment for any facility installed by the department of public utilities in order to accommodate a private fire protection system, plus twenty-five (25) percent.

(c) No person shall use water from a private fire protection system, other than for extinguishing a fire, without the written consent of the director of public utilities. If water from a private fire protection system is used in a manner not authorized herein, all water usage shall be cut off unless such unauthorized use is terminated immediately upon notice from the department of public utilities and payment is made for all water so used.

(d) No charge shall be made for water used to extinguish fires, but a three dollar and forty cent ($3.40) monthly service fee is hereby imposed for reading and maintaining meters and inspecting the systems.

(Code 1965, § 37-14; Ord. No. 1381, 6-27-83; Ord. No. 1711, 7-6-87; Ord. No. 1998, 8-14-90)

Cross reference— Fire prevention and protection, Ch. 12.

Sec. 37-24. - Access to premises supplied with water.

The director of public utilities and his agents shall have free access at all reasonable hours to all parts of any premises to which water is supplied, to make necessary examinations, repairs or alterations.

(Code 1965, § 37-15)

Sec. 37-25. - Obstructing valves, manholes, meters, etc.

(a) It shall be unlawful for any person to intentionally place, upon or about any gate valve, manhole, fire hydrant, stop cock, meter or meter box connected with the water pipes of the city's system of waterworks, any vehicle, trailer or object, material, debris or structure of any kind which will prevent free access to such facilities at all times. It shall be the responsibility of the owner or occupant of all premises upon which such facilities are placed to maintain a one-foot clearance around all such facilities; provided, that there shall be a three-foot clearance surrounding any fire hydrant.

(b) Upon finding that access to a meter for purposes of disconnection of service on the basis of account delinquency is prevented by a motor vehicle or trailer parked on or over such meter, the director of public utilities or his designee shall contact the customer served by the meter and request such customer to move the motor vehicle or trailer so as to allow access to the meter. If the customer cannot be contacted or refuses to cooperate, a written notice stating that the motor vehicle or trailer, or any other motor vehicle or trailer parked in such manner as to prevent access to the meter, will be removed after five (5) days at the vehicle owner's expense shall be posted on the door of the home or business and on the item obstructing the meter. If after five (5) days access to the meter is still prevented by a motor vehicle or trailer, such motor vehicle or trailer may be towed, at the vehicle owner's expense, by or at the direction of the police department in accordance with applicable provisions of the City Code; provided, however, that the

permission of the owner or occupant of the property from which the motor vehicle or trailer is towed shall not be required. Prior to the actual towing of the motor vehicle or trailer, the owner or occupant, if present, shall be given the opportunity to move the motor vehicle or trailer.

(Code 1965, § 37-16; Ord. No. 2969, 1-23-07)

Sec. 37-26. - Unauthorized turning of water on or off generally; tampering with appliances.

No person, except employees of the department of public utilities, shall cut off or turn on water at any city curb cock or meter, nor remove, disconnect or tamper in any way with any water meter, water connection, fire hydrant, lock, curb cock or curb box, or any part thereof, or any other equipment installed by the department of public utilities in connection with the water system, without previous permission, in writing, from the department of public utilities so to do; provided, that in case of necessary emergency repair work to be done on any premises, the person doing such repair work shall be permitted temporarily to turn the water on or off and, upon completion of the work, shall leave the water on or off as before. In such cases, notice of such turning on or off of water shall be given to the department of public utilities as soon as possible.

(Code 1965, § 37-17)

Sec. 37-27. - Repair of damage to system generally.

Whenever any person shall cause damage to any part of the water distribution system, including, but not limited to, all mains, connectors, laterals, lines, meters and any and all appurtenances attached thereto or thereon, the department of public utilities shall be notified immediately of such damage and the department of public utilities shall repair same as quickly as is possible. The cost for the repair shall include all actual costs for labor, material and equipment, plus a charge of twenty-five (25) percent of actual cost for administrative expense and overhead. Such costs shall be borne by the party causing any damage or responsible therefor. Invoices showing all costs incurred shall be rendered to the party or parties liable therefor and shall be payable upon receipt thereof.

(Code 1965, § 37-18.1)

Sec. 37-28. - Turning off water for purpose of repairs.

In case of breaks in the mains, services, pumping machinery, reservoirs or other waterworks equipment making it necessary to shut off the water, or when it is necessary to shut off the water for the purpose of repairing, extending or cleaning the mains, previous notice will, if practicable, be given, but in no case will any claim for damages due to water being shut off be allowed.

(Code 1965, § 37-12)

Sec. 37-29. - City not liable for damage caused by defective plumbing, open outlets, bursting of lines, etc.

(a) The city will not be responsible for any damage caused by defective plumbing or open outlets when water is turned on by order of the director of public utilities or by request of any property owner, lessee or agent.

(b)

The city shall not be liable for any damage resulting from the bursting of any water main, service pipe or cock or fire hydrant, or from the shutting off of water for repairs, extensions or connections, or from the accidental failure of the water supply from any cause whatsoever.

(Code 1965, §§ 37-19, 37-22)

Sec. 37-30. - Cutting off water from contaminating source.

The director of public utilities is hereby authorized to cut off the supply of water from any source within the water distribution system of the city after the director of public health or the director of public utilities, or his duly authorized agent, certifies that such source may be a contaminant and a potential public health hazard.

(Code 1965, § 37-21)

Sec. 37-31. - Termination of service for failure to pay sewage disposal charges to private utility.

(a) Any water customer of the city who has not paid the applicable rates and charges to any private sewage disposal system company within the city for service rendered, and who has been notified pursuant to state statute to cease disposal of sewage into the system within two (2) months, may have his water service terminated upon request of the private utility involved.

(b) After the statutory period for the customer to cease disposal of sewage into the private system has elapsed, the private utility company shall notify the customer, in writing, that water service shall be discontinued by the city if payment for the delinquent sewerage bill is not received by the utility within ten (10) days. After the ten (10) days has expired, the private utility company may turn off water service to the respective property. A copy of such notification shall be sent to the customer.

(c) Within five (5) days after receipt of the notice from the private utility company, the department of public utilities shall turn off water service and hang a notice of turn-off on the front door of the premises, explaining the reason for discontinuation of service.

(d) Upon notification from the private utility company that service discontinued under this section is to be restored, the city will restore such service within one business day.

(e) A charge of twenty dollars ($20.00) shall be paid for each request from a private utility to discontinue service pursuant to this section. This charge shall be billed directly to the private utility company. The department of public utilities will not make any monetary collection for private utility companies.

(f) The department of public utilities will not be liable for any damage resulting from the discontinuance of water service when requested to do so under this section.

(Code 1965, §§ 37-37, 37-38; Ord. No. 1711, 7-6-87)

Sec. 37-32. - Turning water on after cutoff by city.

Should the water be cut off from any premises by the department of public utilities for the nonpayment of a bill or for any other cause, and afterwards be found turned on without authorization of the department of public utilities, the service may be discontinued and shall not be restored until the unauthorized user shall pay all delinquent bills and, in

addition thereto, the sum of fifty dollars ($50.00) for reinstitution of water service. It shall be unlawful for any person to use water obtained through any water service which has been discontinued.

(Code 1965, 37-27)

Sec. 37-33. - Payment of charges prescribed by chapter by check or other instrument which is returned.

In any case where fees or charges required by this chapter are paid by check, draft or other instrument, and the instrument is returned for any reason, no tap shall be installed or, if already installed, the water service or water usage shall be discontinued until full payment is received.

(Code 1965, § 37-34)

Secs. 37-34—37-45. - Reserved.

ARTICLE II. - USAGE AND AVAILABILITY CHARGES

> *Footnotes:*
> *--- (**2**) ---*
> ***State Law reference—** Authority of city to charge and collect compensation for water furnished, Code of Virginia, § 15.1-875. See also, § 15.1-175.*

Sec. 37-46. - Minimum service availability charges prescribed.

Each consumer shall pay a monthly minimum service availability charge as follows for each meter connecting his premises with the city water system:

Meter Size	Monthly Charge Effective July 1, 2023	Monthly Charge Effective July 1, 2024	Monthly Charge Effective July 1, 2025	Monthly Charge Effective July 1, 2026	Monthly Charge Effective July 1, 2027
⅝ inch	$5.00	$5.53	$6.00	$6.30	$6.61
¾ inch	$6.31	$6.97	$7.56	$7.94	$8.34
1 inch	$8.97	$9.92	$10.76	$11.30	$11.86
1½ inch	$15.38	$17.00	$18.44	$19.37	$20.33
2 inch	$23.16	$25.59	$27.76	$29.15	$30.61

3 inch	$41.19	$45.52	$49.39	$51.86	$54.45
4 inch	$66.95	$73.98	$80.26	$84.28	$88.49
6 inch	$131.95	$145.81	$158.20	$166.11	$174.42
8 inch	$209.10	$231.06	$250.69	$263.23	$276.39
10 inch	$299.86	$331.34	$359.51	$377.48	$396.36
12 inch	$557.39	$615.92	$668.27	$701.68	$736.77
Fire hydrant meter	$41.19	$45.52	$49.39	$51.86	$54.45

(Code 1965, § 37-32; Ord. No. 1140, 12-16-80; Ord. No. 1381, 6-27-83; Ord. No. 1711, 7-6-87; Ord. No. 1998, 8-14-90; Ord. No. 2872, 5-10-05; Ord. No. 3128, 5-11-10; Ord. No. 3737, § 6, 5-9-23, eff. 7-1-23)

Sec. 37-47. - Water usage rates prescribed.

In addition to the charges provided for in section 37-46, each consumer shall pay for water usage the rate of five dollars and twenty cents ($5.20) per one thousand (1,000) gallons, as of July 1, 2023; and five dollars and seventy-four cents ($5.74) per one thousand (1,000) gallons, as of July 1, 2024; and six dollars and twenty-three cents ($6.23) per one thousand (1,000) gallons, as of July 1, 2025; and six dollars and fifty-four cents ($6.54) per one thousand (1,000) gallons, as of July 1, 2026; and six dollars and eighty-seven cents ($6.87) per one thousand (1,000) gallons, as of July 1, 2027.

(Code 1965, § 37-33; Ord. No. 952, 6-25-79; Ord. No. 1056, 6-23-80; Ord. No. 1140, 12-16-80; Ord. No. 1186, 6-1-81; Ord. No. 1381, 6-27-83; Ord. No. 1711, 7-6-87; Ord. No. 1740, 9-21-87; Ord. No. 1879, 6-5-89; Ord. No. 1998, 8-14-90; Ord. No. 2069, 6-4-91; Ord. No. 2241, 6-22-93; Ord. No. 2564, 11-2-99; Ord. No. 2872, 5-10-05; Ord. No. 3128, 5-11-10; Ord. No. 3589, 5-14-19, eff. 7-1-19; Ord. No. 3737, § 7, 5-9-23, eff. 7-1-23)

Sec. 37-48. - Usage charge when meter fails to register.

Whenever a water meter is out of order and fails to register, the consumer shall be charged with an average daily consumption as shown by the meter when in good working order and registering correctly.

(Code 1965, § 37-35)

Sec. 37-49. - Deposit to assure payment.

(a) After any consumer has become delinquent in his bill, the department of public utilities may require a deposit in an amount based on an estimated monthly bill in order to continue service.

(b)

Deposits made pursuant to this section may be refunded, upon written request to the department of public utilities, after six (6) consecutive billing periods of maintaining payments on time.

(c) No interest will be paid on deposits made pursuant to this section.

(Code 1965, § 37-4; Ord. No. 1140, 12-16-80)

Sec. 37-50. - Regular rates apply to water used for construction purposes; responsibility of contractor for payment.

Contractors applying for water usage for buildings for construction purposes shall pay for such usage at the regularly scheduled water usage rates and meter maintenance rates and shall be held responsible for all charges so billed until such time as the contractor shall notify the department of public utilities, in writing, to cut off the supply.

(Code 1965, § 37-6)

Sec. 37-51. - Meters and charges for public buildings.

All public buildings (including school buildings), state, federal and municipal, in the city, as may be designated by the director of public utilities, shall have meters attached to the supply pipes connecting such buildings with the water mains of the city for measuring the water supply furnished such buildings, as may be selected by the director of public utilities as being suitable. The water so supplied to such consumers shall be charged to them, through the proper department or to others having control of such consumption, at regularly scheduled prevailing rates.

(Code 1965, § 37-7)

Sec. 37-52. - Division of city into zones for meter reading and billing.

The director of public utilities is authorized to divide the city into as many zones as may be expedient, in order to expedite the reading of water meters and the collection of water bills.

(Code 1965, § 37-24)

Sec. 37-53. - Frequency of billing; sewer, waste collection and stormwater charges may be included.

(a) The director of public utilities shall bill all customers in accordance with their location in the city, for water service rendered.

(b) The director of public utilities is authorized to send one (1) bill for water usage and meter maintenance charges, along with charges for sewer system maintenance, to those customers who are provided with both services, along with waste collection and stormwater management charges levied pursuant to Chapter 32.5; provided, however, that all charges shall be separately stated. The combined bill shall be issued for one (1) total amount. The director of public utilities is hereby authorized and directed to create policies and procedures for the efficient billing and collection of the combined bill, including a policy for allocating payments to the separate charges stated on the combined bill.

(Code 1965, § 37-25; Ord. No. 2827, 6-8-04; Ord. No. 3517, 9-5-17)

Sec. 37-54. - When due and payable; delinquency.

(a) All bills for charges prescribed by this article shall be due and payable within twenty-one (21) days from the date of the bill, and shall be deemed delinquent if not paid in full within such time. A late fee of one dollar and fifty cents ($1.50) will be charged to accounts for a bill that is not paid on or before the due date. The department of public utilities shall notify the customer, in writing, of such delinquency, and shall direct the customer to show cause, within fifteen (15) days, why his water service should not be discontinued.

(b) Failure to receive a bill for charges prescribed by this article shall not prevent the discontinuance of service in accord with the provisions of this section.

(c) If, within ninety (90) days past the date of the bill, all charges and interest provided for in this article are not paid, a twenty dollar ($20.00) delinquent service fee shall be applied to the account and the water supply to the premises shall be disconnected.

(d) When water service is discontinued pursuant to this section, water shall not again be turned on until all arrearages and charges have been paid, including the late fee and the delinquent service fee of twenty dollars ($20.00), and other penalties and fees, if the premises are occupied by the same customer who incurred the bill; provided, that any customer delinquent or in arrears shall settle all past indebtedness, wherever incurred, before again being served city water.

(Code 1965, §§ 37-25, 37-26; Ord. No. 1711, 7-6-87; Ord. No. 2827, 6-8-04; Ord. No. 3019, 5-13-08; Ord. No. 3517, 9-5-17)

Sec. 37-55. - Adjustment of abnormal bills due to leakage.

The director of public utilities is hereby authorized to adjust and settle such claims against the department of public utilities for abnormal bills, due to leakage, as will, in the judgment of the director, work an injustice to the consumer unless corrected.

(Code 1965, § 37-9)

Sec. 37-56. - Testing meter; correcting bill when meter overregisters.

(a) Any consumer shall have the right to demand that the meter through which water is being furnished be examined and tested by the department of public utilities, for the purpose of ascertaining whether or not it is registering correctly the amount of water which is being delivered through it by such department to such consumer. When any consumer desires to have such meter so examined and tested, he shall make application therefor in writing to the department of public utilities and, at the same time, pay a fee as follows, based upon the meter size:

Meter Size	Fee
5/8″	$ 60.00
3/4″	60.00

1″	60.00
1½″	80.00
2″	80.00
3″	80.00
4″	80.00

If the meter is in excess of four (4) inches, the amount required shall be the estimated actual cost of labor, materials and equipment, plus twenty-five (25) percent as an administrative cost.

(b) If, upon such examination and test, the meter is found to register three (3) percent or more water consumption than actually passes through it, the meter shall be corrected and the fee paid pursuant to this section shall be refunded and the water bill shall be correspondingly corrected.

(Code 1965, §37-35; Ord. No. 7111, 7-6-87)

Sec. 37-57. - Developer fire hydrant fee.

Developers installing fire hydrants, as required incident to subdivision development, shall pay the sum of three hundred ten dollars ($310.00)

(Ord. No. 1381, 6-27-83; Ord. No. 7111, 7-6-87)

Secs. 37-58—37-67. - Reserved.

ARTICLE III. - CROSS-CONNECTION CONTROL AND BACKFLOW PREVENTION

Sec. 37-68. - Definitions.

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

Air gap: The unobstructed vertical distance through a free atmosphere between the lowest perimeter of a water outlet and the flood-level rim of any receptacle. This distance will be a minimum of two (2) times the diameter of the outlet. In case of near-walls, this distance will be three (3) times the diameter of the outlet.

Auxiliary supply: Any water source or system other than the public water supply that may be available in the building or premises.

Backflow: The reversal of flow from its intended direction as a result of backsiphonage or backpressure.

Bureau: The bureau of sanitary engineering of the state department of health.

Contamination: Any introduction into pure water of microorganisms, wastes, wastewater, undesirable chemicals or gases.

Cross-connection: Any physical connection between a potable water supply and any waste pipe, soil pipe, sewer, drain or any unapproved source or system; also, any potable water supply outlet which is submerged or can be submerged in waste or other source of contamination.

Director: The director of public utilities or his designee.

Double-check valve assembly: An assembly of two (2) internally loaded, specially designed and independently operating check valves with a tightly closing shut-off valve on the upstream and the downstream side of the check valves, equipped with properly placed female threaded test cocks.

Existing ground level: The level above which surface water will not accumulate under normal conditions.

Flood-level rim: The top edge of the receptacle over which water could overflow.

Hazard: Any condition, device or practice in the water usage system and its operation which creates or, in the judgment of the director, may create a danger to the health and well-being of the water consumer.

Owner: The person in charge, care and control of the property and the tenant or customer who signed the water service agreement.

Pollution: The presence of any foreign substance (chemical, physical, radiological or biological) in water, which tends to degrade its quality so as to constitute an unnecessary risk or impair the usefulness of the water.

Reduced pressure principle back flow preventer: An assembly of differential valves and check valves, including an automatically opened spillage port to the atmosphere, designed to prevent backflow, incorporated with a tightly closing shut-off valve on the upstream and the downstream side of the check valves, equipped with properly placed female threaded test cocks.

RP device: A "reduced pressure principle backflow preventer," as defined above.

Service connection: The terminal end of a service line from the waterworks. If a meter is installed at the end of the service, then the service connection means the downstream end of the meter.

Service line: That portion of the water line from the consumer's side of the water meter to the first water outlet.

Toxic: Any substance of solids or liquids harmful for human consumption.

Vacuum breaker, atmospheric: A vacuum breaker designed so as not to be subjected to continuous static line pressure.

Vacuum breaker, pressure type: A vacuum breaker designed to operate under conditions of static line pressure.

(Code 1965, § 37-39; Ord. No. 2150, 6-23-92; Ord. No. 3182, 5-24-11)

Sec. 37-69. - Objectives of article.

The objectives of this article are to:

(1)

Protect the public health, safety, and welfare through a cross-connection control and backflow prevention program intended to prevent the potential or actual occurrence where a backflow, backpressure condition, or cross connection within piping or other portions of consumers' potable water systems could allow the entry of contaminants or pollutants into the public water system;

(2) Eliminate or control existing cross-connections, actual or potential, at each water outlet from the consumer's service line;

(3) Provide a continuing inspection program of cross-connection control which will systematically and effectively control all actual or potential cross-connections which may be installed in the future; and

(4) Comply with all applicable regulations of the Commonwealth of Virginia pertaining to cross-connection control and backflow prevention.

(Code 1965, § 37-40; Ord. No. 3182, 5-24-11)

Sec. 37-70. - Prohibited connections.

(a) No person shall install or maintain a water service connection to any premises where cross-connections to a waterworks or a consumer's water system may exist, unless such cross-connections are in compliance with this article and approved by the director in accordance with the written policies of the department of public utilities.

(b) No person shall install or maintain any connection that may allow water from an auxiliary water system to enter a waterworks or consumer's water system, unless the auxiliary water system, the method of connection and the use of such system are in compliance with this article and approved by the director in accordance with the written policies of the department of public utilities.

(Ord. No. 3182, 5-24-11)

Editor's note— Ord. No. 3182, adopted May 24, 2011, repealed the former § 37-70, and enacted a new § 37-70 as set out herein. The former § 37-70 pertained to violations of article and derived from § 37-49 of the 1965 Code.

Sec. 37-71. - Maintenance and inspection of backflow prevention devices.

The consumer, at his own expense, shall install, operate, test and maintain approved backflow prevention devices, as directed by the department of public utilities. It shall be the duty of the consumer to have such devices inspected at least annually or at such greater frequency as the director may deem necessary. Such inspections shall be performed by a certified backflow prevention device worker or other qualified person approved by the director. The consumer shall maintain accurate records of tests and repairs made to backflow prevention devices and provide the director with copies of such records. The records shall be on forms approved or provided by the director. In the event of accidental pollution or contamination of the public or consumer's potable water system, due to backflow on or from the consumer's premises, the owner shall promptly take steps to confine further spread of the pollution of contamination within the consumer's premises, and shall immediately notify the director of the hazardous condition.

(Ord. No. 3182, 5-24-11)

Editor's note— Ord. No. 3182, adopted May 24, 2011, repealed the former § 37-71, and enacted a new § 37-71 as set out herein. The former § 37-71 pertained to general responsibilities of city and consumers as to protection of water supply and derived from § 37-42, 37-48 of the 1965 Code; Ord. No. 2150, 6-23-92.

Sec. 37-72. - Inspections; notice to correct defects.

(a) The director shall have the right of entry into any building, during reasonable hours, for the purpose of making inspections of the water distribution system installed in such building or premise. The owner or occupant may accompany the inspector while this inspection is being made.

(b) All new construction plans and specifications for commercial buildings shall be made available to the director and building codes administrator to determine the degree of hazard of possible cross-connections.

(c) An on-site inspection of all existing buildings will be made to determine the degree of hazard to the public water system. If an unauthorized cross-connection is found, either actual or potential, the director shall proceed in accordance with the provisions of Section 37-72.1.

(Code 1965, § 37-43; Ord. No. 3182, 5-24-11)

Sec. 37-72.1. - Violations.

(a) Whenever the director determines that a violation of this article exists, he shall cause a notice of violation to be provided to the consumer at the premises at which the violation exists. Such notice may be mailed to the address of the consumer shown on the records of the department of public utilities or personally served upon the consumer. The notice shall be signed by the director, and may require any or all of the following actions to be completed by a date certain, which date shall, except in circumstances deemed by the director to constitute an imminent and substantial endangerment to public health, be not less than fourteen (14) calendar days from the date the notice was issued: (i) the cessation or correction of the violation; (ii) the acquisition and installation of additional material, equipment, supplies or personnel to ensure that the violation does not recur; (iii) the submission of a certified plan to prevent future violations, which plan shall be prepared by a professional engineer licensed to practice in the Commonwealth of Virginia; or (iv) any other corrective action deemed necessary for compliance with this article.

(b) In the event the owner or occupant fails to comply with the terms of a notice of violation, the director may cause water service to the premises to be terminated. Where a violation constitutes an imminent and substantial endangerment to public health, the director shall terminate water service. The cost of disconnection and reconnection shall be paid by the consumer prior to restoration of water service to the premises.

(c) In addition to disconnection of water service as set forth in this section, and not in lieu thereof, a violation of any of the provisions of this article shall be punishable by a fine in an amount not exceeding Two Thousand, Five Hundred Dollars ($2,500.00) or may be enjoined by a court of competent jurisdiction upon application of the director, either or both.

(Ord. No. 3182, 5-24-11)

Sec. 37-73. - General design, installation and maintenance standards for potable water supply system; cross-connection control and backflow prevention policy.

Potable water supply systems shall conform to the standards and specifications of the Department of Public Utilities Cross-Connection Control and Backflow Prevention Policy (May 2011), which policy, including any future amendments thereto, is hereby adopted and incorporated by reference into this article. In the event of a conflict between the provisions of such policy and applicable provisions of the Virginia Uniform Statewide Building Code or Virginia Waterworks Regulations, the provisions of the building code or waterworks regulations, as the case may be, shall apply.

(Code 1965, § 37-44[a]; Ord. No. 3182, 5-24-11)

Secs. 37-74—37-86. - Reserved.

Editor's note— Ord. No. 3182, adopted May 24, 2011, repealed §§ 37-74—37-86, which pertained to required hazard and backflow prevention devices; cross connections; protective devices for fire systems; vacuum breakers; double-check valve assemblies and RP devices and derived from §§ 37-41, 37-44[table], [b]—[h], 37-45—37-47 of the 1965 Code.

Chapter 38 - WEAPONS

Footnotes:
*--- (**1**) ---*
***Cross reference—** License tax for shooting gallery, § 18-104.*

Sec. 38-1. - Carrying concealed weapons.

(a) If any person carries about his person, hidden from common observation, (i) 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, (ii) any dirk, bowie knife, switchblade knife, ballistic knife, machete, razor, sling bow, spring stick, metal knucks, or blackjack, (iii) any flailing instrument consisting of two (2) or more rigid parts connected in such a manner as to allow them to swing freely, which instrument may also be known as a nun chahka, nun chuck, nunchaku, shuriken or fighting chain, (iv) any disc, of whatever configuration, having at least two (2) 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 (v) any weapon of like kind as those enumerated in this section, he shall be guilty of a Class 1 misdemeanor, and such weapon shall be forfeited to the city 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. For the purposes of this section, a weapon shall be deemed to be hidden from common observation when it is observable but is of such deceptive appearance as to disguise the weapon's true nature.

(b) This section shall not apply to (i) any person carrying a concealed weapon in accord with permission granted by a circuit court pursuant to Code of Virginia, § 18.2-308; or (ii) any person otherwise authorized to carry a concealed weapon pursuant to Code of Virginia, § 18.2-308.

(c) As used in this section:

(1) Spring stick means a spring-loaded metal stick activated by pushing a button which rapidly and forcefully telescopes the weapon several times its original length.

(2) Ballistic knife means any knife with a detachable blade that is propelled by a spring-operated mechanism.

(Code 1965, § 38-1; Ord. No. 945, 5-14-79; Ord. No. 1279, 5-24-82; Ord. No. 1466, 7-2-84; Ord. No. 1558, 9-30-85; Ord. No. 1704, 6-8-87; Ord. No. 2233, 6-22-93; Ord. No. 2343, 6-27-95; Ord. No. 2451, 6-24-97; Ord. No. 2830, 6-22-04; Ord. No. 2882, 6-14-05; Ord. No. 3036, 6-24-08; Ord. No 3632, 7-21-20)

State Law reference— Similar provisions, Code of Virginia, § 18.2-308.

Secs. 38-2, 38-2.1. - Reserved.

Editor's note— Ord. No. 3240, adopted June 26, 2012, effective July 1, 2012, repealed §§ 38-2, 38-2.1, which pertained to processing fee to be paid by applicant for permit to carry concealed weapon and fingerprints required; exception and derived from § 38-1 of the 1965 Code; Ord. No. 945, 5-14-79; Ord. No. 2991, 6-26-07.

Sec. 38-3. - Discharge of firearms, air guns, etc.

(a) It shall be unlawful for any person to discharge any firearm, spring-propelled rifle or pistol, from or across any land or water north or west of the trace of the line beginning at the intersection of North Landing Road and the Chesapeake-Virginia Beach city boundary line; thence northwardly along North Landing Road to Indian River Road; thence eastwardly along Indian River Road to New Bridge Road; thence northeastwardly along New Bridge Road to Sandbridge Road, thence eastwardly along Sandbridge Road to its intersection with the Atlantic Ocean, or across any land north of False Cape State Park and east of Shipps Bay and Point Creek. This prohibition shall not apply to shotguns discharging pellets under the following conditions:

(1) On land that is fifty (50) acres or more of contiguous area, or less than fifty (50) acres of contiguous area south of the trace of the line beginning at the intersection of Elbow Road and the Chesapeake-Virginia Beach city boundary line; thence northeastwardly along Elbow Road to Salem Road; thence southeastwardly along Salem Road to North Landstown Road; thence northeastwardly along Landstown Road to Princess Anne Road; thence southeastwardly along Princess Anne Road to Sandbridge Road; thence eastwardly along Sandbridge Road to its intersection with the Atlantic Ocean; and

(2) Under one (1) ownership; and

(3) Used primarily for agricultural purposes; and

(4) The landowner has applied for an annual permit from the city manager to use his property for this purpose, which permit shall be granted by the city manager if the applicant meets the requirements of this section; and

(5) The person discharging a shotgun as herein set forth shall, at all times while engaged in such activity, have in his possession written permission from the landowner to discharge such weapon on the premises; and

(6) All permits shall expire on the next June 30 after the date of issuance.

(b)

Notwithstanding the provisions of subsection (a)(4) above, no permit shall be issued to a landowner if it is determined by the city manager or his duly authorized agent that the issuance of such permit would be detrimental to the public safety, and any permit that has been issued and is in effect may be revoked by the city manager if it is determined by the city manager or his duly authorized agent that conditions have changed since the date of issuance of the permit that cause the continued use of the land for the permitted purpose to be detrimental to the public safety.

(c) It shall be lawful to discharge firearms of .22-caliber or less south of the trace line enumerated in subsection (a) subject to the provisions of this section. It shall be unlawful to discharge any firearms greater than .22-caliber any place within the city; provided, however, that muzzleloading rifles using a charge of black powder or black powder equivalent may be used to hunt deer during the open season prescribed therefor by the Department of Game and Inland Fisheries south of the trace of the line described in subsection (a)(1). For purposes of this section, a muzzleloading rifle shall mean a single-shot flintlock or percussion rifle, .45 caliber or larger, firing a single lead projectile or sabot with a .38 caliber or larger nonjacketed lead projectile of the same caliber loaded from the muzzle of the weapon and propelled by at least fifty (50) grains of black powder or black powder equivalent.

(d) Notwithstanding any other provisions of this section, it shall be unlawful for any person to discharge any firearm, spring-propelled rifle or pistol, from, on, across or within one hundred fifty (150) yards of any building, dwelling, street, sidewalk, alley, roadway or public land or public place within the city limits.

(e) The prohibitions of this section shall not apply to the operation of a shooting event that is sponsored by an organized group, provided, the written approval of the chief of police as to the safety and location of the event is obtained prior to the event.

(f) No person shall use a pneumatic gun in the area of the city described in (a) above except (i) at approved shooting ranges or (ii) on or within private property with permission of the owner or legal possessor thereof when conducted with reasonable care to prevent a projectile from crossing the bounds of the property. For purposes of this subsection, "pneumatic gun" means any implement designed as a gun that will expel a BB or a pellet by action of pneumatic pressure, including but not limited to paintball guns. Further, for the purpose of this subsection "reasonable care" means that the pneumatic gun is discharged in a manner so the projectile is contained on the property by a backstop, earthen embankment or fence. The discharge of projectiles across or over the bounds of the property shall create the rebuttable presumption that the use of the pneumatic gun was not conducted with reasonable care and shall constitute a Class 3 misdemeanor.

(g) Nothing in this section shall be construed to prohibit the discharge of firearms and other weapons by (1) law enforcement officers; (2) military personnel; or (3) federal, state or local government animal or fowl management agency agents in the city as part of authorized training or in the performance of their duties.

(h) The prohibitions set forth in this section shall not apply to the killing of deer pursuant to Code of Virginia § 29.1-529 on land of at least five (5) acres that is zoned for agricultural use.

(i) A violation of any provision of this section unless otherwise specified shall constitute a Class 1 misdemeanor.

(Code 1965, § 38-2; Ord. No. 1107, 10-20-80; Ord. No. 1220, 9-14-81; Ord. No. 1332, 9-27-82; Ord. No. 1622, 9-15-86; Ord. No. 1624, 9-29-86; Ord. No. 2525, 4-6-99; Ord. No. 3084, 5-26-09; Ord. No. 3188, 6-28-11; Ord. No. 3531, 1-9-18)

State Law reference— Authority of city to regulate or prohibit discharge of firearms, Code of Virginia, § 15.1-865; discharging firearms in streets or public places, §§ 18.2-280, 18.2-286.

Sec. 38-3.1. - Use of slings or slingshots.

No person shall use or discharge, within the limits of the city specified by section 38-3 to be unlawful for the discharge of any firearm, any sling or slingshot made for the throwing of shot, stones or other missiles. Every person violating the provision of this section shall be guilty of a Class 4 misdemeanor.

(Ord. No. 1206, 7-13-81)

Sec. 38-3.2. - Use of bow and arrow restricted.

(a) It shall be unlawful for any person to shoot with a bow and arrow within those limits of the city which are specified in section 38-3 to be unlawful for the discharge of any firearm, except within an archery range having clearly designated boundaries and a safe area of impact sufficient to prevent personal injury and property damage. The use of any such range located on public or school property shall be subject to the approval of the director of parks and recreation or the principal of the respective school. The shooting of arrows tipped with suction cups shall not constitute a violation of this section.

(b) Notwithstanding any other provision of this chapter, it shall be unlawful for any person to shoot with a bow and arrow or crossbow (i) in or across any road, or within the right-of-way thereof, or in any street; or (ii) at or upon the property of another without permission of the owner or other person lawfully in charge thereof.

(c) A violation of this section shall constitute a Class 4 misdemeanor.

(Ord. No. 1865, 5-15-89; Ord. No. 2171, 8-11-92; Ord. No. 2278, 6-28-94)

Cross reference— License tax for archery ranges, § 18-104.

Sec. 38-4. - Possession and discharge of firearms, air guns, etc., by certain minors.

(a) Except as provided in Code of Virginia § 18.2-308.7 it shall be unlawful and a Class 1 misdemeanor for any person under the age of eighteen (18) years to have in his possession or use any firearm, shotgun, spring-propelled rifle or pistol.

(b) It shall be unlawful and a Class 3 misdemeanor for any person under the age of eighteen (18) to have in his possession or use any pneumatic gun, unless such minor is under the direct supervision of his parent, legal guardian or other adult supervisor approved in writing by the parent or legal guardian. Additionally and in lieu of direct supervision, a minor age sixteen (16) or above may carry on his person the written consent of his parent or lawful guardian.

(Code 1965, § 38-6; Ord. No. 3188, 6-28-11)

Sec. 38-5. - Pointing or brandishing firearm or object similar in appearance.

(a) It shall be unlawful and a Class 1 misdemeanor for any person to point or brandish any firearm or any object similar in appearance to a firearm, whether capable of being fired or not, in such manner as to reasonably induce fear in the mind of another, or hold a firearm in a public place in such a manner as to reasonably

induce fear in the mind of another of being shot or injured; however, this section shall not be applicable to any person engaged in justified or excusable self-defense.

(b) Any police officer, in the performance of his duty in making an arrest under the provisions of this section shall not be civilly liable in damages for injuries or death resulting to the person being arrested if he had reason to believe that the person being arrested was pointing, holding or brandishing a firearm or object which was similar in appearance to a firearm, with intent to induce fear in the mind of another.

(c) For purposes of this section, the word "firearm" shall mean any weapon in which ammunition may be used or discharged by explosion or pneumatic pressure. The word "ammunition," as used herein, shall mean cartridge, pellet, ball, missile or projectile adapted for use in the firearm.

(Code 1965, § 38-7; Ord. No. 1994, 8-7-90)

State Law reference— Similar provisions, Code of Virginia, § 18.2-282.

Sec. 38-6. - Hunting with firearms while under influence of intoxicant or narcotic drug; penalty.

It shall be unlawful for any person to hunt wildlife with a firearm, bow and arrow, or crossbow in the city while he is (i) under the influence of alcohol; (ii) under the influence of any narcotic drug or any other self-administered intoxicant or drug of whatsoever nature, or any combination of such drugs, to a degree that impairs his ability to hunt with a firearm, bow and arrow, or crossbow safely; or (iii) under the combined influence of alcohol and any drug or drugs to a degree that impairs his ability to hunt with a firearm, bow and arrow, or crossbow safely. Any person who violates the provisions of this section is guilty of a Class 1 misdemeanor.

(Ord. No. 2882, 6-14-05)

Editor's note— Ord. No. 2789, adopted Oct. 28, 2003, repealed former § 38-6 in its entirety, which pertained to permit prerequisite to purchase of certain weapons and derived from the 1965 Code, § 38-5; Ord. No. 1324, adopted Sept. 13, 1982; and Ord. No. 1429, adopted Jan. 23, 1984. Ord. No. 2882, adopted June 14, 2005, added new provisions as § 38-6.

Sec. 38-7. - Sale, delivery, etc., of blackjacks, metal knucks, switchblade knives and similar weapons.

If a 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 (2) 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 or like weapons, such person shall be prima guilty of a Class 4 misdemeanor. The having in one's possession of any such weapon shall be facie evidence, except in the case of a conservator of the peace, of the intent to sell, barter, give or furnish the same.

(Code 1965, § 38-4; Ord. No. 1540, 6-24-85)

Sec. 38-8. - Transporting a loaded rifle or shotgun.

(a) No person shall transport, possess or carry a loaded shotgun or loaded rifle in any vehicle on any public street, road or highway.

(b) The provisions of this section shall not apply to duly authorized law enforcement officers or military personnel in the performance of their lawful duties, nor to any person who reasonably believes that a loaded rifle or shotgun is necessary for his personal safety in the course of his employment or business.

(c) Violation of this section shall be punishable by a fine of not more than one hundred dollars ($100.00).

(Ord. No. 2050, 4-23-91)