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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 22 - OBSCENITY

Footnotes:
*--- **(1)** ---*
***Cross reference—** Sex offenses, § 23-23 et seq.*

ARTICLE I. - IN GENERAL

Footnotes:
*--- **(2)** ---*
***State Law reference—** Authority of council to adopt ordinance similar to the provisions of this article, Code of Virginia, § 18.2-389.*

Sec. 22-1. - Violations of article generally.

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

State Law reference— Similar provisions with respect to violations of state law on obscenity, Code of Virginia, § 18.2-380.

Sec. 22-2. - "Obscene" defined.

The word "obscene," where it appears in this article, shall mean that which, considered as a whole, has as its dominant theme or purpose an appeal to the prurient interest in sex, that is, a shameful or morbid interest in nudity, sexual conduct, sexual excitement, excretory functions or products thereof or sadomasochistic abuse, and which goes substantially beyond customary limits of candor in description or representation of such matters and which, taken as a whole, does not have serious literary, artistic, political or scientific value.

(Code 1965, § 23-35)

State Law reference— Similar provisions, Code of Virginia, § 18.2-372.

Sec. 22-3. - Obscene items enumerated.

For the purposes of this article, obscene items shall include:

(1) Any obscene book; or

(2) Any obscene leaflet, pamphlet, magazine, booklet, picture, painting, drawing, photograph, film, negative, slide, motion picture; or

(3) Any obscene figure, object, article, instrument, novelty, device or recording or transcription used or intended to be used in disseminating any obscene song, ballad, words or sounds.

(Code 1965, § 23-35)

State Law reference— Similar provisions, Code of Virginia, § 18.2-373.

Sec. 22-4. - Production, publication, sale, possession, etc., of obscene items.

(a) It shall be unlawful for any person to knowingly:

(1) Prepare any obscene item for the purpose of sale or distribution; or

(2) Print, copy, manufacture, produce or reproduce any obscene item for the purpose of sale or distribution; or

(3) Publish, sell, rent, lend, transport in intracity commerce or distribute or exhibit any obscene item, or offer to do any of these things; or

(4) Have in his possession, with intent to sell, rent, lend, transport or distribute, any obscene item.

(b) Possession in public or in a public place of any obscene item shall be deemed prima facie evidence of a violation of this section.

(c) For the purposes of this section, "distribute" shall mean delivery in person or by mail or messenger or by any other means by which obscene items may pass from one person to another.

(Code 1965, § 23-35)

State Law reference— Similar provisions, Code of Virginia, § 18.2-374.

Sec. 22-5. - Obscene exhibitions and performances generally.

It shall be unlawful for any person to knowingly:

(1) Produce, promote, prepare, present, manage, direct, carry on or participate in any obscene exhibition or performance, including the exhibition or performance of any obscene motion picture, play, drama, show, entertainment, exposition, tableau or scene; provided, that no employee of any person or legal entity operating a theater, garden, building, structure, room or place which presents such obscene exhibition or performance shall be subject to prosecution under this section, if the employee is not the manager of the theater or an officer of such entity, and has no financial interest in such theater, other than receiving salary and wages; or

(2) Own, lease or manage any theater, garden, building, structure, room or place and lease, let, lend or permit such theater, garden, building, structure, room or place to be used for the purpose of presenting such obscene exhibition or performance or to fail to post prominently therein the name and address of a person resident in the city who is the manager of such theater, garden, building, structure, room or place.

(Code 1965, § 23-35)

State Law reference— Similar provisions, Code of Virginia, § 18.2-375.

Sec. 22-6. - Advertising obscene items, exhibitions or performances generally.

It shall be unlawful for any person to knowingly prepare, print, publish or circulate or cause to be prepared, printed, published or circulated, any notice or advertisement of any obscene item referred to in section 22-3 or of any obscene performance or exhibition referred to in section 22-5, stating or indicating where such obscene item, exhibition or performance may be purchased, obtained, seen or heard.

(Code 1965, § 23-35)

State Law reference— Similar provisions, Code of Virginia, § 18.2-376.

Sec. 22-7. - Obscene placards, posters, bills, etc.

It shall be unlawful for any person to knowingly expose, place, display, post up, exhibit, paint, print or mark, or cause to be exposed, placed, displayed, posted, exhibited, painted, printed or marked, in or on any building, structure, billboard, wall or fence, or on any street, or in or upon any public place, any placard, poster, banner, bill, writing or picture which is obscene or which advertises or promotes any obscene item referred to in section 22-3 or any obscene exhibition or performance referred to in section 22-5, or to knowingly permit the same to be displayed on property belonging to or controlled by him.

(Code 1965, § 23-35)

State Law reference— Similar provisions, Code of Virginia, § 18.2-377.

Sec. 22-8. - Coercing acceptance of obscene articles or publications.

No person shall, as a condition to any sale, allocation, consignment or delivery for resale of any paper, magazine, book, periodical or publication, require that the purchaser or consignee receive for resale any other article, book or other publication which is obscene; nor shall any person deny or threaten to deny any franchise or impose or threaten to impose any penalty, financial or otherwise, by reason of the failure or refusal of any person to accept such articles, books or publications, or by reason of the return thereof.

(Code 1965, § 23-35)

State Law reference— Similar provisions, Code of Virginia, § 18.2-378.

Sec. 22-9. - Obscene photographs, slides and motion pictures.

Every person who knowingly:

(1) Photographs himself or any other person, for purposes of preparing an obscene film, photograph, negative, slide or motion picture for purposes of sale or distribution; or

(2) Models, poses, acts or otherwise assists in the preparation of any obscene film, photograph, negative, slide or motion picture for purposes of sale or distribution;

shall be guilty of a Class 3 misdemeanor.

(Code 1965, § 23-35)

State Law reference— Similar provisions, Code of Virginia, § 18.2-382.

Sec. 22-10. - Public nudity generally.

(a) As used in this section, "state of nudity" means a state of undress so as to expose the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple.

(b) It shall be unlawful for any person to knowingly, voluntarily and intentionally appear in public, or in a public place, or in a place open to the public or open to public view, in a state of nudity or to employ, encourage or procure another person to so appear.

(c) Nothing contained in this section shall be construed to apply to the exhibition, presentation, showing or performance of any play, ballet, drama, tableau, production or motion picture in any theater, concert hall, museum of fine arts, school, institution of higher learning or other similar establishment which is primarily devoted to such exhibitions, presentations, shows or performances as a form of expression of opinion, communication, speech, ideas, information, art or drama, as differentiated from commercial or business advertising, promotion or exploitation of nudity for the purpose of advertising, promoting, selling or serving products or services or otherwise advancing the economic welfare of a commercial or business enterprise, such as a hotel, motel, bar, nightclub, restaurant, tavern or dance hall.

(Code 1965, § 23-32.1)

Cross reference— Swimming in the nude, § 6-19.

Sec. 22-11. - Indecent exposure.

No person shall intentionally make an obscene display or exposure of his person, or the private parts thereof, in any public place or in any place where others are present, and no person shall procure another to so expose himself. No person shall be deemed to be in violation of this section for breastfeeding a child in any public place or any place where others are present.

(Code 1965, § 23-34; Ord. No. 1003, 11-5-79; Ord. No. 2279, 6-28-94)

Cross reference— Swimming in the nude, § 6-19.

State Law reference— Similar provisions, Code of Virginia, § 18.2-387.

Sec. 22-11.1. - Urination or defecation in public.

Any person who urinates or defecates in public or in a place open to public view except in public restroom facilities shall be guilty of a Class 4 misdemeanor.

(Ord. No. 1184, 5-18-81)

Editor's note— Ord. No. 1184, adopted May 18, 1981, added § 23-32.2 to the 1965 Code; the editor, upon the advice of the city, has made these provisions § 22-11.1 hereof.

Sec. 22-11.2. - Obscene sexual display; penalty.

Any person who, while in any public place where others are present, intending that he be seen by others, intentionally and obscenely as defined in section 22-2, engages in actual or explicitly simulated acts of masturbation, is guilty of a Class 1 misdemeanor.

(Ord. No. 2887, 6-14-05)

Sec. 22-12. - Employing or permitting minor to assist in violation of article.

It shall be unlawful for any person to knowingly hire, employ, use or permit any person under the age of eighteen (18) years to do or assist in doing any act or thing constituting an offense under this article.

(Code 1965, § 23-35)

State Law reference— Similar provisions, Code of Virginia, § 18.2-379.

Sec. 22-13. - Proceeding against obscene book or motion picture film.

Whenever he has reasonable cause to believe that any person is engaged in the sale or commercial distribution of any obscene book or motion picture film in the city, any citizen or the city attorney may institute a proceeding in the circuit court of the city for adjudication of the obscenity of the book pursuant to sections 18.2-384 and 18.2-385 of the Code of Virginia.

(Code 1965, § 23-35)

Sec. 22-14. - Exceptions from article.

Nothing contained in this article shall be construed to apply to:

(1) The purchase, distribution, exhibition or loan of any book, magazine or other printed or manuscript material by any library, school or institution of higher learning, supported by public appropriation;

(2) The purchase, distribution, exhibition or loan of any work of art by any museum of fine arts, school or institution of higher learning, supported by public appropriation;

(3)

The exhibition or performance of any play, drama, tableau or motion picture by any theater, museum of fine arts, school or institution of higher learning, supported by public appropriation.

(Code 1965, § 23-35)

Secs. 22-15—22-25. - Reserved.

ARTICLE II. - OFFENSES RELATING TO JUVENILES

Sec. 22-26. - Definitions.

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

Harmful to juveniles: That quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement or sadomasochistic abuse, when it:

(1) Predominantly appeals to the prurient, shameful or morbid interest of juveniles;

(2) Is patently offensive to prevailing standards in the adult community in the city as a whole with respect to what is suitable material for juveniles; and

(3) Is, when taken as a whole, lacking in serious literary, artistic, political or scientific value for juveniles.

Juvenile: Any person less than eighteen (18) years of age.

Knowingly: Having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both the character and content of any material described herein, which is reasonably susceptible of examination by the defendant, and the age of the juvenile; provided, however, that an honest mistake shall constitute an excuse from liability hereunder if the defendant made a reasonable bona fide attempt to ascertain the true age of such juvenile.

Nudity: A state of undress so as to expose the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered or uncovered male genitals in a discernibly turgid state.

Sadomasochistic abuse: Actual or explicitly simulated flagellation or torture by or upon a person who is nude or clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

Sexual conduct: Actual or explicitly simulated acts of masturbation, homosexuality, sexual intercourse or physical contact, in an act of apparent sexual stimulation or gratification, with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be female, breast.

Sexual excitement: The condition of human male or female genitals when in a state of sexual stimulation or arousal.

(Code 1965, §§ 23-35.1, 23-36)

State Law reference— Similar provisions, Code of Virginia, § 18.2-390.

Sec. 22-27. - Violations of article generally.

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

Sec. 22-28. - Unlawful sales or loans to juveniles generally.

It shall be unlawful for any person to knowingly sell or loan to a juvenile:

(1) Any picture, photograph, drawing, sculpture, motion picture film or similar visual representation or image of a person or portion of the human body which depicts sexually explicit nudity, sexual conduct or sadomasochistic abuse and which is harmful to juveniles; or

(2) Any book, pamphlet, magazine, printed matter, however reproduced, or sound recording which contains any matter enumerated in paragraph (1) above, or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct or sadomasochistic abuse and which, taken as a whole, is harmful to juveniles.

(Code 1965, § 23-35.1)

State Law reference— Similar provisions, Code of Virginia, § 18.2-391.

Sec. 22-29. - Admitting juveniles to premises exhibiting obscene films or other presentations; such films not to be visible to juveniles from public way.

It shall be unlawful for any person to knowingly sell to a juvenile an admission ticket or pass or to knowingly admit a juvenile to premises whereon there is exhibited a motion picture, show or other presentation which, in whole or in part, depicts sexually explicit nudity, sexual conduct or sadomasochistic abuse and which is harmful to juveniles, or to exhibit any such motion picture at any such premises which are not designed to prevent viewing from any public way of such motion picture by juveniles not admitted to such premises.

(Code 1965, § 23-35.1)

State Law reference— Similar provisions, Code of Virginia, § 18.2-391.

Sec. 22-30. - Misrepresentation to persons mentioned in sections 22-28 and 22-29 as to juvenile's age, etc.

(a) It shall be unlawful for any juvenile to falsely represent to any person mentioned in section 22-28 or 22-29, or to his agent, that such juvenile is eighteen (18) years of age or older, with the intent to procure any material set forth in section 22-28 or with the intent to procure such juvenile's admission to any motion picture, show or other presentation set forth in section 22-29.

(b) It shall be unlawful for any person to knowingly make a false representation to any person mentioned in section 22-29, or to his agent, that he is the parent or guardian of any juvenile, or that any juvenile is eighteen (18) years of age, with the intent to procure any material set forth in section 22-28, or with the

intent to procure such juvenile's admission to any motion picture, show or other presentation set forth in section 22-29.

(Code 1965, § 23-35.1)

State Law reference— Similar provisions, Code of Virginia, § 18.2-391.

Sec. 22-31. - Display of obscene materials at business establishments open to juveniles.

It shall be unlawful for any person to knowingly display for commercial purposes in a manner whereby juveniles may examine or peruse:

(1) Any picture, photograph, drawing, sculpture, motion picture film or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct or sadomasochistic abuse and which is harmful to juveniles, or

(2) Any book, pamphlet, magazine or printed matter, however reproduced, or sound recording which contains any matter enumerated in paragraph (1) above, or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct or sadomasochistic abuse and which, taken as a whole, is harmful to juveniles.

(Code 1965, § 23-36; Ord. No. 1539, 6-24-85)

Sec. 22-32. - Exceptions from article.

Nothing contained in this article shall be construed to apply to:

(1) The purchase, distribution, exhibition or loan of any work of art, book, magazine or other printed or manuscript material by any accredited museum, library, school or institution of higher learning.

(2) The exhibition or performance of any play, drama, tableau or motion picture by any theatre, museum, school or institution of higher learning, either supported by public appropriation or which is an accredited institution supported by private funds.

State Law reference— Similar provisions, Code of Virginia, § 18.2-391.1.

Secs. 22-33—22-45. - Reserved.

ARTICLE III. - STUDIOS PROVIDING NUDE OR PARTIALLY NUDE MODELS

Sec. 22-46. - To be closed during certain hours.

It shall be unlawful for any person engaged in the business of providing live nude or partially nude models to be painted, sketched or photographed by the general public to remain open to such business between the hours of 10:00 p.m. and 6:00 a.m. the following day.

(Code 1965, § 23-61.4)

Sec. 22-47. - Information to be filed with chief of police.

(a) Each person who shall engage in the business in the city of providing live nude or partially nude models to be painted, sketched or photographed, whether by appointment or otherwise, shall file with the chief of police his name, age and current residential address and business address, together with all residential addresses for the previous five (5) years. Such person shall also file with the chief of police the name, age, residential address and occupation of each model employed or to be employed in such business.

(b) Any person who shall fail or refuse to file with the chief of police the information required by subsection (a) above shall be guilty of a Class 4 misdemeanor.

(Code 1965, § 23-61.1)

Sec. 22-48. - Registration of customers.

(a) Each person who shall engage in the business in the city of providing live nude or partially nude models to be painted, sketched or photographed shall at all times keep and maintain therein a book or register in which shall be inscribed, with ink or indelible pencil, the name and address of each customer, in his or her own handwriting, with a clear and definite showing of the model or models painted, sketched or photographed, by name. Such book or register shall be maintained for a period of two (2) years from the date of each entry, and shall be open to inspection by the law-enforcement officers of the city at reasonable hours.

(b) It shall be unlawful for any person to sign or cause to be signed, in the book or register referred to in subsection (a) above, a false or fictitious name when seeking to paint, sketch or photograph a model or models.

(c) Any person violating any provision of this section shall be guilty of a Class 4 misdemeanor.

(Code 1965, § 23-61.2)

Sec. 22-49. - Third person to be present when model being photographed or painted.

In order to protect such models, it shall be unlawful for any person engaged in the business of providing live nude or partially nude models to be painted, sketched or photographed by the general public to allow or permit the painting, sketching or photographing of live nude or partially nude models in a room unless there be present in the room a responsible adult individual in addition to the model and the customer.

(Code 1965, § 23-61.3)

Sec. 22-50. - Obscene photographs or paintings.

(a) It shall be unlawful for any person to operate a business in the city which provides models or facilities for obscene sketching, painting or photographing of the human figure, where the nude or partially nude model's posture or the reproduction of the nude or partially nude model, whether by sketching, painting or photographing, appear in a manner which:

(1) Predominantly appeals to the prurient interests,

(2) Is patently offensive to contemporary community standards, and

(3) Is utterly without redeeming social value.

(b) It shall be unlawful for any person to act as a nude or partially nude model or to present any posture whereby the reproduction thereof shall appear in a manner which:

(1) Predominantly appeals to the prurient interests,

(2) Is offensive to contemporary community standards, and

(3) Is utterly without redeeming social value.

(c) It shall be unlawful for any person to cause to be made, whether by photography, sketching, painting or otherwise, reproductions of any nude or partially nude model which shall appear in a manner which:

(1) Predominantly appeals to the prurient interests,

(2) Is patently offensive to contemporary community standards, and

(3) Is utterly without redeeming social value.

(d) A violation of any provision of this section shall constitute a Class 3 misdemeanor.

(Code 1965, § 23-61)

Chapter 23 - OFFENSES

ARTICLE I. - MISCELLANOUS OFFENSES

Sec. 23-1. - Attempt to commit misdemeanor.

Every person who attempts to commit an offense which is a misdemeanor shall be punishable by the same punishment prescribed for the offense the commission of which was the object of the attempt.

(Code 1965, § 23-10)

State Law reference— Similar provisions, Code of Virginia, § 18.2-27.

Sec. 23-2. - Curfew for minors.

(a) It shall be unlawful for any minor under the age of eighteen (18) to be present on any street, road, alley, avenue, park or other public place in the city, or in any vehicle operating or parked thereon, between the hours of 11:00 p.m. and 5:00 a.m., unless accompanied by the parent, guardian or other adult person having the care, custody or control of such minor.

(b) It shall be unlawful for any parent, guardian or other adult person having the care, custody or control of any minor under the age of eighteen (18) to permit, allow or encourage such minor to be present on any street, road, alley, avenue, park or other public place in the city, or in any vehicle operating or parked thereon, between the hours of 11:00 p.m. and 5:00 a.m. in violation of the provisions of subsection (a) of this section.

(c) Whenever any police or other officer charged with the duty of enforcing the laws of the state or ordinances of the city shall discover or has his attention called to the fact that any minor under eighteen (18) years of age is present on any street, road, alley, avenue, park or other public place in the city, or in any vehicle

operating or parked thereon, between the hours of 11:00 p.m. and 5:00 a.m., such officer shall make an immediate investigation for the purpose of ascertaining whether or not the presence of such minor is in violation of the provisions of this section. If such investigation reveals that the presence of such minor is in violation of the provisions of this section, the officer may charge the minor with a violation of this section and release the minor on a summons, or the officer may cause the minor to be taken to his home or place of residence, and released to his parent, guardian or other adult person having the care, custody or control of such minor. If the officer deems that it will be for the best interest of the minor, the minor may be taken to a nonsecure state certified crisis center or juvenile shelter, or the minor may be taken to the intake division of the juvenile and domestic relations district court of the city and thereafter be released or detained as provided in article 4, chapter 11, title 16.1 (§ 16.1-246 et seq.) of the Code of Virginia. In those cases where a summons is not issued, the officer may proceed as provided in article 5, chapter 11, title 16.1 (§ 16.1-259 et seq.) of the Code of Virginia.

(d) The provisions of this section shall not apply to any minor who has been emancipated as provided by section 16.1-333 of the Code of Virginia, or to any minor engaged in the following activities:

(1) Any emergency errand reasonably necessary to safeguard life, limb or property;

(2) Lawful employment, including going directly from the minor's residence to the place of such employment or returning directly from the place of such employment to the minor's residence;

(3) Attendance at a specified engagement or performance, attendance at religious services or participation in any assembly or expressive activity protected by the First Amendment of the United States Constitution; provided that the minor shall have in his possession written permission including the signature, address and telephone number, of a parent, guardian or other adult person having care, custody or control of such minor to attend such activity or event, and shall return directly to his residence upon conclusion thereof; or

(4) Interstate travel through, beginning or terminating in the City of Virginia Beach.

(e) Any person violating any provision of subsection (b) of this section shall be guilty of a Class 4 misdemeanor. Any minor violating any provision of subsection (a) of this section shall be deemed to be a child in need of services, as defined by section 16.1-228 of the Code of Virginia. Such minor and his parent, guardian, legal custodian or other person stand *in loco parentis* shall be subject to the provisions of section 16.1-278.4 of the Code of Virginia.

(Code 1965, §§ 23-13.1—23-13.3; Ord. No. 1011, 12-10-79; Ord. No. 1028, 3-10-80; Ord. No. 1317, 8-23-82; Ord. No. 1857, 5-1-89; Ord. No. 2029, 1-15-91; Ord. No. 2223, 5-25-93)

Cross reference— Minors in poolrooms, § 4-2; minors in family table top commercial recreation centers, § 4-55; employing or permitting minors to assist in violation of anti-obscenity provisions, § 22-12; sale or loan of obscene photographs, pictures, etc., to juveniles, § 22-28 et seq.

Sec. 23-2.1. - Curfews after declarations of emergency.

(a) Pursuant to the police powers granted to the city by Code of Virginia, § 15.2-1102, and in the interest of promoting public safety, the city manager or his designee is hereby authorized to impose a curfew after the declaration of an emergency, in accordance with the provisions of this section.

(b) As used in this section:

(1) "Curfew" means an order issued by the city manager prohibiting persons from being present on any street, road, alley, avenue, park or other public place in the city or any portion thereof designated by the city manager during specified times of the day or night;

(2) "City manager" means the city manager or his designee;

(3) "Natural disaster" means any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, earthquake, drought, fire or other natural catastrophe resulting in damage, hardship, suffering or possible loss of life; and

(4) "Manmade disaster" means any condition following an attack by an enemy or foreign nation upon the City of Virginia Beach that results in substantial damage of property or injury to persons in the United States, and may be by use of bombs, missiles, shell fire, nuclear, radiological, chemical or biological means or other weapons or by overt paramilitary actions; terrorism, foreign and domestic; any industrial, nuclear or transportation accident, explosion, conflagration, power failure, or other condition such as sabotage, oil spills, and other injurious environmental contaminations that threaten or cause damage to property, human suffering, hardship or loss of life.

(c) The city manager may declare a curfew if he deems such action necessary for the preservation of life or property, the implementation of emergency mitigation, preparedness, response actions or recovery actions anticipated or resulting from the dangers caused by a natural or manmade disaster or the resulting effects thereof, pursuant to the following procedure:

(1) The authority conferred upon the city manager by this section shall arise only after either the state or the city declares an emergency in accordance with the provisions of Virginia Code section 44-146.19 or 44-146.21 for a geographical area located within the city;

(2) The curfew shall be announced in such manner as is reasonably calculated to provide notice to the public of the imposition of the curfew. Termination of curfew shall be in like manner;

(3) The declaration of a curfew, circumstances justifying its imposition, time and areas of the city in which the curfew is in effect, and the means and time of the public announcement of the curfew shall be recorded in a written document signed by the city manager and maintained in the records of the city;

(4) No curfew shall be imposed except in areas and at times that can be justified as necessary for the public safety.

(5) The action of the city manager in imposing a curfew during a natural or manmade disaster shall be ratified by the city council at its next regularly scheduled meeting.

(d) After the declaration and public announcement of a curfew, it shall be unlawful for:

(1) Any person, after having been warned by a law-enforcement officer, to remain on any street, road, alley, avenue, park or other public place in the city, or in any vehicle operating or parked thereon, in any portion of the city designated by the city manager; and

(2) The owner or proprietor of any retail, wholesale or eating and drinking establishment, entertainment venue or similar establishment, or other person in control of such establishment, to allow any person to remain on the premises without the express written permission of the city manager; provided, however,

that this prohibition shall not apply to lodging establishments serving registered guests.

(e) The following persons shall be exempt from the provisions of this section while on duty or traveling to and from work:

(1) Hospital personnel;

(2) City employees and volunteers;

(3) Military personnel;

(4) Employees of public utility companies;

(5) Private emergency medical transport workers; and

(6) Other emergency workers as authorized by the city manager.

(f) Nothing in this section shall be construed to prohibit or restrict travel to a hospital in the event of a medical emergency, nor shall such travel be considered in violation of this section.

(g) A violation of this section shall be punishable as a Class 1 misdemeanor.

(Ord. No. 2895, 8-9-05; Ord. No. 3027, 6-3-08)

Cross reference— Emergency management office, § 2-411 et seq.

Sec. 23-3. - Prohibited trick or treat activities.

(a) If any person over the age of twelve (12) years shall engage in the activity commonly known as "trick or treat" or any other activity of similar character or nature under any name whatsoever, he shall be guilty of a Class 4 misdemeanor. Nothing herein shall be construed as prohibiting any parent, guardian or other responsible person, having lawfully in his custody a child twelve (12) years old or younger, from accompanying such child who is playing "trick or treat" for the purpose of caring for, looking after or protecting such child.

(b) If any person shall engage in the activity commonly known as "trick or treat" or any other activity of similar character or nature under any name whatsoever after 8:00 p.m., he shall be guilty of a Class 4 misdemeanor.

(Code 1965, §§ 23-54.1, 23-54.2; Ord. No. 1660, 10-27-86)

Sec. 23-4. - Aircraft—Minimum height.

(a) Except when taking off from or landing on an established landing field, airport or other property designated for that purpose by the owner, no person shall fly any aircraft in the city at a height less than the following:

(1) Over any congested area of the city, not less than one thousand (1,000) feet.

(2) Over any open-air assembly of people, not less than one thousand (1,000) feet.

(3) Elsewhere, not less than five hundred (500) feet.

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

(Code 1965, § 23-4)

Sec. 23-5. - Same—Acrobatic flying.

(a) No person shall acrobatically fly any aircraft in the city:

(1) Over any congested area of the city.

(2) Over any open-air assembly of persons or below two thousand (2,000) feet in height, over any established civil airway, or at any height over any established airport or landing field, or within one thousand (1,000) feet horizontally thereof.

(3) Over any other place at a height less than one thousand five hundred (1,500) feet.

(b) The term "acrobatic flying", as used in this section, means intentional maneuvers not necessary to air navigation.

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

(Code 1965, § 23-5)

Sec. 23-6. - Same—Exceptions to sections 23-4 and 23-5.

The provisions of sections 23-4 and 23-5 shall not apply to aircraft used in interstate or foreign commerce, nor to aircraft flown over property or places belonging to or under the control of the United States of America or any of its agencies.

(Code 1965, § 23-6)

Sec. 23-7. - Misleading, obstructing, etc., city officers.

(a) If any person without just cause knowingly obstructs a judge, magistrate, justice, juror, witness, any law enforcement officer or animal control officer in the performance of his duties as such, or fails or refuses without just cause to cease such obstruction when requested to do so by such judge, magistrate, justice, juror, witness, law enforcement officer or animal control officer, he shall be guilty of a Class 1 misdemeanor.

(b) If any person, by threats or force, knowingly attempts to intimidate or impede a judge, magistrate, justice, juror, witness, any law enforcement officer or animal control officer, lawfully engaged in his duties as such, or to obstruct or impede the administration of justice in any court, he shall be deemed to be guilty of a Class 1 misdemeanor.

(c) Any person who knowingly and willfully makes any materially false statement or representation to a law-enforcement officer or animal control officer who is in the course of conducting an investigation of a crime by another is guilty of a Class 1 misdemeanor.

(d) Any person or persons who unreasonably or unnecessarily obstruct a member or members of an emergency medical services agency, whether governmental, private or volunteer, or who shall fail or refuse to cease such obstruction or move on when requested to do so by a member of an emergency medical services agency going to or at the site at which emergency medical services are required shall be guilty of a Class 2 misdemeanor.

(Code 1965, § 23-37; Ord. No. 1267, 4-26-82; Ord. No. 1465, 7-2-84; Ord. No. 1893, 7-10-89; Ord. No. 2230, 6-8-93; Ord. No. 2398, 6-25-96; Ord. No. 2707, 6-25-02; Ord. No. 2771, 6-24-03; Ord. No. 3094, 6-23-09; Ord. No. 3432, 11-17-15)

Cross reference— Interfering with firefighters, § 12-28; obstructing or interfering with enforcement of housing code, § 16-8; interference with police animals, § 27-7.

State Law reference— Obstructing justice, Code of Virginia, § 18.2-460.

Sec. 23-7.1. - Providing identification to law enforcement officer.

It shall be unlawful and a Class 1 misdemeanor for any person at a public place or place open to the public to refuse to identify himself by name and address at the request of a uniformed law enforcement officer or of a properly identified law enforcement officer not in uniform, or to provide false information in response to such a request, if the surrounding circumstances are such as to indicate to a reasonable man that the public safety requires such identification.

(Ord. No. 1570, 12-16-85; Ord. No. 3723, 2-21-23)

Sec. 23-7.2. - Evasion of security device or check point.

It shall be unlawful and a Class 1 misdemeanor for any person who enters a secured area of any building or other enclosure owned or leased by the city or school board when a metal detection device is being operated therein, or when a security check for the detection of unlawful items or substances is being conducted, to wilfully proceed so as to avoid such metal detection device, or otherwise to pass any security check point, unless such person receives permission to do so from the law enforcement officer or other security official on duty.

(Ord. No. 2271, 6-14-94)

Sec. 23-7.3. - Resisting lawful arrest; penalty.

(a) Any person who intentionally prevents or attempts to prevent a law-enforcement officer from lawfully arresting him, with or without a warrant, is guilty of a Class 1 misdemeanor.

(b) For the purpose of this section, intentionally preventing or attempting to prevent a lawful arrest means fleeing from a law-enforcement officer when (1) the officer applies physical force to the person or (2) the officer communicates to the person that he is under arrest and (i) the officer has the legal authority and the immediate physical ability to place the person under arrest, and (ii) a reasonable person who receives such communication knows or should know that he or she is not free to leave.

(Ord. No. 2771, 6-24-03)

Sec. 23-7.4. - Escape without force or violence or setting fire to jail.

Except as provided in Virginia Code § 18.2-479.B, any person lawfully confined in jail or lawfully in the custody of any court, officer of the court, or of any law-enforcement officer for violation of his probation or parole or on a charge or conviction of a misdemeanor, who escapes, other than by force or violence or by setting fire to the jail, is guilty of a Class 1 misdemeanor.

(Ord. No. 2885, 6-14-05)

Sec. 23-7.5. - Duty to obey traffic signs and signals and orders of law enforcement officers.

Pedestrians shall obey signs and signals erected on highways or streets for the direction and control of travel and traffic and they shall obey the orders of law enforcement officers engaged in directing travel and traffic on the highways and streets. Violations of this section shall be punished by a fine not exceeding two hundred dollars ($200.00) for each offense.

(Ord. No. 2903, 12-13-05; Ord. No. 3723, 2-21-23)

Sec. 23-8. - Calling ambulance or fire fighting apparatus without cause; malicious activation of fire alarm in public building.

Any person who, without just cause therefor, calls or summons, by telephone or otherwise, any ambulance or fire fighting apparatus, or any person who maliciously activates a manual or automatic fire alarm in any building, regardless of whether fire apparatus respond or not, shall be guilty of a Class 1 misdemeanor.

(Code 1965, § 23-7; Ord. No. 1003, 11-5-79; Ord. No. 3508, 6-20-17, eff. 7-1-17)

Cross reference— Emergency medical vehicles, Ch. 10.5; fire prevention and protection, Ch. 12.

State Law reference— Similar provisions, Code of Virginia, § 18.2-212.

Sec. 23-8.1. - Maliciously giving false report of crime, accident, etc.

(a) It shall be unlawful for any person maliciously to give, by telephone or otherwise, a false report as to (1) the commission of any crime, (2) the death of, accident to, injury to, illness of or disappearance of some third party, or (3) the present existence of any emergency reasonably requiring the response of law enforcement personnel, to any law enforcement personnel, to any law enforcement official, or to any "911" communications officer or public safety dispatcher.

(b) It shall be unlawful for any person without intent to report an emergency, but with intent to harass, to call any "911" communications operator. Repeated calling of any "911" communications operator, without intent to report an emergency, and after having been acknowledged by such operator, shall constitute violation of this section.

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

(Ord. No. 1793, 8-1-88)

Sec. 23-8.2. - Imitation infectious biological, etc., substances.

(a) It shall be a Class 1 misdemeanor for any person to:

(1) Threaten injury to the person or property of another by the use of an imitation infectious biological, toxic or radioactive substance;

(2) Use an imitation infectious biological, toxic or radioactive substance in such manner as to place any person in reasonable apprehension of death or bodily harm, or with the intent to disrupt or interfere with the operations of any law enforcement agency, fire department, or other city services, or with the intent to cause the closing or evacuation of any residence, business, school or place of public gathering;

(3)

Possess, manufacture, sell, give or distribute an imitation infectious biological, toxic or radioactive substance with the intent to place a person in reasonable apprehension of death or bodily harm; or

(4) Knowingly release or place, or cause or procure to be released or placed in, on or around any residence, place of business, school, or place of public gathering, any imitation infectious biological, toxic or radioactive substance with the intent to place any person in reasonable apprehension of death or bodily harm.

(b) As used in this section:

(1) "Imitation infectious biological substance" means a substance, in any form whatsoever, which is not an infectious biological substance, and which:

a. By overall appearance, including color, shape, size, marking, packaging or by representations made, would cause a reasonable likelihood that such substance in any form whatsoever would be mistaken for an infectious biological substance; or

b. By express or implied representation purports to act like an infectious biological substance;

(2) "Infectious biological substance" means any bacteria, virus, fungi, protozoa, or rickettsiae capable of causing death;

(3) "Imitation toxic substance" means a substance, in any form whatsoever, which is not a toxic substance and which:

a. By overall appearance, including color, shape, size, marking, packaging or by representations made, would cause a reasonable likelihood that such substance in any form whatsoever would be mistaken for a toxic substance; or

b. By express or implied representation purports to act like a toxic substance;

(4) "Toxic substance" means any substance, including any raw materials, intermediate products, catalysts, final products, or by-products of any manufacturing operation conducted in a commercial establishment, that has the capacity, through its physical, chemical or biological properties, to pose a substantial risk of death or impairment either immediately or over time, to the normal functions of humans, aquatic organisms, or any other animal;

(5) "Imitation radioactive substance" means a substance, in any form whatsoever, which is not a radioactive substance, and which:

a. By overall appearance, including color, shape, size, marking, packaging or by representations made, would cause a reasonable likelihood that such substance in any form whatsoever would be mistaken for a radioactive substance; or

b. By express or implied representation purports to act like a radioactive substance; and

(6) "Radioactive substance" means any substance that emits ionizing radiation spontaneously.

(Ord. No. 2674, 11-6-01)

Sec. 23-8.3. - Reimbursement of expenses incurred in responding to terrorism hoax incident.

Any person who is convicted of a violation of Code of Virginia § 18.2-46.6 subsection B or C when his violation of such section is the proximate cause of any incident resulting in an appropriate emergency response, shall be liable at the time of sentencing or in a separate civil action, to the city, to any volunteer rescue squad, or both, which may provide such emergency response for the reasonable expense thereof, in an amount not to exceed two thousand five hundred dollars ($2,500.00) in the aggregate for a particular incident occurring in the city. In determining the "reasonable expense," the city may bill a flat fee of two hundred fifty dollars ($250.00) or a minute-by-minute accounting of the actual costs incurred. As used in this section, "appropriate emergency response" includes all costs of providing law-enforcement, fire-fighting, rescue and emergency medical services. The provisions of this section shall not preempt or limit any remedy available to the commonwealth, to the city or to any volunteer rescue squad to recover the reasonable expenses of an emergency response to an incident not involving a terroristic hoax as set forth herein.

(Ord. No. 2885, 6-14-05; Ord. No. 3508, 6-20-17, eff. 7-1-17)

Sec. 23-9. - Use, operation, etc., of device to automatically initiate call and deliver prerecorded message to telephone number of public safety service.

(a) No person shall use or operate, attempt to use or operate, or cause to be used or operated, or arrange, adjust, program or otherwise operate any device or combination of devices that will, upon activation, either mechanically, electronically or by other automatic means, initiate an intracity or intercity call and deliver a prerecorded message to any telephone number assigned to public safety services in the city.

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

(Ord. No. 985, 9-10-79)

Sec. 23-9.1. - Audible intruder alarms to be equipped with bell/siren cutoff.

(a) No person shall install, maintain, or operate, or cause to be installed, maintained, or operated, any intrusion alarm device or system which causes a siren, bell or other audible response to be sounded outside an enclosed building or other structure, unless such alarm device or system incorporates a functioning sound cutoff timer which shall automatically silence any audible signal after a period not exceeding ten (10) minutes in any location zoned for residential use, and fifteen (15) minutes in any other location. The provisions of this section shall become effective April 1, 1989.

(b) Any person violating this section shall be guilty of a Class 3 misdemeanor.

(Ord. No. 1817, 10-31-88)

Sec. 23-10. - Disturbing the peace generally.

It shall be unlawful and a Class 1 misdemeanor for any person to disturb the peace of others by violent, tumultuous or obstreperous conduct or by threatening, challenging to fight, assaulting, fighting or striking another.

(Code 1965, § 23-17; Ord. No. 3302, 8-13-13)

Sec. 23-11. - Assault and battery.

(a) Any person who shall commit a simple assault or assault and battery upon another person shall be guilty of a Class 1 misdemeanor, and if the person intentionally selects the person against whom a simple assault is committed because of his race, religious conviction, color or national origin, the penalty upon conviction shall include a mandatory, minimum term of confinement of at least six (6) months, thirty (30) days of which shall not be suspended, in whole or in part.

(b) In addition, if any person commits a battery against another, knowing or having reason to know that such other person is a full-time or part-time employee of any public or private elementary or secondary school and is engaged in the performance of his duties as such, he shall be guilty of a Class 1 misdemeanor and the sentence of such person upon conviction shall include a mandatory, minimum sentence of fifteen (15) days in jail, two (2) days of which shall not be suspended in whole or in part. However, if the offense is committed by use of a firearm or other weapon prohibited on school property, pursuant to § 18.2-308.1 [of the Code of Virginia], the person shall serve a mandatory, minimum sentence of confinement of six (6) months which shall not be suspended in whole or in part.

(c) "Simple assault" or "assault and battery" shall not be construed to include the use of, by any school security officer or full-time or part-time employee of any public or private elementary or secondary school while acting in the course and scope of his acting official capacity, any of the following: (i) incidental, minor or reasonable physical contact or other actions designed to maintain order and control; (ii) reasonable and necessary force to quell a disturbance or remove a student from the scene of a disturbance that threatens physical injury to persons or damage to property; (iii) reasonable and necessary force to prevent a student from inflicting physical harm on himself; (iv) reasonable and necessary force for self-defense or the defense of others; or (v) reasonable and necessary force to obtain possession of weapons or other dangerous objects or controlled substances or associated paraphernalia that are upon the person of the student or within his control. In determining whether a person was acting within the exceptions provided in this subsection, due deference shall be given to reasonable judgments that were made by a school security officer or full-time or part-time employee of any public or private elementary or secondary school at the time of the event.

As used in this section, the term "school security officer" means an individual who is employed by the local school board for the purpose of maintaining order and discipline, preventing crime, investigating violations of school board policies and detaining persons violating the law or school board policies on school property, a school bus or at a school-sponsored activity and who is responsible solely for ensuring the safety, security and welfare of all students, faculty and staff in the assigned school.

(Code 1965, § 23-9; Ord. No. 1003, 11-5-79; Ord. No. 2707, 6-25-02; Ord. No. 3353, 6-3-14, eff. 7-1-14)

State Law reference— Similar provisions, Code of Virginia, § 18.2-57.

Sec. 23-11.1. - Objects, substances thrown from buildings, etc.

(a) It shall be unlawful and a Class 1 misdemeanor, for any person to throw, drop or project, or cause to be thrown, dropped or projected from any building or structure any object or substance wherein the impact of such object or substance shall be upon public property or the property of another or may constitute a hazard to the public.

(b) The provisions of this section shall not be applicable to lawful construction, demolition, agricultural or commercial activities wherein appropriate precautions are taken for the protection of the public.

(Ord. No. 1826, 1-30-89)

Sec. 23-11.2. - Assault and battery against family or household member.

(a) Any person who commits an assault and battery against a family or household member shall be guilty of a Class 1 misdemeanor.

(b) As used in this section, "family or household member" means (i) the defendant's spouse, whether or not he or she resides in the same home with the defendant; (ii) the defendant's former spouse, whether or not he or she resides in the same home with the defendant; (iii) the defendant's parents, stepparents, children, stepchildren, brothers and sisters, half-brothers and half-sisters, grandparents and grandchildren regardless of whether or not such persons reside in the same home with the defendant; (iv) the defendant's mother-in-law, father-in-law, son-in-law, daughter-in-law, brothers-in-law and sisters-in-law who reside in the same home with the defendant; (v) any person who has a child in common with the defendant, whether or not the defendant and that person have been married or have resided together at any time; or (vi) any individual who cohabits or who, within the previous twelve (12) months, cohabited with the person, and any children of either of them residing in the same home with the defendant.

(Ord. No. 2102, 9-3-91; Ord. No. 2169, 8-4-92; Ord. No. 3533, 2-20-18)

Sec. 23-11.3. - Directing beam of laser pen, flashlight or similar device into eyes of another person; pointing laser at law-enforcement officer.

(a) It shall be unlawful and a Class 1 misdemeanor for any person to intentionally, and without good cause, direct the beam from a laser pen, flashlight or similar device into the eyes (or eye) of another person.

(b) It shall be unlawful and a Class 2 misdemeanor for any person, knowing or having reason to know another person is a law-enforcement officer as defined in Code of Virginia section 18.2-57, a probation or parole officer appointed pursuant to Code of Virginia section 53.1-143, a correctional officer as defined in Code of Virginia section 53.1-1, or a person employed by the state department of corrections directly involved in the care, treatment or supervision of inmates in the custody of the department engaged in the performance of his public duties as such, to intentionally project at such other person a beam or a point of light from a laser, a laser gun sight, or any device that simulates a laser.

(Ord. No. 2504, 8-25-98; Ord. No. 2593, 6-27-2000; Ord. No. 3121, 3-23-10)

Sec. 23-12. - Abusive language.

If any person shall, in the presence or hearing of another, curse or abuse such other person, or use any violent abusive language to such other person concerning himself or any of his relations, or otherwise use such language under circumstances reasonably calculated to provoke a breach of the peace, he shall be guilty of a Class 3 misdemeanor.

(Code 1965, § 23-1)

State Law reference— Similar provisions, Code of Virginia, § 18.2-416.

Sec. 23-13. - Disorderly houses.

(a) It shall be unlawful for any person in the city to keep, maintain or operate, for himself or as an officer of or agent for any corporation, association, club, lodge or other organization, or under the guise of any corporation, association, club, lodge or other organization, any disorderly house or place where disorderly persons meet or may meet for the purpose of illegally dispensing or indulging in intoxicating liquors or illicit drugs, or to engage in boisterous or other disorderly conduct. In any prosecution for this offense, the general reputation of the place in question may be proved.

(b) It shall be unlawful for any person to frequent, reside in or visit any place referred to in subsection (a) of this section for the purpose of illegally dispensing or indulging in intoxicating liquors or illicit drugs, or to engage in boisterous or other disorderly conduct.

(c) A violation of any provision of this section shall constitute a Class l misdemeanor.

(Code 1965, § 23-16; Ord. No. 2040, 3-5-91)

Sec. 23-14. - Disorderly conduct in public places.

(a) No person shall be charged under this section if the offensive or disruptive conduct constitutes a violation under any other provision of this section or Code of Virginia, Tit. 18.2.

(b) A person is guilty of disorderly conduct and a class 1 misdemeanor if, with the intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, he:

(1) In any street, highway, or public building, or while in or on a public conveyance or in a public place, engages in conduct having a direct tendency to cause acts of violence by the person or persons at whom, individually, such conduct is directed; or

(2) Willfully, or being intoxicated, whether willfully or not, and whether such intoxication results from self-administered alcohol or other drug of whatever nature, disrupts any meeting of the city council or any department, division or agency thereof, or of any school, literary society or place of religious worship, if such disruption:

(i) Prevents or interferes with the orderly conduct of the meeting; or

(ii) Has a direct tendency to cause acts of violence by the person or persons at whom, individually, the disruption is directed; or

(3) Willfully or while intoxicated, whether willfully or not, and whether such intoxication results from self-administered alcohol or other drug of whatever nature, disrupts the operation of any school or any activity conducted or sponsored by any school, if the disruption;

(i) Prevents or interferes with the orderly conduct of the operation or activity; or

(ii) Has a direct tendency to cause acts of violence by the person or persons at whom, individually, the disruption is directed.

However, the conduct prohibited under subsection (1), (2) or (3) shall not be deemed to include the utterance or display of any words.

(c) The person in charge of any such building, place, conveyance, meeting, operation or activity may eject therefrom any person who violates any provision of this section, with the aid, if necessary, of any persons who may be called upon for such purpose.

(Code 1965, § 23-14; Ord. No. 1993, 8-7-90; Ord. No. 3024, 5-27-08)

Cross reference— Authority of mayor to clear chamber in case of disorderly conduct at council meeting, § 2-17.

State Law reference— Similar provisions and authority of council to adopt above section, Code of Virginia, § 18.2-415.

Sec. 23-14.1. - Reserved.

Editor's note— Ord. No. 1165, adopted April 27, 1981, relating to public meetings, amended the 1965 Code by adding § 20-90.1 thereto; at the editor's discretion, the ordinance has been designated § 23-14.1. The section was repealed by Ord. No. 2140, adopted June 9, 1992. See § 24-6.

Sec. 23-15. - Reserved.

Editor's note— Ord. No. 3530, adopted January 9, 2018, repealed § 23-15, which pertained to begging on streets or beaches. See Code Comparative Table for complete derivation.

Sec. 23-16. - Obstructing free passage of others.

Any person who, in any public place or on any private property open to the public, unreasonably or unnecessarily obstructs the free passage of other persons to and from or within such public place or private property, and who shall fail or refuse to cease such obstruction or move on when required to do so by the owner or lessee or agent or employee of such owner or lessee or by a duly authorized law-enforcement officer, shall be guilty of a Class 1 misdemeanor.

(Code 1965, § 23-36.1)

Cross reference— Interference with traffic and blocking access to certain facilities, § 21-34; leaving scene of traffic accident when directed by police officer, § 21-502.

State Law reference— Similar provisions, Code of Virginia, § 18.2-404.

Sec. 23-16.1. - Interference with operation of school buses.

(a) It shall be unlawful for any person to obstruct or interfere with the operation of a school bus in the transportation of pupils to and from school or other destination.

(b) Any violation of this section shall constitute a Class 1 misdemeanor.

(Ord. No. 1286, 6-7-82)

Sec. 23-17. - Riots and unlawful assemblies—What constitutes.

(a) For the purposes of sections 23-18 through 23-20, any unlawful use, by three (3) or more persons acting together, of force or violence which seriously jeopardizes the public safety, peace or order is a riot.

(b) For the purposes of sections 23-18 through 23-20, whenever three (3) or more persons assembled share the common intent to advance some lawful or unlawful purpose by the commission of an act or acts of unlawful force or violence likely to jeopardize seriously public safety, peace or order, and the assembly actually tends to inspire persons of ordinary courage with well-grounded fear of serious and immediate breaches of public safety, peace or order, then such assembly is an unlawful assembly.

(Ord. No. 3401, 4-7-15)

State Law reference— Similar provisions, Code of Virginia, §§ 18.2-405, 18.2-406.

Sec. 23-18. - Same—Participation in.

It shall be unlawful and a Class 1 misdemeanor for any person to participate in any riot or unlawful assembly within the city.

State Law reference— Similar provisions, Code of Virginia, §§ 18.2-405, 18.2-406, under which the offense is a felony, if the participant carries a dangerous weapon.

Sec. 23-18.1. - Same—Restriction or regulation of persons and vehicles by chief of police.

(a) The chief of police, upon his determination that there exists an imminent threat of civil commotion or disturbance in the nature of a riot, constituting a clear and present danger to the public safety, may restrict or regulate the movement of persons and vehicles and may prohibit any assembly of persons in such areas as may be affected by the commotion or disturbance.

(b) Any person who shall willfully enter an area which is subject to such restriction, after having been lawfully warned not to do so, shall be guilty of a Class 3 misdemeanor.

(Ord. No. 1850, 4-3-89; Ord. No. 3401, 4-7-15)

Sec. 23-19. - Same—Remaining at scene after warning to disperse.

Every person, except the owner or lessee of the premises, his family and nonrioting guests, and public officers and persons assisting them, who remains at the place of any riot or unlawful assembly, after having been lawfully warned to disperse, shall be guilty of a Class 3 misdemeanor.

State Law reference— Similar provisions, Code of Virginia, § 18.2-407.

Sec. 23-20. - Same—Dispersal.

(a) When any number of persons, whether armed or not, are unlawfully or riotously assembled, the police officials of the city shall go among the persons assembled, or as near to them as safety will permit, and command them, in the name of the state, to immediately disperse. If, upon such command, the persons unlawfully assembled do not disperse immediately, the police officials may use such force as is necessary to disperse them and to arrest those who fail or refuse to disperse. To this end, the police officials of the city may request and use the assistance and services of private citizens.

(b)

Every endeavor must be used, both by the police officers and by the officer commanding any other force, which can be made consistently with the preservation of life, to induce or force persons unlawfully assembled to disperse before an attack is made upon such persons by which their lives may be endangered.

(c) No liability, criminal or civil, shall be imposed upon any person authorized to disperse or assist in dispersing a riot or unlawful assembly for any action of such person which was taken after those rioting or unlawfully assembled had been commanded to disperse, and which action was reasonably necessary, under all the circumstances, to disperse such riot or unlawful assembly or to arrest those who failed or refused to disperse.

State Law reference— Similar provisions, Code of Virginia, §§ 18.2-411, 18.2-412.

Sec. 23-21. - Unlawful carrying of certain canes or walking sticks.

It shall be unlawful and a Class 4 misdemeanor for any person, unless totally or partially blind or otherwise incapacitated, while on any public street or highway, to carry, in a raised or extended position, a cane or walking stick which is metallic or white in color or white tipped with red.

(Code 1965, § 23-62)

Cross reference— Duty of vehicle driver approaching pedestrian carrying metallic or white cane, § 21-467.

State Law reference— Similar provisions, Code of Virginia, § 18.2-212.1.

Sec. 23-22. - Public intoxication; transportation of public inebriates to detoxification center.

If any person be intoxicated in public, whether such intoxication results from alcohol, narcotic drug or other intoxicant or drug of whatever nature, he shall be deemed guilty of a Class 4 misdemeanor. In any area in which there is located a court-approved detoxification center, the judge of the general district court may, by written order, authorize the transportation, by police or otherwise, of public inebriates to such detoxification center; provided, however, that no person shall be involuntarily detained in such center.

(Code 1965, § 23-20; Ord. No. 1003, 11-5-79; Ord. No. 1934, 10-30-89; Ord. No. 1995, 8-7-90)

Cross reference— Driving vehicle while under influence of alcohol, § 21-336 et seq.

State Law reference— Similar provisions, Code of Virginia, § 18.2-388; authority of council to adopt above section, § 15.2-926.2.

Sec. 23-22.1. - Drinking alcoholic beverages, or tendering to another, in public place.

(a) If any person shall take a drink of alcoholic beverage or shall tender a drink thereof to another, whether accepted or not, at or in any public place, as defined by Code of Virginia, § 4.1-100, or possess any opened alcoholic beverage containers in the local public parks, playgrounds, public streets, or any sidewalk adjoining any public street, he shall be guilty of a Class 4 misdemeanor.

(b)

It shall be unlawful and punishable as a Class 4 misdemeanor for any person to consume an alcoholic beverage while driving a motor vehicle upon a public highway of this city. A rebuttable presumption that the driver has consumed an alcoholic beverage in violation of this section shall be created if (i) an open container is located within the passenger area of the motor vehicle, (ii) the alcoholic beverage in the open container has been at least partially removed and (iii) the appearance, conduct, odor of alcohol, speech or their physical characteristic of the driver of the motor vehicle may be reasonably associated with the consumption of an alcoholic beverage.

(c) This section shall not prevent any person from drinking or possessing alcoholic beverages or offering a drink thereof to another in any rooms or areas approved by the Virginia Alcoholic Beverage Control Board in a licensed establishment, provided such establishment or the person who operates the same is licensed to sell alcoholic beverages at retail for on-premises consumption and the alcoholic beverages drunk or offered were purchased therein.

This section also shall not prevent any person from drinking or possessing alcoholic beverages or offering a drink thereof to another in any room or area approved by the Virginia Alcoholic Beverage Control Board at an event for which a banquet license or mixed beverage special events license has been granted. Nor shall this section prevent, upon authorization of the licensee, any person from drinking or possessing his own lawfully acquired alcoholic beverages or offering a drink thereof to another in approved areas and locations at events for which a coliseum or stadium license has been granted.

(d) In addition to the exceptions provided for in subsection (c), this section also shall not apply to parking areas designated by the city manager or his designee for use by persons attending a collegiate or professional sporting exhibition or event on the day of such exhibition or event. The application process for such designation shall be substantially similar to the process set forth for special events in City Code section 4-1, and shall include input from public safety entities. No such designation shall be valid unless the applicant has also obtained the required permit or permits from the Virginia Alcoholic Beverage Control Board.

(Ord. No. 1402, 9-26-83; Ord. No. 1848, 4-3-89; Ord. No. 2707, 6-25-02; Ord. No. 2992, 6-26-07; Ord. No. 3157, 12-14-10; Ord. No. 3444, 4-19-16)

Sec. 23-22.2. - Drinking or possession of alcoholic beverages in or on public school grounds.

(a) No person shall possess or drink any alcoholic beverage in or upon the grounds of any public elementary or secondary school during school hours or during school or student activities.

(b) No person shall drink and no organization shall serve any alcoholic beverage in or upon the grounds of any public elementary or secondary school after school hours, or after student activities, except for religious congregations using wine for sacramental purposes only.

(c) Any person convicted of a violation of this section shall be guilty of a Class 2 misdemeanor.

(Ord. No. 1402, 9-26-83; Ord. No. 2992, 6-26-07)

Sec. 23-23. - Adultery generally.

(a) Any person, being married, who voluntarily shall have sexual intercourse with any person not his or her spouse shall be deemed guilty of adultery.

(b) If any person commits adultery, such person shall be guilty of a Class 4 misdemeanor.

(Ord. No. 3631, 7-21-20)

Editor's note— Ord. No. 3631, adopted July 21, 2020, amended § 23-23 in its entirety to read as herein set out. Former § 23-23, pertained to adultery and fornication generally, and derived from § 23-2 of the 1965 Code.

State Law reference— Similar provisions, Code of Virginia, § 18.2-365.

Sec. 23-24. - Sexual intercourse by persons forbidden to marry.

If any person engages in sexual intercourse with any person whom he or she is forbidden by law to marry, such person shall be guilty of a Class 1 misdemeanor; provided, however, that this section shall not be construed to apply to a person who engages in sexual intercourse with his daughter or granddaughter, or with her son or grandson or with her father or his mother.

(Ord. No. 3631, 7-21-20)

Editor's note— Ord. No. 3631, adopted July 21, 2020, amended § 23-24 in its entirety to read as herein set out. Former § 23-24, pertained to adultery and fornication by persons forbidden to marry and derived from § 23-3 of the 1965 Code.

State Law reference— Similar provisions, Code of Virginia, § 18.2-366, which declares adultery or fornication by persons mentioned in the proviso to be a felony.

Sec. 23-25. - Reserved.

Editor's note— Ord. No. 3631, adopted July 21, 2020, repealed § 23-25, which pertained to lewd, and lascivious cohabitation and derived from § 23-29 of the 1965 Code; Ord. No. 1003, 11-5-79.

Sec. 23-26. - Prostitution generally.

(a) Any person who, for money or its equivalent, (i) commits or performs any act in violation of Code of Virginia, § 18.2-361 or 18.2-346, or (ii) offers to commit or perform any act in violation of Code of Virginia § 18.2-361 or 18.2-346, and thereafter does any substantial act in furtherance thereof, shall be guilty of being a prostitute, or of prostitution, which shall be a Class 1 misdemeanor.

(b) Any person who offers money or its equivalent to another for the purpose of committing or performing any sexual act as enumerated above and thereafter does any substantial act in furtherance thereof shall be guilty of solicitation of prostitution and shall be guilty of a Class 1 misdemeanor.

(Code 1965, § 23-46; Ord. No. 2230, 6-8-93; Ord. No. 2526, 4-13-99; Ord. No. 2677, 12-11-01; Ord. No. 3631, 7-21-20)

State Law reference— Similar provisions, Code of Virginia, § 18.2-346.

Sec. 23-26.1. - Reserved.

Editor's note— Ord. No. 3631, adopted July 21, 2020, repealed § 23-26.1, which pertained to prostitution and immoral acts; solicitation and derived from Ord. No. 1508, 1-7-85.

Sec. 23-27. - Bawdy places.

(a) It shall be unlawful and a Class 1 misdemeanor for any person to keep any bawdy place, or to frequent, reside in or at or visit, for immoral purposes, any bawdy place. Each and every day such bawdy place is kept, resided in or visited shall constitute a separate offense.

(b) For the purpose of this section, "bawdy place" shall mean any place, within or without any building or structure, within this city which is used or is to be used for lewdness, assignation or prostitution.

(c) In a prosecution for a violation of this section, the general reputation of the place may be proved.

(Code 1965, §§ 23-43, 23-44)

State Law reference— Similar provisions, Code of Virginia, § 18.2-347; houses of prostitution as nuisances, § 48-7 et seq.

Sec. 23-28. - Aiding prostitution or illicit sexual intercourse.

(a) It shall be unlawful for any person or any officer, employee, or agent of any firm, association, or corporation, with knowledge of or good reason to believe the immoral purpose of such visit, to take or transport or assist in taking or transporting, or offer to take or transport, on foot or in any way, any person to a place, whether within or without any building or structure, used or to be used for the purpose of lewdness, assignation or prostitution within this city; or to procure or assist in procuring for the purpose of illicit sexual intercourse, or any act in violation of Code of Virginia, § 18.2-361 or 18.2-348, or to give any information or direction to any person with intent to enable such person to commit an act of prostitution.

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

(Code 1965, § 23-45; Ord. No. 3631, 7-21-20)

State Law reference— Similar provisions, Code of Virginia, § 18.2-348.

Sec. 23-29. - Using vehicle to promote prostitution or unlawful sexual intercourse.

It shall be unlawful and a Class 1 misdemeanor for any owner or chauffeur of any vehicle, with knowledge or reason to believe the same is to be used for such purpose, to use the same or to allow the same to be used for the purpose of prostitution or unlawful sexual intercourse, or to aid or promote such prostitution or unlawful sexual intercourse by the use of any such vehicle.

State Law reference— Similar provisions, Code of Virginia, § 18.2-349.

Sec. 23-30. - Reserved.

Editor's note— Ord. No. 2599, adopted July 11, 2000, repealed § 23-30, which pertained to physical contact with members of opposite sex at massage parlors, etc., and which derived from Code 1965, § 23-60; and from Ord. No. 1816, adopted Oct. 31, 1988; and Ord. No. 2188, adopted Nov. 10, 1992.

Sec. 23-30.1. - Live exhibitions or performances.

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

Business establishment shall be deemed to include the real property of a business, as well as all appurtenances thereto and buildings thereon, including, but not limited to, the grounds, private walkways and parking lots or garages adjacent thereto which are owned or controlled by the property owner, lessee, or employees or agents thereof.

Direct line of sight means the ability to directly view an area without the benefit or assistance of a mirror, video camera or similar aid.

Live exhibition or performance means modeling, dancing or any similar activity which involves a person or persons physically performing for the benefit of one or more other persons.

Manager's station means any check-out counter, desk, or other place or position where an employee, agent, manager or owner of a business establishment sits or stands or is assigned to sit or stand.

Performer means a person engaged in a live exhibition or performance in a business establishment.

Person means an individual, proprietorship, partnership, corporation, limited liability company, association, organization, or other legal entity.

State of nudity means a state of undress so as to expose the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof immediately below the top of the areola.

Viewing area means any area within a business establishment where a live exhibition or performance is taking place.

(b) The City of Virginia Beach hereby finds and declares that the unregulated practice of live exhibitions or performances in private or semi-private rooms, booths, viewing areas or cubicles within business establishments (i) encourages criminal activities of a sexual nature including, but not limited to, masturbation, prostitution, public nudity and sodomy, (ii) facilitates sexual liaisons of a casual nature which create unhealthy conditions, and (iii) increases the likelihood that other criminal activities, such as sexual assaults and drug-related offenses, will occur.

The concern over sexually-transmitted diseases, and the deleterious effect on both existing businesses and surrounding neighborhoods caused by increased crime and the downgrading of property values, demands reasonable regulation of live exhibitions or performances in business establishments which provide such exhibitions or performances in private or semi-private rooms, booths, viewing areas, or cubicles in order to (i) protect the health, safety and welfare of the city's citizens and visitors; (ii) protect citizens and visitors from increased crime; and (iii) preserve the quality of life, property values, the character of surrounding neighborhoods, and the city's tourism industry and other economic interests.

The intent of this section is not to suppress any activities protected by the First Amendment, but is to enact content-neutral regulations which are specifically designed and intended to prevent the deleterious secondary effects associated with live exhibitions or performances in business establishments which provide such exhibitions or performances in private or semi-private rooms, booths, viewing areas or cubicles.

(c)

It shall be unlawful for any person to maintain or operate for himself or herself, or as an officer, employee or agent, a business establishment where live exhibitions or performances take place, unless the following requirements have been met:

(1) No viewing area of the business establishment shall be obstructed by curtains, doors, walls, display racks or any other permanent or temporary enclosure or barrier.

(2) At least one employee other than the performer must be on duty at all times that any patron, customer or member of the audience is inside the business establishment, and such employee must have a direct line of sight of any viewing area during any live exhibition or performance.

(3) In any business establishment which is configured to include a manager's station, there must be an unobstructed view, from the manager's station, of all viewing areas and any other area of the business establishment, except restrooms, to which any patron, customer or member of the audience is permitted access for any purpose. If the business establishment has two (2) or more manager's stations, all viewing areas and any other area of the business establishment, except restrooms, to which any patron, customer or member of the audience is permitted access for any purpose must be visible from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.

(4) No performer shall be permitted to touch the breasts, genitals, anus, buttocks or groin of any patron, customer or member of the audience, regardless of whether such parts of the body are fully or partially covered by clothing, or are uncovered.

(5) No patron, customer or member of the audience shall be permitted to touch the breasts, genitals, anus, buttocks or groin of any performer regardless of whether such parts of the body are fully or partially covered by clothing, or are uncovered.

(6) No sofa, futon, cot, bed, mattress or similar furnishing shall be located in any viewing area or in any other area of the establishment to which patrons, customers or members of the audience are permitted access.

(7) No performer shall appear in a state of nudity in the viewing area or in any other area of the establishment to which any patron, customer or member of the audience is permitted access.

(d) It shall be unlawful for any performer to touch the breasts, genitals, anus, buttocks or groin of any patron, customer or member of the audience, regardless of whether such parts of the body are fully or partially covered by clothing, or are uncovered.

(e) It shall be unlawful for any patron, customer or member of the audience to touch the breasts, genitals, anus, buttocks or groin of any performer, regardless of whether such parts of the body are fully or partially covered by clothing, or are uncovered.

(f) Nothing contained in this section shall be construed to apply to the exhibition, presentation, showing or performance of any play, ballet, drama, tableau, production or motion picture in any theater, concert hall, museum of fine arts, school, institution of higher learning or other establishment which is primarily devoted to such exhibitions, presentations, shows or performances as a form of expression of opinion, communication, speech, ideas, information, art or drama.

(g) Any person who violates any of the provisions of this section shall be guilty of a Class 1 misdemeanor.

(h) If any subsection, clause or other portion 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 portions of this section.

(Ord. No. 2538, 6-1-99; Ord. No. 3631, 7-21-20)

Sec. 23-31. - Petit larceny.

(a) Any person who:

(1) Commits larceny from the person of another of money or other thing of value of less than five dollars ($5.00), or

(2) Commits simple larceny not from the person of another of goods and chattels of the value of less than one thousand dollars ($1,000.00), shall be deemed guilty of petit larceny, which shall be punishable as a Class 1 misdemeanor. Upon a second conviction of petit larceny, the court shall order participation in a local alcohol safety action program or substance abuse screening in accordance with the provisions of Code of Virginia, § 19.2-299.2.

(b) Any person convicted of an offense under this section, when it is alleged in the warrant or information on which such person is convicted, and admitted, or found by the jury or judge before whom such person is tried, that such person has been before sentenced in the United States for any offense deemed to be larceny by the law of the sentencing jurisdiction, shall be confined in jail not less than thirty (30) days nor more than twelve (12) months.

(Code 1965, § 23-27.1; Ord. No. 1080, 8-18-80; Ord. No. 1674, 3-30-87; Ord. No. 3037, 6-24-08; Ord. No. 3576, 12-11-18; Ord. No. 3634, 7-21-20)

Cross reference— Concealment of book or other property while on premises of library; removal of book or other property from library, § 17-5.

State Law reference— Similar provisions, Code of Virginia, § 18.2-96.

Sec. 23-32. - Shoplifting.

(a) Whoever, without authority, with the intention of converting goods or merchandise to his own or another's use without having paid the full purchase price thereof, or of defrauding the owner of the value of the goods or merchandise:

(1) Willfully conceals or takes possession of the goods or merchandise of any store or other mercantile establishment, or

(2) Alters the price tag or other price marking on such goods or merchandise, or transfers the goods from one container to another, or

(3) Counsels, assists, aids or abets another in the performance of any of the above acts, shall be deemed guilty of larceny and, upon conviction thereof, shall be punished as hereinafter provided. The willful concealment of goods or merchandise of any store or other mercantile establishment, while still on the premises thereof, shall be prima facie evidence of an intent to convert and defraud the owner thereof out of the value of the goods or merchandise.

(b) Any person convicted for the first time of an offense under this section, when the value of the goods or merchandise involved in the offense is less than one thousand dollars ($1,000.00), shall be punished as for a Class 1 misdemeanor.

(c) Any person convicted of an offense under this section, when the value of the goods or merchandise involved in the offense is less than one thousand dollars ($1,000.00), and it is alleged in the warrant or information on which such person is convicted, and admitted, or found by the jury or judge before whom such person is tried, that such person has been before convicted in the Commonwealth of Virginia for a like offense, regardless of the value of the goods or merchandise involved in the prior conviction, or for a violation of Code of Virginia, § 18.2-95 or 18.2-96 or section 23-31 of this Code, shall be confined in jail not less than thirty (30) days nor more than twelve (12) months.

(d) Any person who has been convicted of violating the provisions of this section shall be civilly liable to the owner for the retail value of any goods and merchandise illegally converted and not recovered by the owner, and for all costs incurred in prosecuting such person under the provisions of this section. Such costs shall be limited to actual expenses, including the base wage of one employee acting as a witness for the prosecution, and suit costs. The total amount of allowable costs granted hereunder shall not exceed two hundred fifty dollars ($250.00), excluding the retail value of the goods and merchandise.

(e) A merchant, agent or employee of the merchant, who causes the arrest of any person pursuant to the provisions of this section shall not be held civilly liable for unlawful detention, if such detention does not exceed one hour, slander, malicious prosecution, false imprisonment, false arrest or assault and battery of the person so arrested, whether such arrest takes place on the premises of the merchant or after close pursuit from such premises by such merchant, or the merchant's agent or employee; provided that, in causing the arrest of such person, the merchant, agent or employee of the merchant, had, at the time of such arrest, probable cause to believe that the person had shoplifted or committed willful concealment of goods or merchandise. For the purposes of this subsection, "agents of the merchant" shall include attendants at any parking lot owned or leased by the merchant, or generally used by customers of the merchant through any contract or agreement between the owner of the parking lot and the merchant.

(Code 1965, § 23-27.2; Ord. No. 1081, 8-18-80; Ord. No. 1743, 10-19-87; Ord. No. 3576, 12-11-18; Ord. No. 3634, 7-21-20)

State Law reference— Similar provisions, Code of Virginia, §§ 18.2-103—18.2-106. See § 18.2-104 for conditions under which the above offense is a felony.

Sec. 23-33. - Scalping tickets for public events.

(a) It shall be unlawful for any person to resell, for profit, any ticket for admission to any sporting event, theatrical production, lecture, motion picture or any other event open to the public for which tickets are ordinarily sold, except in the case of religious, charitable or educational organizations where all or a portion of the admission price reverts to the sponsoring group and the resale for profit of such ticket is authorized by the sponsor of the event and the manager or owner of the facility in which the event is being held.

(b) Any violation of this section shall constitute a Class 3 misdemeanor.

(Ord. No. 986, 9-17-79; Ord. No. 1755, 1-4-88; Ord. No. 2338, 6-13-95)

State Law reference— Authority for above section, Code of Virginia, § 15.1-29.3.

Sec. 23-34. - Defrauding hotels, motels, campgrounds, etc.

(a) It shall be unlawful for any person, without paying therefor, and with the intent to cheat or defraud the owner or keeper to:

(1) Put up at a hotel, motel, campground or boardinghouse;

(2) Obtain food from a restaurant or other eating house;

(3) Gain entrance to an amusement park; or

(4) Without having an express agreement for credit, procure food, entertainment or accommodation from any hotel, motel, campground, boardinghouse, restaurant or eating house.

It shall be unlawful for any person, with intent to cheat or defraud the owner or keeper out of the pay therefor, to obtain credit at a hotel, motel, campground, boardinghouse, restaurant or eating house for food, entertainment or accommodations by means of any false show of baggage or effects brought thereto.

It shall be unlawful for any person, with intent to cheat or defraud, to obtain credit at a hotel, motel, campground, boardinghouse, restaurant, eating house or amusement park for food, entertainment or accommodations through any misrepresentation or false statement.

It shall be unlawful for any person, with intent to cheat or defraud, to remove or cause to be removed any baggage or effects from a hotel, motel, campground, boardinghouse, restaurant or eating house while there is a lien existing thereon for the proper charges due from him for fare and board furnished.

(b) This section shall apply only if the value of the service, credit or benefit procured or obtained is less than five hundred dollars ($500.00).

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

(Code 1965, § 23-21; Ord. No. 1003, 11-5-79; Ord. No. 1703, 6-8-87; Ord. No. 2230, 6-8-93; Ord. No. 3576, 12-11-18)

Cross reference— Food and food establishments, Ch. 13; hotels and similar establishments, Ch. 15.

State Law reference— Similar provisions, Code of Virginia, § 18.2-188, which makes the offense a felony, if the value of the service, credit or benefit is $100.00 or more.

Sec. 23-35. - Fraudulent use of pay phones, parking meters and other coin-operated devices.

Any person who shall operate, cause to be operated, or attempt to operate or cause to be operated any coin box, telephone, parking meter, vending machine or other machine that operates on the coin-in-the-slot principle, whether of like kind or not, designed only to receive lawful coins of the United States of America, in connection with the use or enjoyment of telephone or telegraph service, parking privileges or any other service, or the sale of merchandise or other property, by means of a slug, or any false, counterfeit, mutilated, sweated or foreign coin, or by any means, method, trick or device whatsoever, not authorized by the owner, lessee or licensee of such coin box telephone, parking meter, vending machine or other machine; or who shall obtain or receive telephone or telegraph service, parking privileges, merchandise or any other service or property from any such coin box telephone, parking meter, vending

machines or other machine, designed only to receive lawful coins of the United States of America, without depositing in or surrendering to such coin box telephone, parking meter, vending machine or other machine lawful coins of the United States of America to the amount required therefor by the owner, lessee or licensee of such coin box telephone, parking meter, vending machine or other machine, shall be guilty of a Class 3 misdemeanor.

(Code 1965, § 23-13)

Cross reference— License tax for coin-operated machines, and operators thereof, §§ 18-72, 18-73; parking meters, § 21-393 et seq.

State Law reference— Similar provisions, Code of Virginia, § 18.2-179.

Sec. 23-36. - Purchase of junk, secondhand articles, etc., from minors.

(a) It shall be unlawful and a Class 1 misdemeanor for any person, whether licensed or unlicensed, to purchase, barter or exchange or in any manner obtain, from any person under the age of eighteen (18) years, any kind of secondhand articles, junk, rags, metals or other like commodities.

(b) In addition to any punishment that may be imposed upon conviction for a violation of this section, upon such conviction of any pawnbroker, junk dealer or secondhand dealer, the judge of a court of competent jurisdiction may, at his discretion, revoke the license of the offender.

(Code 1965, § 23-30)

Cross reference— Pawnbrokers, junk and secondhand dealers, Ch. 25.

Sec. 23-37. - Unlawful use of words "Official Tourist Information" or similar language.

(a) It shall be unlawful for any person in this city to use the words "Official Tourist Information" or "Official Information Service" or other similar language, for the purpose of informing tourists, motorists and other persons that the information offered is free of charge, or is sponsored by or offered under the authority of the state or any department or agency thereof or by any municipality or any chamber of commerce or any civic agency or group of this or any other state or the District of Columbia. Any person disseminating information as contemplated in this section must state on any signboards, billboards or other similar signs, in large, easily read and legible letters, and on any advertising or other publicity media, the names of the persons, firms or corporations represented or from whom any remuneration whatsoever is received.

(b) Nothing in this section shall be construed to prohibit or affect the giving or advertising of "official tourist information" or other such service by gasoline service stations or other organizations which offer such information without a charge and without any inducement to purchase any services or products.

(c) Any person violating any provision of this section shall be guilty of a Class 3 misdemeanor.

(Code 1965, § 23-51)

Cross reference— Advertising, Ch. 3.

State Law reference— Similar provisions, Code of Virginia, § 18.2-211.

Sec. 23-38. - Abusing any monument, memorial, statue or other items situated on public property; penalty

It shall be unlawful and a Class 4 misdemeanor for any person to climb, walk, jump, stand, sit, skate or ride upon any monument, memorial, statue or other item not specifically designed for such use that is situated on public property. Should this unlawful activity cause damage to the monument, memorial, statue or other item, then it shall be punished as described in State Code § 18.2-137.

(Ord. No. 2936, 4-4-06)

Editor's note— Ord. No. 2936, adopted April 4, 2006, amended § 23-38 of the Code in its entirety. Prior to amendment, § 23-38 pertained to damaging, defacing, etc., property generally and derived from the 1965 Code, § 23-27; Ord. No. 1003, adopted Nov. 5, 1979; Ord. No. 2835, adopted Aug. 10, 2004; and Ord. No. 2885, adopted June 14, 2005.

Cross reference— Damaging library property, § 17-4; damaging traffic signs, § 21-299; damaging parking meters, § 21-406; damaging refuse receptacles, § 31-13.

State Law reference— Similar provisions, Code of Virginia, § 18.2-137.

Sec. 23-39. - Cutting, etc., of trees, shrubs or other vegetation upon city property.

(a) It shall be unlawful and a Class 3 misdemeanor for any person to cut, trim, damage, deface or remove any tree, shrub or other vegetation upon city property, or to cause, procure or direct the cutting, trimming, damaging, defacing or removal of any such tree, shrub or other vegetation, without the written authorization of the landscape services administrator or the city arborist. If any person shall commit any of the acts prohibited herein upon more than one tree or shrub, a separate violation of this section shall be deemed to have occurred with respect to each such tree or shrub.

(b) The provisions of this section shall not apply to any cutting or trimming of vegetation required by section 23-50 of this Code or to routine trimming of shrubbery upon city property, and shall not apply to city personnel engaged in the performance of their duties.

(Ord. No. 1837, 3-20-89; Ord. No. 2936, 4-4-06; Ord. No. 3122, 3-23-10)

Editor's note— Ord. No. 2936, adopted April 4, 2006, repealed former § 23-39 of the Code in its entirety and renumbered former § 23-39.1 as § 23-39. Former § 23-39 pertained to damaging or defacing property in or on streets, lanes or public squares and derived from the 1965 Code, § 23-28.

Sec. 23-40. - Altering surface of road or other public property; obstructing drainage.

(a) It shall be unlawful for any person to alter in any way the existing surface of any public road, right-of-way, drainage easement or other public property in the city, until such person obtains permission for such improvement from the planning commission. The planning commission or its agent shall specify any and all such improvements to be made and shall also specify the condition upon which improvements shall be made in order to insure the satisfactory completion of such work in the interest of the general public. This subsection shall be enforced by the planning commission or its agent.

(b)

No person shall obstruct any ditch, road, swale, public right-of-way, watercourse or drainage easement in such a manner as to interfere with the natural flow of water or cause the stoppage or to impede the natural flow thereof across and along such ditch, road, swale, public right-of-way, watercourse or drainage easement.

(c) A violation of any provision of this section shall constitute a Class 1 misdemeanor.

(Code 1965, §§ 23-18, 23-19)

Sec. 23-41. - Injuring, tampering with, etc., vehicles, boats, etc.

(a) Any person who shall, individually or in association with one or more others, willfully break, injure, tamper with or remove any part of any vehicle, aircraft, boat or vessel, for the purpose of injuring, defacing or destroying such vehicle, aircraft, boat or vessel, or temporarily or permanently preventing its useful operation, or for any purpose against the will or without the consent of the owner of such vehicle, aircraft, boat or vessel, or who shall in any other manner willfully or maliciously interfere with or prevent the running or operation of such vehicle, aircraft, boat or vessel, shall be guilty of a Class 1 misdemeanor.

(b) Any person who shall, without the consent of the owner or person in charge of a vehicle, aircraft, boat, vessel or locomotive or other rolling stock of a railroad, climb into or upon such vehicle, aircraft, boat, vessel or locomotive or other rolling stock of a railroad, with intent to commit any crime, malicious mischief or injury thereto, or who, while a vehicle, aircraft, boat, vessel or locomotive or other rolling stock of a railroad is at rest and unattended, shall attempt to manipulate any of the levers and starting crank or other device, brakes or mechanism thereof, or to set such vehicle, aircraft, boat, vessel or locomotive or other rolling stock of a railroad in motion, with the intent to commit any crime, malicious mischief or injury thereto, shall be guilty of a Class 1 misdemeanor. This subsection shall not apply when any such act is done in an emergency or in furtherance of public safety or by or under the direction of an officer in the regulation of traffic or performance of any other official duty.

(c) The provisions of this section shall not apply to a bona fide repossession of a vehicle, aircraft, boat or vessel by the holder of a lien on such vehicle, aircraft, boat or vessel, or by agents or employees of such lienholder.

(Code 1965, §§ 23-57—23-59; Ord. No. 1003, 11-5-79)

Cross reference— Boats, Ch. 6; motor vehicles, Ch. 21.

State Law reference— Similar provisions, Code of Virginia, §§ 18.2-146—18.2-148.

Sec. 23-42. - Concealing, destroying, etc., city records.

(a) Whoever willfully and unlawfully conceals, removes, alters, mutilates, obliterates or destroys, or attempts to do so, or with intent to do so takes and carries away, any record, proceeding, map, book, paper, document or other thing filed or deposited in any public office of the city or with any public officer of the city shall be guilty of a Class 1 misdemeanor.

(b) Whoever, having the custody of any record, proceeding, map, book, document, paper or other thing belonging to the city, willfully and unlawfully conceals, removes, alters, mutilates, obliterates, falsifies or destroys the same, or permits another to do so, shall be guilty of a Class 1 misdemeanor and, in addition shall forfeit his office and be disqualified from holding any office with the city.

(c) Whoever having, or having had, access in an official capacity to any official record or report pertaining to any criminal investigation, including written documents, computer data and/or photographically recorded materials, who uses or knowingly permits another to use such record or report or portion thereof for any purpose not consistent with the exemptions permitted in section 2.1-342 of the Code of Virginia or other provision of state law or city ordinance, shall be guilty of a Class 2 misdemeanor.

(Code 1965, §§ 23-48.2, 23-48.3; Ord. No. 1881, 6-19-89)

Cross reference— Public records management, § 2-341 et seq.

State Law reference— Theft, destruction, etc. of public records, Code of Virginia, §§ 18.2-107, 18.2-472.

Sec. 23-43. - Trespass after having been forbidden to do so.

(a) If any person shall, without authority of law, go upon or remain upon the lands, buildings or premises of another, or any part, portion or area thereof, after having been forbidden to do so, either orally or in writing, by the owner, lessee, custodian, or the agent of any such person, or other person lawfully in charge thereof, or after having been forbidden to do so by a sign or signs posted by or at the direction of such person or the agent of any such person or by the holder of any easement or other right-of-way authorized by the instrument creating such interest to post such signs on such lands, buildings, premises or part, portion or area thereof, at a place or places where it or they may be reasonably seen, or if any person, whether he is the owner, tenant or otherwise entitled to the use of such land, building or premises, goes upon, or remains upon such land, building or premises after having been prohibited from doing so by a court of competent jurisdiction by an order issued pursuant to Code of Virginia §§ 16.1-253, 16.1-253.1, 16.1-278.2 through 16.1-278.6, 16.1-278.8, 16.1-278.14, 16.1-278.15, 16.1-279.1, 19.2-152.8, 19.2-152.9, 19.2-152.10 or an ex parte order issued pursuant to Code of Virginia § 20-103, and after having been served with such order, he shall be guilty of a Class 1 misdemeanor. This section shall not be construed to affect in any way the provisions of Code of Virginia §§ 18.2-132 through 18.2-136.

(b) Any owner, lessee, custodian, or person lawfully in charge of real property may, in writing on a form prescribed by the chief of police, designate the police department as a "person lawfully in charge thereof," as those terms are used in subsection (a) of this section, for the purpose of forbidding another to go or remain upon the lands, buildings or premises of such owner, lessee, custodian, or person lawfully in charge. Such designation shall include a description of the land(s), building(s) or premises to which it applies; shall reference the period of time during which it is in effect; and shall be kept on file in the office of the chief of police or in such other location within the police department as the chief of police deems appropriate.

(Code 1965, § 23-52; Ord. No. 1748, 11-16-87; Ord. No. 2571, 2-22-00; Ord. No. 2707, 6-25-02; Ord. No. 3187, 6-28-11)

Sec. 23-43.1. - Trespassing on public transportation; penalty.

(a) Any person who enters or remains upon or within a vehicle operated by a public transportation service without the permission of, or after having been forbidden to do so by the owner, lessee, or authorized operator thereof is guilty of a Class 4 misdemeanor.

(b)

"Public transportation service" means passenger transportation service provided by bus, rail or other surface conveyance that provides transportation to the general public on a regular and continuing basis.

(Ord. No. 2990, 6-26-07)

Sec. 23-43.2. - Nighttime use of city parks.

(a) Any person who remains, goes or enters upon any city park, or the park's parking areas, between sunset and sunrise shall be guilty of a misdemeanor and subject to a fine not less than two hundred dollars ($200) and not more than five hundred dollars ($500).

(b) This section shall not apply during city-sponsored events or events authorized by city permit, nor shall it apply to any city employee or authorized agent while in the performance of official duties.

(c) As provided by Code of Virginia § 15.2-1124, city parks and parking areas are under city police jurisdiction for the enforcement of this section pertaining to the use and occupancy thereof.

(d) For the purpose of this section, "city park" means any city-owned and operated property open to the public for general recreational use, including, but not limited to traditional park areas, canoe and kayak launch areas, and the disabled children's beach playground known as Grommet Park. The term "city park" does not include city-owned golf courses or city-owned and operated motor boat launch ramp areas.

(Ord. No. 3153, 10-26-10)

Sec. 23-44. - Instigating, etc., trespass by others; preventing service to persons not forbidden to trespass.

If any person shall solicit, urge, encourage, exhort, instigate or procure another to go upon or remain upon the lands, buildings or premises of another, or any part, portion or area thereof, knowing such other person to have been forbidden, either orally or in writing, to do so by the owner, lessee, custodian or other person lawfully in charge thereof, or knowing such other person to have been forbidden to do so by a sign posted on such lands, buildings, premises or part, portion or area thereof, at a place where it may reasonably be seen, or if any person shall, on such lands, buildings, premises or part, portion or area thereof, prevent or seek to prevent the owner, lessee, custodian, person in charge or any of his employees from rendering service to any person not so forbidden, he shall be deemed guilty of a Class 1 misdemeanor.

(Code 1965, § 23-53)

State Law reference— Similar provisions, Code of Virginia, § 18.2-120.

Sec. 23-44.1. - Entering property of another for purpose of damaging it, etc.

It shall be unlawful for any person to enter the land, dwelling, outhouse or any other building of another for the purpose of damaging such property or any of the contents thereof or in any manner to interfere with the rights of the owner, user or the occupant thereof to use such property free from interference. Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor.

(Ord. No. 1173, 5-11-81)

Editor's note— Ord. No. 1173, adopted May, 11, 1981, enacted as § 23-53.1 to amend the 1965 Code; the editor has designated it as § 23-44.1 hereof.

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

State Law reference— Similar provisions, Code of Virginia, § 18.2-212.

Sec. 23-44.2. - Placement of unrequested materials on residential property.

(a) It shall be unlawful for any person to place or cause to be placed any commercial or noncommercial sample, handbill, dodger, brochure, circular, paper or other material of a similar nature on any private property on which there is conspicuously posted a "no solicitation" sign or any similar sign which clearly indicates that the owner or occupant of the property does not want to receive such materials.

(b) The materials set forth in subsection (a) of this section shall not be deemed to include (i) materials delivered or distributed by any federal, state or local governmental agency, or (ii) materials delivered or distributed pursuant to an active subscription.

(c) Any person violating this section shall be guilty of a Class 3 misdemeanor.

(Ord. No. 2328, 5-23-95)

Sec. 23-45. - Peeping toms.

(a) It shall be unlawful for any person to enter upon the property of another and secretly or furtively peep, spy or attempts to peep or spy into or through a window, door or other aperture of any building, structure or other enclosure of any nature occupied or intended to be occupied as a dwelling, whether or not such building, structure or enclosure is permanently situated or transportable, and whether or not such occupancy is permanent or temporary.

(b) It shall be unlawful for any person to use a peephole or other aperture to secretly or furtively peep, spy or attempt to peep or spy into a restroom, dressing room, locker room, hotel room, motel room, tanning bed, tanning booth, bedroom or other location or enclosure for the purpose of viewing any nonconsenting person who is totally nude, clad in undergarments, or in a state of undress exposing the genitals, pubic area, buttocks or female breast and the circumstances are such that the person would otherwise have a reasonable expectation of privacy.

(c) The provisions of subsections (a) and (b) shall not apply to a lawful criminal investigation or a correctional official or local or regional jail official conducting surveillance for security purposes or during an investigation of alleged misconduct involving a person committed to the Department of Corrections or to a local or regional jail.

(d) As used in this section, "peephole" means any hole, crack or other similar opening through which a person can see.

(e) A violation of subsection (a) or (b) is a Class 1 misdemeanor.

(Code 1965, § 23-54; Ord. No. 1003, 11-5-79; Ord. No. 2169, 8-4-92; Ord. No. 2240, 6-22-93; Ord. No. 2555, 7-13-99)

State Law reference— Similar provisions, Code of Virginia, § 18.2-130.

Sec. 23-45.1. - Reserved.

Editor's note— Ord. No. 3038, adopted June 24, 2008, repealed § 23-45.1, which pertained to unlawful filming, videotaping or photographing of another and derived from Ord. No. 2555, 7-13-99; Ord. No. 2831, 6-22-04; Ord. No. 2885, 6-14-05.

Sec. 23-46. - Nuisance generally.

(a) For purposes of this section, the term "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 described in this section.

(b) Except as otherwise provided in this Code or other ordinances of the city, it shall be unlawful for any person to cause, create, allow, permit or maintain, upon any land or premises in the city in his possession or under his control, any public nuisance or any condition injurious to the public health or morals or endangering the life or property of others, including, but not limited to, the accumulation of stagnant water or any offensive, unwholesome, unsanitary or unhealthy substances. In addition to the foregoing, any condition of any land or premises which provides cover or harborage for rodents or vermin or breeds flies or mosquitoes, without proper treatment, shall constitute a public nuisance.

(c) Upon a determination by the city manager, that there exists on any land or premises within the city a public nuisance as set forth in subsection (a) hereof, notice shall be served on the owner of such land or premises or his agent, or on the occupant thereof, or both, to abate or remove such public nuisance from such land or premises within seven (7) days from the date of such notice. Provided, however, in the event the public nuisance involves the release or accumulation of a hazardous substance requiring response by the hazardous materials team of the Virginia Beach Fire Department to undertake measures to contain such substance or abate or otherwise mitigate the effects thereof upon the health or the environment, the notice requirement provided herein shall not apply.

(d) Service of the notice provided for in subsection (b) shall be by first-class mail, personal delivery or posting in a conspicuous place upon the land or premises; provided, however, that if the land or premises are unoccupied and the owner or his agent cannot be found by the exercise of due diligence or are unknown, such notice shall be sufficient against the owner if given by first-class mail to the owner's last known mailing address and posted in a conspicuous place upon the land or premises. The city manager is authorized to deliver or post such notice.

(e) A violation of any of the provisions of this section, or failure to comply with the terms of a notice issued and served as provided in this section within the time prescribed in such notice, shall constitute a class 2 misdemeanor. In addition to any penalties imposed hereunder, the city may institute legal action to enjoin the continuing violation of this section and may remove or contract for the removal of such public nuisance, in which event the cost and expenses thereof, including an administrative fee in the amount of one hundred fifty dollars ($150.00), shall be chargeable to and paid by the owner or occupant of the land or premises. Any

such charge which is not paid within thirty (30) days of the date or which is billed to the person or persons named in the notice may be collected by an action at law or in any manner provided by law for the collection of taxes.

(Code 1965, § 23-33; Ord. No. 2410, 8-6-96; Ord. No. 2550, 7-6-99; Ord. No. 3015, 5-13-08)

Cross reference— Nuisance animals, § 5-9.

State Law reference— Nuisances generally, Code of Virginia, title 48; authority of city with reference to abatement of nuisances, §§ 15.1-14, 15.1-867.

Sec. 23-46.1. - Nuisance structures.

(a) Any building or structure which is vacant and unsecured or open to entry through doors or windows, or which is determined by the code enforcement administrator to be unsafe, unsanitary or not provided with adequate exit facilities, or to constitute a fire hazard or a hazard to health or safety by reason of inadequate maintenance, dilapidation or abandonment, or to lack required ventilation, illumination, sanitary or heating facilities, shall be declared unfit for occupancy by the code enforcement administrator. Upon making such determination, the code enforcement administrator shall cause to be posted in a conspicuous location up on the premises a placard stating "THIS STRUCTURE IS UNSAFE OR UNFIT FOR OCCUPANCY AND ITS USE OR OCCUPANCY IS PROHIBITED," or words to substantially the same effect. Any such building or structure is hereby declared to constitute a public nuisance.

(b) Any person who enters in or upon any building or structure which constitutes a public nuisance and which has been placarded as provided in subsection (a) shall be guilty of a Class 1 misdemeanor; provided, however, that it shall not be unlawful for any person having written authorization from the code enforcement administrator to enter in or upon such building or structure, or portion thereof, for the purposes of making required repairs, demolition or inspection.

(Ord. No. 2027, 1-8-91; Ord. No. 2469, 1-13-98)

Sec. 23-46.2. - Releases of hazardous substances.

(a) Any hazardous substance which is released or allowed to accumulate or remain upon any property within the city, except as prescribed or permitted by governmental law or regulation, is hereby declared to constitute a public nuisance subject to the provisions of section 23-46.

(b) Notwithstanding any other provision of law, in the event of a response by the Hazardous Materials Team of the Virginia Beach Fire Department to a release or accumulation of a hazardous substance in which such team undertakes measures to contain such substance or to abate or otherwise mitigate the effects thereof upon health or the environment, the responsible party shall be liable to the city for all costs of such response; provided, however, that in the event the city shall be eligible for reimbursement by the commonwealth or the United States, or an agency thereof, the responsible party shall be liable to the city only to the extent such response costs are not so reimbursable.

(c) Monies recovered from responsible parties pursuant to subsection (b) shall be placed in a separate account in the general fund, and shall be used for the purpose of necessary replacement, purchase or upgrade of equipment used to contain, abate or otherwise mitigate releases of hazardous substances.

(d) As used in this section:

(1) *Responsible party* includes:

a. The owner of such substance or his agent;

b. The person transporting such substance at the time of its release;

c. Any person whose acts or omissions cause the release or accumulation of a hazardous substance in violation of the provisions of this section; and

d. In the event the identity or whereabouts of another responsible party cannot be determined despite the exercise of due diligence, the owner or occupant of the premises upon which a release or accumulation of a hazardous substance occurs; provided, however, that an owner or occupant of such premises who knowingly or negligently permits the release of a hazardous substance on such premises shall be deemed a responsible party notwithstanding the failure to determine the identity or whereabouts of any other responsible party.

(2) *Hazardous substance* means any material or substance, which now or hereafter is designated, defined or characterized as hazardous by law or regulation of the commonwealth or the United States.

(3) *Release* means spilling, leaking, emitting, discharging, leaching, disposing or otherwise escaping from a container approved by the United States Department of Transportation.

(e) Costs recoverable by the city in connection with a response for which recovery is sought pursuant to this section shall be limited to the following:

(1) Disposable materials and supplies acquired, consumed and expended specifically for the purpose of the response;

(2) Compensation of employees for the time and efforts devoted specifically to the response not otherwise provided for in the operating budget;

(3) Rental or leasing of equipment, such as protective equipment or clothing and scientific or technical equipment used specifically for the response;

(4) Replacement costs for equipment which is contaminated beyond reuse or repair during, and as a result of, the response;

(5) Decontamination of equipment contaminated during the response;

(6) Special technical services specifically required for the response, such as costs associated with the time and efforts of technical experts and specialists not otherwise provided for by the city;

(7) Other special services specifically required for the response, such as the relocation of utilities;

(8) Laboratory costs for purposes of analyzing samples taken during the response; and

(9) Costs associated with the services, supplies and equipment procured for a specific evacuation.

(f) Nothing in this section shall be construed to impair, limit or otherwise alter the right of any responsible party to indemnity or contribution.

(Ord. No. 2207, 3-23-93; Ord. No. 3117, 2-9-10)

Sec. 23-47. - Reserved.

Editor's note— Ord. No. 3120, adopted March 9, 2010, repealed § 23-47, which pertained to loud, disturbing and unnecessary noise and derived from Code 1965, § 23-32; Ord. No. 1326, 9-13-82; Ord. No. 1563, 10-28-85; Ord. No. 1827, 2-6-89.

Sec. 23-48. - Open storage of rusted, junked, etc., machinery, equipment, etc.

(a) It shall be unlawful for any person to place or leave, on any property in the city, any dilapidated furniture, appliance, machinery, equipment, building material or other item, which is either in a wholly or partially rusted, wrecked, junked, dismantled or inoperative condition and which is not completely enclosed within a building. Any such item which remains on the property for a period of seven (7) days after notice of violation of this section is given to the owner of such property shall be presumed to be abandoned and subject to being removed from the property by the city or its agents without further notice. In the event any such item is so removed, the cost of removal, including an administrative fee in the amount of one hundred fifty dollars ($150.00), shall be charged to the owner of the property. Any such charge which is not paid within thirty (30) days of the date on which it is billed to the owner shall constitute a lien upon the property and may be collected in any manner provided by law for the collection of taxes.

(b) This section shall not apply to any licensed junk dealers or establishments engaged in the repair, rebuilding, reconditioning or salvaging of equipment.

(c) A violation of this section shall constitute a class 1 misdemeanor. In addition to any other remedy provided herein, the code enforcement administrator may institute legal action to enjoin the continuing violating of this section.

(d) The provisions of this section shall not apply to any parcel of land greater than one acre in size which is located in an agricultural zoning district and used principally for agricultural or horticultural purposes.

(Ord. No. 1016, § 17-12(B), 1-14-80; Ord. No. 1917, 10-2-89; Ord. No. 1930, 10-23-89; Ord. No. 2130, 5-12-92; Ord. No. 2205, 2-9-93; Ord. No. 2469, 1-13-98; Ord. No. 3015, 5-13-08)

Sec. 23-49. - Abandoned or discarded refrigerators and other airtight containers.

(a) It shall be unlawful for any person to discard, abandon, leave or allow to remain in any place any icebox, refrigerator or other container, device or equipment of any kind with an interior storage area of more than two (2) cubic feet of clear space which is airtight, without first removing the door or hinges from such icebox, refrigerator, container, device or equipment.

(b) This section shall not apply to any icebox, refrigerator, container, device or equipment which is being used for the purpose for which it was originally designed or is being used for display purposes by any retail or wholesale merchant or is crated, strapped or locked to such an extent that it is impossible for a child to obtain access to any airtight compartment thereof.

(c) Any person violating any of the provisions of this section shall be guilty of a class 3 misdemeanor.

(Code 1965, § 23-26; Ord. No. 1016, § 17-12(C), 1-14-80)

State Law reference— Similar provisions, Code of Virginia, § 18.2-319.

Sec. 23-50. - Accumulations of trash, garbage, etc., or excessive growth of weeds or grass.

(a) Upon determination by the director of housing and neighborhood preservation, the code enforcement administrator, or any inspector of the department of housing and neighborhood preservation, whether temporarily or permanently employed as such, that there exists upon any land or premises within the city, including the area between such land or premises and the nearer of (i) the curb line, including a sidewalk if one is present, (ii) a sound wall, or (iii) the edge of the pavement of any public street abutting such property in the absence of a curb or sound wall any trash, garbage, refuse, litter or similar substances, except as may be placed thereon for purposes of collection in accordance with chapter 31 of this Code, notice shall be served on the owner of such land or premises or his or her agent, or on the occupant thereof, or both, to cause such trash, garbage, refuse, litter or similar substances to be removed from such land or premises within seven (7) days from the date of such notice. For purposes of this section, "sound wall" means a wall or other noise attenuation structure installed as part of a city, state, or federally funded road project.

(b) Except as provided in subsections (e) and (f) hereof, upon determination by the director of housing and neighborhood preservation, the code enforcement administrator, or any inspector of the department of housing and neighborhood preservation, whether temporarily or permanently employed as such, that there exists on any land or premises within the city, including the area between such land or premises and the nearer of (i) the curb line, including a sidewalk if one is present, (ii) a sound wall, or (iii) the edge of the pavement of any public street abutting such property in the absence of a curb or sound wall, any grass, weeds, brush or similar vegetation in excess of ten (10) inches in height, notice shall be served on the owner of such land or premises or his or her agent, or on the occupant thereof, or both, to cause such grass, weeds, brush or similar vegetation to be cut and removed from such land or premises within seven (7) days from the date of such notice.

(c) Service of the notice provided for in subsections (a) and (b) shall be by first-class mail, personal delivery or posting in a conspicuous place upon the land or premises; provided, however, that if the land or premises are unoccupied and the owner or his or her agent cannot be found by the exercise of due diligence or are unknown, such notice shall be sufficient against the owner if given by first-class mail to the owner's last known mailing address and posted in a conspicuous place upon the land or premises. The code enforcement administrator and inspectors of the department of housing and neighborhood preservation are hereby authorized to deliver or post such notices. One notice (as provided for in subsection (b)) per growing season is hereby deemed reasonable notice to owners of vacant developed or undeveloped property to authorize the city to remove or contract for the removal of any excessive growth of grass, weeds, brush or similar vegetation for the entire growing season.

(d) Failure to comply with the terms of a notice issued and served as provided in this section within the time prescribed in such notice shall constitute a Class 4 misdemeanor. In addition to any penalties imposed hereunder, the city may institute legal action to enjoin the continuing violation of this section and may remove or contract for the removal of such trash, garbage, refuse, litter or similar substances or grass, weeds, brush or similar vegetation, in which event the cost and expenses thereof, including an administrative fee in the amount of one hundred fifty dollars ($150.00), shall be chargeable to and paid by the owner or

occupant of the land or premises. Any such charge which is not paid within thirty (30) days of the date on which it is billed to the owner of such land or premises shall constitute a lien upon the property and may be collected in any manner provided by law for the collection of taxes; provided, however, that no such lien shall be valid against any owner of land or premises who was not served with the notice prescribed in subsection (a) or (b) hereinabove, as the case may be.

(e) The provisions of subsection (b) shall not apply to any parcel of land zoned for or in active farming operation.

(f) The provisions of subsection (b) shall not apply to the following areas:

(1) Portions of undeveloped lots, parcels or tracts of land which are not located within one hundred fifty (150) feet of a paved road;

(2) Portions of undeveloped lots, parcels or tracts of land which are not located within one hundred fifty (150) feet of any other property, developed or undeveloped, located in a Residential, Apartment, Business, Office, Resort Tourist or Industrial Zoning District;

(3) Portions of undeveloped lots, parcels or tracts of land which are inaccessible to power mowing equipment;

(4) Areas required by the Chesapeake Bay Preservation Area Ordinance [appendix F] or the Southern Watersheds Management Ordinance [appendix G] to be vegetated;

(5) Vegetated wetlands, as defined in the Wetlands Zoning ordinance [appendix A, article 14];

(6) Nontidal wetlands located within Resource Protection Areas;

(7) Coastal primary sand dunes;

(8) State-designated Wildlife Habitat Areas;

(9) Banks of detention ponds, streams, and other bodies of water, natural or manmade;

(10) Banks of drainage easements;

(11) Wooded areas, including understory vegetation; and

(12) Any other area required to be vegetated by reason of the application of the City Zoning Ordinance [appendix A], Subdivision Ordinance [appendix B], Site Plan Ordinance [appendix C], Stormwater Management Ordinance [appendix D], Chesapeake Bay Preservation Area Ordinance [appendix F], Southern Rivers Watershed Management Ordinance [appendix G], or any other ordinance or provision of law.

(g) As used in this section, the term "developed" shall refer to any lot, parcel or tract of land upon any portion of which there has been placed any building, structure or other improvement or upon any portion of which there has been any land-disturbing activity, including, without limitation, paving, filling, grading, dredging, clearing or excavating.

(Code 1965, §§ 17-25, 17-26, 17-28, 17-30—17-32; Ord. No. 1016, § 17-12(A), 1-14-81; Ord. No. 1232, 11-2-81; Ord. No. 1750, 12-7-87; Ord. No. 1918, 10-2-89; Ord. No. 1952, 5-7-90; Ord. No. 2197, 12-8-92; Ord. No 2469, 1-13-98; Ord. No. 2645, 6-26-01; Ord. No. 3015, 5-13-08; Ord. No. 3140, 6-22-10; Ord. No. 3373, 9-16-14; Ord. No. 3385, 12-9-14; Ord. No. 3536, 3-20-18; Ord. No. 3599, 9-17-19)

Cross reference— Solid waste, Ch. 31.

Sec. 23-50.1. - Removal of certain trees.

(a) Upon determination by the code enforcement administrator or the city arborist, or the officers or employees of their respective departments, that there exists upon any land or premises within the city any tree which, by reason of disease, death, injury, infirmity or other condition, presents a danger to property or to the health and safety of persons or other trees or vegetation, notice shall be served upon the owner of such land or premises or his or her agent or upon the occupant thereof to cause such tree to be removed within a reasonable period of time, not less than seven (7) days nor more than thirty (30) days, specified in such notice. If the danger presented by such tree may be eliminated by the removal of a portion of such tree, the notice shall specify the portion or portions of the tree to be so removed. For purposes of this section, the term "tree" shall be construed to include the plural of the term.

(b) Service of the notice provided for herein shall be by personal service or by certified or registered mail. In the event the land or premises are vacant and the owner thereof or his or her agent cannot be found by the exercise of due diligence, such notice shall be given by certified or registered mail to the last-known residence or post office box address of the owner and, in addition thereto, shall be posted in a conspicuous place upon the premises. Service of such notice upon one owner or occupant in any manner provided for herein shall be sufficient in the event such land or premises is owned or occupied jointly.

(c) Failure to comply with the terms of a notice issued and served as provided in this section within the time prescribed by such notice shall be punishable as a Class 4 misdemeanor. In addition to any fine imposed hereunder, the code enforcement administrator may, in the name of the city, institute legal action to enjoin the continuing violation of this section and may remove or contract for the removal of any such tree or portion thereof, in which event the cost of such removal, including an administrative fee in the amount of one hundred fifty dollars ($150.00), shall be charged to the person or persons named in the notice and collected by action at law or as delinquent real estate taxes are collected, or both. The remedies provided for herein shall be cumulative in nature.

(Ord. No. 1675, 4-13-87; Ord. No. 1919, 10-2-89; Ord. No. 1931, 10-23-89; Ord. No. 2130, 5-12-92; Ord. No 2469, 1-13-98; Ord. No. 3015, 5-13-08; Ord. No. 3599, 9-17-19)

Sec. 23-51. - Tattooing and tattoo parlors.

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

(1) *Tattoo:* To place any design, letter, scroll, figure, symbol or any other mark upon or under the skin or any person with ink or any other substance resulting in the permanent coloration of the skin, including permanent make-up or permanent jewelry, by the aid of needles or any other instrument designed to touch or puncture the skin.

(2) *Tattoo artist:* Any person who actually performs the work of tattooing.

(3) *Tattoo parlor:* Any place in which is offered or practiced the placing of designs, letters, scrolls, figures, symbols or any other marks upon or under the skin of any person with ink or any other substance, resulting in the permanent coloration of the skin, including permanent make-up or permanent jewelry, by the aid of needles or any other instrument designed to touch or puncture the skin.

(4) *Tattoo operator:* Any person who controls, operates, conducts or manages any tattoo parlor, whether actually performing the work of tattooing or not.

(b) No person shall control, operate, conduct or manage any tattoo parlor or shall perform tattooing on any person without complying with the requirements of this section.

(c) No person shall control, operate, conduct or manage any tattoo parlor, whether actually performing the work of tattooing or not, without first obtaining a permit from the department of public health. such an application shall be made on an application form provided by the city manager or his designee.

(d) The permit fee shall be one thousand two hundred dollars ($1,200.00) for a one-year licensing period from January 1 to December 31. All permits issued during the course of a calendar year shall expire on December 31 of that year, regardless of the date issued. For any person required to obtain a permit under the provisions of this section after the first day of January, the permit fee shall be prorated as follows: between January 1 and on or before March 31, the full permit fee shall be paid; between April 1 and on or before June 30, three-fourths of the permit fee shall be paid; between July 1 and on or before September 30, one-half of the permit fee shall be paid; and after September 30 of the licensing year, one-fourth of the permit fee shall be paid.

(e) Every tattoo artist shall provide one of the following to the department of public health:

(1) Proof of completion of the full Hepatitis B vaccine;

(2) Proof of Immunity by blood titer; or

(3) Written declination of refusal of the full Hepatitis vaccine.

(f) Every tattoo artist and tattoo operator shall at all times comply with the following requirements:

(1) All tattooing-related procedures shall be carried out in a clean, safe and sanitary manner as approved by the department of public health so as to minimize the potential of disease transmission. All tattoo artists shall complete annual blood borne pathogen training approved by the department of public health.

(2) All areas of the tattoo parlor shall be constructed and maintained in a clean, safe and sanitary manner in compliance with all applicable statutes, laws, regulations, codes and ordinances of the city and the Commonwealth of Virginia.

(3) All walls, ceilings and floors shall be smooth and easily cleaned. The floors shall not be carpeted, and neither rugs nor fabrics of any kind shall be placed on the floors. Walls and ceilings shall be painted a light color. Walls, ceilings and floors shall be kept clean and free from dust and debris. The floors shall be swept and mopped daily. The walls, ceilings or floors shall not be swept or cleaned while tattooing is occurring.

(4) Adequate light and ventilation shall be provided.

(5) Adequate toilet and hand-washing facilities shall be available in the tattoo parlor separate and isolated from the business area in which tattooing is performed, for the use of customers and personnel of the tattoo parlor. Toilets and washing facilities shall be maintained in a sanitary condition at all times. Smoking, eating, or drinking is prohibited in the area in which tattooing is performed.

(6)

All areas of the tattoo parlor shall be accessible for inspection by the department of public health and its authorized representatives. The department of public health is hereby authorized to conduct unannounced inspections of tattoo parlors.

(7) All inks, dyes, pigments, needles and equipment shall be specifically manufactured for performing tattooing and shall be used in accordance with the manufacturer's instructions. The mixing of approved tattooing inks, dyes or pigments or their dilutions with potable water shall be permitted. Immediately before a tattoo is applied, the quantity of the dye to be used shall be transferred from the dye bottle and placed into single-use paper or plastic cups. Upon completion of the procedure, such cups and their contents shall be discarded in the manner prescribed in subdivision (8) hereof.

(8) All cleaned, non-disposable instruments used in connection with the preparation for or process of tattooing shall be sterilized before each use in a steam autoclave or dry-heat sterilizer approved by the department of public health. Such sterilization shall be performed in accordance with the manufacturer's instructions, a copy of which shall be submitted, with contact information, as part of the permit application. The tattoo operator shall be responsible for maintaining a log which indicates that the autoclave or other sterilizer has been checked during each cycle and has been sterilized in accordance with the manufacturer's instructions. All cleaned and ready-to-use needles and instruments shall be stored in a protective manner to prevent subsequent contamination. Sterile equipment shall not be used after the expiration date or if the package has been breached. If disposable instruments are used, those instruments shall be disposed of in accordance with applicable laws. The skin surface to be tattooed and any jewelry to be used shall be cleaned and sanitized using processes and materials approved by the department of public health. All hazardous waste, body fluids, and medical waste of any kind shall be disposed of in accordance with the Virginia Department of Environmental Quality's Regulated Medical Waste Regulations, 9 VAC 20-120-10 et seq., as may be amended from time to time. Single-use items shall not be used on more than one (1) client for any reason. After use, all single-use needles, razors, and other sharps shall be immediately disposed of in accordance with the aforesaid regulations.

(9) Records for each patron shall be maintained by the tattoo operator. Such records shall be maintained for a minimum period of four (4) [years], except if the patron is under eighteen (18) years of age, in which event these records shall be maintained for a minimum of four (4) years from the eighteenth birthday of said patron and shall include the following information:

(i) Name, address, sex and age of the person tattooed;

(ii) Date of tattooing;

(iii) Physical location and description of tattooing;

(iv) Name, address and telephone number of the person performing the tattooing;

(v) Parent or legal guardian written consent form for minors; and

(vi) Name and address of the manufacturer of the dyes used as well as identifying information about the dye solutions and types of dyes used. If a customer has need for this information, then the tattoo parlor operator shall release it to the customer.

At such time as the tattoo parlor ceases doing business or is removed from the city or changes its name or has a change in management or ownership, copies of all such records shall be provided to the department of public health.

(10) More than one (1) set of sterilized needles, tubes and tips or alternate approved sterilization method shall be kept on the premises at all times.

(11) No person, customer or patron having any visible skin infection or other disease of the skin or any communicable disease shall have tattooing performed, and no person having any skin infection or disease of the skin shall perform tattooing. All infections resulting from the practice of tattooing which become known to the tattoo operator shall promptly be reported to the department of public health by the person owning or in charge of the tattoo parlor, and the infected client shall be referred to a physician.

(12) No tattooing shall be performed on any person under the age of eighteen (18) years without the written consent of his or her parent or guardian, and such written consent shall be kept on file for at least four (4) years at the tattoo parlor from the eighteenth birthday of the minor. Where there is doubt about such an age, written proof of age shall be obtained before the tattooing is done. Written proof of age shall be photocopied and kept by the tattoo operator. All customers under eighteen (18) years of age shall be accompanied by a parent or legal guardian. Both customer and parent or guardian shall sign a consent form and a driver's license or other appropriate form of identification of both the customer and the parent or guardian shall be photocopied and attached to the consent form.

(13) Tattoo artists and tattoo operators shall refuse service to any person whom the tattoo artist or tattoo operator knows, or has reason to believe, is intoxicated.

(14) No person shall state or imply in any advertisement or publication, written or oral and prepared or uttered for the purpose of soliciting business, that the tattoo parlor is endorsed, regulated or approved by the city or by any of its departments or is conducted in compliance with the terms of this section.

(15) Immediately after tattooing a patron the tattoo artist shall advise the patron of the care of the tattooed area and shall instruct the patron to consult a physician at the first sign of infection.

(16) The tattoo artist shall wash his or her hands between customers and between tattooing different parts of the body on the same person. The tattoo artist shall wear protective, disposable latex or vinyl gloves while tattooing, and shall wear a new pair of gloves for each client and when tattooing different parts of the same client.

(17) The name, address and telephone number of the tattoo parlor shall be on the heading of all waivers, care sheets, consent and other forms utilized by the tattoo parlor.

(18) The tattoo operator shall file with the department of public health annually with the license application and any renewal thereof a list of the following information for each employee: Name, permit number, home address, home phone number, and position or job title. With respect to tattoo artists, the tattoo operator shall also submit proof annually of vaccination and testing as required by subsection (e). The tattoo operator shall amend the list accordingly and submit it to the department of public health immediately upon the addition of an employee or termination of an employee.

(19) No tattoo artist or tattoo operator shall tattoo the genitals, pubic area, or buttocks of any member of the opposite sex, nor shall any male tattoo artist or male tattoo operator tattoo any portion of the breast of any female below the aureole.

(g) No person shall perform tattooing on any client unless he or she complies with the Centers for Disease Control and Prevention's guidelines for "Universal Blood and Body Fluid Precautions" and provides the client with the following disclosure:

(1) Tattooing is an invasive procedure in which the skin is penetrated by a foreign object.

(2) If proper sterilization and antiseptic procedures are not followed by tattoo artists, there is a risk of transmission of bloodborne pathogens and other infections, including, but not limited to, human immunodeficiency viruses and hepatitis B or C viruses.

(3) Tattooing may cause allergic reactions in persons sensitive to dyes or the metals used in ornamentation.

(4) Tattooing may involve discomfort or pain for which appropriate anesthesia cannot be legally made available by the tattoo artist unless such person holds the appropriate license from a Virginia health regulatory board.

(h) Any person who violates any provision of this section shall be guilty of a Class 2 misdemeanor. Any second or subsequent violation of this section shall be punished as a Class 1 misdemeanor.

(i) This section shall not apply to medical doctors, veterinarians, registered nurses or any other medical services personnel, licensed pursuant to Title 54.1 of the Code of Virginia, in performance of their professional duties.

(Code 1965, § 23-49, 23-50; Ord. No. 2629, 4-24-01; Ord. No. 2643, 6-5-01; Ord. No. 2710, 7-2-02; Ord. No. 3325, 2-11-14)

Sec. 23-52. - Water and sewer utilities to maintain employees on call at all times for emergencies.

(a) Every individual, partnership or corporation engaged in the business of providing utility service of delivery of water through pipes or the removal and treatment of sewage shall maintain, at all times, an employee on call to respond to failures in the system. Such employee shall be stationed at the main plant or office of such utility, or shall be capable of being reached by telephone through a telephone list furnished to the chief of police.

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

(Code 1965, § 23-46.1)

Cross reference— Sewers, Ch. 28; water supply, Ch. 37.

Sec. 23-53. - Barred or locked premises upon which food or drink served.

It shall be unlawful and a Class 1 misdemeanor for any person to operate any club, restaurant, place of amusement, dancehall or similar establishment open to the public in the city where beverages (including alcoholic, but not limited thereto) or food is served, dispensed or otherwise made available to the occupants behind barred or locked doors and on premises made inaccessible for proper health, safety and fire inspections at all times during its operating hours.

(Code 1965, § 23-10.1; Ord. No. 1058, 7-14-80)

Cross reference— Food and food establishments, Ch. 13.

Sec. 23-53.1. - Body piercing.

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

(1) *Body piercing:* The act of penetrating the skin to make a hole, mark, or scar, generally permanent in nature. "Body piercing" does not include the use of a mechanized, pre-sterilized ear-piercing system that penetrates the outer perimeter or lobe of the ear or both.

(2) *Body piercer:* Any person who actually performs the work of body piercing.

(3) *Body piercing establishment:* Any place in which a fee is charged for the act of penetrating the skin to make a hole, mark, or scar, generally permanent in nature. "Body piercing" does not include the use of a mechanized, pre-sterilized ear-piercing system that penetrates the outer perimeter or lobe of the ear or both.

(4) *Body piercing operator:* Any person who controls, operates, conducts or manages any body piercing establishment, whether actually performing the work of body piercing or not.

(b) No person shall control, operate, conduct or manage any body piercing establishment or shall perform body piercing on any person without complying with the requirements of this section.

(c) No person shall control, operate, conduct or manage any body piercing establishment, whether actually performing the work of body piercing or not, without first obtaining a permit from the department of public health. Such an application shall be made on an application form provided by the city manager or his designee.

(d) The permit fee shall be one thousand two hundred dollars ($1,200.00) for a one-year licensing period from January 1 to December 31. All permits issued during the course of a calendar year shall expire on December 31 of that year, regardless of the date issued. For any person required to obtain a permit under the provisions of this section after the first day of January, the permit fee shall be prorated as follows: between January 1 and on or before March 31, the full permit fee shall be paid; between April 1 and on or before June 30, three-fourths of the permit fee shall be paid; between July 1 and on or before September 30, one-half of the permit fee shall be paid; and after September 30 of the licensing year, one-fourth of the permit fee shall be paid.

(e) Every body piercer shall submit proof annually to the department of public health that he or she has received a tuberculosis assessment or PPD skin test and shall submit proof of a completed hepatitis B series by a competent medical authority approved by the director of public health.

(f) Every body piercer and body piercing operator shall at all times comply with the following requirements:

(1) All body piercing related procedures shall be carried out in a clean, safe and sanitary manner as approved by the department of public health so as to minimize the potential of disease transmission. All body piercers shall complete annual blood borne pathogen training approved by the department of public health.

(2) All areas of the body piercing establishments shall be constructed and maintained in a clean, safe and sanitary manner in compliance with all applicable statutes, laws, regulations, codes and ordinances of the city and the Commonwealth of Virginia.

(3) All walls, ceilings and floors shall be smooth and easily cleaned. The floors shall not be carpeted, and neither rugs nor fabrics of any kind shall be placed on the floors. Walls and ceilings shall be painted a light color. Walls, ceilings and floors shall be kept clean and free from dust and debris. The floors shall be swept and mopped daily. The walls, ceilings or floors shall not be swept or cleaned while body piercing services are occurring.

(4) Adequate light and ventilation shall be provided.

(5) Adequate toilet and hand-washing facilities shall be available in the body piercing establishment separate and isolated from the business area in which body piercing is performed, for the use of customers and personnel of the body piercing establishment. Toilets and washing facilities shall be maintained in a sanitary condition at all times. Smoking, eating or drinking is prohibited in the area in which body piercing is performed.

(6) All areas of the body piercing establishment shall be accessible for inspection by the department of public health and its authorized representatives. The department of public health is hereby authorized to conduct unannounced inspections of body piercing establishments.

(7) All cleaned, non-disposable instruments used in connection with the preparation for or process of body piercing shall be sterilized before each use in a steam autoclave or dry-heat sterilizer approved by the department of public health . Such sterilization shall be performed in accordance with the manufacturer's instructions, a copy of which shall be submitted, with contact information, as part of the permit application. The body piercing operator shall be responsible for maintaining a log which indicates that the autoclave has been checked during each cycle and has been sterilized in accordance with the manufacturer's instructions. All cleaned and ready-to-use needles and instruments shall be stored in a protective manner to prevent subsequent contamination. Sterile equipment shall not be used after the expiration date or if the package has been breached. If disposable instruments are used, those instruments shall be disposed of in accordance with applicable laws. The skin surface to be pierced as well as the jewelry to be used shall be cleaned and sanitized using processes and materials approved by the department of public health. All hazardous waste, body fluids, and medical waste of any kind shall be disposed of in accordance with the Virginia Department of Environmental Quality's Regulated Medical Waste Regulations, 9 VAC 20-120-10 et seq., as may be amended from time to time.

(8) Records for each patron shall be maintained by the body piercing operator. These records shall be maintained for a minimum period of four (4) years except if the patron is under eighteen (18) years of age, in which event these records shall be maintained for a minimum of four (4) years from the eighteenth birthday of said patron and shall include the following information:

(i) Name, address, sex and age of the person body pierced;

(ii) Date of body piercing;

(iii) Physical location and description of body piercing;

(iv) Name, address and telephone number of the person performing the body piercing; and

(v) Parent or legal guardian written consent form for minors.

At such time when a body piercing establishment ceases doing business or is removed from the city or changes its name or has a change in management or ownership, copies of all such records shall be provided to the department of public health.

(9) More than one (1) set of sterilized needles, tubes and tips or alternate approved sterilization method shall be kept on the premises at all times.

(10) No person, customer or patron having any visible skin infection or other disease of the skin or any communicable disease shall have body piercing performed, and no person having any skin infection or disease of the skin shall perform body piercing. All infections resulting from the practice of body piercing which become known to the body piercing operator shall promptly be reported to the department of public health by the body piercing operator, and the infected client shall be referred to a physician.

(11) It shall be unlawful to perform body piercing on any person under the age of eighteen (18) years without written consent of his/her parent or guardian, and such written consent shall be kept on file for at least four (4) years at the body piercing establishment from the eighteenth birthday of the minor. Where there is doubt about such an age, written proof of age shall be obtained before the body piercing is done. Written proof of age shall be photocopied and kept by the body piercing operator. All customers under eighteen (18) years of age shall be accompanied by a parent or legal guardian. Both customer and parent or guardian must sign a consent form and a driver's license or other appropriate form of identification of both the customer and the parent or guardian shall be photocopied and attached to the consent form.

(12) Body piercers and body piercing operators shall refuse service to any person whom the body piercer or body piercing operator knows, or has reason to believe, is intoxicated.

(13) No person shall state or imply in any advertisement or publication, written or oral and prepared or uttered for the purpose of soliciting business, that the body piercing establishment is endorsed, regulated or approved by the city or by any of its departments or is conducted in compliance with the terms of this section.

(14) Immediately after body piercing a patron, the body piercer shall advise that patron of the care of the body pierced area and shall instruct the patron to consult a physician at the first sign of infection.

(15) The body piercer shall wash his or her hands between customers and between piercing different parts of the body on the same person. The body piercer shall wear protective, disposable latex or vinyl gloves while performing body piercing, and shall wear a new pair of gloves for each client and when piercing different parts of the same client.

(16) The name, address and telephone number of the body piercing establishment shall be on the heading of all waivers, care sheets, consent and other forms utilized by the body piercing establishment.

(17) The body piercing operator shall file with the department of public health annually with the license application and any renewal thereof a list of the following information for each employee: Name, permit number, home address, home phone number, and position or job title. With respect to body piercers, the body piercing operator shall also submit proof annually of vaccination and testing as required in

subsection (e). The body piercing operator shall amend the list accordingly and submit it to the department of public health immediately upon the addition of an employee or termination of an employee.

(18) No body piercer shall body pierce the genitals, pubic area, or buttocks of any member of the opposite sex, nor shall any male body piercer pierce any portion of the breast of any female below the aureole.

(g) No person shall perform body piercing on any client unless he or she complies with the Centers for Disease Control and Prevention's guidelines for "Universal Blood and Body Fluid Precautions" and provides the client with the following disclosure:

(1) Body piercing is an invasive procedure in which the skin is penetrated by a foreign object.

(2) If proper sterilization and antiseptic procedures are not followed by body piercers, there is a risk of transmission of bloodborne pathogens and other infections, including, but not limited to, human immunodeficiency viruses and hepatitis B or C viruses.

(3) Body piercing may cause allergic reactions in persons sensitive to the metals used in ornamentation.

(4) Body piercing may involve discomfort or pain for which appropriate anesthesia cannot be legally made available by the person performing the body piercing unless such person holds the appropriate license from a Virginia Health Regulatory Board.

(h) Any person who violates any provision of this section shall be guilty of a Class 2 misdemeanor. Any second or subsequent violation of this section shall be punished as a Class 1 misdemeanor.

(i) This section shall not apply to medical doctors, veterinarians, registered nurses or any other medical services personnel, licensed pursuant to Title 54.1 of the Code of Virginia, in performance of their professional duties.

(Ord. No. 2596, 6-27-00; Ord. No. 2626, 4-24-01; Ord. No. 2644, 6-5-01; Ord. No. 2710, 7-2-02)

Sec. 23-54. - Sleeping in automobiles.

It shall be unlawful and a Class 4 misdemeanor for any person to use an automobile for sleeping quarters, in lieu of hotel, tourist cabin, boardinghouse, rooming house or other similar accommodations, within the city.

(Code 1965, § 23-48)

Cross reference— Sleeping on beach, § 6-4.

Sec. 23-55. - Sleeping in public parks or other public property.

It shall be unlawful and a Class 4 misdemeanor for any person to sleep in any public park or in or on other public property between the hours of 8:00 p.m., and 8:00 a.m.

(Code 1965, § 23-48.1.1)

Cross reference— Sleeping on beach, § 6.4; parks, Ch. 24.

Sec. 23-56. - Overnight occupancy of camper vehicle on public property.

It shall be unlawful and a Class 4 misdemeanor for any person to park on public property and occupy overnight any camper vehicle, self propelled or trailed, except in areas or sites designated for such occupancy and use.

(Code 1965, § 23-48.1)

Sec. 23-57. - Barbershops, beauty parlors, nail salons and barber and beauty culture schools; maintenance requirements, etc.

(a) Floors in barbershops, beauty parlors, nail salons, barber schools or beauty culture schools shall be cleaned every day and all furniture, walls, woodwork and windows therein shall be kept clean and in good repair at all times. Each barbershop, beauty parlor, nail salon, barber school or beauty culture school shall be provided with a toilet and wash basins properly trapped and connected to an approved sewer system. Adequate soap, clean towels and toilet tissue shall be available at all times. All basins, sinks and toilets shall be kept in clean and in good repair at all times. The use of powder puffs and sponges is prohibited. No alum or other astringent shall be used in stick form in any barbershop, beauty parlor, nail salon, barber school or beauty culture school. If used therein to stop the flow of blood, it shall be applied in liquid or powdered form.

(b) Terms used in this section shall have the meanings ascribed to them in section 18-56 of this Code.

(c) Any person who shall violate any provision of this section shall be guilty of a Class 4 misdemeanor.

(Ord. No. 1091, 69-22-80; Ord. No. 3156, 12-14-10)

Cross reference— License tax for establishments referred to above, § 18-56.

Sec. 23-58. - Commercial parking lots.

(a) For purposes of this section, the term *"commercial parking lot"* means any lot, or portion thereof, used for the parking of motor vehicles for a fee or other consideration, but not including parking garages or similar structures. The provisions of this section shall apply to all commercial parking lots located in any Resort Tourist Zoning District or the OR Oceanfront Resort District.

(b) It shall be unlawful and a misdemeanor punishable by a fine of not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000.00) for any person, firm, corporation or other entity to operate a commercial parking lot in violation of any of the provisions of this section. Each day that a violation continues shall constitute a separate offense. In addition to any fine imposed hereunder, and not in lieu thereof, the continuing violation of any of the provisions of this section may be enjoined or restrained by injunction.

(c) Application for a permit required by this section shall be made to the city manager or his designee. Each application shall set forth the name and address of the applicant and, if different, the name and address of the owner of the property upon which the proposed commercial parking lot is to be located, and shall be accompanied by:

(1) A nonrefundable fee of one hundred dollars ($100.00);

(2) An approved site plan prepared in accordance with the Site Plan Ordinance and showing all elements required by this section; and

(3) A sign plan showing the design, size, color and materials of all signs to be located on the lot.

(d) Upon approval of an application, the permittee shall be issued a self-adhesive sticker which shall serve as the permit and shall be affixed to one (1) of the entrance signs required by subsection (i) of this section.

(e)

It shall be a condition of every permit issued hereunder that the city or its agents shall have the authority to enter upon the commercial parking lot and perform any acts required to bring the property into compliance with the provisions of this section in the event the owner or operator, after being given notice of, and a reasonable opportunity to correct, any condition of noncompliance shall fail to do so.

(f) Commercial parking lots shall at all times, whether or not they are in operation:

(1) Have a paved surface, inclusive of all drive aisles, which meets the requirements of the Public Works Design Standards Manual and the Site Plan Ordinance; provided, that any commercial parking lot in operation as of July 1, 2002 shall not be required to provide curbing so long as wheel stops composed of concrete or asphalt are provided and maintained in good condition and repair at all times;

(2) Contain perimeter landscaping meeting the requirements of section 5A of the Parking Lot Landscaping Specifications and Standards where adjacent to any public right-of-way or other publicly-owned property. The perimeter may also be enclosed by fencing meeting the requirements for fences set forth in section 201(e) of the City Zoning Ordinance; provided, however, that such fencing shall not exceed four (4) feet in height and shall consist of materials, such as black vinyl-coated chain link, white vinyl picket or black wrought iron, which are generally recognized within the industry as maintenance-free. Wood split-rail fences shall not be permitted. Such fencing and landscaping shall at all times be maintained in good condition and repair;

(3) Where such lot is greater than twenty-four thousand (24,000) square feet in area, contain additional landscaping, which may consist of city-approved plant containers, located at the end of all parking aisles not adjacent to a public right-of-way or other publicly-owned property and which shall be maintained in good condition and repair at all times;

(4) Be secured at all points of ingress and egress by a gate, consisting of materials, such as black vinyl-coated chain link, white vinyl picket or black wrought iron, which are generally recognized within the industry as maintenance-free, except during hours of operation;

(5) Contain no less than one (1) trash receptacle, plainly visible and marked as such, for every three thousand five hundred (3,500) square feet of lot area or fraction thereof;

(6) Have upon the premises, from dusk until one-half (½) hour after closing or until the last vehicle has exited the lot, whichever is earlier, at least one (1) attendant. If any type of shelter is provided for attendants, such shelter shall at all times be maintained in good condition and repair. Alternately, or in addition to, automated fee collection machines may be utilized provided that a current contact number is provided and such contact can be present at the commercial parking lot with thirty (30) minutes;

(7) Be maintained in a clean and orderly condition at all times. All trash receptacles shall be emptied and the contents thereof properly disposed of at the close of operation daily and at such other times as receptacles become full; and

(8) Be in compliance with all other applicable requirements of federal, state and local law including, without limitation, the handicapped parking space requirements of the Americans With Disabilities Act.

(g) Notwithstanding the provisions of any other ordinance or regulation, commercial parking lots shall have one (1) sign, not exceeding nine (9) square feet in surface area per face, at each principal entrance. Each entrance sign shall contain the name of the establishment, if any, and times of operation and shall otherwise comply

with all applicable city sign regulations and specifications for public signs in the Resort Area. Entrance signs may contain removable numbers for purposes of displaying rates. The square footage of such entrance signs shall not be counted against the maximum square footage allowed for commercial signs under the City Zoning Ordinance.

(h) Commercial parking lots shall be subject to inspection by the city manager or his designee for purposes of determining compliance with the provisions of this section, and no person shall obstruct or interfere with such personnel as are authorized by the city manager to enforce this section in the lawful discharge of their duties.

(i) During the period from April 1 to September 30, inclusive, except where a commercial parking lot is accessory to a business which remains open after 2:00 a.m., is used solely by patrons of such business, and is supervised by the operator of such business, no vehicle shall be permitted to enter any commercial parking lot after 2:00 a.m. . All such lots shall be secured at all points of ingress and egress, as required by subdivision (3) of subsection (f) hereof, by no later than 2:30 a.m. and shall remain closed until no earlier than 5:00 a.m.

(j) The provisions of this section shall be deemed to be severable, and if any of the provisions hereof are adjudged to be invalid or unenforceable, the remainder of this section shall remain in full force and effect and its validity shall remain unimpaired.

(k) The city manager or his designee is authorized, upon application by the owner of a commercial parking lot, to grant a variance from the provisions of this section when:

(1) Strict application of the provisions of this section will effectively prohibit or unreasonably restrict the use of the property. For purposes of this section, it shall be presumed that the loss of ten (10) percent or more of existing parking spaces meeting the dimensional requirements of section 203 of the City Zoning Ordinance by reason of the application of the landscaping requirements set forth in subsection (f)(2) of this section shall constitute an unreasonable restriction upon the use of the property; or

(2) The granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege.

In granting a variance, the city manager or his designee may impose such conditions as may be necessary in the public interest; provided, however, that the city manager or his designee shall not grant a variance from any condition or requirement of a conditional use permit granted by the city council.

(Ord. No. 1846, 4-3-89; Ord. No. 2522, 3-2-99; Ord. No. 2703, 6-25-02; Ord. No. 3232, 5-8-12; Ord. No. 3249, 7-10-12; Ord. No. 3523, 12-5-17; Ord. No. 3619, 6-16-20)

Sec. 23-59. - Off-site parking facilities.

(a) For purposes of this section, the term "off-site parking facility", shall mean any lot which is used principally for the parking of motor vehicles, except commercial parking lots as defined in section 23-58. The provisions of this section shall apply to all off-site parking facilities located in any Resort Tourist District or the OR Oceanfront Resort District.

(b) Off-site parking facilities shall at all times, whether or not they are in operation:

(1)

Have a paved surface, inclusive of all drive aisles, which meets the requirements of the Specifications and Standards of the Department of Public Works and the Site Plan Ordinance; provided, that any off-site parking facility in operation as of July 1, 2002 shall not be required to provide curbing so long as wheel stops composed of concrete or asphalt are provided and maintained in good condition and repair at all times;

(2) Contain perimeter landscaping meeting the requirements of section 5A of the Parking Lot Landscaping Specifications and Standards where adjacent to any public right-of-way or other publicly-owned property. The perimeter may also be enclosed by fencing meeting the requirements for fences set forth in section 201(e) of the City Zoning Ordinance; provided, however, that such fencing shall not exceed four (4) feet in height and shall consist of materials, such as black vinyl-coated chain link, white vinyl picket or black wrought iron, which are generally recognized within the industry as maintenance-free. Wood split-rail fences shall not be permitted. Such fencing and landscaping shall at all times be maintained in good condition and repair;

(3) Contain, no less than one trash receptacle, plainly visible and marked as such, for every three thousand, five hundred (3,500) square feet of lot area or fraction thereof;

(4) Be maintained in a clean and orderly condition at all times. All trash receptacles shall be emptied and the contents thereof properly disposed of at the close of operation daily and at such other times as receptacles become full;

(5) Shall, notwithstanding the provisions of any other ordinance have one sign, not exceeding six (6) square feet in surface area per face, at each principal entrance. Each sign shall contain the name of the establishment or establishments for which the lot is used for off-site parking and times of operation. Signs shall otherwise comply with all applicable city sign regulations;

(6) Where such lot is greater than twenty-four thousand (24,000) square feet in area, contain additional landscaping, which may consist of city-approved plant containers, located at the end of all parking aisles not adjacent to a public right-of-way or other publicly-owned property and which shall be maintained in good condition and repair at all times; and

(7) Be in compliance with all other applicable requirements of federal, state and local law including, without limitation, the handicapped parking space requirements of the Americans with Disabilities Act.

(c) Off-site parking facilities shall be subject to inspection by the city manager or his designee for purposes of determining compliance with the provisions of this section, and no person shall obstruct or interfere with such personnel as are authorized by the city manager to enforce this section in the lawful discharge of their duties.

(d) The provisions of this section shall be deemed to be severable, and if any of the provisions hereof are adjudged to be invalid or unenforceable, the remainder of this section shall remain in full force and effect and its validity shall remain unimpaired.

(e) It shall be unlawful and a misdemeanor punishable by a fine of not less than ten dollars ($10.00) nor more than one thousand dollars ($1,000.00) for any person, firm, corporation or other entity to operate an off-site parking facility in violation of any of the provisions of this section. Each day that a violation continues shall constitute a separate offense. In addition to any fine imposed hereunder, and not in lieu thereof, the continuing violation of any of the provisions of this section may be enjoined or restrained by injunction.

(Ord. No. 1847, 4-3-89; Ord. No. 3249, 7-10-12; Ord. No. 3490, 3-7-17)

Sec. 23-60. - Vending machines on private property.

(a) Every vending machine located on private property within the RT-1, RT-3, or RT-4 Resort Tourist District shall, when located outside of the enclosed physical structure of a building or establishment, be located in such a manner as to comply with the following:

(1) No more than one vending machine shall be located on any lot or parcel.

(2) The vending machine shall be accessory to a permitted use and structure.

(3) The vending machine shall be enclosed on three (3) sides.

(4) The open side of the vending machine enclosure shall not face the boardwalk, any city park or any improved connector street plaza.

(5) The vending machine shall be set back a minimum of three (3) feet from any public right-of-way and shall not interfere with any building entrance or exit.

(b) When a vending machine has been located in accordance with subsection (a) above, the owner of the vending machine, or the owner or operator of the business or establishment in control of the vending machine, may display, or cause to be displayed, a sign, visible from the public right-of-way, in letters no higher than three (3) inches, for the purpose of indicating the location of the vending machine.

(c) 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.

(d) The provisions of this section shall not be applicable to newspaper vending machines or coin-operated telephones.

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

(Ord. No. 1845, 4-3-89; Ord. No. 1859, 5-1-89; Ord. No. 3249, 7-10-12)

Cross reference— Vending machines on public property, § 33-18.

Sec. 23-61. - Adult movie arcades.

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

(1) *Adult movie arcade.* The term "adult movie arcade" means any business wherein an electronic viewing device is operated, generally for the purpose of viewing sexually oriented images.

(2) *Electronic viewing device.* The term "electronic viewing device" includes but is not limited to any electrical or mechanical device in a business, which projects or displays any live feed, digital image, film, videotape or reproduction into a viewing area obscured by a curtain, door, wall, or other enclosure which is designed for occupancy by no more than five (5) persons, and is not visible from a continuous main aisle.

(3) *Viewing area.* The term "viewing area" means the area where a patron or customer would ordinarily be positioned while watching images from an electronic viewing device.

(b)

It shall be unlawful for any person in the city to own, maintain or operate, for himself or as an employee or agent an adult movie arcade where the viewing area is not visible from a continuous main aisle and is obscured by any curtain, door, wall, or other enclosure.

(c) Any person who violates the provisions of this section shall be guilty of a Class 1 misdemeanor.

(Ord. No. 2206, 3-9-93; Ord. No. 3123, 3-23-10)

Sec. 23-62. - Display of certain merchandise at business establishments in areas accessible to juveniles.

(a) The City of Virginia Beach hereby finds and declares that juveniles are confronted on a daily basis by the public display and sale of merchandise which graphically depicts or describes sexual activities or organs in an indecent manner and which is, therefore, inappropriate for their viewing. By adoption of this section, it is the intent of the city to aid parents in the exercise of their primary responsibility for the health and welfare of their children and to help protect the physical and psychological well-being of juveniles by shielding juveniles from the harmful influences of exposure to such merchandise in businesses which are open to the general public.

(b) For purposes of this section, the following words and phrases shall have the meanings respectively ascribed to them:

Juvenile shall mean any person less than eighteen (18) years of age.

Knowingly shall mean having general knowledge of, or a reason to know, or a belief or ground for belief which warrants further inspection or inquiry as to, the age of a juvenile.

Merchandise shall be deemed to include, but shall not be limited to, any banner, button, clothing (including hats), figurine, game, greeting card, magnet, photograph, postcard, poster, sculpture, souvenir, sticker, towel or similar item, whether or not the item is offered for sale.

To depict or describe sexual activities or organs in an indecent manner shall mean to graphically depict or describe, by visual representation and/or language, sexual intercourse, masturbation, sadomasochistic abuse, sexual penetration with an inanimate object, sodomy, bestiality, uncovered genitals, buttocks, or female breasts, covered genitals in a state of sexual stimulation or arousal, or the fondling or other erotic touching of genitals, the pubic region, buttocks or the female breast.

(c) Any person who owns, leases or manages a business establishment which displays and/or offers for sale merchandise which depicts or describes sexual activities or organs in an indecent manner shall be required to place such merchandise in an area of the establishment whereby the merchandise is inaccessible to, and out of the plain view of, juveniles; and no person to whom this subsection applies shall knowingly permit a juvenile to enter any such area or to purchase any such merchandise unless the juvenile is accompanied by a parent, guardian or other adult person having care, custody or control of such juvenile.

(d) Any person who violates this section shall be guilty of a Class 4 misdemeanor. Furthermore, in addition to the penalty imposed for violation of this section, the city may seek injunctive relief in the circuit court of the City of Virginia Beach, pursuant to section 15.1-904 of the Code of Virginia, as amended, to enjoin a continuing violation hereof.

(e)

It is the intent of this section to regulate the display of inappropriate and indecent materials to juveniles; this section shall not be deemed to supersede any provision of chapter 22 of this Code pertaining to the display or sale of obscene materials to juveniles, nor shall this section be interpreted to authorize the display or sale of obscene materials.

(Ord. No. 2380, 4-23-96)

ARTICLE II. - NOISE

Sec. 23-63. - Declaration of findings and policy.

City council hereby finds and declares that excessive sound is a serious hazard to the public health, welfare, peace and safety and the quality of life; that a substantial body of science and technology exists by which excessive sound may be substantially abated; that the people have a right to and should be ensured an environment free from excessive sound that may jeopardize the public health, welfare, peace and safety or degrade the quality of life; and that it is the policy of the city to prevent such excessive sound to the extent such action is not inconsistent with a citizen's First Amendment rights.

(Ord. No. 3082, 5-12-09; Ord. No. 3180, 5-24-11)

Sec. 23-64. - Definitions.

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

A-weighted sound level means the sound pressure level in decibels as measured on a sound level meter using the A-weighting network. The level so read is designated dB(A) or dBA.

Audible and discernable means the sound can be heard by the human ear, and the sound is sufficiently distinct such that its source can be clearly identified.

Background noise level shall mean the aggregate of all sound sources impacting at the place where a specific sound generation is measured or evaluated, excluding the specific sound generation itself.

Decibel (dB) means a unit for measuring the volume of a sound, equal to twenty (20) times the logarithm to the base ten (10) of the ratio of the pressure of the sound measured to the reference pressure, which is twenty (20) micropascals (twenty (20) micronewtons per square meter).

Emergency means any occurrence or set of circumstances involving actual or imminent physical injury or illness or property damage that requires immediate action.

Emergency work means any work performed for the purpose of preventing or alleviating the physical injury or illness or property damage threatened or caused by an emergency.

Gross vehicle weight rating (GVWR) means the value specified by the manufacturer as the recommended maximum loaded weight of a single motor vehicle. In cases where trailers and tractors are separable, the gross combination weight rating (GCWR), which is the value specified by the manufacturer as the recommended maximum loaded weight of the combination vehicle, shall be used.

Instrument, machine or device means and refers to any musical instrument, radio, phonograph, compact disc player, cassette tape player, amplifier or any other machine or device for producing, reproducing or amplification of sound.

Motor carrier vehicle engaged in interstate commerce means any vehicle for which regulations apply pursuant to section 18 of the Federal Noise Control Act of 1972 (P.L. 92-574), as amended, pertaining to motor carriers engaged in interstate commerce.

Motorcycle means any motor vehicle designed to travel on not more than three (3) wheels in contact with the ground and any four-wheeled vehicle weighing less than five hundred (500) pounds and equipped with an engine of less than six (6) horsepower, excepting farm tractors.

Motor vehicle means any self-propelled device or device designed for self-propulsion, upon or by which any person or property is or may be drawn or transported upon a street or highway, except devices moved by human power or used exclusively upon stationary wheels or tracks.

Noise means any audible sound which disturbs or tends to disturb humans or which causes or tends to cause an adverse psychological or physiological effect on humans.

Public area means any real property owned by the government, including, but not limited to, public rights-of-way, sidewalks, parks, and buildings.

Residential dwelling means any building or other structure in which one or more persons resides on a permanent or temporary basis, including, but not limited to, houses, apartments, condominiums, hotels, and motels.

Restaurant means any building or structure where in the normal course of business food or drink is available for eating on the premises, in consideration for payment. For purposes of this chapter, the term restaurant includes, but is not limited to, bars, lounges, taverns, coffee shops and cafes.

Sound means an oscillation in pressure, particle displacement, particle velocity or other physical parameter, in a medium with internal forces that causes compression and rarefaction of that medium. The description of sound may include any characteristic of such sound, including duration, intensity and frequency.

Sound generation means any conduct, activity or operation, whether human, mechanical, electronic or other, and whether continuous, intermittent or sporadic, and whether stationary or ambulatory in nature, which produces or results in an audible sound.

Sound level means the weighted sound pressure level obtained by the use of a sound level meter and the A-frequency weighting network, as specified in American National Standards Institute specifications for sound level meters.

Sound level meter means an instrument which includes a microphone, amplifier, RMS detector, integrator or time averager, output meter and weighting networks used to measure sound pressure levels.

(Ord. No. 3082, 5-12-09; Ord. No. 3180, 5-24-11)

Sec. 23-65. - Administration and enforcement.

(a) The police department may issue a summons for enforcement of the noise control program established by this article and may be assisted by other city departments as required.

(b) Nothing in this section shall preclude a private citizen from obtaining a magistrate's summons based upon a probable cause determination by the magistrate's office.

(Ord. No. 3082, 5-12-09; Ord. No. 3180, 5-24-11)

Sec. 23-66. - Violations.

(a) Any person who violates any provision of this article shall be deemed to be guilty of a Class 3 misdemeanor for a first offense. Any person who violates a provision of this article within one (1) year after a previous conviction under this article shall be guilty of a Class 2 misdemeanor.

(b) The person operating or controlling a noise source shall be guilty of any violation caused by that source. If that cannot be determined, any owner, tenant, resident or manager physically present on the property where the violation is occurring is rebuttably presumed to be operating or controlling the noise source.

(c) 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 article and may seek any other remedy or relief authorized by law.

(Ord. No. 3082, 5-12-09)

Sec. 23-67. - Exceptions.

No provisions of this article shall apply to (1) the emission of sound for the purpose of alerting persons to the existence of an emergency; (2) the emission of sound in the performance of emergency work; (3) activities sponsored by the city; (4) activities authorized by a permit issued pursuant to sections 4-1 or 24-6; or (5) activities for which the regulation of noise has been preempted by federal law.

(Ord. No. 3082, 5-12-09; Ord. No. 3180, 5-24-11)

Sec. 23-68. - Use of sound level meters.

The decibel level of any noise regulated on a decibel basis by this article shall be measured by a sound level meter. The test results shall be prima facie evidence if administered in accordance with Code of Virginia § 19.2-270.7. In order to implement and enforce this article effectively, the chief of police shall promulgate standards and procedures for using and testing sound level meters used in the enforcement of this article.

(Ord. No. 3082, 5-12-09; Ord. No. 3180, 5-24-11)

Sec. 23-69. - Maximum sound levels and residential dwellings.

(a) *Nighttime.* No person shall permit, operate or cause any source of sound to create a sound level that can be heard in another person's residential dwelling during the hours between 10:00 p.m. and 7:00 a.m. in excess of 55 dBA when measured inside the residence at least four (4) feet from the wall nearest the source, with doors and windows to the receiving area closed.

(b)

Daytime. No person shall permit, operate or cause any source of sound to create a sound level in another person's residential dwelling during the hours between 7:00 a.m. and 10:00 p.m. in excess of 65 dBA when measured inside the residence at least four (4) feet from the wall nearest the source, with doors and windows to the receiving area closed.

(c) *Measurements in multifamily dwellings or mixed use structures.* In a structure used as a multifamily dwelling or a mixed use structure, the police department may take measurements to determine sound levels from indoor common areas or other dwelling units within the structure , when requested to do so by a residential occupant in possession and control thereof. Such measurement shall be taken at a point at least four (4) feet from the wall, ceiling or floor nearest the noise source, with doors and windows to the receiving area closed.

(d) *Exemptions.* The following activities or sources of noise shall be exempt from the daytime prohibition set forth in subsection (b) of this section:

(1) Band performances or practices, athletic contests or practices and other school-sponsored activities on the grounds of public or private schools, colleges, or universities.

(2) Athletic contests and other officially sanctioned activities in city parks or facilities.

(3) Activities related to the construction, repair, maintenance, remodeling or demolition, grading or other improvement of real property.

(4) Gardening, lawn care, tree maintenance or removal, and other landscaping activities.

(5) Agricultural activities.

(6) Church bells, carillons, or calls to worship by other sound-producing devices.

(7) Religious or political gatherings to the extent that those activities are protected by the First Amendment to the United States Constitution.

(8) Public transportation, refuse collection and sanitation services.

(Ord. No. 3082, 5-12-09; Ord. No. 3180, 5-24-11)

Sec. 23-70. - Motor vehicle maximum sound levels; amplified sound from vehicles.

(a) No person shall operate or cause to be operated a public or private motor vehicle or motorcycle on a public right-of-way at any time in such a manner that the sound level emitted by the operation of the motor vehicle or motorcycle, when measured at a distance of one-hundred (100) feet or more is audible and discernable or exceeds the level set forth in the following table:

	Sound level in dBA	
Vehicle Class	Speed limit 35 MPH or less	Speed limit over 35 MPH
All motor vehicles of GVWR or GCWR of 6,000 lbs. or more	86	90
Any motorcycle	82	86

Any other motor vehicle or any combination of vehicles towed by any motor vehicle	76	82

(b) This section shall not apply to any motor carrier vehicle engaged in interstate commerce.

(c) Notwithstanding any other provisions of this section or article, it shall be unlawful for any person to play or operate, or permit the playing, use or operation of, any radio, tape player, compact disc player, loud speaker or other electronic device used for the amplification of sound, which is located within a motor vehicle being operated or parked on public or private property within the city, including any public or private street or alley, in such a manner as to be audible and discernable at a distance of one hundred (100) or more feet from the vehicle in which it is located.

The provisions of this subsection shall not apply to motor vehicles driven in a duly authorized parade, nor to motor vehicle alarms or other security devices, nor to the emission of sound for the purpose of alerting persons to the existence of an emergency or the emission of sound in the performance of emergency work.

(Ord. No. 3082, 5-12-09; Ord. No. 3180, 5-24-11)

Sec. 23-71. - Specific prohibitions.

The following acts are declared to be violations of this article. This enumeration shall not be construed to limit, in any way, the general prohibitions contained in section 23-69:

(a) *Vehicle horns, signaling devices and similar devices.* Sounding any horn, signaling device, or similar device on any automobile, motorcycle or other vehicle on any right-of-way or in any public space continuously or intermittently for more than ten (10) consecutive seconds, except when the sounding of any such device is intended as a danger warning.

(b) *Nonemergency signaling devices.* Sounding or permitting the sounding of any amplified signal continuously or intermittently from any bell, chime, siren, whistle or similar device intended primarily for nonemergency purposes from any one location for more than ten (10) consecutive seconds in any hourly period; provided, however, that this subsection shall not apply to the sounding of such devices by religious uses or by public bodies or agencies for testing, traffic control or other public purposes.

(c) *Emergency signaling devices, security, burglar and fire alarms, etc.* Sounding or permitting the continuous or intermittent sounding outdoors of any emergency signaling device, or any security, burglar or fire alarm, siren, whistle, or similar device, including without limitation any motor vehicle security alarm, siren, whistle, or similar device, for a period in excess of ten (10) minutes in any residential area and fifteen (15) minutes in any other area, except in response to a burglary, attempted burglary, fire, or other emergency.

(d) *Audio and audio-visual devices, musical instruments, amplified sound etc., excluding those in motor vehicles.* The playing or operation of any television, boombox, stereo, phonograph, radio, tape player, compact disc player, MP3 player, video player, musical instrument, drum, amplifier or any other device

that produces, reproduces or amplifies sound except for those located in motor vehicles, where the sound, when measured in any public area including but not limited to any public street or sidewalk, or from other private property between the hours of 7:00 a.m. and 11:00 p.m. exceeds eighty (80) dB(A), or between the hours of 11:00 p.m. and 7:00 a.m. exceeds seventy-five (75) dB(A); provided, however that the provisions of this subsection shall not apply to any outdoor performance, parade, gathering, dance, concert, show, sporting event, or other event sponsored by the city or for which the city has granted a permit.

(e) *Noise-sensitive areas.* The making of any unreasonably loud and raucous noise within two hundred (200) feet of any school, place of worship, court, hospital, nursing home, or assisted-living facility while the same is being used as such, that substantially interferes with the workings of the institution.

(f) *Construction equipment.* The operation of any bulldozer, crane, backhoe, front loader, pile driver, jackhammer, pneumatic drill, or other construction equipment between the hours of 9:00 p.m. and 7:00 a.m. except as provided in section 23-67 above, or as specifically deemed necessary and authorized by a written document issued by the city manager or his designee.

(Ord. No. 3082, 5-12-09; Ord. No. 3180, 5-24-11)

Sec. 23-72. - Sound levels; restaurants.

No person shall permit, operate or cause any source of sound to create a sound level emanating from a restaurant during the hours between 7:00 a.m. and 11:00 p.m. in excess of eighty (80) dB(A), or between 11:00 p.m. and 7:00 a.m. in excess of seventy-five (75) dB(A) when measured from any public area including, but not limited to, any public streets or sidewalks, or other private property.

(Ord. No. 3082, 5-12-09; Ord. No. 3180, 5-24-11)

Sec. 23-73. - Severability.

A determination of invalidity or unconstitutionality by a court of competent jurisdiction of any clause, sentence, paragraph, section or part of this article shall not affect the validity of the remaining parts thereto.

(Ord. No. 3082, 5-12-09)

Chapter 24 - PARKS AND RECREATION

Footnotes:
*--- (**1**) ---*
Cross reference— *Amusements, Ch. 4; beaches, boats and waterways, Ch. 6; sleeping in public parks, § 23-55; overnight occupancy of camper vehicle on public property, § 23-56; public swimming pools, § 34-21 et seq.*
State Law reference— *Authority of city to establish and maintain parks, playgrounds and recreation systems, Code of Virginia, §§ 15.1-15, 15.1-271, 15.1-272. See also, § 15.1-886.*

Sec. 24-1. - Creation and composition of department.

There is hereby created a department of parks and recreation, which shall consist of the director of parks and recreation and such other employees as may be prescribed by the council or by the orders of the city manager consistent therewith.

(Code 1965, § 2-144)

Charter reference— Authority of council to create departments, §§ 3.05(b), 7.01.

Sec. 24-2. - Functions of department.

The department of parks and recreation shall be responsible for operating and maintaining all public parks, playgrounds and recreation facilities and grounds within the city government and organizing and conducting recreation programs, and shall have such other powers and duties as may be assigned by the council.

(Code 1965, § 2-145; Ord. No. 2824, 5-25-04)

Sec. 24-3. - Fees, policies, procedures, rules and regulations pertaining to the use of city parks, recreational facilities, and parks and recreation equipment.

(a) Except as provided in subsection (b) of this section, the director of parks and recreation is hereby authorized to (i) establish reasonable fees, and (ii) adopt and enforce reasonable policies, procedures, rules and regulations, pertaining to the use of city parks, recreational facilities, and parks and recreation equipment, subject to the approval of the city manager.

(b) The director of the Virginia Beach convention and visitors bureau is hereby authorized to (i) establish reasonable fees, and (ii) adopt and enforce reasonable policies, procedures, rules and regulations, pertaining to the use of city parks located in the resort area adjacent to the Atlantic Ocean, subject to the approval of the city manager.

(Code 1965, § 2-1.1; Ord. No. 2454, 7-8-97; Ord. No. 2763, 5-13-03)

Secs. 24-4, 24-5. - Reserved.

Editor's note— Ord. No. 2454, adopted July 8, 1997, amended Ch. 24 by deleting provisions formerly codified as §§ 24-4 and 24-5, which set out fees for boating and fishing on lakes of Mount Trashmore Park and rules and regulations for use in lakes of Mount Trashmore Park, and which derived from Code 1965, §§ 6-11.3 and 6-11.4.

Sec. 24-6. - Permit requirements for use of city parks.

(a) *Permit required.* No person shall hold, organize, or sponsor any assemblage or gathering (hereinafter "event") in any city park (i) that will be attended by two hundred (200) or more persons, or (ii) that, regardless of the number of persons anticipated to be in attendance, will require the normal operations of the city park to be altered, unless a permit therefor has been granted by the director of parks and recreation. This permit shall be in addition to (i) any other permit that may be required by federal, state or local law, and (ii) payment of the applicable fee or fees, if any, established pursuant to section 24-3.

(b) *Application: Contents and fee.* An application for any permit required by this section shall be made to the director of parks and recreation, accompanied by the applicable nonrefundable processing fee established pursuant to section 24-3. The application must be submitted to the director of parks and recreation not less than thirty (30) days prior to the date of the proposed event, and not more than twelve (12) months prior to the date of the proposed event. The application shall contain the following information, utilizing a form provided by the department of parks and recreation:

(1) The name of the park;

(2) The nature, date, duration and estimated attendance of the event;

(3) Provisions for sanitation facilities, crowd, noise and traffic control, and parking;

(4) The designation of an individual or individuals who shall be responsible for ensuring compliance with (i) the provisions of this section, (ii) applicable policies, procedures, rules and regulations of the department of parks and recreation adopted pursuant to section 24-3, and (iii) any specific conditions of the permit; and

(5) Such other information as may reasonably be required by the director of parks and recreation.

(c) *Application: Submission and processing requirements:*

(1) A completed application shall be processed and either granted or denied within a reasonable time, but not more than forty-five (45) days following receipt thereof. A decision to deny an application shall be in writing, setting forth the reasons for denial, and shall be provided to the applicant either in person or at the address stated in the application.

(2) If an application is submitted to the city less than thirty (30) days prior to a proposed event, the director of parks and recreation may modify the requirements of subsections (b) and (c) upon a demonstration by the applicant, in writing, that circumstances giving rise to the proposed event did not reasonably allow the applicant to apply for a permit within the time prescribed.

(d) *Permit approval process.* Except as provided in subsection (i) of this section, the permit shall be granted by the director of parks and recreation if the proposed use of the city park:

(1) Will not generate excessive or unreasonable traffic or noise or otherwise adversely affect the public health, safety or welfare; and

(2) Will not be so extensive or require the use of such portion of the city park as to unreasonably interfere with the primary use or uses for which such park is designed or intended.

(e) *Permit requirements:*

(1) The permittee shall comply with all policies, procedures, rules and regulations for pertaining to the use of city parks as adopted by the director of parks and recreation.

(2) The director of parks and recreation may impose, as conditions to granting a permit, such further requirements and restrictions as may be determined to be reasonably necessary to protect the public health, safety, welfare, peace and order. Such conditions may include, but are not limited to:

(i) The payment of a reasonable fee for the use of such park, based upon the additional maintenance and/or other costs incurred by the city in relation to such use, not to exceed the actual costs incurred by the city;

(ii) The provision of adequate security personnel and parking attendants;

(iii) The posting of a performance bond or other surety securing payment of the aforesaid fee and compliance with any and all conditions of the permit;

(iv) Proof of liability insurance underwritten by insurers acceptable to the city, indemnifying the applicant against any perils, suits, claims and losses which may arise in connection with the proposed activity. Such coverage shall be in amounts consistent with a standard schedule approved by the city, based upon risks associated with each type of event, in consideration of anticipated attendance;

(v) A limitation upon the number of persons who may assemble in the requested area;

(vi) Designation of an area compatible with anticipated crowd size and proposed activities;

(vii) Any of the additional requirements for special events set forth in section 4-1 of this code.

(f) *Notice of denial; hearing.* In the event the application fails to meet any one (1) or more of the criteria set forth in subsections (d) and (e) of this section, the permit shall be denied; however, prior to any final decision to deny a permit, the applicant shall be apprised of the reason(s) for such denial and shall be entitled to a hearing before the city manager or his designee.

(g) *Grant of permit subject to terms and conditions.* If a permit is denied because the proposed use of a park is so extensive or requires the use of such portion thereof as will substantially interfere with the primary use or uses for which such park is designed or intended, the city council may, in its discretion, direct that the permit be granted, subject to such terms and conditions as the city council may deem proper. No such action shall be taken by the city council except upon public notice and hearing. Such notice shall be by publication at least once in a newspaper of general circulation within the city not less than seven (7), nor more than fourteen (14), days prior to the hearing and by posting of a sign at the proposed place of gathering. The cost of such notice shall be borne by the applicant.

(h) *Exceptions for expressive activities:*

(1) Liability insurance, payment of the permit fee and administrative costs, and provision of security personnel and parking attendants may be partially or completely waived for any noncommercial event which is held strictly for the purpose of expressive activity upon a demonstration, in writing, by the applicant (i) that the applicant is financially unable to pay the costs of such fees and services and (ii) that the right to engage in expressive activity would be unreasonably curtailed by failure to waive such requirements; provided, however, that insurance may be required for collateral activities such as food service and the use of structures and equipment which present a demonstrable risk or hazard.

(2) Upon a demonstration that enforcement of the limitation provisions of subsections (b) and (c) of this section would unreasonably restrict the right of free expression, the director of parks and recreation shall waive the time prescribed for advance notice of an event and impose only such provisions as will not unreasonably restrict the element of timeliness of the expressive activity.

(3) For purposes of this section, the term "expressive activity" means a public gathering, procession or parade, the primary purpose of which is the exercise of the rights of assembly and free speech as guaranteed by the First Amendment of the Constitution of the United States.

(i) *Denial or revocation of permit:*

(1) The director of parks and recreation shall have the authority to deny an application or to revoke a permit for any of the following reasons:

(i) Violation of any of the provisions of this section;

(ii) Violation of any applicable policies, procedures, rules and/or regulations adopted by the director of parks and recreation pursuant to section 24-3 of this code;

(iii) Violation of any specific condition(s) of the permit;

(iv) A material misrepresentation, intentional or otherwise, made on or in connection with the application; or

(v) When denial of an application or revocation of a permit is necessary to protect the public health, safety and welfare, or is necessary for environmental considerations.

(2) In the event a permit is revoked, the director of parks and recreation shall so notify the sponsor, or the individual(s) designated pursuant to subsection (b)(4), who shall cause the persons who are attending the event to immediately leave the city park at which the event is being held.

(j) *Administration.* The city manager may designate one (1) or more officers or employees of the city to administer the provisions of this section.

(k) *Violation.* Any person who violates any provision of this section shall be guilty of a Class 1 misdemeanor.

(Ord. No. 2137, 6-9-92; Ord. No. 2454, 7-8-97)

Chapter 25 - PAWNBROKERS; JUNK AND SECONDHAND DEALERS

Footnotes:
*--- **(1)** ---*
***Cross reference—** Records to be kept by dealers in secondhand bicycles and mopeds, § 7-6; dealers not to purchase secondhand bicycles and mopeds from minors, § 7-7; license tax of dealers in precious metals and gems, § 18-76.1; license tax for junk and secondhand dealers, § 18-86; license tax for pawnbrokers, § 18-92; purchase of junk or secondhand articles from minors, § 23-36.*
***State Law reference—** Junk and secondhand dealers, Code of Virginia, §§ 54-825—54-836; pawnbrokers, §§ 54-840—54-859.*

ARTICLE I. - IN GENERAL

Sec. 25-1. - Definitions.

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

Junk dealer. The term "junk dealer" means any person who purchases, sells, barters or exchanges any kind of secondhand articles, junk, rags, rag cullings, bones, bottles, puer, scrap, metals, metal drosses, steel, iron, old lead or lead pipe, old bathroom fixtures, old rubber, old rubber articles or other like commodities, except paper and except furniture, clothes, shoes and stoves intended to be resold for use as such.

Pawnbroker. The word "pawnbroker" means any person who shall, in any manner, lend or advance money or other things for profit on the pledge and possession of personal property or other valuable things, other than securities or written or printed evidences of indebtedness, or who deals in the purchasing of personal property or other valuable things on condition of selling the same back to the seller at a stipulated price.

Secondhand dealer. The term "secondhand dealer" means any person who buys, sells, barters or exchanges used or secondhand articles, such as firearms, jewelry, office machines, household appliances, radios, television sets, electronic equipment, sporting equipment, photographic equipment, heating or plumbing fixtures or supplies, electrical fixtures or wiring, gas fixtures or appliances, water faucets, pipes, locks, bathtubs or any other secondhand merchandise intended to be resold for use as such. This definition does not include those persons who exclusively buy, sell, barter or exchange used or secondhand clothing, furniture and non-electronic children's articles.

(Code 1965, § 24-1; Ord. No. 3257, 8-14-12)

State Law reference— Similar definitions of "junk dealer" and "pawnbroker," Code of Virginia, §§ 54-825, 54-840.

Sec. 25-2. - Violations of article generally.

(a) Unless otherwise specifically provided, a violation of any provision of this article shall constitute a Class 4 misdemeanor.

(b) In addition to any penalty that may be imposed for a violation of this article, upon conviction of any pawnbroker, junk dealer or secondhand dealer of a violation of this article, the judge of a court of competent jurisdiction may, at his discretion, revoke the license of the offender.

(Code 1965, § 24-13)

Sec. 25-3. - Exceptions from article.

Nothing contained in this article shall apply to any licensed retail merchant accepting secondhand merchandise as partial payment or as trade-in on new merchandise of the same or similar type or to (1) any nonprofit, charitable, religious or educational organization; (2) any corporation that operates a retail store on behalf of a nonprofit, charitable, religious, or educational organization; or (3) any properly licensed antique dealer; provided, however, that this exception does not apply to those who deal primarily in new and used firearms.

(Code 1965, § 24-12; Ord. No. 3439, 4-5-16)

Sec. 25-4. - Identification of persons from whom property received.

It shall be unlawful and a Class 1 misdemeanor for any pawnbroker, secondhand dealer or junk dealer to purchase, barter or exchange or in any manner obtain from any person any articles described in section 25-1 without first requiring such person to exhibit sufficient evidence of his identity.

(Code 1965, § 24-2)

Sec. 25-5. - Certain transactions prohibited between 10:00 p.m. and sunrise.

(a) No pawnbroker, secondhand dealer or junk dealer shall purchase, barter or exchange any of the articles referred to in section 25-1 between the hours of 10:00 p.m. and sunrise of the following morning.

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

(Code 1965, § 24-11; Ord. No. 2423, 9-24-96)

State Law reference— Purchases by junk dealers to be made only between sunrise and sunset, Code of Virginia, § 54-828.

Sec. 25-6. - Daily reports to chief of police.

(a) All pawnbrokers, secondhand dealers and junk dealers shall furnish daily, by noon, to the chief of police or his designee, a true and correct report, of all items pawned, purchased, sold, bartered or exchanged or otherwise coming into his possession, during the preceding business day, except such as is purchased at public auction. Each item included in the report shall be described as accurately as possible and shall include any brand name, model number, serial number, initial or name or any other identifying marks found on the item. The report shall include the full name of the person pawning, pledging, or selling the goods, article, or thing; residence address; telephone number; the identification card type, number, and issuing agency recorded from a government-issued identification card bearing a photograph of the pledger or seller presented during the transaction; a photograph or digital image of the form of identification used by the pledger or seller; and a description of the pledger or seller, including the height, weight, date of birth, race, gender, hair and eye color, and any other identifying marks, of such person. The report shall be submitted in an electronic format as provided by the chief of police or his designee.

(b) If the purchase, sale or acquisition occurs during a weekend or holiday, then the submittal of the electronic report required in subsection (a) above shall be made no later than noon the next regular business day.

(c) For each loan or transaction, a pawnbroker, junk dealer or secondhand dealer may charge a service fee for making daily electronic reports as required above. Such fee shall not exceed five (5) percent of the amount of the loan or transaction, or three dollars ($3.00), whichever is less.

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

(Code 1965, § 24-8; Ord. No. 2851, 11-9-04; Ord. No. 3101, 8-25-09; Ord. No. 3404, 4-21-15, eff. 6-1-15)

State Law reference— Pawnbrokers' reports, Code of Virginia, § 54-853.

Sec. 25-7. - Duty to allow removal of stolen property.

Every pawnbroker, secondhand dealer or junk dealer shall, upon reasonable demand and with just cause, after obtaining a proper receipt, allow the removal of any merchandise suspected of being, or identified as, stolen property, by any police officer.

(Code 1965, § 24-9)

Sec. 25-8. - Pawnbroker's records.

(a) Every pawnbroker shall keep at his place of business an accurate and legible record of each loan or transaction in the course of his business, including transactions in which secondhand goods, wares, or merchandise is purchased for resale. The account shall be recorded at the time of the loan or transaction and shall include:

(1) A description, serial number, and a statement of ownership of the goods, article or thing pawned or pledged or received on account of money loaned thereon or purchased for resale;

(2) The time, date, and place of the transaction;

(3) The amount of money loaned thereon at the time of pledging the same or paid as the purchase price;

(4) The rate of interest to be paid on such loan;

(5) The fees charged by the pawnbroker, itemizing each fee charged;

(6) The full name, residence address, telephone number, and driver's license number or other form of identification of the person pawning or pledging or selling the goods, article or thing, together with a particular description, including the height, weight, date of birth, race, gender, hair and eye color, and any other identifying marks of such person;

(7) Verification of the identification by the exhibition of a government-issued identification card bearing a photograph of the person pawning, pledging, or selling the goods, article, or thing, such as a driver's license or state identification card. The record shall contain the type of identification exhibited, the issuing agency, and the number thereon;

(8) A digital image of the form of identification used by the person involved in the transaction;

(9) As to loans, the terms and conditions of the loan, including the period for which any such loan may be made; and

(10) All other facts and circumstances respecting such loan or purchase.

(b) The chief of police shall promulgate regulations specifying the nature of the particular description for the purposes of subsection (6) above and he shall promulgate regulations specifying the nature of identifying credentials of the person pawning, pledging, or selling the goods, article, or thing. Such credentials shall be examined by the pawnbroker, and an appropriate record retained thereof.

(c) The records, either written or electronic, required to be kept by this section shall, at all reasonable times, be open to inspection by judges of the criminal courts and all law-enforcement officers. If maintained electronically, a pawnbroker shall retain the electronic records for at least one (1) year after the date of the transaction.

(d) For each loan or transaction, a pawnbroker may charge a service fee for making the daily electronic reports to the appropriate law-enforcement officers, creating and maintaining the electronic records required under this section, and investigating the legal title to property being pawned or pledged or purchased. Such fee shall not exceed five (5) percent of the amount loaned on such item or paid by the pawnbroker for such item or three dollars ($3.00), whichever is less.

(e) No goods, article, or thing shall be pawned or pledged or received on account of money loaned or purchased for resale if the original serial number affixed to the goods, article, or thing has been removed, defaced, or altered.

(f) Any person, firm or corporation violating any provision of this section shall be guilty of a Class 4 misdemeanor.

(Code 1965, §§ 24-5, 24-6; Ord. No. 1991, 7-9-90; Ord. No. 2851, 11-9-04; Ord. No. 3404, 4-21-15, eff. 6-1-15)

State Law reference— Similar provisions, Code of Virginia, §§ 54-851, 54-852.

Sec. 25-9. - Note or memorandum of pawn to include schedule of interest and charges.

Before delivering the note or memorandum required by section 54-846 of the Code of Virginia to a person pawning or pledging any goods, articles or things, a pawnbroker shall enter, on the back of such note or memorandum, a schedule of the rate of interest and charges allowed to such pawnbroker by law.

(Code 1965, § 24-10)

Sec. 25-10. - Junk dealer's records.

Every junk dealer and every merchant and foundryman who deals in junk, bronze metals, bronze plaques, bronze statuaries, old metals and similar articles shall keep, at his place of business, and every canvasser shall carry and keep with him, a book in which shall be fairly written in English, at the time of each transaction in the course of his business, an accurate account of such transaction, except as to the purchase of rags, bones, old iron and paper, setting forth a description of the goods, articles or other thing purchased, the time of receiving the same, the name and residence of the person selling or delivering the same, the terms and conditions of purchase or receipt thereof and all other facts and circumstances respecting such purchase or receipt. Such book shall, at all times, be subject to the inspection of the judges of the criminal courts and all law-enforcement officers.

(Code 1965, § 24-3)

State Law reference— Similar provisions, Code of Virginia, § 54-832.

Sec. 25-11. - Search of premises; seizure of missing or stolen property.

Every junk dealer and canvasser, every merchant and foundryman referred to in section 25-9 and every pawnbroker and employee of a pawnbroker shall admit to his premises, at any time, any judge of a criminal court or any law-enforcement officer to examine any books or other records on the premises or in his possession, as well as the articles purchased, pledged, pawned or received, and to search for and take into possession any article known by such judge or officer to be missing or known or believed by him to be stolen, without the formality of a search warrant or any other process, and such search or seizure is hereby authorized.

(Code 1965, §§ 24-4, 24-7)

State Law reference— Similar provisions, Code of Virginia, §§ 54-834, 54-854.

Sec. 25-12. - Limitation as to number of pawnshops.

(a) No more than fifteen (15) pawnshops shall be licensed to operate in the city at any one time.

(b)

Notwithstanding the provisions of subsection (a), any pawnshop licensed to operate in the city as of the date of adoption of this section may remain so licensed as long as such pawnshop shall remain continuously in operation.

(c) The commissioner of revenue shall not issue any license to operate a pawnshop, except to renew any license in good standing, unless the number of pawnshops licensed has been reduced below the maximum prescribed herein.

(d) When the number of pawnshops in the city has reached the maximum prescribed herein, the commissioner of revenue shall file a statement with the circuit court that the maximum number of pawnshops authorized to be operated in the city has been reached.

(e) For purposes of this section, the term "pawnshop" shall be deemed to include pawnbrokers' sales stores.

(Ord. No. 2191, 11-10-92)

Secs. 25-13—25-22. - Reserved.

ARTICLE II. - AUTOMOBILE GRAVEYARDS, JUNKYARDS AND DUMPS

Footnotes:
*--- (**2**) ---*
Cross reference— *License tax for wrecking or salvaging automobiles, § 18-116; provisions of traffic code relative to abandoned, inoperative, etc., vehicles, §§ 21-376, 21-377; solid waste, Ch. 31; city refuse disposal areas, § 31-61 et seq.*
State Law reference— *Authority of city to regulate operation and maintenance of automobile graveyards and junkyards, Code of Virginia, § 15.1-28.*

DIVISION 1. - GENERALLY

Sec. 25-23. - Definitions.

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

Automobile graveyard. The term "automobile graveyard" means any lot or parcel which is exposed to the weather and upon which more than five (5) motor vehicles of any kind, incapable of being operated, and which it would not be economically practical to make operative, are placed, located or found.

Dump. The term "dump" means any lot or parcel of land, water or part thereof used for the disposal, by abandonment, dumping, burial, burning or any other means, of garbage, sewage, trash, refuse, junk, discarded machinery or waste materials of any kind.

Junkyard. The term "junkyard" means any lot or parcel of land, structure or part thereof used for the collection, storage and sale of wastepaper, rags or scrap metal or discarded material, or for the collection, dismantling, storage and salvaging of machinery or vehicles not in running condition and for the sale of parts thereof.

(Code 1965, § 24-14)

State Law reference— Similar definitions of "automobile graveyard" and "junkyard," Code of Virginia, § 33.1-348.

Sec. 25-24. - Violations of article.

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

Sec. 25-25. - Fencing.

Each automobile graveyard, junkyard and dump located in the city shall be completely enclosed by a board or masonry fence, eight (8) feet or more in height, which shall be kept neatly painted and in good repair for the purpose of excluding the premises from the public view. Such fence shall not be constructed closer than fifty (50) feet to the nearest right-of-way and shall not be used for the purpose of advertising anything other than the place of business and such advertising shall be limited to four (4) feet by eight (8) feet.

(Code 1965, § 24-15)

State Law reference— Screening of junkyards and automobile graveyards adjacent to highways, Code of Virginia, § 33.1-348.

Sec. 25-26. - Contents of premises not to extend above height of fence.

The contents of an automobile graveyard, junkyard or dump shall not be placed or deposited to a height greater than the height of the fence required by section 25-25.

(Code 1965, § 24-15)

Sec. 25-27. - Abutting streets and sidewalks to be kept clear of junked vehicles and waste matter.

Sidewalks and streets abutting an automobile graveyard, junkyard or dump shall be kept clear of all vehicles incapable of being operated under their own power and trash or other waste matter.

(Code 1965, § 24-16)

Cross reference— General duty of property owners and occupants to keep abutting streets and sidewalks free of litter, § 33-13.

Sec. 25-28. - Record of purchases to be kept by proprietor of automobile graveyard.

The proprietor of an automobile graveyard shall maintain an accurate record, open for inspection to all city officials and law-enforcement officers, showing the make, state license number, state certificate of title, motor number, body number, style and seating capacity of vehicles purchased, together with such other information concerning such property as may be necessary to establish the ownership of all such vehicles.

(Code 1965, § 24-17)

Secs. 25-29—25-35. - Reserved.

DIVISION 2. - PERMIT

> *Footnotes:*
> *--- (**3**) ---*
> ***State Law reference—** General authority of city as to permits, Code of Virginia, § 15.1-906.*

Sec. 25-36. - Required.

It shall be unlawful for any person to establish, locate, operate or maintain any automobile graveyard, junkyard or dump within the city, unless he has a current permit so to do issued pursuant to the provisions of this division.

(Code 1965, § 24-18)

Sec. 25-37. - Application.

Application for a permit required by this division shall be made to the secretary of the planning commission. Such application shall contain a plat or drawing showing the location of the proposed automobile graveyard, junkyard or dump with relation to highway rights-of-way, street names and ownership of land involved, size of lot or parcel, location of homes in the area and such other pertinent data as may be required by the secretary of the planning commission.

(Code 1965, §§ 24-19, 24-20)

Sec. 25-38. - Fee.

Every application for a permit under this division shall be accompanied by a fee in the sum of twenty-five dollars ($25.00), payable to the city treasurer, to be used to defray the costs of investigation and of processing the application in question. Such fee shall not be refundable.

(Code 1965, § 24-21)

Sec. 25-39. - Procedure for issuance or denial.

Upon receipt of an application for a permit under this division, the secretary of the planning commission shall transmit the same to the planning commission for study and report. The planning commission shall then transmit such application, together with its recommendations thereon, to the city council, which shall either authorize the issuance of the permit or deny the application.

(Code 1965, § 24-19)

Sec. 25-40. - Expiration and renewal.

A permit required by this division shall be issued for the calendar year in which application is made and shall expire on December thirty-first of the year in which issued. Such permit shall be renewed within thirty (30) days following the expiration date. If not renewed, the use for which the permit was issued shall be discontinued within sixty (60) days

after such permit has expired. The procedure provided by this division for obtaining permits shall apply to any person making application for the re-establishment of an automobile graveyard, junkyard or dump after such use has been so discontinued.

(Code 1965, §§ 24-22, 24-23)

Sec. 25-41. - Revocation.

If any automobile graveyard, junkyard or dump operated pursuant to a permit issued under this division is found to be causing a hardship through location and is found to be impairing the health, safety or morals of the public, the permit in question shall be revoked by the city council and the automobile graveyard, junkyard or dump in question shall be removed, at the expense of the owner, as directed by the director of public works.

(Code 1965, § 24-24)

Secs. 25-42—25-50. - Reserved.

Chapter 25.1 - PRECIOUS METAL AND GEM DEALERS

Sec. 25.1-1. - Definitions.

For the purposes of this chapter, unless the context requires a different meaning:

"Coin" means any piece of gold, silver or other metal fashioned into a prescribed shape, weight and degree of fineness, stamped by authority of a government with certain marks and devices, and having a certain fixed value as money.

"Dealer" means any person, firm, partnership, or corporation engaged in the business of (i) purchasing secondhand precious metals or gems; (ii) removing in any manner precious metals or gems from manufactured articles not then owned by the person, firm, partnership, or corporation; or (iii) buying, acquiring, or selling precious metals or gems removed from manufactured articles. "Dealer" includes all employers and principals on whose behalf a purchase is made, and any employee or agent who makes any purchase for or on behalf of his employer or principal.

The definition of "dealer" shall not include persons engaged in the following:

(1) Purchases of precious metals or gems directly from other dealers, manufacturers, or wholesalers for retail or wholesale inventories, provided that the selling dealer has complied with the provisions of this chapter.

(2) Purchases of precious metals or gems from a qualified fiduciary who is disposing of the assets of an estate being administered by the fiduciary.

(3) Acceptance by a retail merchant of trade-in merchandise previously sold by the retail merchant to the person presenting that merchandise for trade-in.

(4) Repairing, restoring or designing jewelry by a retail merchant, if such activities are within his normal course of business.

(5) Purchases of precious metals or gems by industrial refiners and manufacturers, insofar as such purchases are made directly from retail merchants, wholesalers, dealers, or by mail originating outside the Commonwealth of Virginia.

(6) Persons regularly engaged in the business of purchasing and processing nonprecious scrap metals which incidentally may contain traces of precious metals recoverable as a by-product.

"Gems" means any item containing precious or semiprecious stones customarily used in jewelry.

"Precious metals" means any item except coins composed in whole or in part of gold, silver, platinum, or platinum alloys.

(Ord. No. 3219, 2-28-12, eff. 4-1-12)

Sec. 25.1-2. - Permit required; method of obtaining permit; no convictions of certain crimes; approval of weighing devices; renewal; permanent location required; bond required.

(a) No person shall engage in the activities of a dealer as defined in section 25.1-1 without first obtaining a permit from the Virginia Beach Police Department Pawn Unit.

(b) To obtain a permit, the dealer shall file an application form which includes the dealer's full name, any aliases, address, age, date of birth, sex, and fingerprints; the name, address, and telephone number of the applicant's employer, if any; and the location of the dealer's place of business. The dealer shall include a valid copy of the business lease agreement, or proof of building ownership, with the permit application. Upon filing this application and the payment of the application fee set forth in section 27-3(b)(5), the dealer shall be issued a permit by the Chief of Police or his designee, provided that the applicant has not been convicted of a felony or crime of moral turpitude within seven (7) years prior to the date of application and has no such charges pending court disposition. The permit may be denied if the applicant has been denied a permit or has had a permit revoked under any other local ordinance or state statute similar in substance to the provisions of this chapter.

(c) Before a permit may be issued, the dealer must have all weighing devices used in his business inspected and approved by local or state weights and measures officials and present written evidence of such approval to the Virginia Beach Police Department Pawn Unit.

(d) This permit shall be valid from the date issued through December 31 st of the issue year and may be renewed in the same manner as such permit was initially obtained with the annual permit fee set forth in section 27-3(b)(5). No permit shall be transferable to any other location or individual.

(e) Every dealer at the time of obtaining such permit shall obtain and provide to the city a bond secured by a corporate surety authorized to do business in this Commonwealth, in the penal sum of ten thousand dollars ($10,000.00), conditioned upon strict compliance with the terms of this chapter. In lieu of a bond, a dealer may cause to be issued by a bank authorized to do business in the Commonwealth a letter of credit in favor of the city for ten thousand dollars ($10,000.00).

(f) If the business of the dealer is not operated without interruption, with Saturdays, Sundays, and recognized holidays excepted, the dealer shall notify the Virginia Beach Pawn Unit of all closings and reopenings of such business. The business of a dealer shall be conducted only from the fixed and permanent location specified

in his application for a permit.

(Ord. No. 3219, 2-28-12, eff. 4-1-12; Ord. No. 3463, 9-20-16)

Sec. 25.1-3. - Penalties; first and subsequent offenses.

(a) Any person convicted of violating any of the provisions of this chapter shall be guilty of a Class 2 misdemeanor for the first offense. Upon conviction of any subsequent offense he shall be guilty of a Class 1 misdemeanor.

(b) Upon the first conviction of a dealer for violation of any provision of this chapter, the Chief of Police may revoke or suspend the dealer's permit for up to one full year from the date the conviction becomes final. Upon a second conviction, the Chief of Police shall revoke the permit for two (2) full years from the date the conviction becomes final.

(Ord. No. 3219, 2-28-12, eff. 4-1-12)

Sec. 25.1-4. - Records to be kept; daily electronic report to police.

(a) Every dealer shall keep at his place of business an accurate and legible record of each purchase of precious metals or gems. The record of each purchase shall be retained by the dealer for at least twenty-four (24) months and shall set forth the following:

(1) A complete description of all precious metals or gems purchased from each seller. The description shall include all names, initials, serial numbers or other identifying marks or monograms on each item purchased, the true weight and purity, if known, of any precious metal, the true weight or carat of any gem, the color of any gem or precious metal, and the price paid for each item;

(2) The date, time and place of receiving the items purchased;

(3) The full name, residence address, work place, home and work telephone numbers, date of birth, sex, race, height, weight, hair and eye color, and other identifying marks of the seller;

(4) Verification of the identification of the seller by the exhibition of a government-issued identification card with a photograph of the seller, such as a driver's license or state identification card. The record shall contain the type of identification exhibited, the issuing agency, and the identification card number thereon;

(5) A statement of ownership from the seller; and

(6) A digital image of the form of identification used by the seller.

(b) The information required by subdivisions (1) through (5) of subsection (a) of this section shall appear on each bill of sale for all precious metals and gems purchased by a dealer.

(c) The information required by subdivisions (1) through (4) and the digital image of the form of government-issued identification used by the seller required by subdivision (6) of subsection (a) of this section shall be submitted in an electronic format to the Chief of Police as specified by the Chief of Police or his designee. The electronic transaction report shall be submitted by noon the following day, except on weekends and holidays, when the electronic transaction report shall be submitted by noon the next regular business day. Faxing the information is not permitted.

(Ord. No. 3219, 2-28-12, eff. 4-1-12; Ord. No. 3298, 7-9-13; Ord. No. 3404, 4-21-15, eff. 6-1-15)

Sec. 25.1-5. - Officers may examine records or property; warrantless search and seizure authorized.

Every dealer or his employee shall admit to his place of business during regular business hours any Virginia Beach police officer or any law-enforcement officer of the state or federal government. The dealer or his employee shall permit the officer to (i) examine all records required by this chapter and any article listed in a record which is believed by the officer to be missing, stolen or the focus of an inspection conducted by officers assigned to the Virginia Beach Pawn Unit and (ii) search for and take into possession any article known to him to be missing, or known or believed by him to have been stolen.

(Ord. No. 3219, 2-28-12, eff. 4-1-12)

Sec. 25.1-6. - Prohibited purchases.

(a) No dealer shall purchase precious metals or gems from any seller who is under the age of eighteen.

(b) No dealer shall purchase precious metals or gems from any seller who the dealer believes or has reason to believe is not the owner of such items, unless the seller has written and duly authenticated authorization from the owner permitting and directing such sale.

(c) No dealer shall purchase precious metals or gems without first (i) ascertaining the identity of the seller by requiring an identification issued by a governmental agency with a photograph of the seller thereon, and at least one other corroborating means of identification, and (ii) obtaining a statement of ownership from the seller.

(Ord. No. 3219, 2-28-12, eff. 4-1-12)

Sec. 25.1-7. - Dealer to retain purchases.

(a) The dealer shall retain all precious metals or gems purchased for a minimum of fifteen (15) calendar days from the date the electronic daily report required under section 25.1-4 above is received by the Virginia Beach Police Department Pawn Unit. Until the expiration of this period, the dealer shall not sell, alter, or dispose of a purchased item in whole or in part, or remove it from the City of Virginia Beach.

(b) If a dealer performs the service of removing precious metals or gems, he shall retain the metals or gems removed and the article from which the removal was made for a period of fifteen (15) calendar days after receiving such article and precious metals or gems.

(Ord. No. 3219, 2-28-12, eff. 4-1-12)

Sec. 25.1-8. - Record of disposition.

Each dealer shall maintain for at least twenty-four (24) months an accurate and legible record of the name and address of the person, firm, or corporation to which he sells any precious metal or gem in its original form after the waiting period required by section 25.1-7. This record shall also show the name and address of the seller from whom the dealer purchased the item.

(Ord. No. 3219, 2-28-12, eff. 4-1-12)

Sec. 25.1-9. - Exemptions from chapter.

(a) The provisions of this chapter shall not apply to the sale or purchase of coins.

(b) The provisions of this chapter shall not apply to any bank, branch thereof, trust company or bank holding company, or any wholly owned subsidiary thereof, engaged in buying and selling gold and silver bullion.

(Ord. No. 3219, 2-28-12, eff. 4-1-12)

Chapter 26 - PEDDLERS AND SOLICITORS

Footnotes:
*--- (**1**) ---*
Cross reference— *Permit for sales and solicitations on boardwalk and adjacent areas, § 6-8; street vendors of food products, § 13-36 et seq.; license tax for agents selling books, magazines and periodicals, § 18-47; license taxes for peddlers, §§ 18-93—18-98; license tax for solicitors for photographers, film developers, etc., § 18-100; disturbing noise by peddlers, § 23-47(a)(4).*
State Law reference— *Authority of city to regulate or prohibit peddling, Code of Virginia, § 15.1-866.*

ARTICLE I. - IN GENERAL

Sec. 26-1. - Violations of chapter generally.

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

(Ord. No. 1410, 10-24-83)

Sec. 26-2. - Reserved.

Editor's note— Ord. No. 1410, adopted Oct. 24, 1983, deleted the provisions of § 26-2, "Going on residential premises without invitation," which had derived from Code 1965, § 18-1.

Sec. 26-3. - Peddling or selling on or in public parks, public buildings, or on public property in the Resort Tourist or Oceanfront Resort Districts.

(a) It shall be unlawful for any person to engage in the activity of selling or offering for sale, renting, or offering for rent or taking orders for, goods, wares, merchandise, beverages, foods, prepackaged or otherwise, or any service whatsoever, to or from any prospective customers or passersby while such person, prospective customer or passerby is in any public park, on the grounds of the city municipal complex, in any city-owned or - leased building, or on public property in the RT-1, RT-3, or RT-4 Resort Tourist Districts or the OR Oceanfront Resort District without obtaining a permit from the city manager or his or her designee as set forth in subsection (d) of this section. Such permit shall be in addition to any other permit required by this Code.

(b) The restriction set forth in subsection (a) above shall not be applicable to:

(1) Special events conducted pursuant to a permit granted under section 4-1 of this Code;

(2) Events conducted pursuant to the city's contract for general entertainment and major events;

(3) Duly licensed or permitted concessions granted by the city pursuant to a competitive procurement process;

(4) Franchises granted in accordance with section 15.2-2100 et seq. of the Code of Virginia; or

(5) Activities commonly associated with expression as guaranteed by the First Amendment of the Constitution of the United States.

(c) For the purposes of this section, the following terms shall have the meanings respectively ascribed to them:

(1) Public property in the RT-1, RT-3, or RT-4 Resort Tourist Districts or the OR Oceanfront Resort District shall include, without limitation, the boardwalk, the grassy area adjacent thereto, streets, alleys, sidewalks, bicycle paths, parks, the sand beach, city-owned or operated facilities, and all other public property.

(2) The terms *selling, offering for sale, renting, offering for rent,* or *taking orders for* shall include selling or taking orders for goods, wares, merchandise, food, beverages, prepackaged or otherwise, or any service whatsoever from a walk-up window or an opening on private property adjacent to a public right-of-way, public alley, or other public property.

(d) An application for a permit required by this section shall be filed with the city manager's office, on forms provided by the city, and processed as follows:

(1) A completed application shall be processed and either granted or denied within thirty (30) days of receipt of such application. All decisions shall be in writing, setting forth the conditions of the permit, if granted, or the reasons for denial.

(2) No permit shall be granted unless the city manager or his or her designee finds that:

(i) In consideration of factors such as public safety, noise, and vehicular and pedestrian traffic, the proposed activity will not unreasonably interfere with the normal and intended use of the public property by the city or the general public;

(ii) The proposed activity will not adversely affect the city's efforts to protect the general welfare and to promote tranquility and the high quality of life associated with resort community living and recreation; and

(iii) The proposed activity is not inconsistent with city policies for the use of the public property at the particular location.

(3) The city manager or his or her designee may impose, as conditions to granting a permit, such further requirements and restrictions as will reasonably protect the public health, safety, welfare, peace, and order. Such conditions may include, but are not limited to:

(i) A limitation on the dates and hours of operation, the number of peddlers or salespersons, or location of the peddling or sales activity; and/or

(ii) The provision of adequate crowd and traffic control, food handling, waste and refuse disposal, and noise restrictions.

(4) The city manager or his or her designee is authorized to revoke or suspend any permit previously granted: (i) for violation of any provision of this code or of any condition of the permit; (ii) for damage to city property; (iii) for any material misrepresentation, intentional or otherwise, made in connection with the application; (iv) when weather conditions render the subject activity unsafe; or (v) when revocation or suspension is required in the interest of public health, safety, and welfare, or environmental considerations. In the event a permit is revoked or suspended, the permittee shall immediately discontinue, or cause to be discontinued, the activity for which the permit was granted, but shall be thereafter entitled to a hearing before the city manager or his or her designee concerning the revocation or suspension within ten (10) days of the date of such revocation or suspension.

(6) A permit granted under the provisions of this section shall expire after such period as determined by the city manager or his or her designee, not to exceed one (1) year from the date of issuance. The holder of the permit may thereafter apply for a new permit as set forth in subsection (d) (1).

(7) No permit issued under this section shall be transferred to another person or entity without the approval of the city manager or his or her designee. Such approval, if granted, shall be granted in the same manner as for original applications for permits.

(8) In addition to any penalty imposed under section 26-1, the city may institute legal action to enjoin a continuing violation of any of the provisions of this section or any terms and conditions of a permit issued pursuant to this section.

(Code 1965, § 18-1.1; Ord. No. 1410, 10-24-83; Ord. No. 1990, 7-2-90; Ord. No. 2483, 4-24-98; Ord. No. 3252, 7-10-12)

Sec. 26-3.1. - Peddling or selling on public property in the resort area during the prime resort season.

(a) Notwithstanding any provision of this Code to the contrary, it shall be unlawful for any person to engage in the activity of selling or offering for sale, or renting or offering for rent, any goods, wares, merchandise, foodstuffs, refreshments or other kinds of property or services whatsoever in the "resort area" during the "prime resort season" while such person or any table, stand, cart, trailer, or similar structural component of such person's activity is located on public property.

(b) The restriction set forth in subsection (a) above shall not be applicable to:

(1) Special events conducted pursuant to a permit granted under section 4-1 of this Code;

(2) Events conducted pursuant to the city's contract for general entertainment and major events;

(3) Duly-licensed or permitted concessions granted by the city pursuant to a competitive procurement process;

(4) Franchises granted in accordance with section 15.2-2100 et seq. of the Code of Virginia; or

(5) The sale, or offer for sale, of publications of general circulation.

(c) For purposes of this section, the following terms shall have the meanings respectively ascribed to them:

(1) *Public property* shall include, without limitation, the boardwalk, the grassy area adjacent thereto, streets, alleys, sidewalks, bicycle paths, parks, the sand beach, city-owned or operated facilities, and all other public property.

(2)

Publication of general circulation shall mean a publication which is published at regular intervals primarily for the dissemination of news, intelligence and opinions on recent events or newsworthy items of a general nature and which is available to the general public.

(3) *Resort area* shall mean the 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.

(4) *Prime resort season* shall mean the period from, and including, the fifteenth day of April, to and including, the thirtieth day of September of each year.

(Ord. No. 2385, 5-14-96; Ord. No 2484, 4-28-98)

Secs. 26-4—26-15. - Reserved.

ARTICLE II. - COMMERCIAL SOLICITATIONS

DIVISION 1. - GENERALLY

Sec. 26-16. - Purpose statement.

Soliciting, selling or taking orders for goods, wares, merchandise, publications, any article for future delivery, or any service or commodity whatsoever upon the premises of any private residence, apartment house, or other place of human habitation not having been requested or invited to do so by the owner or occupant thereof, presents an opportunity for greater deception, confusion and fraud that is not present in other commercial transactions. The city believes that reasonable measures, including a permit program, will serve the purpose of discouraging fraud, protecting privacy, deterring crime and promoting the health, safety and welfare of the community.

(Ord. No. 3480, 12-13-16)

Sec. 26-17. - General restrictions.

It shall be unlawful for any person selling, soliciting or taking orders pursuant to a permit issued under this article to solicit, sell or take orders by using any unreasonably loud or disturbing or unnecessary noise or language of such character, intensity or duration as to disturb or annoy the quiet, comfort or repose of any person or neighborhood, or by touching or interfering with the person or freedom of prospective customers or passersby. In no event shall such person so selling, soliciting or taking orders interfere in any manner with the orderly flow of pedestrian and vehicular traffic.

(Code 1965, § 18-3; Ord. No. 1410, 10-24-83)

Cross reference— General prohibition against interference with traffic, § 21-34.

Sec. 26-18. - Responsibility and liability of employers of solicitors.

Any person who employs others to sell, solicit or take orders under a permit issued under this article, as well as the employer of a group of persons selling, soliciting or taking orders without a permit, shall be held responsible and liable for the acts of his employees and shall be deemed in violation of this article in the same manner as though he were the actual employee in question.

(Code 1965, § 18-19; Ord. No. 1410, 10-24-83)

Secs. 26-19—26-25. - Reserved.

DIVISION 2. - PERMIT

> *Footnotes:*
> *--- (**2**) ---*
> ***Cross reference—** Permit for sales and solicitations on boardwalk and adjacent areas, § 6-8.*
> ***State Law reference—** General authority of city with respect to permits, Code of Virginia, § 15.1-906.*

Sec. 26-26. - Permit required.

(a) It shall be unlawful for any person to engage in soliciting, selling or taking orders for goods, wares, merchandise, publications, any article for future delivery, or any service or commodity whatsoever upon the premises of any private residence, apartment house, or other place of human habitation not having been requested or invited to do so by the owner or occupant thereof, in the city, unless he has a current permit so to do from the Police Department (hereinafter "Department").

(b) The requirements of this section shall not apply to those who sell or offer for sale in person or by their employees ice, wood, charcoal, meats, milk, butter, eggs, poultry, fish, oysters, game, vegetables, fruits or other family supplies of a perishable nature or farm products grown or produced by them and not purchased by them for sale; persons licensed by the state under Code of Virginia (1950), title 38.1, as amended; persons licensed by the Virginia Real Estate Commission, pursuant to Code of Virginia (1950), § 54-749, as amended; such activities when they are conducted on behalf of a nonprofit charitable, civic or religious organization; 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; occasional garage sales in residential areas; sales made at flea markets duly licensed by the city; or sales by wholesale merchants to retail merchants or industrial or commercial establishments.

(c) Soliciting with a valid permit upon a private residence that displays a "No Solicitation" or similar sign shall constitute a class three misdemeanor for a first offense and a class two misdemeanor for a second or subsequent offense within a twelve-month period.

(Code 1965, § 18-4; Ord. No. 1410, 10-24-83; Ord. No. 1456, 6-4-84; Ord. No. 3480, 12-13-16)

Sec. 26-27. - Filing and contents of application.

Any person desiring a permit required by this division shall make application thereof to the Police Chief or his authorized designee (hereafter "Police Chief") in writing on a form to be furnished by the Department, which application shall show:

(1) The name and address of the applicant and of each employee who will operate under the permit;

(2) The name and address of the firm or corporation which such applicant represents;

(3) The kind of goods, ware or merchandise offered for sale;

(4) Whether such applicant, upon any order obtained, will demand, accept or receive payment or deposit of money in advance of final delivery;

(5) The period of time during which such applicant wishes to solicit, sell and take orders in the city;

(6) A statement as to whether or not the applicant has been convicted of a felony or misdemeanor, the nature of the offense or violation, the penalty or punishment imposed, the date and jurisdiction of the conviction, and other pertinent details thereof.

(Code 1965, § 18-6; Ord. No. 1410, 10-24-83; Ord. No. 3480, 12-13-16)

Secs. 26-28, 26-29. - Reserved.

Editor's note— Ord. No. 3480, adopted December 13, 2016, repealed §§ 26-28, 26-29, which pertained to applicant's references and filing of fingerprints of applicant and employees. See Code Comparative Table for complete derivation.

Sec. 26-30. - Photographs of applicant and employees required.

Upon receipt of application, the police department shall take a photograph of the applicant for use in the solicitation permit.

(Code 1965, § 18-11; Ord. No. 1410, 10-24-83; Ord. No. 3480, 12-13-16)

Sec. 26-31. - Reserved.

Editor's note— Ord. No. 3480, adopted December 13, 2016, repealed § 26-31, which pertained to applicant's bond. See Code Comparative Table for complete derivation.

Sec. 26-32. - Fee.

An application filed under this division shall be accompanied by a fee of twenty dollars ($20.00). Such fee shall be for the purpose of covering administration costs and is not to be returned to the applicant if a permit is refused.

(Code 1965, § 18-8; Ord. No. 1410, 10-24-83; Ord. No. 3480, 12-13-16)

Sec. 26-33. - Investigation.

(a) The Police Chief shall investigate the criminal record of the applicant prior to issuing any permit. The cost of such record check is set forth in section 27-3. In reviewing the record, the Police Chief shall pay specific attention to any felonies, violent crimes against the person, crimes of moral turpitude or crimes involving fraud and/or misrepresentation, such conviction being entered within seven (7) years preceding the date of application. The Police Chief shall follow section 26-34 in response to this investigation.

(b) Such investigation shall take place during a reasonable period of time. If such investigation is to exceed a period of fifteen (15) days, the Police Chief shall provide the applicant with a written statement specifying the reasons for the delay in acting upon the application.

(Code 1965, § 18-12; Ord. No. 1410, 10-24-83; Ord. No. 3480, 12-13-16)

Sec. 26-34. - Denial.

(a) The Police Chief shall refuse to issue a permit applied for under this division (i) to any person who has a criminal history of fraud, misrepresentation or unlawful conduct, (ii) an applicant who falsifies information on the application, (iii) an applicant who has been denied a permit under this division within the immediate past year, unless the applicant can and does show to the satisfaction of the Police Chief that the reasons for such earlier denial no longer exist;

(b) Evidence of a criminal history of fraud, misrepresentation or unlawful conduct includes but is not limited to the conviction of a felony, a crime of moral turpitude, violent crimes against the person, or a crime involving fraudulent practices or misrepresentation within the seven (7) years immediately proceeding the date of the application;

(c) The Police Chief's disapproval and the reasons for disapproval shall be noted on the application, and the applicant shall be notified in writing that the application is disapproved and that no permit will be issued. Notice shall be mailed to the applicant at the address shown on the application form or personally delivered to the applicant; and

(d) Any appeal of an adverse decision by the Police Chief shall follow the process stated in section 26-39.

(Code 1965, § 18-13; Ord. No. 1410, 10-24-83; Ord. No. 3480, 12-13-16)

Sec. 26-35. - Permittee's and employee's registration or identification card.

(a) Upon the issuance of a permit under this division, there shall be issued to the holder of such permit and to each of his employees a registration or identification card. A photograph of the person to whom the card is issued, as referred to in section 26-30, shall be attached to such registration or identification card. A fee of five dollars ($5.00) shall be charged for the issuance of each identification or registration card.

(b) Each person selling, soliciting or taking orders pursuant to a permit issued under this division shall, while so engaged in such soliciting, selling or taking such orders, carry with him the registration or identification card issued under this section. It shall be the duty of such person to prominently display such card while engaged in soliciting activities.

(Code 1965, §§ 18-16, 18-17; Ord. No. 1410, 10-24-83; Ord. No. 3480, 12-13-16)

Sec. 26-36. - Maximum term.

No permit required by this division shall be issued for a longer period than twelve (12) months. All permits expire on December 31 st of the year in which they are issued.

(Code 1965, § 18-14; Ord. No. 1410, 10-24-83; Ord. No. 3484, 2-7-17)

Sec. 26-37. - Revocation.

(a) The Police Chief may revoke a permit issued under this division for any of the following reasons:
    i. Fraud, misrepresentation or false statement contained in the application for a permit;
    ii. Fraud, misrepresentation or false statement made by the permittee in the course of conducting solicitation or sales activities;
    iii. Conducting solicitation or sales activities contrary to the provisions contained in the permit;
    iv. Conviction of any felony or crime of moral turpitude; or
    v. Conducting solicitation or sales activities in such a manner as to create a public nuisance, constitute a breach of the peace or endanger the health, safety or general welfare of the public.

(b) Such revocation shall result in the invalidation of the registration or identification card issued pursuant to section 26-35.

(c) The permittee shall be informed of the revocation of the permit and the reason for such revocation. The revocation shall be effective, pending appeal as provided in subsection (e), for the remaining permit period. In no event shall the revocation deny the applicant the opportunity to re-apply for a permit at the end of the permit period in which such permit was revoked. Any subsequent permit application will be evaluated according to section 26-33;

(d) Written notice of revocation shall be either personally delivered or mailed to the applicant at the address shown on the application form; and

(e) Any appeal from an adverse decision by the city shall follow the process stated in section 26-39.

(Code 1965, § 18-15; Ord. No. 1410, 10-24-83; Ord. No. 3480, 12-13-16)

Sec. 26-38. - Compliance with other laws.

Nothing herein shall exempt any person conducting an activity of the type described herein from the requirements of section 13-36 et seq., section 33-6 or any other applicable provision of the law. The Police Department shall coordinate with the Commissioner of the Revenue to encourage any applicant to obtain a business license.

(Ord. No. 1410, 10-24-83; Ord. No. 3480, 12-13-16)

Cross reference— Street vendors of food products, § 13-36 et seq.; sales conducted on or adjacent to the public right-of-way, § 33-6.

Sec. 26-39. - Appeal of adverse determination.

(a) In the event of a denial of an application or the revocation of a permit issued under this division, the applicant/permittee is entitled to an appeal of the adverse determination;

(b) The appeal of the adverse determination must be in writing and filed with the City Manager's Office within fifteen (15) days of the adverse determination;

(c) In the event that the appeal is not submitted in writing and filed with the City Manager's Office within fifteen (15) days of the adverse determination, the right to an appeal is waived by the applicant; and

(d) If an appeal is filed according to subsection (b), the City Manager or his authorized designee 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 or his designee, be rescheduled for good cause shown. The decision of the City Manager or his designee is final.

(Ord. No. 3480, 12-13-16)

Sec. 26-40. - Transfer prohibited.

It shall be unlawful for any person other than the permittee to use or wear any permit or badge issued under the provisions of this division. A violation of this provision shall be a class two misdemeanor.

(Ord. No. 3480, 12-13-16)

Secs. 26-41—26-48. - Reserved.

ARTICLE III. - CHARITABLE SOLICITATIONS

Footnotes:
*--- (**3**) ---*
***Editor's note—** Ord. No. 3483, adopted February 7, 2017, amended article III in its entirety to read as herein set out. Former article III, §§ 26-49—26-72, pertained to similar subject matter. See Code Comparative Table for complete derivation.*
***State Law reference—** Solicitations of contributions, Code of Virginia, § 57-48 et seq.; ordinances regulating charitable organizations soliciting within city, § 57-63.*

Sec. 26-49. - Definitions.

All definitions of words and phrases contained in the Code of Virginia § 57-48 are hereby adopted and shall apply to such words and phrases when used in this article, unless clearly indicated to the contrary.

(Ord. No. 3483, 2-7-17)

Sec. 26-50. - Exemptions from article generally.

The following organizations are exempt from the registration requirements of this article:

(a) The American Red Cross or any of its local chapters;

(b)

A charitable organization registered with the state commissioner of agriculture and consumer services or if such organization is a chapter, branch or affiliate included in the consolidated report of an organization or federated organization which is so registered;

(c) A church or political organization;

(d) Educational institutions that are accredited by the Board of Education, by a regional accrediting association or by an organization affiliated with the National Commission on Accrediting, the Association of Montessori Internationale, the Virginia Independent Schools Association, or any similar organization;

(e) Organizations which have no office within the city and which solicit in the city from without the commonwealth solely by means of telephone or telegraph, direct mail or advertising in national media;

(f) Organizations which solicit only within the membership of the organization by the members thereof;

(g) Health care institutions defined herein as any facilities that have been granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code, and that are (i) licensed by the Department of Health or the Department of Mental Health, Mental Retardation and Substance Abuse Services; (ii) designated by the Health Care Financing Administration (HCFA) as federally qualified health centers; (iii) certified by the HCFA as rural health clinics; or (iv) wholly organized for the delivery of health care services without charge; and any supporting organization which exists solely to support any such health care institutions. For purposes of clause (iv), "delivery of health care services without charge" includes the delivery of dental, medical or other health services where a reasonable fee is charged to cover administrative expenses;

(h) Civic organizations;

(i) Any museum that has registered with the Commissioner as required by Code of Virginia § 57-49; and

(j) Organizations that have been granted tax-exempt status under section 501(c)(3) of the Internal Revenue Code and that are organized wholly as Area Health Education Centers in accordance with Code of Virginia § 32.1-122.7.

(Ord. No. 3483, 2-7-17)

Sec. 26-51. - Licensing of charitable organizations; prohibition against support of terrorists.

(a) If an entity not subject to this chapter by operation of the definitions contained in Code of Virginia § 57-48 or section 26-50 of this article wishes to voluntarily obtain a license at no cost, such organization shall submit, before any solicitation, to the commissioner of the revenue or designee, on form to be prescribed by him or her, the name, address and purpose of the organization and a statement setting forth the reason for the claim for exemption. If exempted, the commissioner of the revenue or designee shall issue a letter of exemption which may be exhibited to the public. The letter of exemption shall remain in effect as long as the organization continues to solicit in accordance with its claim for exemption.

(b) Every charitable organization, except as otherwise provided herein, which intends to solicit contributions within the city, or have funds solicited on its behalf, shall, prior to any solicitation, file an initial license application with the office of the commissioner of the revenue upon forms acceptable to him. Each license application shall thereafter be refiled on or before the first day of the fourth calendar month of the next and

each following fiscal year in which such charitable organization is engaged in solicitation activities within the city. It shall be the duty of the president, chairman or principal officer of such charitable organization to file the license application required herein. Such license application shall contain the following information:

(1) The name of the organization and the purpose for which it was organized and the name of any fictitious names of such organization.

(2) The principal address of the organization, the address of any offices in the city and its designated agent for process within the commonwealth. If no such agent is designated, the organization shall be deemed to have designated the secretary of the commonwealth. If the organization does not maintain an office, the statement shall include the name and address of the person having custody of its financial records.

(3) The names and addresses of any chapters, branches or affiliates in the city.

(4) The place where and the date when the organization was legally established, the form of the organization, and a reference to any determination of its tax-exempt status under the Internal Revenue Code.

(5) The names and addresses of the officers, directors, trustees and the principal salaried executive staff officer.

(6) The general purpose or purposes for which the contributions to be solicited shall be used.

(7) A statement indicating whether the organization, or any officer, professional solicitor or professional fund raiser thereof, has ever been convicted of a felony and, if so, a description of the pertinent facts.

(c) Every license application shall include the following language:

"No funds have been or will knowingly be used, directly or indirectly, to benefit or provide support, in case or in kind, to terrorists, terrorist organizations, terrorist activities, or the family members of any terrorist."

(d) No person shall be licensed by the commissioner of the revenue to solicit funds that are intended to benefit or support terrorists, terrorist organizations or terrorist activities.

(e) The registration forms shall be signed by an authorized officer of the charitable organization.

(f) Every charitable organization which submits an independent registration to the office of the commissioner of the revenue shall pay an annual license fee of ten dollars ($10.00). A parent organization filing on behalf of one or more chapters, branches or affiliates or a federated fund-raising organization filing on behalf of its member agencies shall pay a single annual license fee. All fees paid hereunder shall be credited to the office of the commissioner of the revenue for reimbursement of administrative expenses.

(Ord. No. 3483, 2-7-17)

Sec. 26-52. - Time and effect of licensure.

(a) Licenses by charitable organizations are effective, if complete, when approved by the commissioner of the revenue. Incomplete license application forms and license application forms lacking required accompanying documents shall not be approved until completed or until the required accompanying documents are received by the commissioner of the revenue.

(b)

If the commissioner of the revenue at any time determines that (i) the requirements of section 26-51 have not been met or (ii) the licensee is violating any requirement of section 26-57, then the commissioner of the revenue may suspend the license until the licensee meets the requirements or complies and provides evidence thereof satisfactory to the commissioner of the revenue. If the licensee does not provide sufficient evidence to reinstate the license within 30 days of the suspense, the license shall be revoked, and such revocation shall be final subject to section 26-60.

(Ord. No. 3483, 2-7-17)

Sec. 26-53. - Charitable solicitation dis-closure.

Every professional solicitor who solicits contributions from a prospective contributor in the city: (i) shall identify himself and his employer; (ii) shall disclose that he is a paid solicitor; and (iii) shall notify the prospective contributor that a financial statement for the last fiscal year is available from the State Office of Consumer Affairs. Such disclosure shall comply with the requirements set forth in the Rules Governing the Solicitation of Contributions promulgated by the Board of the Virginia Department of Agriculture and Consumer Services.

(Ord. No. 3483, 2-7-17)

Sec. 26-54. - Records to be kept by organizations.

Every charitable organization required to be licensed with the city shall keep true fiscal records for all fiscal years in accordance with the standards set out in Code of Virginia § 57-53. Such records shall be retained for a period of at least three (3) years after the end of the period to which they relate.

(Ord. No. 3483, 2-7-17)

Sec. 26-55. - Reciprocal agreements with other municipalities.

The commissioner of the revenue may enter into a reciprocal agreement with the appropriate authority of any other locality within the commonwealth for the purpose of exchanging information with respect to charitable organizations. Pursuant to such agreements, the commissioner of the revenue may accept information filed by charitable organizations with the appropriate authority of another locality within this commonwealth, in lieu of the information required to be filed by pursuant to section 26-51.

(Ord. No. 3483, 2-7-17)

Sec. 26-56. - Information filed under article to constitute public records; charge for copies thereof.

License application and all other documents and information required to be filed under this article shall become public records in the office of the commissioner of the revenue, and shall be open to the general public for inspection at such time and under such conditions as the commissioner of the revenue may prescribe. A charge, not exceeding one dollar ($1.00) per page, may be made for any copy of such documents and information as may be furnished any person by the commissioner of the revenue.

(Ord. No. 3483, 2-7-17)

Sec. 26-57. - Prohibited acts.

(a) No charitable organization shall use or exploit the fact of licensing under this article so as to lead the public to believe that such license in any manner constitutes an endorsement or approval by the city. The use of the following statement shall not be deemed a prohibited exploitation, "Licensed with the commissioner of the revenue is required by law. Licensure does not imply endorsement of a public solicitation for contributions."

(b) No person shall, in connection with the solicitation of contributions or the sale of tangible personal property or services represent, or lead anyone by any manner, means, practice or device whatsoever to believe, that the person on whose behalf such solicitation or sale is being conducted is a bona fide charitable organization or that the proceeds of such solicitation or sale will be used for charitable purposes, if he has reason to believe such not to be the fact.

(c) No person shall, in connection with the solicitation of contributions or the sale of tangible personal property or services for charitable purposes, represent or lead anyone by any manner, means, practice or device whatsoever to believe, that any other person sponsors or endorses such solicitation of contributions, sale of tangible personal property or services for charitable purposes or approves of such charitable purposes or a charitable organization connected therewith when such other person has not given written consent to the use of his name for these purposes.

Any member of the board of directors or trustees of a charitable organization or any other person who has agreed either to serve or to participate in any voluntary capacity in the campaign shall be deemed thereby to have given his consent to the use of his name in said campaign. Nothing contained in this section shall prevent the publication of names of contributors without their written consents, in an annual or other periodic report issued by a charitable organization for the purpose of reporting on its operations and affairs to its membership or for the purpose of reporting contributions to contributors.

(d) No person shall denominate any membership fee or purchase price of goods or services sold, as a contribution or as a donation or in any other manner represent or imply that the member or the purchaser of such goods or services will be entitled to an income tax deduction for his cost or any portion thereof unless:

(1) There shall have been first obtained a signed opinion of counsel or an Internal Revenue Service ruling or determination letter holding such cost to be deductible; or

(2) The member or purchaser is informed in writing that such cost may not be deductible.

No person shall represent or imply that a contributor will be entitled to an income tax deduction for his contribution unless a signed opinion of counsel or an Internal Revenue Service ruling or determination letter holding gifts to such organization to be so deductible has been obtained.

(e) No person shall make any representation that he is soliciting contributions for or on behalf of a charitable organization or shall use or display any emblem, device or printed matter belonging to or associated with a charitable organization for the purpose of soliciting or inducing contributions from the public without first being authorized to do so by the charitable organization.

(f) No professional solicitor shall solicit in the name of or on behalf of any charitable organization unless such solicitor has:

(1) Written authorization of two officers of such organization, a copy of which shall be filed with the commissioner of the revenue. Such written authorization shall bear the signature of the solicitor and shall expressly state on its face the period for which it is valid, which shall not exceed one year from the date issued.

(2) Such authorization with him when making solicitations and exhibits the same on request to persons solicited, or police officers.

(g) No charitable organization shall accept any contribution exceeding five dollars ($5.00) in cash or tangible property without providing, on request of the donor, a written receipt acknowledging such contribution on behalf of the organization.

(h) No person, and no organization of which such person is an officer, professional fund-raising counsel or professional solicitor, shall solicit within this locality if:

(1) Such person has been convicted in any jurisdiction of embezzlement, larceny or other crime involving the obtaining of money or property by false pretenses or the misapplication of funds impressed with a trust, unless such person has received a pardon for such offense or the public is informed of such conviction in a manner approved in writing by the commissioner of the revenue before any solicitation occurs; or

(2) Such person has ever been enjoined by any court or otherwise prohibited from soliciting in any jurisdiction, unless the commissioner of the revenue first determines in writing that such person is entitled to solicit in such jurisdiction at the time of soliciting within the city or that the reason for such injunction or prohibition does not involve moral turpitude.

(i) No person shall solicit within this locality for the benefit of any other person located without the locality, if such other person refuses to supply any information which the commissioner of the revenue deems necessary to assure himself that the provisions of this chapter are complied with. A solicitation shall be deemed to be on behalf of every person who or which receives, directly or indirectly, more than ten (10) percent of the gross amount collected.

(j) No charitable organization shall allow a professional solicitor to solicit on its behalf if the professional solicitor has not registered with the Commissioner of the Virginia Department of Agriculture and Consumer Services pursuant to Code of Virginia § 57-61.

(k) No professional solicitor shall solicit in the city on behalf of a charitable organization if the professional solicitor has not registered with the Commissioner of the Virginia Department of Agriculture and Consumer Services pursuant to Code of Virginia § 57-61.

(l) No charitable organization shall solicit in this locality without being duly licensed or exempt under this chapter.

(m) No person shall employ in any solicitation or collection of contributions for a charitable purpose any device, scheme or artifice to defraud or obtain money or property by any misrepresentation or misleading statement.

(n) No officer, agent, director or trustee of any charitable organization, professional fund-raising counsel or professional solicitor shall refuse or fail, after notice, to produce to the commissioner of the revenue any books and records of such organization.

(o) No person shall use or permit the use of the funds raised by a charitable solicitation for any purpose other than the solicited purpose or, with respect to funds raised by general appeals, the general purposes of the charitable organization on whose behalf the solicitation was made.

(p) No person shall knowingly and willfully make any false statements in any license application or statement, report or other disclosure required by this article.

(q) No professional solicitor shall solicit in the city on behalf of a charitable organization unless the charitable organization has submitted the appropriate license application as required by section 26-51 of this article or is qualified for an exemption under section 26-50 of this article, and the charitable organization has registered with the Commissioner of the Virginia Department of Agriculture and Consumer Services pursuant to Code of Virginia § 57-49, or the charitable organization has been granted the appropriate exemption by the Commissioner of the Virginia Department of Agriculture and Consumer Services pursuant to Code of Virginia § 57-60.

(r) No person shall represent, in any solicitation, that tickets to events will be donated for use by another unless he complies with the following requirements:

(1) He shall have obtained commitments, in writing, from persons or charitable organizations stating that they will accept donated tickets and specifying the number of persons for whom they are willing to accept tickets;

(2) He shall not collect or accept more contributions for donated tickets than the number of ticket commitments he has received from persons or charitable organizations;

(3) He shall have printed in advance on each ticket the exact number of persons to be admitted by the ticket and the dollar price or value of each ticket;

(4) He shall distribute the tickets in a timely fashion to those having given commitments; and

(5) He shall maintain during the solicitation and for a period of three years thereafter: (i) records reflecting the name and address of each contributor and the amount of money and number of tickets donated by each such contributor; and (ii) the written commitments of each person or charitable organization to accept tickets and specifying the number of persons on whose behalf tickets were to be accepted, as required in paragraph (1) of this subsection.

(s) No person shall knowingly use or permit the use of funds raised by a solicitation or by contribution to benefit or provide support, directly or indirectly, in cash or in kind, to terrorists, terrorist organizations, terrorist activities or to family members of any terrorist.

(Ord. No. 3483, 2-7-17)

Sec. 26-58. - Enforcement and penalties.

(a) Any person who willfully and knowingly violates or causes to be violated any provision of this article, or who willfully and knowingly gives false or incorrect information to the commissioner of the revenue in filing license applications or reports required by this article, whether such report or license application is verified or not, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished for the first offense by a fine of not less than one hundred dollars ($100.00) and not more than one thousand dollars ($1,000.00)

or by confinement in jail for not more than six months, or both, and for the second and any subsequent offense by a fine of not less than five hundred dollars ($500.00) and not more than two thousand five hundred dollars ($2,500.00) or by confinement in jail for not more than one year, or both.

The following property shall be subject to lawful seizure by any law-enforcement officer charged with enforcing the provisions of this article: all moneys or other property, real or personal, together with any interest or profits derived from the investment of such money and used in substantial connection with an act of terrorism as defined in Code of Virginia § 18.2-46.4. All seizures and forfeitures under this section shall be governed by the procedures contained in Chapter 22.1 (§ 19.2-386.1 et seq.) of Title 19.2 Code of Virginia.

(b) Whenever the commissioner of the revenue has reasonable cause to believe that a violation of this chapter may have occurred, the commissioner of the revenue, upon his own motion or upon complaint of any person, may investigate any charitable organization, professional fund-raising counsel or professional solicitor to determine whether such charitable organization, professional fund-raising counsel or professional solicitor has violated the provisions of this article or has filed any application or other information required under this chapter which contains false or misleading statements. In the conduct of such investigation, the commissioner of the revenue may:

(1) Require or permit any person to file a statement in writing, under oath or otherwise as the commissioner of the revenue determines, as to all facts and circumstances concerning the matter to be investigated.

(2) Administer oaths or affirmations and, upon his motion or upon request of any party, subpoena witnesses, compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangibles and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence.

Any proceedings or hearings by the commissioner of the revenue under this article, where witnesses are subpoenaed and their attendance is required for evidence to be taken or any matter is to be produced to ascertain material evidence, shall take place within the city.

Upon failure to obey a subpoena and upon reasonable notice to all persons affected thereby, the commissioner of the revenue may apply to the Circuit Court of the city for an order imposing punishment for contempt of the subpoena or compelling compliance.

(c) Whenever the City Attorney or the attorney for the Commonwealth has reason to believe that any charitable organization, professional fund-raising counsel or professional solicitor is operating in violation of the provisions of this chapter or is about to operate in violation of the provisions of this chapter, in addition to all other actions authorized by law, the City Attorney, or the attorney for the Commonwealth may bring an action in the name of the city or the Commonwealth against such charitable organization and its officers, professional fund-raising counsel or professional solicitor or their officers, directors or other agents to enjoin the continuation of such violation, solicitation or collection, or engaging therein, or the conducting of any acts in furtherance thereof and for such other relief as the court deems appropriate.

(d)

In any action brought under subsection (c), the court may also award to the Commonwealth a civil penalty of not more than five thousand dollars ($5,000.00) per violation, to be paid to the Literary Fund, reasonable expenses incurred by the state or local agency in investigating and preparing the case, not to exceed two hundred fifty dollars ($250.00) per violation, and attorney's fees. Such expenses and attorney's fees shall be paid into the general fund of the city which such attorney represented.

(Ord. No. 3483, 2-7-17)

Sec. 26-59. - Article does not authorize unlawful acts or omissions or decrease liability imposed by law.

Nothing contained in this article shall be construed as making lawful any act or omission which is now unlawful, or as decreasing the liability, civil or criminal, of any person imposed by existing laws.

(Ord. No. 3483, 2-7-17)

Sec. 26-60. - Appeals from orders under article.

Any person aggrieved by any final order of the commissioner of the revenue under this article, denying such person any right to which he is entitled under law, may, within fifteen (15) days from the date of such order, apply for relief to the circuit court of the city. Either party may appeal any final order of such court in the same manner as provided by law in cases other than cases of appeals of right.

(Ord. No. 3483, 2-7-17)

Chapter 27 - POLICE

Footnotes:

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

Cross reference— *High constable, § 1-11; mandatory retirement age for police officers, § 2-81; resisting or obstructing law-enforcement officer, § 23-7; providing identification to police officer, § 23-7.1; use, operation, etc., of device to automatically initiate call and deliver prerecorded message to telephone number of city public safety services, § 23-9.*

State Law reference— *General powers and duties of local police force, Code of Virginia, § 15.1-138.*

ARTICLE I. - IN GENERAL

Sec. 27-1. - Composition of department.

The department of police shall consist of a chief of police, who shall be the head of the department, together with such other officers and personnel as are authorized by the council.

(Code 1965, § 2-48)

Sec. 27-2. - Departmental rules and regulations; duty assignments.

(a) The chief of police, with the approval of the city manager, shall make rules and regulations concerning the operation of the department of police, the conduct of the officers and employees thereof and their uniforms, arms, other equipment and training.

(b) The chief of police shall assign all members of the department of police to their respective posts, shifts, details and duties.

(c) The chief of police and the sheriff are authorized to permit police officers and deputy sheriffs, respectively, to engage in off-duty employment which may occasionally require the use of police powers in the performance of such employment, and to promulgate rules and regulations concerning such off-duty employment.

(Code 1955, §§ 2-49, 2-50; Ord. No. 2183, 10-6-92; Ord. No. 2560, 9-7-99)

Sec. 27-3. - Authority of department to furnish copies of records, perform certain services, etc., and fees therefor.

(a) The department of police is hereby authorized to release forensic photographs after all criminal charges are resolved and when such release is provided by law, to furnish photostatic copies of accident reports and offense reports, and to allow such reports to be viewed by proper persons consistent with the provisions of the Virginia Freedom of Information Act, Code of Virginia § 2.2-3700.

(b) The chief of police is hereby authorized to make record checks and reports (local record only) and take fingerprints of individuals on request. For the processing of applications for permits required by law, the following fees shall be charged:

(1) Record check and report by name (local) .....$ 15.00

(2) First fingerprint card requested by individuals 10.00

(3) Subsequent fingerprint cards requested by individuals 5.00

(4) Certificate for public convenience and necessity 50.00

(5) Precious metals permit 550.00

(c) If a permit issued by the department of police requires a record check of the applicant, the fee for such record check shall be equal to the fee set forth in (b)(1) of this section

(Code 1965, §§ 2-56.1—56.3; Ord. No. 1162, 4-20-81; Ord. No. 1278, 5-17-82; Ord. No. 1294, 6-28-82; Ord. No. 2093, 8-27-91; Ord. No. 2139, 6-9-92; Ord. No. 2342, 6-27-95; Ord. No. 2789, 10-28-03; Ord. No. 2879, 5-24-05; Ord. No. 2888, 6-14-05; Ord. No. 3131, 5-11-10; Ord. No. 3451, § 1, 5-10-16, eff. 7-1-16; Ord. No. 3482, 12-13-16)

Cross reference— Fees for copies of city documents, manuals, etc., § 2-2; fees for copies of fire department reports, § 12-30.

Sec. 27-3.1. - Vehicle escort service; traffic control.

(a) The department of police is authorized to provide police vehicle escorts and related traffic control for funeral processions, house moving and other events for which such services may be requested.

(b) For vehicle escort service and traffic control for house moving and other events for which such services may be requested, the department shall charge, for each police officer, twenty-five dollars ($25.00) for the first hour, or portion thereof, and, thereafter, twelve dollars and fifty cents ($12.50) for each one-half hour or

portion thereof. There shall be no charge for providing police vehicle escorts and related traffic control for funeral processions.

(Ord. No. 2093, 8-27-91; Ord. No. 2222, 5-11-93)

Sec. 27-4. - Auxiliary police.

The chief of police is hereby authorized to appoint auxiliary police officers as he deems necessary, not to exceed one hundred (100) in number. The chief of police, with the approval of the city manager, shall make rules and regulations concerning the operation of the auxiliary police officers, their uniforms, arms, other equipment and training. Such rules and regulations shall be subject to ratification by the council.

(Code 1965, § 2-56.4; Ord. No. 1385, 7-11-83)

Cross reference— Recognition of auxiliary police as part of city safety program, § 2-4; issuance of vehicle license plates or decals to auxiliary policemen, § 21-79.

State Law reference— Auxiliary police, Code of Virginia, § 15.1-159.2 et seq.

Sec. 27-5. - Service charge for false alarms to which police are required to respond.

There is hereby established a service charge of one hundred fifty dollars ($150.00) to be paid by each residence upon the third false alarm call within a twelve month period and for each false alarm call thereafter to which the police of the city are required to respond. Two hundred fifty dollars ($250.00) is hereby charged to each business, industrial user for each false alarm caused by negligence to which the police of the city are required to respond upon the third false alarm call within a twelve month period and each call thereafter. Such charge shall be payable to the city treasurer.

(Ord. No. 983, 9-10-79; Ord. No. 3013, 5-13-08; Ord. No. 3377, 10-7-14)

Sec. 27-5.1. - Permits required for alarm systems using third-party alarm companies to notify police.

(a) *Permit required:* No person shall use an alarm system that relies on a third-party alarm company to notify the police department in the event the alarm is activated without first obtaining a permit to operate such a system from the police department. A ten-dollar ($10.00) fee shall be charged for such a permit.

(b) *Application:* The permit application shall be submitted by the alarm user on a form obtained from the police department. For the purpose of this section, the "alarm user" is any person who is in physical possession of any premises where an installed alarm system is monitored by a third-party alarm company.

(c) *Transfer of premises possession:* Alarm permits are not transferable. Alarm permits issued by the police department shall expire when the alarm user, as identified on the alarm permit application, vacates possession of said premises. Any person in possession of said premises after the expiration of the alarm permit shall be required to obtain a new alarm permit.

(d) *Reporting updated information:* Whenever any information provided to the police department on the alarm permit application changes, the alarm user shall provide the updated information to the police department within thirty (30) days.

(e) *Multiple alarm systems or users:* In the event an alarm user has one or more alarm systems protecting two or more separate structures that have either different addresses or tenants, a separate permit shall be required for each structure and/or tenant.

(f) *Notice:*

(1) All third-party alarm companies that notify the police department in the event of an alarm activation on behalf of clients/subscribers located in the city, shall provide notice of the requirements of this section to all such clients/subscribers located in the city.

(2) After police provide a response to a third-party alarm company's call for service to a location where a person or persons in possession of such property has not obtained the required alarm permit, the police department may provide no further responses requested by a third-party alarm company's call for service until the required permit is obtained.

(Ord. No. 3049, 9-2-08; Ord. No. 3234, 5-22-12)

Sec. 27-6. - Impersonation.

Any person who falsely assumes or exercises the functions, powers, duties and privileges incident to the office of sheriff, police officer, marshal or other peace officer, or who falsely assumes or pretends to be any such officer, is guilty of a Class 1 misdemeanor upon conviction of a first offense.

(Code 1965, § 23-38; Ord. No. 1003, 11-5-79; Ord. No. 3293, 6-11-13)

State Law reference— Similar provisions, Code of Virginia, § 18.2-174.

Sec. 27-7. - Interference with law enforcement animals.

Any person who willfully torments, beats, kicks, strikes, injures or otherwise mistreats an animal owned by the department of police or sheriff's office, or who willfully interferes with the lawful performance of such animal in a law enforcement activity shall be guilty of a Class 2 misdemeanor. Any person who willfully touches such animal in any manner after being directed not to do so by a law enforcement officer shall be guilty of a Class 4 misdemeanor.

(Ord. No. 1323, 9-13-82; Ord. No. 1523, 4-1-85; Ord. No. 3723, 2-21-23)

Sec. 27-8. - Law enforcement jurisdiction.

Pursuant to Code of Virginia § 15.2-1725.1, for purposes of public safety regulatory authority and enforcement, the territorial limits of the city extends from its costal shoreline, the coastal shorelines of Camp Pendleton, the coastal shorelines of First Landing State Park, and the coastal shorelines of False Cape State Park in a perpendicular direction for three miles into the Atlantic Ocean and Chesapeake Bay waters. This territorial jurisdiction is concurrent with the jurisdiction of the Commonwealth, but this authority does not extend to the regulatory authority of the Virginia Marine Resources Commission.

(Ord. No. 3243, 6-26-12, eff. 7-1-12)

Secs. 27-9—27-20. - Reserved.

ARTICLE II. - UNCLAIMED PROPERTY IN CUSTODY OF POLICE DEPARTMENT

Footnotes:

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Editor's note— *Ord. No. 1331, adopted Sept. 27, 1982, amended art. II to read as set out in §§ 27-21—27-23. Former art. II consisted of §§ 27-21—27-25, concerning the same subject, as derived from Code 1965, §§ 2-53—2-56.*

Cross reference— *Unclaimed bicycles or mopeds in custody of police department to be disposed of in accord with this article, § 7-8.*

State Law reference— *Authority for article, Code of Virginia, § 15.1-133.01.*

Sec. 27-21. - Disposal of unclaimed property in possession of police.

(a) Any unclaimed personal property which has been in the possession of the department of police and remains unclaimed for a period of more than sixty (60) days may be sold at public auction or retained for use by the Police Department in accordance with the provisions of this article. As used herein, "unclaimed personal property" shall be any personal property belonging to another which has been acquired by a law enforcement officer pursuant to his duties, which is not needed in any criminal prosecution, which has not been claimed by its rightful owner and which the state treasurer has indicated will be declined if remitted under the Uniform Disposition of Unclaimed Property Act of the Code of Virginia.

(b) Notwithstanding the provisions of subsection (a) above, bicycles and lost/found property may be disposed of in accordance with sections 27-24 and 27-25.

(c) Any unclaimed personal property, as described in subsection (a) above, that has insubstantial commercial value may be destroyed or otherwise disposed of after it remains unclaimed for a period of more than ninety (90) days. For the purpose of this subsection "insubstantial commercial value" includes items that are unsuitable for resale, or items deemed to have a value less than the cost of giving notice and holding a sale.

(Ord. No. 1331, 9-27-82; Ord. No. 1498, 11-19-84; Ord. No. 3222, 3-13-12)

Sec. 27-22. - Requirements prior to sale or retention by police department.

(a) Prior to the sale or retention by Police Department of any unclaimed item the chief of police or his duly authorized agent shall make reasonable attempts to notify the rightful owner of the property, obtain from the commonwealth's attorney in writing a statement advising that the item is not needed in any criminal prosecution, and cause to be published in a newspaper of general circulation in the locality once a week for two (2) successive weeks, notice that there will be a public sale of unclaimed personal property. Such property shall be described generally in the notice, together with the date, time and place of the sale. The chief of police, or his duly authorized agent, shall pay from the proceeds of the sale the cost of advertisement, removal, storage and investigation as to ownership and liens, and notice of sale. The balance of the funds shall be held by such officer for the owner and paid to the owner upon satisfactory proof of ownership.

(b)

Any unclaimed item retained for use by the Police Department shall become the property of the City and shall be retained only if, in the opinion of the chief of police or his designee, there is a legitimate use for the property by the department and retention of the item is a more economical alternative than purchase of a similar or equivalent item.

(Ord. No. 1331, 9-27-82; Ord. No. 3222, 3-13-12)

Sec. 27-23. - Disposition of funds from sale.

If no claim has been made by the owner for the proceeds of such sale within sixty (60) days of the sale, the remaining funds shall be deposited in the general fund of the city. Any such owner shall be entitled to apply to the city within three (3) years from the date of the sale and, if timely application is made therefor, the city shall pay the remaining proceeds of the sale to the owner without interest or other charges. No claim shall be made nor any suit, action or proceeding be instituted for the recovery of such funds after three (3) years from the date of the sale.

(Ord. No. 1331, 9-27-82)

Sec. 27-24. - Disposal of bicycles and other wheeled devices or vehicles.

Any bicycle, electric personal assistive mobility device, electric power-assisted bicycle, electric-powered wheeled device, gas-powered wheeled device, golf cart, surrey or moped which has been in the possession of the department of police, unclaimed, for more than thirty (30) days may be sold at public auction or donated to a charitable organization. If such wheeled device or vehicle is sold at public auction, the provisions of sections 27-22 and 27-23 shall apply. If such wheeled device or vehicle is donated to a charitable organization, the notice provisions of section 27-22 shall apply.

(Ord. No. 1498, 11-19-84; Ord. No. 2850, 10-26-04)

Cross reference— Bicycles and other wheeled devices, Ch. 7.

Sec. 27-25. - Disposal of lost/found property.

Any person who initially found and turned over to the department of police, property which otherwise remains unclaimed for a period of sixty (60) days (thirty (30) days for bicycles and other wheeled devices and vehicles as set forth in section 27-24), may make claim for such property, prior to its sale, to the chief of police or his duly authorized agent. The chief of police or his duly authorized agent may elect to return such property to the finder making such claim or proceed under the provisions of sections 27-21 or 27-24. Strict records of each such disposal shall be kept.

(Ord. No. 1498, 11-19-84; Ord. No. 2850, 10-26-04; Ord. No. 3222, 3-13-12)

Secs. 27-26—27-38. - Reserved.

ARTICLE III. - CONVICTED FELONS' REPORTS

Footnotes:

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***State Law reference—** Central criminal records exchange, Code of Virginia, § 19.2-387 et seq.*

Sec. 27-39. - Violations of article.

A violation of any provision of this article shall constitute a Class 1 misdemeanor.

Sec. 27-40. - Exemptions from article.

Nothing in this article shall be deemed or construed to apply to any person who has received or who shall receive a full and unconditional pardon for each or any crime whereof he shall have been convicted or to any person on furlough from either a federal or state prison or similar facility, when such person is on constant escort by city, state or federal law officers or officials or prison authorities during the period of such furlough.

(Code 1965, § 15-7; Ord. No. 1031, 3-17-80)

Sec. 27-41. - When required.

(a) Any person who has been convicted of any offense punishable as a felony in this state or elsewhere, at any time subsequent to September 14, 1964, who comes into the city from any point outside the city and remains in the city for a period exceeding twenty-four (24) hours, shall report to the chief of police within twelve (12) hours after the expiration of the twenty-four (24) hour period.

(b) The chief of police or his designee shall endeavor to notify all persons subject to this section of their duty to comply with the provisions of this section. Failure to file a report after such actual notice is given shall be a violation of this section.

(Code 1965, § 15-1)

Sec. 27-42. - Contents.

Persons required to report by section 27-41 shall furnish to the chief of police a statement, in writing, signed by such person and giving the following information:

(1) His true name and all aliases which he has used or under which he may have been known.

(2) A full and complete description of his person.

(3) The kind, character and nature of each crime of which he has been convicted.

(4) The place where any of such crimes were committed and the place of conviction of the same.

(5) The name under which he was convicted in each instance and the date thereof.

(6) The name, if any, and the location of each prison, reformatory, jail or other penal institution in which he was confined or to which he was sentenced.

(7) The location or address of his residence, stopping place, living quarters or place of abode in the city, and each one thereof, if more than one; or the address of the location of his intended residence, stopping place, living quarters or place of abode therein, and each one thereof; with a description of the character of each such place, whether a hotel, apartment house, dwelling house or otherwise, giving the street

number thereof, if any, or such description of the address or location thereof as will so identify the same as to make it possible to locate; and the length of time for which he expects or intends to reside within the territorial boundaries of the city.

(Code 1965, § 15-2)

Sec. 27-43. - Photographing and fingerprinting of person making report.

At the time of making a report pursuant to section 27-41, the person so reporting shall be photographed and fingerprinted by the chief of police and the photograph and fingerprints of such person shall be made a part of the permanent record provided for in this article.

(Code 1965, § 15-4)

Sec. 27-44. - Notice of change of address.

In the event any person required to make a report under section 27-41 shall change any place of residence, stopping place or living quarters to any new or different place within the City, other than any place last shown in such report, he shall, within twenty-four (24) hours after the making of such change, notify the chief of police, in a written and signed statement, of such change of address and shall furnish, in such written statement, his new address.

(Code 1965, § 15-5)

Sec. 27-45. - False or misleading information.

It shall be unlawful for any person required by any provision of this article to furnish a report to furnish, in such report, any false or fictitious address or any address other than a true address or intended address, or to furnish, in making any such report, any false, untrue or misleading information or statement relating to any information required by any provision of this article to be furnished.

(Code 1965, § 15-3)

Sec. 27-46. - Disposition and use of statements, photographs, etc.

(a) The statements, photographs and fingerprints provided for in this article shall at all times be kept by the chief of police in a file separate and apart from other files and records maintained and kept by the department of police and shall not be open to inspection by the public, or by any person other than a regular member of the department of police; provided, that any such photographs, or duplicates thereof, may be exhibited to persons other than police officers of the city for the purpose of assisting in identifying perpetrators of any crime.

(b) Copies of such statements, photographs and fingerprints may be transmitted to the sheriff of any county of the state, to the head of any department of the state engaged in the enforcement of any criminal law of the state, to the head of any federal law-enforcement agency or to any sheriff or chief of police of a municipality or the head of any other law-enforcement agency of any state or territory outside the state, when request is made in writing by such sheriff or other head of a law-enforcement agency asking for the record of a certain

person named therein or for the record of a person whose photograph or fingerprints reasonably correspond with photographs or fingerprints submitted with such request; provided, that such written request states that such record is deemed necessary for the use of such law-enforcement officer or agency, in or concerning the investigation of any crime or any person who is accused of committing a crime, or any crime which is reported to have been committed; provided further, that such request in writing shall state that the record will be used only for such purpose.

(Code 1965, § 15-6)

State Law reference— Dissemination of criminal history record information, Code of Virginia, § 19.2-389.

Secs. 27-47—27-59. - Reserved.

ARTICLE IV. - INDEPENDENT CITIZEN REVIEW BOARD

Sec. 27-60. - Establishment of the board and membership requirements.

(a) There is hereby created the Independent Citizen Review Board as a law-enforcement civilian oversight body of the Police Department. The board shall consist of eleven (11) members, and may include up to two (2) non-voting members with law-enforcement experience, with a preference for persons with at least fifteen (15) years of law-enforcement investigative experience, all of whom shall be appointed by the City Council and shall serve at the pleasure of the City Council. In accordance with the requirements imposed by Code of Virginia § 9.1-601(E) or its successor provision, any person currently employed as a law-enforcement officer as defined in Code of Virginia § 9.1-101 or its successor provision is ineligible to serve as a member of the board, but a retired law-enforcement officer may serve on the board as an advisory, non-voting ex officio member; provided, however, that such retired officer shall not have been previously employed as a law-enforcement officer by the Virginia Beach Police Department but shall have been employed as a law-enforcement officer in a locality that is similar to the City of Virginia Beach.

(b) The membership of the body shall reflect the demographic diversity of the City. The eleven voting members shall be eligible to vote, reside in the City of Virginia Beach, and should reflect the racial, gender/gender identity, and socio-economic diversity of the City's population and be chosen on the basis of expertise and experience in fields relevant to the performance of the board's duties. The Council shall strive to appoint at least two (2) members under the age of 40. No member shall be a current City employee, but voting members may include former City employees if honorably separated from service for at least five (5) years. Appointments shall be consistent with the membership disqualifiers set forth in the next section of this Code.

(Ord. No. 3680, 11-16-21; Ord. No. 3716, 11-15-22)

Sec. 27-61. - Membership disqualifiers.

(a) No person may serve on the Board, in either a voting or nonvoting capacity, if any of the following apply: public office holder or candidate for such office; employed by, or immediate family member of someone employed by the City; current employee of any law enforcement agency; convicted felon (unless rights have

been restored and the felony conviction did not involve moral turpitude, a sex offense, domestic assault, offenses involving children as victims, gun violations or any crime of violence as defined in Code of Virginia § 18.2-288 or its successor provision); a person convicted of any misdemeanor involving moral turpitude, sex offense, domestic assault, or offenses involving children as victims or gun violations; currently or previously subject to a protective order; less than honorable discharge from the military; multiple DUI convictions within ten (10) years; any pending criminal charges/adjudication; pending litigation against the City by the appointee or immediate family member; or pending litigation against a law enforcement officer by the appointee or immediate family member. For the purposes of this section, the term "immediate family" shall be defined as set forth in Code of Virginia § 2.2-3101 or its successor provision.

(b) Any appointee shall promptly self-report changes in circumstances that may cause him or her to be disqualified.

(Ord. No. 3680, 11-16-21; Ord. No. 3716, 11-15-22)

Sec. 27-62. - Term of appointments.

(a) Of the voting members initially appointed, four (4) should be appointed for terms of three (3) years, four (4) appointed with terms of two (2) years, and three (3) appointed with terms of one (1) year. Of the non-voting members initially appointed, one (1) should be appointed for a term of three (3) years, and one (1) should be appointed to for a term of two (2) years.

(b) Following the initial appointments, all appointments shall be for terms of three (3) years, but neither voting nor non-voting members should be re-appointed for more than one (1) consecutive term.

(Ord. No. 3680, 11-16-21)

Sec. 27-63. - Duties of the board and the establishment of policies and procedures for the performance of those duties.

(a) The board shall have the following duties, subject to the policy and procedures referenced in subsection (b):

(1) To receive, investigate, and issue findings on complaints from civilians regarding the conduct of sworn members of the Police Department;

(2) To investigate and issue findings on incidents, including the use of force by a law-enforcement officer that results in the death of, or serious injury to, any person held in custody, serious abuse of authority or misconduct, allegedly discriminatory stops, and other incidents regarding the conduct of sworn members of the Department (and for purposes of this section, "serious injury" shall be defined as "bodily injury that involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty");

(3) To hold hearings and, if after making a good faith effort to obtain, voluntarily, the attendance of witnesses and the production of books, papers, and other evidence necessary to perform its duties, the board may apply to the circuit court for a subpoena compelling the attendance of such witness or the production of such books, papers, and other evidence, and the court may, upon good cause shown, cause the subpoena to be issued; provided, however, that any person so subpoenaed may apply to the court that issued such subpoena to quash it;

(4)

To investigate policies, practices, and procedures of the Department and to make recommendations regarding changes to such policies, practices, and procedures. In response to such recommendations, the Department shall create a written record, made available to the public, in cases in which the Department declines to implement such changes;

(5) To review any investigations conducted internally by the Department and to issue findings regarding the accuracy, completeness, and impartiality of such investigations;

(6) To request reports of the annual expenditures of the Department and to make budgetary recommendations to the City Council concerning future appropriations;

(7) To make public reports on the board's activities, including investigations, hearings, findings, recommendations, determinations, and oversight activities; and

(8) To undertake any other duties as reasonably necessary for the board to effectuate its lawful purpose as set forth in this section.

(b) The board in the exercise of the duties listed above shall adhere to the provisions of the City of Virginia Beach Independent Citizen Review Board Policy and Procedures, which have been established by the City Council and shall be available for public inspection and also be publicly accessible via the City's website.

(Ord. No. 3680, 11-16-21)

Chapter 28 - SEWERS AND SEWAGE DISPOSAL

Footnotes:

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

Cross reference— *Building regulations, Ch. 8; housing code, Ch. 16; license tax for sewer companies, § 18-115; mobile homes, Ch. 19; sewer utility to maintain employees on call for emergencies, § 23-52; soil removal and other land-disturbing activities, Ch. 30; solid waste, Ch. 31; installation or maintenance of defective sewers or drains under street, § 33-40; repair of street or sidewalk damaged by sewers or drains, § 33-41; installation or repair of underground utilities prior to street improvements, §§ 33-86 et seq.; water supply, Ch. 37; zoning ordinance, App. A; sanitary sewers in subdivisions, App. B, § 5.9; site plan ordinance, App. C; App. H.*

State Law reference— *Sewage disposal generally, Code of Virginia, § 32.1-163 et seq.; authority of city to establish, maintain and operate sewage disposal systems, §§ 15.1-320, 15.1-876; authority to regulate sewage disposal, §§ 15.1-855, 15.1-856.*

ARTICLE I. - IN GENERAL

Sec. 28-1. - Violations of chapter generally.

Unless otherwise specifically provided, any person who shall violate any provision 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, § 29-10)

Sec. 28-1.1. - "Sewer system" defined.

For the purposes of this chapter, "public sewer system" shall be defined as any appurtenance of that integrated regional system of sewage collection, transmission or treatment, whether located within or without the boundaries of the city, which has been, or is intended to be, installed, operated or maintained by the city, or in the installation. operation or maintenance of which the city has participated, is participating or intends to participate, financially.

(Ord. No. 1035, 4-21-80; Ord. No. 1108, 10-27-80)

Sec. 28-2. - Mandatory sewer connections.

(a) The owner of any dwelling or other building in which human beings live or congregate shall, when a public sewer system is made available by the city, connect such dwelling or building with such public sewer line, within one year after such line becomes available; provided, however, that the director of public health may require connection within sixty (60) days if, in his opinion, a health hazard exists. The date of availability shall be that on which notice is given by publication or by mailing or delivering notice to the affected property owner.

(b) It shall be unlawful for any person to empty any sewage or industrial waste into any well, septic tank, open stream or waterway, upon any other land or water or into any noncertificated sewer service at any time after connection to the public sewer system, as required by this section.

(c) It shall be unlawful for any person to occupy, lease or rent any premises, unless the same is connected to the public sewer, if such connection is required by this section.

(d) The fees prescribed by this article shall be due from the date the sewer connection is required pursuant to this section, and no connection shall be made to the public sewer system until such fees have been paid.

(Code 1965, § 29-1; Ord. No. 1035, 4-21-80; Ord. No. 1108, 10-27-80; Ord. No. 1209, 8-3-81)

State Law reference— Authority of city to require sewer connections, Code of Virginia, § 15.1-876.

Sec. 28-3. - Sewer tap installation fees.

The following fees shall be paid for connections to the public sewer system:

(a) For a four-inch or larger tap, lateral and cleanout, except as provided in City Code section 28-3.1: 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, § 29-3, Ord. No. 1035, 4-21-80; Ord. No. 1108, 10-27-80; Ord. No. 1209, 8-3-81; Ord. No. 1380, 6-27-83; Ord. No. 1712, 7-6-87; Ord. No. 2928, 3-7-06)

Cross reference— Plumbing permit fee, § 8-32.

Sec. 28-3.1 - Same—Existing dwelling (mandatory connections).

(a) Sewer tap, cleanout and installation fees for existing dwellings qualifying under section 28-2, pertaining to mandatory connections to the public sewer system, shall be seven hundred sixty dollars ($760.00) for a four-inch tap. For six-inch or larger taps, the fee shall be the actual cost of installation by the city.

(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. 3737, § 1, 5-9-23, eff. 7-1-23)

Sec. 28-4. - Sewer capital recovery fees—Generally.

(a) The fees prescribed by the following subsections of this section shall be paid as the property owner's share of the cost of the public sewer system and associated conveyance facilities. Such fees shall be known as "sewer 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 sanitary sewer system when such use or structure connects and as otherwise provided in this article. If a property owner has paid sanitary sewer connection 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 sewer capital recovery fees in the amount prescribed in this article, less a credit of any sanitary sewer connection fees previously paid. Any property owner who pays such fees between July 1, 2014 and December 31, 2014 may choose to pay sewer capital recovery fees in the prescribed amount or the applicable amount of sanitary sewer connection fees in effect as of June 30, 2014.

(b) In cases in which a gravity sewer connection to the public sewer system is not available to the property, the sewer capital recovery fee shall be in amount equal to fifty (50) percent of the applicable fee set forth in subsection (a) of section 28-4.1.

(b1) Notwithstanding the provisions of subsection (b), where a use or structure connected to the public sewer system is reconstructed, expanded or modified, so as to result in an increase in water meter size, the sewer capital recovery fee shall be 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) Where the property owner is required to construct sewage facilities that are to become a part of the public sewer system in order to provide service to a specific parcel or parcels, the sewer capital recovery fee shall be in an amount equal to twenty-five (25) percent of the applicable fee specified in subsection (a) of section 28-4.1.

(d) Whenever a property to be served discharges through a publicly-owned pump station, and (1) the system installation costs are calculated pursuant to subsection (c) of this section, or (2) the estimated peak sanitary sewer flow exceeds the property's flow allocation, there shall be an additional fee in the amount of one thousand, one hundred eighty-seven dollars ($1,187.00) per gallon per minute/peak flow. "Peak flow" shall be

construed to mean the projected peak flow set forth in the Department of Public Utilities Design Standards or the actual peak flow, whichever is greater. "Flow allocation" shall mean that portion of the pump station's capacity assigned to the property.

(e) The sewer capital recovery fee for campgrounds or temporary uses connected to the public sanitary sewer system is hereby established. Such fee shall be determined as follows:

(1) For campgrounds and other uses operated on a seasonal basis, the fee shall be in an amount equal to one-half (½) of the applicable sewer capital recovery fee specified in subsection (a) of section 28-4.1 for each water meter installed to serve such campground. For such fee to be applicable, the owner shall first enter into a contract with the city providing that, if such campground is converted to year-round use, the owner shall, at the time of conversion to year-round use, pay the fee prescribed by subdivision (2) hereof, less the amount of any sewer capital recovery fee previously paid on account of such campground.

(2) For campgrounds operated on a year-round basis the sewer capital recovery fee shall be in an amount equal to the applicable fee under subsection (a) of section 28-4.1 for each water meter installed to serve such campground.

(3) For temporary uses and structures, the applicable fee shall be determined by the director of public utilities based upon the estimated contribution of wastewater to the public sanitary sewer system from the proposed use or structure. A temporary use or structure shall be one intended to be operated or occupied during a single season or period of time and not thereafter repeated on an annual or other basis.

(f) No building permit shall be issued and no water or sewer tap shall be installed for any property until the fees required by this section have been fully paid, except as otherwise provided in this article.

(g) Existing contractual agreements between property owners and the city regarding fees and waiver of fees shall remain in effect.

(h) Where a property having no water meter is connected to the public sewer system, the sewer capital recovery fee shall be in an amount equal to the applicable fee for a water meter of a size necessary to serve such property, as determined in accordance with the applicable provisions of the Department of Public Utilities Design Standards Manual.

(Code 1965, § 29-3; Ord. No. 953, 6-25-79; Ord. No. 987, 9-17-79; Ord. No. 989, 9-17-79; Ord. No. 991, 9-17-79; Ord. No. 1035, 4-21-80; Ord. No. 1057, 6-16-80; Ord. No. 1122, 11-24-80; Ord. No. 1209, 8-3-81; Ord. No. 1367, 4-11-83; Ord. No. 1380, 6-27-83; Ord. No. 1712, 7-6-87; Ord. No. 2490, 5-26-98; Ord. No. 3020, 5-13-08; Ord. No. 3063, 1-13-09; Ord. No. 3346, 5-13-14, eff. 7-1-14)

Sec. 28-4.1. - Same—Amount.

The sewer capital recovery fee shall be determined as follows:

(a) 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)	Sewer Capital Recovery Fee

⅝	$2,521.00
1	$6,302.00
1.5	$12,603.00
2	$20,165.00
3	$37,809.00
4	$63,016.00
6	$126,032.00
8	$201,650.00
10	$289,872.00

(b) For multiple-family dwellings, the fee shall be in an amount equal to seventy (70) percent of the applicable sewer capital recovery fee or reduced fee under section 28-4(c), as the case may be, per dwelling unit.

(c) 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.

(Ord. No. 3346, 5-13-14, eff. 7-1-14; Ord. No. 3737, § 2, 5-9-23, eff. 7-1-23)

Sec. 28-5. - Installment, etc., payment of sewer capital recovery fees.

(a) The director of public utilities is hereby authorized to accept, on behalf of the city, promissory notes for the payment of the sewer capital recovery fees due under this article, for single-family residences and duplexes. The terms of each such note shall be all tap and cleanout fees, given as a down payment, with the full sewer capital recovery fee to be paid within four (4) years. Installation 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 subsection (a) 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, 29-3; Ord. No. 1020, 1-4-80; Ord. No. 1035, 4-4-80; Ord. No. 1209, 8-3-81; Ord. No. 1712, 7-6-87; Ord. No. 2184, 10-13-92; Ord. No 2485, 4-28-98; Ord. No. 2501, 8-4-98; Ord. No. 3346, 5-13-14, eff. 7-1-14)

Sec. 28-6. - Sewer capital recovery fee exemption—Certain elderly or disabled persons.

(a) Exemption or partial exemption from payment of the sewer capital recovery fees prescribed by section 28-4 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 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 public sewer system;

(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 public sewer system. 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 public sewer system must be the sole residence 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 public sewer system. 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 an exemption under this section must file with the administrator an affidavit setting forth, in a manner prescribed by the administrator, the location and value of the property to be connected to the public sewer, 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 meets the eligibility criteria set forth in this section, the exemption shall be as shown in the following schedule:

Total income, all sources	Amount of 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 having 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 provided for by this section shall be guilty of a Class 1 misdemeanor.

(Code 1965, § 29-11; Ord. No. 1035, 4-21-80; Ord. No. 1057, 6-16-80; Ord. No. 1209, 8-3-81; Ord. No. 1440, 3-5-84; Ord. No. 1693, 4-27-87; Ord. No. 1898, 7-10-89; Ord. No. 1938, 1-22-90; Ord. No. 2456, 8-26-97; Ord. No. 2492, 6-9-98; Ord. No. 3346, 5-13-14)

Sec. 28-7. - Same—Certain financially disadvantaged persons generally.

(a) Exemption from payment of the sewer capital recovery fees prescribed by this article is provided for certain 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 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 at least one hundred twenty (120) days prior to the installation or scheduled date of installation, whichever comes first, of the sewer line.

(2) The dwelling to be connected to the sewer line must be the sole residence of the applicant claiming 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 fair market value of the house to be connected to the sewer 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 an exemption under this section must file with the administrator an 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, their gross combined income and their net combined financial worth.

(d) Where the person claiming an exemption meets the eligibility criteria set forth in this section, the exemption shall be one hundred (100) percent of the sewer capital recovery fee.

(e) If, within twelve (12) months after an exemption is obtained under this section, the financial position of the person having 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, § 29-12; Ord. No. 1693, 4-27-87; Ord. No. 1898, 7-10-89; Ord. No. 2501, 8-4-98; Ord. No. 3346, 5-13-14)

Sec. 28-8. - Reserved.

Editor's note— Ord. No. 3346, adopted May 13, 2014, repealed § 28-8, which pertained to sanitary sewer connection fee exemptions—families in community development target areas. See Code Comparative Table for complete derivation.

Sec. 28-9. - Sewer cleanouts.

All buildings and dwellings connected to the public sewer system shall have a cleanout installed in the lateral line at or near the property lines served.

(Code 1965, § 29-2, Ord. No. 1380, 6-27-83; Ord. No. 1712, 7-6-87; Ord. No. 2928, 3-7-06)

Sec. 28-10. - Sewage disposal facilities for commercial and industrial units.

(a) In commercial and industrial units, there shall be provided therein or attached directly thereto and opening therein approved toilet facilities that afford protection against the elements, are flytight and properly lighted and ventilated in a manner approved by the housing officer.

(b)

In the event any premises having a commercial or industrial unit thereon is not within one hundred fifty (150) feet of a sanitary sewer of usable elevation or a public water supply main or pipe existing in any public street, alley or right-of-way which abuts or adjoins the lot or parcel of land upon which the unit or premises exists, the requirements of this section regarding toilet facilities shall not apply; provided, that the water supply and method of sewage disposal shall be approved by the department of public health.

(Code 1965), §§ 19-25, 19-36)

Sec. 28-11. - Procedure when check in payment of fees or charges provided for in chapter is returned unpaid.

In any case where fees or charges provided for in this chapter are paid by check, draft or other instrument and the check or other instrument is returned unpaid for any reason, no tap shall be installed or, if already installed, the sewer service or water service to the premises shall be discontinued until full payment of all fees and charges due under this chapter is received.

(Code 1965, § 29-9)

Secs. 28-12—28-25. - Reserved.

ARTICLE II. - SEWER MAINTENANCE AND SEWAGE TREATMENT CHARGES

Sec. 28-26. - Sanitary sewer charges established.

The following monthly charges are hereby established with respect to all property connected directly or indirectly to the public sewer system maintained by the city:

(1) *Residential uses:*

a. Single-family detached residences: $31.58 effective July 1, 2023; and $32.37 effective July 1, 2024; and $33.18 effective July 1, 2025.

b. Structures with two (2) or more family residential units with one (1) connection to the public sewer system, except where structures meet the criteria set forth in subsection (e), and trailer parks:

1. First unit or trailer: $31.58 effective July 1, 2023; and $32.37 effective July 1, 2024; and $33.18 effective July 1, 2025.

2. Each additional unit or trailer: $23.70 effective July 1, 2023; and $24.29 effective July 1, 2024; and $24.90 effective July 1, 2025.

c. Hotels and motels:

1. First room provided for occupancy: $31.58 effective July 1, 2023; and $32.37 effective July 1, 2024; and $33.18 effective July 1, 2025.

2. Each additional room provided for occupancy: $12.69 effective July 1, 2023; and $13.01 effective July 1, 2024; and $13.33 effective July 1, 2025.

d. Campgrounds:

1.

First space provided: $31.58 effective July 1, 2023; and $32.37 effective July 1, 2024; and $33.18 effective July 1, 2025.

2. Each additional space provided: $12.69 effective July 1, 2023; and $13.01 effective July 1, 2024; and $13.33 effective July 1, 2025.

e. If a structure or property has two (2) or more family residential units, each of which is directly connected to the public sewer system owned and operated by the city, the charge for individual unit(s) shall be no less than $31.58 per unit effective July 1, 2023; and $32.37 effective July 1, 2024; and $33.18 effective July 1, 2025.

f. Separately metered multi-unit structures served by a privately-owned, on-site sewer collection system with a single connection point to the city's sewer system shall be charged $14.65 effective July 1, 2009, and $23.70 effective July 1, 2023; and $24.29 effective July 1, 2024; and $24.90 effective July 1, 2025.

(2) *Nonresidential uses:* Effective July 1, 2023, for all nonresidential uses in which there is also supplied public water service, the sanitary sewer service charge shall be determined by the size of the water tap through which water is provided, as per the following table:

Tap Size	Monthly Charge Effective July 1, 2023
¾ inch	$31.93
1 inch	$40.30
1½ inch	$79.79
2 inch	$120.93
3 inch	$237.39
4 inch	$396.56
6 inch	$795.92
8 inch	$1,849.10
10 inch	$3,057.58
12 inch	$4,636.08

Effective July 1, 2024, for all nonresidential uses in which there is also supplied public water service, the sanitary sewer service charge shall be determined by the size of the water tap through which water is provided, as per the following table:

Tap Size	Monthly Charge Effective July 1, 2024
¾ inch	$32.73
1 inch	$41.31
1½ inch	$81.78
2 inch	$123.95
3 inch	$243.32
4 inch	$406.48
6 inch	$815.82
8 inch	$1,895.33
10 inch	$3,134.01
12 inch	$4,751.98

Effective July 1, 2025, for all nonresidential uses in which there is also supplied public water service, the sanitary sewer service charge shall be determined by the size of the water tap through which water is provided, as per the following table:

Tap Size	Monthly Charge Effective July 1, 2025
¾ inch	$33.55
1 inch	$42.34
1½ inch	$83.83
2 inch	$127.05

3 inch	$249.41
4 inch	$416.64
6 inch	$836.22
8 inch	$1,942.71
10 inch	$3,212.36
12 inch	$4,870.78

a. For all nonresidential uses in which public water service is not available, the monthly charge shall be as follows:

1. 0—4 commodes: $63.38 effective July 1, 2023; and $64.96 effective July 1, 2024; and $66.58 effective July 1, 2025.
2. Each additional commode over four (4): $12.69 effective July 1, 2023; and $13.01 effective July 1, 2024; and $13.33 effective July 1, 2025.

The charges prescribed in this section shall be calculated for each service period by multiplying the number of days in the service period by the applicable daily charge for the rates on a twelve-month basis.

(Code 1965, §§ 29-4, 29-5; Ord. No. 1035, 4-21-80; Ord. No. 1139, 12-15-80; Ord. No. 1309, 7-12-82; Ord. No. 1380, 6-27-83; Ord. No. 1999, 8-14-90; Ord. No 2487, 4-28-98; Ord. No. 2634, 5-15-01; Ord. No. 2873, 5-10-05; Ord. No. 3129, 5-11-10; Ord. No. 3737, § 3, 5-9-23, eff. 7-1-23)

Sec. 28-26.1. - Nonresidential tap sizing.

For nonresidential uses wherein an Omni-type meter combines domestic and fire flow through a single meter, the sewer charge provided by section 28-26 shall be based on a meter size equal to the calculated domestic flow.

(Ord. No. 3229, 5-8-12, eff. 7-1-12)

Sec. 28-27. - Sewage treatment charges established.

In addition to the charges imposed by section 28-26, there are hereby imposed uniform charges for sewage treatment as follows:

(a) Where treatment of sewage is performed by the Hampton Roads Sanitation District, the charges shall be paid to the district in conformity with the rates established by the district.

(b) Where treatment of sewage is performed by the city, the charges shall be:

(1) For each single-family residence, including trailers and mobile homes: $3.00 per month.

(2)

For all other structures, the charge shall be equal to those imposed by Hampton Roads Sanitation District for like structures.

(Code 1965, § 29-6)

Sec. 28-28. - Billing.

(a) The director of public utilities is hereby authorized to bill each customer, for charges due the city under this article. If the customer also receives water service from the city, charges provided for by this article may be included in the bill, along with waste collection and stormwater management charges levied pursuant to Chapter 32.5; 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 department of public utilities shall mail or deliver all bills for charges prescribed by this article, but failure to receive such bills shall not prevent the discontinuance of service, if the amount due is not paid within the time limits set forth in this article.

(Code 1965, §§ 29-5, 29-7; Ord. No. 2827, 6-8-04; Ord. No. 3516, 9-5-17)

Sec. 28-29. - When due and payable; notice of and interest on delinquency.

All bills for charges prescribed by this article shall be due and payable twenty-one (21) days from the date of the bill, and shall be deemed delinquent if not paid in full within such time. A notice of such delinquency shall be mailed to the owner or occupant of the premises, directing such owner or occupant to show cause why the premises should not cease discharging sewage or waste, directly or indirectly, into the public sewer system.

(Code 1965, § 29-7; Ord. No. 2827, 6-8-04; Ord. No. 3516, 9-5-17)

Sec. 28-30. - Discontinuing service and assessing penalty for failure to pay.

(a) If, within ninety (90) days past the date of the bill, all charges provided for in this article are not paid, the water supply to the premises, if furnished by the city, shall be disconnected pursuant to section 15.2-2119 of the Code of Virginia, and such charges shall become a lien against the property, ranking on a parity with liens for unpaid taxes, and shall be collected as provided by section 15.2-2119 of the Code of Virginia. If water service is so disconnected, arrearages and a delinquent service fee shall be paid in accordance with section 37-54 of this Code.

(b) For premises not supplied water by the city, the sewer service to such premises shall be disconnected, if a bill for charges under this article is not paid within two (2) months of the due date, and a penalty shall be assessed in the amount of ten dollars ($10.00). If sewer service is so disconnected, it shall not be reinstituted until payment is made to the city for all arrearage, plus the actual cost to make the reconnection, plus twenty-five percent (25%) of such cost as an administrative charge. Such charges and penalty shall become a lien on the property, ranking on a parity with liens for unpaid taxes and shall be collected as provided by section 15.2-2119 of the Code of Virginia.

(c) Notwithstanding the above, no lien for unpaid sewer charges shall be recorded unless the charges were incurred by an owner of the property.

(Code 1965, §§ 29-7, 29-8; Ord. No. 2827, 6-8-04; Ord. No. 3516, 9-5-17)

Sec. 28-31. - Account initiation and reestablishment charge.

(a) For each new account established for a property not connected to city water, there shall be a fee of twenty dollars ($20.00) to cover costs connected with the establishment of the account.

(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 service.

(Ord. No. 1380, 6-27-83; Ord. No. 1712, 7-6-87; Ord. No. 2827, 6-8-04)

Secs. 28-32—28-45. - Reserved.

ARTICLE III. - PRIVATE SEWAGE DISPOSAL FACILITIES

DIVISION 1. - GENERALLY

Sec. 28-46. - Violations of article.

Any person violating any provision of this article shall be guilty of a Class 4 misdemeanor.

(Code 1965, § 17-40)

Sec. 28-47. - Permit required to install or repair.

(a) It shall be unlawful for any person to install or repair, have installed or repaired, allow to be installed or repaired or contract to install or repair any septic tank or other sewage disposal system for himself/herself or any other person before the owner of the property on which the septic tank or other system is to be installed or repaired obtains a permit from the director of public health and pays a fee in the amount of seventy-five dollars ($75.00).

(b) Notwithstanding the above, no fee shall be required for a permit to repair an existing septic tank or other sewage disposal system which has been previously approved.

(Code of 1965, § 17-39; Ord. No. 2386, 5-14-96)

Sec. 28-48. - Design standards; drainage easements; etc.

The permit required by section 28-47 shall specify the design standards for the septic tank or other system, such as tank size, length of drainfield, location of tank, drainfield and well, where applicable, and such other facilities as may be required under rules and criteria of the state health department. Where grading and drainage improvements are

required under such rules and criteria, the permit shall so stipulate. The director of public health shall require such drainage easements and other assurances as he deems adequate to guarantee the perpetual maintenance of such drainage improvements.

(Code 1965, § 17-39)

Sec. 28-49. - Maintenance.

It shall be unlawful for any person to fail, neglect or refuse to maintain or cause to be maintained any septic tank or other sewage disposal system, including associated drainage improvements, in the manner specified in the permit issued under this article and in a manner satisfactory to the director of public health. All duties and responsibilities of any person for whose property a permit is issued under this article shall be binding upon any and all subsequent owners of such property for as long as such septic tank or sewage disposal system remains in service.

(Code 1965, § 17-39)

Sec. 28-50. - Removal, etc., of inoperative septic tanks.

All inoperative septic tanks must be removed or, in lieu thereof, be pumped out and filled with sand, gravel or other similar acceptable material, unless such septic tank is inspected by a representative of the department of public health and is found to meet the standards of health and safety established by the director of public health, as approved by the city council.

(Code 1965, § 17-39)

Secs. 28-51—28-57. - Reserved.

DIVISION 2. - SANITATION DISPOSAL CONTRACTORS

> *Footnotes:*
> *--- (**2**) ---*
> ***Cross reference—** License tax for contractors removing contents of privies, cesspools, etc., § 18-75.*

Sec. 28-58. - Definitions.

As used in this division, the term "sanitation disposal contractor" shall mean any person who engages in the business of removing the contents of privies, cesspools, septic tanks and other similar facilities in the city. References in this article to the "director of public health" shall mean the director of public health of the city or his authorized representative.

(Code 1965, § 17-33)

Sec. 28-59. - Bond.

(a) The commissioner of revenue shall not issue any license under section 18-75 of this Code to any sanitation disposal contractor, until the applicant shall have posted with him a bond, with corporate surety, in the sum of one thousand dollars ($1,000.00) conditioned upon faithful compliance with the terms of this article.

(b) If any sanitation disposal contractor is convicted of violating any provision of this article, in addition to any other penalty imposed, the court may order the forfeiture of the bond posted pursuant to this section. The forfeiture of such bond shall operate to suspend the license of such person until a new bond is posted. The commissioner of revenue shall not accept a new bond until the cause for the forfeiture has been removed.

(Code 1965, §§ 17-35, 17-40)

Sec. 28-60. - Approval of equipment and manner and place of disposal.

(a) Every sanitation disposal contractor shall obtain the written approval of the director of public health of all equipment to be used in such contractor's business and of the manner and place of disposal. No such equipment or manner or place of disposal shall be used or employed unless it has been so approved. The director of public health shall not approve such equipment or place of disposal, unless such equipment is capable of holding and transporting its contents without leakage or spillage and the place of disposal is such that no water supply or stream will be contaminated by the presence of the contents of the disposal vehicle and the presence of such contents at such place will not create a hazard to the health of any person. The manner of disposal shall not be approved, unless it is such that flies and other insects will not have access to such contents and it will not create a hazard to the health of any person.

(b) No license shall be issued to any sanitation disposal contractor under section 18-75 of this Code, until the applicant has submitted to the commissioner of revenue a written statement, signed by the director of public health, that the equipment to be used and the manner and place of disposal have been approved by the director of public health, as required by this section.

(Code 1965, § 17-34)

Sec. 28-61. - Identification of vehicles used to transport contents of privies, septic tanks, etc.

Every vehicle used by a sanitation disposal contractor to transport the contents of privies, cesspools, septic tanks or similar facilities shall have displayed, on the outside of both doors thereof, the name of such contractor or his firm and his office address and phone number.

(Code 1965, § 17-36)

Sec. 28-62. - Display of license.

The license issued under section 18-75 of this Code to a sanitation disposal contractor shall be displayed in the principal place of business and will be displayed, upon request, to the director of public health or to any police officer of the city.

(Code 1965, § 17-36)

Sec. 28-63. - Records to be kept.

(a) Every sanitation disposal contractor shall keep, at his principal place of business, a record of each business transaction, setting forth the following: Date, time, name of person to whom service is rendered, the address where pickup is made, route traveled and time and place of deposit.

(b) Records kept pursuant to this section shall, at all reasonable times, be open to inspection by the director of public health and any officer of the city with police jurisdiction.

(Code 1965, 17-37, 17-38)

ARTICLE IV. - USE OF THE PUBLIC SEWER SYSTEM

DIVISION 1. - SEWER USE

Sec. 28-64. - Purpose and intent.

(a) Purpose. The purpose of this division is to prevent the introduction of pollutants and wastes into the city's public sewer system that will interfere with the operation of the system and with the wastewater system of the Hampton Roads Sanitation District (the "district"), contaminate the receiving waters of the system, or otherwise be incompatible with the system; to protect the wastewater facilities of the City of Virginia Beach and those of the District; and to ensure that the city and the users of the public sewer system comply with federal and state mandates under the Clean Water Act and all other applicable laws, rules and regulations.

(b) The provisions of this division are intended to comply with provisions of the Virginia Department of Environmental Quality (DEQ) and the Special Order by Consent issued to the Cities of Virginia Beach, Chesapeake, Hampton, Newport News, Poquoson, Portsmouth, Suffolk and Williamsburg; the Counties of Gloucester, Isle of Wight and York; the Town of Smithfield; the Hampton Roads Sanitation District and the James City Service Authority, effective September 26, 2007.

(Ord. No. 3067, 2-24-09)

Sec. 28-65. - Definitions.

The following words and terms used in this division shall have the following meanings, unless the context clearly indicates otherwise:

Day means the twenty-four-hour period beginning at 12:01 a.m.

Director means the director of public utilities or the authorized designee of the director of public utilities.

Infiltration. The introduction of groundwater into the public sanitary sewer system. Infiltration includes, but is not limited to, frequent seepage of groundwater through defective or cracked pipes, pipe joints, connections, or manhole walls. Infiltration does not include, and is distinguished, from inflow.

Inflow. Water, other than wastewater, that enters a sanitary sewer system (including service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cleanouts, cross connections between storm sewers and sanitary sewers, catch basins, storm waters, surface runoff, street wash waters or drainage. Inflow does not include, and is distinguished from, infiltration.

Public sewer system includes the pipelines or conduits, pumping stations, force mains, and all other construction, devices, and appliances appurtenant thereto, located within the City of Virginia Beach and used for the conveyance of residential, commercial or industrial sewage or wastewater or other wastes to the Hampton Roads Sanitation District.

Regional consent order or special order by consent means the regulatory order between the Virginia Department of Environmental Quality and localities within the Hampton Roads region, including the City of Virginia Beach, effective September 26, 2007.

Storm sewer system means the system of roads, streets, catch basins, curbs, gutters, ditches, pipes, lakes, ponds, channels, storm drains and other facilities located within the City of Virginia Beach that are designed or used for collecting, storing or conveying stormwater or through which stormwater is collected, stored or conveyed.

User means any person who contributes, causes, or permits the contribution or discharge of wastewater into the city's wastewater collection system within the city's boundaries, including any person who contributes such wastewater from mobile sources, such as one who discharges hauled wastewater.

Wastewater means a combination of liquid and water-carried wastes from the sanitary conveniences of residences, commercial buildings, industries, or institutions.

(Ord. No. 3067, 2-24-09; Ord. No. 3181, 5-24-11)

Sec. 28-66. - Prohibited discharges.

No person shall discharge or cause to be discharged into any portion of the public sewer system, directly or indirectly, any wastes which may violate any law or governmental regulation or have an adverse or harmful effect on the public sewer system, maintenance personnel, processes, or equipment, or which may otherwise endanger the public or create a nuisance. The following discharges are prohibited:

(a) Any gasoline, benzene, naphtha, solvent, fuel oil or any liquid, solid, or gas that may cause flammable or explosive conditions, including, but not limited to, waste streams with a closed cup flashpoint of less than 140° F (60° C) using test methods specified in Title 40, Part 261.21 of the Code of Federal Regulations (40 CFR Part 261.21) or any successor regulation.

(b) Any toxic or poisonous solids, liquids or gases in such quantities that, alone or in combination with other wastewater constituents, may interfere with the sewage treatment process of the Hampton Roads Sanitation District or biosolids use or disposal, cause acute worker or public health and safety problems, materially increase the cost of treatment, or constitute a hazard to any beneficial stream use, including recreation, ascribed to the receiving waters of the effluent from the sewage treatment plant.

(c) Any waste having a pH in violation of requirements as provided in Title 40, Part 403 of the Code of Federal Regulations (40 CFR Part 403) or any successor regulation or having any detrimental characteristics that may cause injury or damage to persons or property.

(d) Any solids or viscous substances that may cause obstruction to flow or be detrimental to sewerage system operations. These objectionable substances include, but are not limited to, asphalt, dead animals, offal, ashes, sand, mud, straw, industrial process shavings, metals, glass, rags, feathers, tar, plastics, wood, whole blood, paunch manure, bones, hair and fleshings, entrails, paper dishes, paper cups, milk containers, or other similar paper products, either whole or ground.

(e) Any significant quantities of unpolluted water such as rainwater, stormwater, groundwater, street drainage, yard drainage, private swimming pool discharge, or water from yard fountains, ponds or lawn sprays.

(f) Any water added for the purpose of diluting wastes which would otherwise exceed applicable limitations for any wastewater constituent.

(g) Any petroleum or mineral-based oils (non-saponifiable) and/or any animal or vegetable based oils, fats, or greases which in excess concentrations would tend to cause interference, pass-through, or adverse effects on the sewerage system, as determined by HRSD. No visible free non-saponifiable oil shall be present in the discharged waste stream.

(h) Any wastes with excessively high chemical oxygen demand (COD), biological oxygen demand (BOD), or decomposable organic content or any significant quantities of wastewater with a COD to BOD ratio exceeding six to one (6:1). COD to BOD ratio criteria are shown on Hampton Roads Sanitation District's list entitled "Wastewater Discharge Authorization Criteria COD/BOD Ratio," as amended from time to time.

(i) Any significantly odorous wastes or waste tending to create odors.

(j) Any waste containing dissolved sulfides in amounts which would be hazardous, cause damage to the sewerage system, or create a public nuisance.

(k) Any substance promoting or causing the promotion of toxic gases.

(l) Any wastes that will increase the temperature of the treatment plant influent to greater than 104° F (40° C).

(m) Any wastes requiring the introduction of an excessive quantity of chlorine or any other compound for sewage treatment purposes.

(n) Any significant amounts of deionized water, distilled water, steam condensate, cooling water, or discharges from heat pumps.

(o) Any waste producing significant discoloration of wastewater or treatment plant influent.

(p) Any waste containing substances that may precipitate, solidify, or become viscous at temperatures between 50° F (10° C) and 100° F (38° C).

(q) Any significant quantities of solid waste material that is not ground sufficiently to pass through a ⅜ inch screen.

(r) Any significant quantity of blown-down or bleed water from cooling towers or other evaporative coolers.

(s) Any quantities of radioactive material wastes which are in violation of applicable local, state, and federal regulations.

(t) Any significant quantities of inorganic material.

(u) Any discharge of any pollutant released at a flow rate and/or pollutant concentration that would result in interference, cause adverse effects or pass through at the treatment plant.

(v) Any significant quantity of wastewater in which the Toxic Organics (TO) concentration exceeds 2.13 milligrams per liter (mg/l), or in which any one toxic organic compound exceeds 1.0 mg/l, or in which the BTEX (Benzene, Toluene, Ethylbenzene and Xylene) concentration exceeds 1.0 mg/l).

(Ord. No. 3067, 2-24-09; Ord. No. 3181, 5-24-11)

Sec. 28-67. - Discharges of stormwater or surface water.

(a) No person shall connect any sump pump or any roof, foundation, areaway, parking lot, roadway, or other surface runoff or groundwater drains to any sewer connected to any portion of the city's wastewater collection system unless such connection is authorized in writing, for good cause, by the director.

(b) All discharges of stormwater, surface water, groundwater, roof runoff, subsurface drainage, or other similar discharges of stormwater shall be made to discharge to storm sewers or natural outlets designed for such discharges, except as authorized under this section. No person shall construct or use any connection, drain, or arrangement which will permit any such waters to enter the public sewer system.

(Ord. No. 3067, 2-24-09; Ord. No. 3181, 5-24-11)

Sec. 28-68. - Damage to the wastewater collection system.

(a) It shall be unlawful for any person to willfully damage, obstruct, introduce materials harmful to the collection system that would cause or contribute to sanitary sewer overflows, or tamper with any part of the public sewer system, including any manholes, cleanouts, plugs, pipes, pumping station, valves, apparatus, tools or fixtures. No person other than authorized agents or employees of the city, shall uncover any public sewer lines, operate any public fire hydrant or operate any valves connected with the public water and sanitary sewer systems without first obtaining express approval from the director of public utilities, unless such use is necessary for emergencies.

(b) Any person causing damage to or obstruction of the public sewer system shall be liable to the city for the cost of repairing such damage or obstruction.

(Ord. No. 3067, 2-24-09)

Sec. 28-69. - Inspections.

(a) The director shall have authority to make such lawful inspections during reasonable hours for the purpose of observing, measuring, sampling, testing or reviewing records of the wastewater collection system installed in any building or structure as may be necessary or appropriate, including inspections performed for the purpose of ensuring that discharge to the city's public sanitary sewer system from such building or structure is not in violation of this division. The owner or occupant of such building or structure, or his or her designee, shall be entitled to accompany the director during such inspection.

(Ord. No. 3067, 2-24-09)

Sec. 28-70. - Violations and penalties.

(a) Any intentional or willful act or omission to act in violation of any of the provisions of this division shall be punishable by fine in an amount not to exceed one thousand dollars ($1,000.00) per violation. Each day that a continuing violation exists shall constitute a separate offense. The court assessing such fines may, at its discretion, order such fines to be paid into the treasury of the city for the purpose of abating, preventing or mitigating environmental pollution.

(b) Any person who, intentionally or otherwise, commits any of the acts prohibited by this division or who fails to perform any of the acts required by this division shall be liable to the city in an action at law for all costs of containment, cleanup, abatement, removal and disposal of any substance unlawfully discharged into the wastewater collection system, as well as the costs of any damages or regulatory fines imposed upon the city, that are proximately caused by such violations. Such costs shall be collectible by the city in accordance with the provisions of sections 28-29 and 28-30.

(c) The city may bring legal action to enjoin the continuing violation of this division, and the existence of any other remedy, at law or in equity, shall be no defense to any such action.

(d) Except as expressly provided in section 28-70.1, the remedies set forth in this section and in section 28-70.1 shall be cumulative, not exclusive; and, it shall not be a defense to any action, civil or criminal, that one or more of the remedies set forth herein has been sought or granted.

(Ord. No. 3067, 2-24-09; Ord. No. 3181, 5-24-11)

Sec. 28-70.1. - Civil penalties; scheduled violations.

(a) Except for the violations specified in the Schedule of Civil Penalties set forth in subsection (b), and without otherwise limiting the remedies which may be obtained under this division, the director may issue an order assessing a civil penalty or other monetary assessment in accordance with the following provisions:

(1) No order assessing a civil penalty for a violation shall be issued until after the alleged violator has been provided an opportunity for a hearing before the director, except with the consent of the alleged violator. The notice of the hearing shall be served personally or by registered or certified mail, return receipt requested, on the alleged violator or his authorized representative at least thirty (30) days prior to the hearing. The notice shall specify the time and place for the hearing, facts and legal requirements related to the alleged violation, and the amount of any proposed civil penalty. At the hearing the alleged violator may present evidence, including witnesses, regarding the occurrence of the alleged violation and the amount of the penalty, and may examine any witnesses for the city. A verbatim record of the hearing shall be made. Within thirty (30) days after the conclusion of the hearing, the director shall make findings of fact and conclusions of law and issue the order.

(2) No such order shall assess civil penalties in excess of thirty-two thousand five hundred dollars ($32,500.00) per violation, not to exceed one hundred thousand dollars ($100,000.00) per order, or such other amount as may be allowed under Code of Virginia § 62.1-44.15 or any successor statute, except with the consent of the violator.

(3)

The actual amount of any civil penalty assessed shall be based upon the severity of the violation, the extent of any potential or actual environmental harm or facility damage, the compliance history of the violator, any economic benefit realized from the noncompliance, and the ability of the violator to pay the penalty. In addition to civil penalties, the order may include a monetary assessment for actual damages to sewers, treatment works and appurtenances and for costs, attorney fees and other expenses resulting from the violation.

(4) Any civil penalty or other monetary assessment included in any such order shall be payable as set forth in the order. Any unpaid balance at the time payment of the civil penalty or other monetary assessment is due may be collected in an action at law against the violator or included in the violator's bill for sewer services and collected in accordance with sections 28-29 and 28-30.

(5) Any order issued by the director, whether or not such order assesses a civil penalty, shall inform the alleged violator of his right to judicial review of any final order by appeal to the circuit court on the record of proceedings before the director. To commence an appeal, the alleged violator shall file a petition in circuit court within thirty (30) days of the date of the final order, and failure to do so shall constitute a waiver of the right to appeal. With respect to matters of law, the burden shall be on the party seeking review to designate and demonstrate an error of law subject to review by the court. With respect to issues of fact, the duty of the court shall be limited to ascertaining whether there was substantial evidence in the record to reasonably support such findings.

(b) Any violation listed in the following schedule shall subject the violator to a civil penalty in the amount of one hundred dollars ($100.00) for an initial summons and one hundred fifty dollars ($150.00) for each additional summons in lieu of any other civil penalty authorized by this section; provided, however, that the total amount for a series of specified violations arising from the same operative set of facts shall not exceed three thousand dollars ($3,000.00), as follows:

(1) The director, or any full-time employee of the department of public utilities designated by the director, may issue a civil summons ticket for a violation. Any person summoned or issued a ticket 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. Any person so appearing may enter a waiver of trial, admit liability and pay the civil penalty established for the violation.

(2) If a person charged with a violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided for by law. In any such trial, the city shall have the burden of proving by a preponderance of the evidence the liability of the alleged violator.

(3) An admission of liability or finding of liability under this section shall not be deemed an admission at a criminal proceeding, and no civil action authorized by this section shall proceed while a criminal action is pending.

(4) Any civil penalties imposed pursuant to this subsection shall be paid into the treasury of the city for the purpose of abating, preventing or mitigating environmental pollution.

SCHEDULE OF CIVIL PENALTIES

Violation	City Code Section
Unauthorized roof leader connected to public sewer system	28-67(a)

Unauthorized sump pump connected to public sewer system	28-67(a)
Unauthorized connection to sanitary sewer allowing inflow and/or infiltration to enter the sanitary sewer system	28-67(b)
Discharges to public sewer system prohibited by Section 28-66	28-66
Willfully causing damage to, obstruction of, or introduction of materials harmful to public sewer collection system	28-68(a)

(Ord. No. 3181, 5-24-11; Ord. No. 3239, 6-12-12)

Sec. 28-71. - Variances.

The director may authorize a variance from the provisions of section 28-67 or 28-68 in any case in which a property owner or other person demonstrates that strict compliance with the provision from which a variance is sought would cause undue hardship or extraordinary expense and the director is satisfied that the authorization of the variance will not adversely affect the public sewer system. In such cases, the director shall impose such reasonable conditions as will ensure, to the extent possible, that the variance does not adversely affect the public sewer system.

(Ord. No. 3067, 2-24-09)

Sec. 28-72. - Severability.

The provisions of this division shall be severable, it being the intention of the city council that in the event one (1) or more of the provisions of this division are adjudged to be invalid or unenforceable, the validity and enforceability of the remaining provisions shall be unaffected by such adjudication.

(Ord. No. 3067, 2-24-09)

DIVISION 2. - FATS, OILS, AND GREASE (FOG)

Sec. 28-73. - Purpose; findings.

(a) *Purpose.* The purpose of this division is to aid in preventing the introduction and accumulation of fats, oils, and grease (FOG), which cause or tend to cause or contribute to sanitary sewer blockages and obstructions, into the municipal wastewater system. This division requires that grease control devices be installed, implemented, and maintained by food service establishments in accordance with the provisions hereof.

(b) *Findings.* The city council hereby finds that:

(1) Grease buildup in the public sewer system occurs when FOG from cooking is allowed to be introduced into the system. FOG washed down sinks and floor drains builds up over time and eventually creates backups in the public sewer system which may result in sanitary sewer overflows (SSOs). SSOs constitute significant public health hazards, expose the city to costly environmental penalties, and are prohibited under the federal Clean Water Act. In 2008, thirty-eight (38) SSOs within the city were caused by accumulations of FOG in the public sewer system.

(2)

The accumulation of FOG in the public sewer system leads to increased costs for maintaining sewers and wastewater treatment plants and cleaning blockages out of public and private property. During 2008, the department of public utilities responded to three thousand one hundred five (3,105) sewer blockages caused by accumulations of FOG in the public sewer system.

(3) FOG from food service establishments is a major source of FOG in the public sewer system. The use of properly sized, installed and maintained grease control devices in food service establishments, however, minimizes the introduction of FOG into the system.

(4) The special order by consent issued to the City of Virginia Beach and other localities and service providers within Hampton Roads, which became effective on September 26, 2007, requires the city, among other things, to develop and submit to the Virginia Department of Environmental Quality (DEQ) a Maintenance, Operations and Management (MOM) Plan that documents the MOM Plan elements used to manage the city's sewer system and minimize SSOs.

(Ord. No. 3067, 2-24-09)

Sec. 28-74. - Applicability.

The provisions of this division shall apply to all food service establishments, as defined herein, within the city that are required under the Virginia Uniform Statewide Building Code or applicable regulations of the Hampton Roads Sanitation District to have grease control devices and to all grease haulers providing service to any such food service establishment.

(Ord. No. 3067, 2-24-09)

Sec. 28-75. - Definitions.

The following words and terms used in this division shall have the following meanings, unless the context clearly indicates otherwise:

Brown grease means floatable fats, oils, grease and settled solids produced during food preparation that are recovered from grease control devices.

Building code administrator means the city's building code administrator or his or her authorized designee. The building code administrator is referred to in the Virginia Uniform Statewide Building Code as the building official.

Director means the city's director of public utilities or his or her authorized designee.

Enforcement response plan means a system that sets forth the process and procedures for enforcement of this section by the city.

Fats, oils, and grease (FOG) means material, either liquid or solid, composed of fats, oils or grease from animal or vegetable sources. Examples of FOG include, but are not limited to, kitchen cooking grease, vegetable oil, bacon grease and organic polar compounds derived from animal or plant sources that contain multiple carbon triglyceride molecules. These substances are detectable and measurable using analytical test procedures established in the Title 40, Part 135 of the Code of Federal Regulations (40 CFR 136), as may be amended from time to time.

Food service establishment (FSE) means any commercial, institutional, or food processing facility that discharges kitchen or food preparation wastewaters and that is required to have a grease control device under the Virginia Uniform Building Code or applicable regulations of the Hampton Roads Sanitation District.

Grease control device means a device used to collect, contain, and remove food waste and grease from the wastewater while allowing the remaining wastewater to be discharged to the city's wastewater collection system by gravity. Devices include grease interceptors, grease traps, automatic grease removal devices or other devices approved by the director.

Grease hauler means a contractor who collects the contents of a grease interceptor or trap and transports it to a recycling or disposal facility. A grease hauler may also provide other services related to grease interceptor maintenance for a food service establishment.

Grease interceptor means a structure or device, usually located underground and outside of a food service establishment, designed to collect, contain and remove food waste and grease from the wastewater while allowing the remaining wastewater to be discharged to the city's wastewater collection system by gravity.

Grease removal device means an active, automatic device that separates and removes fats, oils and grease from effluent discharge and that cleans itself of accumulated FOG at least once every twenty-four (24) hours utilizing electromechanical apparatus.

Grease trap means a device typically located indoors and under the sink, designed for separating and retaining grease prior to the wastewater exiting the trap and entering the wastewater collection system. Such devices are typically passive (gravity fed) and compact with removable baffles.

Public sewer system includes the pipelines or conduits, pumping stations, force mains, and all other construction, devices, and appliances appurtenant thereto, located within the City of Virginia Beach and used for the conveyance of residential, commercial or industrial sewage or wastewater or other wastes to the Hampton Roads Sanitation District.

Renderable FOG container means a closed, leak-proof container for the collection and storage of yellow grease.

Virginia Uniform Statewide Building Code includes the model codes incorporated by reference therein, including, specifically, the International Plumbing Code.

Yellow grease means fats, oils, and grease used in food preparation that have not been in contact or contaminated with other sources such as water, wastewater or solid waste. An example of yellow grease is fryer oil, which can be recycled into products such as animal feed, cosmetics and alternative fuel. Yellow grease is also referred to as renderable FOG.

(Ord. No. 3067, 2-24-09)

Sec. 28-76. - Registration requirements for food service establishments.

All food service establishments shall be required to register their grease control devices. Registrations shall be on forms provided by the director to ensure that such devices are properly sized and maintained and to facilitate inspection in accordance with the requirements established by the director.

(a)

Existing food service establishments shall register all grease control devices within ninety (90) days after the effective date of this division; provided new establishments shall register such devices when requesting their water and sewer service, applying for a business license, or prior to obtaining a certificate of occupancy, whichever is later.

(b) At least one employee of a food service establishment shall have completed a training program concerning the operation and maintenance of grease control devices, provided by the city, no later than ninety (90) days after the effective date of this division.

(Ord. No. 3067, 2-24-09; Ord. No. 3181, 5-24-11)

Sec. 28-77. - Discharge limits.

No person shall discharge or cause to be discharged from any food service establishment any wastewater with fats, oils, grease or other substances harmful or hazardous to the public sewer system, the regional sanitary sewer system, or sewage treatment plant or processes, as determined by Section 301 (d) of the Hampton Roads Sanitation District's Industrial Wastewater Discharge Regulations or any successor regulation.

(Ord. No. 3067, 2-24-09)

Sec. 28-78. - Grease control devices.

(a) *Requirements.* All food service establishments shall have a grease control device or devices meeting all applicable requirements of the Virginia Uniform Statewide Building Code, as determined by the building code administrator. Any grease control device sized in accordance with the "Hampton Roads Regional Technical Standards, Sizing of Grease Control Devices" shall be deemed to meet the requirements of the section.

(1) *New establishments.* Except as provided in subdivision (a)(2), food service establishments shall be required to install, operate, and maintain a grease control device in compliance with the requirements of the Virginia Uniform Statewide Building Code. Grease control devices shall be installed and registered prior to the issuance of a certificate of occupancy.

(2) *Existing establishments.* Food services establishments in operation as of the effective date of this division may continue to operate and maintain their existing grease control devices, provided such grease control devices are in proper operating condition and are not found to be contributing FOG in quantities sufficient to cause line stoppages or to necessitate increased maintenance of the sanitary sewer system. An existing food service establishment shall install a new grease control device that complies with the requirements of the Uniform Statewide Building Code if its grease control device is determined by the director not to be in proper operating condition or if is found to be contributing FOG in quantities sufficient to cause line stoppages or to necessitate increased maintenance of the sanitary sewer system.

(3) *Renovations or expansions.* Food service establishments that are renovated or expanded shall, if required by the Virginia Uniform Statewide Building Code, install new grease control devices meeting the requirements of such Code.

(4) *Retrofitting.* Existing establishments lacking approved grease control devices by reason of having been grandfathered from such requirement under the Virginia Uniform Statewide Building Code shall, if required by the Hampton Roads Sanitation District, install grease control devices in accordance with the

regulations of the district. Such grease control devices shall be registered within thirty (30) days of their installation.

(b) *Installation.* Grease control devices shall be installed by a plumber licensed in the Commonwealth of Virginia. Every grease control device shall be installed and connected so that it may be readily accessible for inspection, cleaning, and removal of the intercepted food waste and grease at any time.

(c) *Maintenance.* Grease control devices shall be maintained as follows:

(1) Grease control devices shall be properly maintained at all times. Maintenance shall include the complete removal of all contents, including floating material, wastewater and settled solids. Decanting or discharging of removed waste back into the grease interceptor or private sewer line or into any portion of the city's or HRSD's wastewater collection system is prohibited.

(2) Grease interceptors shall be pumped out completely when the total accumulation of surface fats, oils and grease, including floating solids and settled solids, reaches twenty-five (25) percent of the overall liquid volume. At no time shall a grease control device be cleaned less frequently than once every three (3) months unless allowed by the director for good cause shown. Approval will be granted on a case-by-case basis upon submittal of a request by the food service establishment documenting reasons for the proposed frequency variance. The director shall not approve any request unless the applicant demonstrates that the frequency variance will not result in the introduction of any greater quantities of FOG into the public sewer system than would otherwise be introduced.

(3) Grease traps and grease removal devices shall be opened, inspected and completely cleaned of food solids and fats, oils and grease a minimum of once per week, unless allowed by the director for good cause shown. Approval will be granted on a case-by-case basis upon submittal of a request by the food service establishment documenting reasons for the proposed frequency variance. The director shall not approve any request unless the applicant demonstrates that the frequency variance will not result in the introduction of any greater quantities of FOG into the public sewer system than would otherwise be introduced, and in no event shall the content of food solids and fats, oils, and grease exceed twenty-five (25) percent of the overall liquid depth of the device.

(4) The director of public utilities may establish a more frequent cleaning schedule if the food service establishment is found to be contributing FOG in quantities sufficient to cause line stoppages or to necessitate increased maintenance of the wastewater collection system.

(5) Unless authorized by the director, the use of additives including, but not limited to, products that contain solvents, emulsifiers, surfactants, caustics, acids, enzymes or bacteria are prohibited for use as grease management control; provided, however, that additives may be used to clean the FSE drain lines so long as the usage of such additives will not cause FOG to be discharged from the grease control device to the sanitary sewer system. The use of additives shall not be substituted for the maintenance procedures required by this section. The director shall not approve the use of any additives unless he is satisfied that such use will have no adverse effects upon the public sewer system.

(6) Any grease control device rated for a flow of fifty (50) gallons per minute (gpm) (one hundred (100) lb.) or higher shall be maintained by a grease hauler meeting the requirements of section 28-79.

(d) *Waste disposal.* Waste material from grease control devices shall be disposed of as follows:

(1)

Waste removed from a grease trap shall be disposed of in the solid waste disposal system or by a grease hauler certified by the Hampton Roads Planning District Commission.

(2) Waste removed from a grease interceptor shall be disposed of at a facility permitted to receive such wastes. No materials removed from interceptors shall be returned to any grease interceptor, private sewer line or into any portion of the city's or HRSD's wastewater collection system.

(3) Yellow grease shall be disposed of in a renderable FOG container in which contents will not be discharged to the environment. Yellow grease shall not be poured or discharged into the city's or HRSD's wastewater collection system.

(e) *Inspection.* The director shall have the authority to make such lawful inspections as are authorized by law during reasonable hours for the purpose of inspecting, observing, taking measurement, sampling, testing or reviewing the records of the wastewater collection system and grease control devices installed in a food service establishment to ensure that such food service establishment is compliance with this division. Operational changes, maintenance and repairs required by the director shall be implemented as noted in the written notice received by the food service establishment. The owner or occupant of such food service establishment, or his or her designee, shall be entitled to accompany the director during such inspection.

(f) *Recordkeeping.* Food service establishments shall maintain records meeting the following requirements:

(1) Food service establishments shall retain and make available for inspection and copying records of all cleaning and maintenance for the previous three (3) years for all grease control devices. Cleaning and maintenance records shall include, at a minimum, the dates of cleaning/maintenance, the names and business addresses of the company or person performing each cleaning/maintenance and the volume of waste removed in each cleaning. Such records shall be kept on site and shall be made available to the director upon request.

(2) Food service establishments shall retain and make available for inspection and copying records of yellow grease disposal for the previous three (3) years. Yellow grease disposal logs shall include, at a minimum, the dates of disposal, name and business address of the company or person performing the disposal and the volume of yellow grease removed in each cleaning. Such records shall be kept on site and shall be made available to the director upon request.

(Ord. No. 3067, 2-24-09; Ord. No. 3181, 5-24-11)

Sec. 28-79. - Requirements for grease haulers.

(a) Any person collecting, pumping or hauling waste from grease control devices within the city shall be certified under the Regional Grease Hauler Program of the Hampton Roads Planning District Commission and shall be approved through a Hampton Roads Sanitation District Indirect Wastewater Discharge Permit or a permit from the facility in which waste will be disposed.

(b) Grease haulers shall notify the director within twenty-four (24) hours of any incident required to be reported to the Virginia Department of Environmental Quality.

(c) Grease haulers shall retain and make available for inspection and copying by the director, for a period of at least three (3) years, all records related to grease interceptor pumping and waste disposal from businesses located in the city's wastewater service area. The director may require additional record keeping and

reporting, as necessary, to ensure compliance with the terms of this division.

(Ord. No. 3067, 2-24-09; Ord. No. 3181, 5-24-11)

Sec. 28-80. - Modification and repair.

(a) The director may require existing food service establishments to modify or repair any noncompliant grease control device and appurtenances within thirty (30) calendar days of written notification by the director. The director may grant extensions for good cause shown.

(Ord. No. 3067, 2-24-09)

Sec. 28-81. - Violations and penalties.

(a) Any intentional or willful act or omission to act in violation of any of the provisions of this division shall be punishable by fine in an amount not to exceed one thousand dollars ($1,000.00) per violation. Each day that a continuing violation exists shall constitute a separate offense. The court assessing such fines may, at its discretion, order such fines to be paid into the treasury of the city for the purpose of abating, preventing or mitigating environmental pollution.

(b) Any person who, intentionally or otherwise, commits any of the acts prohibited by this division or who fails to perform any of the acts required by this division shall be liable to the city in an action at law for all costs of containment, cleanup, abatement, removal and disposal of any substance unlawfully discharged into the wastewater collection system, as well as the costs of any damages or regulatory fines imposed upon the city, that are proximately caused by such violations. Such costs shall be collectible by the city in accordance with the provisions of sections 28-29 and 28-30.

(c) In addition to any other remedy for the violation of this division, the city may bring legal action to enjoin the continuing violation of this division, and the existence of any other remedy, at law or in equity, shall be no defense to any such action.

(d) Except as expressly provided in section 28-81.1, the remedies set forth in this section are cumulative, not exclusive, and it shall not be a defense to any action, civil or criminal, that one or more of the remedies set forth herein has been sought or granted.

(Ord. No. 3067, 2-24-09; Ord. No. 3181, 5-24-11)

Sec. 28-81.1. - Civil penalties; scheduled violations.

(a) Except for the violations specified in the Schedule of Civil Penalties set forth in subsection (b), and without otherwise limiting the remedies which may be obtained under this division, the director may issue an order assessing a civil penalty or other monetary assessment in accordance with the following provisions:

(1) No order assessing a civil penalty for a violation shall be issued until after the alleged violator has been provided an opportunity for a hearing before the director, except with the consent of the alleged violator. The notice of the hearing shall be served personally or by registered or certified mail, return receipt requested, on the alleged violator or his authorized representative at least thirty (30) days prior to the hearing. The notice shall specify the time and place for the hearing, facts and legal requirements related

to the alleged violation, and the amount of any proposed civil penalty. At the hearing the alleged violator may present evidence, including witnesses, regarding the occurrence of the alleged violation and the amount of the penalty, and may examine any witnesses for the city. A verbatim record of the hearing shall be made. Within thirty (30) days after the conclusion of the hearing, the director shall make findings of fact and conclusions of law and issue the order.

(2) No order issued by the director shall assess civil penalties in excess of thirty-two thousand five hundred dollars ($32,500.00) per violation, not to exceed one hundred thousand dollars ($100,000.00) per order, or such other amount as may be allowed under Code of Virginia § 62.1-44.15 or any successor statute, except with the consent of the violator.

(3) The actual amount of any civil penalty assessed shall be based upon the severity of the violation, the extent of any potential or actual environmental harm or facility damage, the compliance history of the violator, any economic benefit realized from the noncompliance, and the ability of the violator to pay the penalty. In addition to civil penalties, the order may include a monetary assessment for actual damages to sewers, treatment works and appurtenances and for costs, attorney fees and other expenses resulting from the violation.

(4) Any civil penalty or other monetary assessment included in any such order shall be payable as set forth in the order. Any unpaid balance at the time payment of the civil penalty or other monetary assessment is due may be collected in an action at law against the violator or included in the violator's bill for sewer services and collected in accordance with sections 28-29 and 28-30.

(5) Any order issued by the director, whether or not such order assesses a civil penalty, shall inform the alleged violator of his right to judicial review of any final order by appeal to the circuit court on the record of proceedings before the director. To commence an appeal, the alleged violator shall file a petition in circuit court within thirty (30) days of the date of the final order, and failure to do so shall constitute a waiver of the right to appeal. With respect to matters of law, the burden shall be on the party seeking review to designate and demonstrate an error of law subject to review by the court. With respect to issues of fact, the duty of the court shall be limited to ascertaining whether there was substantial evidence in the record to reasonably support such findings.

(b) Any violation listed in the following schedule shall subject the violator to a civil penalty in the amount of one hundred dollars ($100.00) for an initial summons and one hundred fifty dollars ($150.00) for each additional summons in lieu of any other civil penalty authorized by this section; provided, however, that the total amount for a series of specified violations arising from the same operative set of facts shall not exceed three thousand dollars ($3,000.00), as follows:

(1) The director, or any full-time employee of the department of public utilities designated by the director, may issue a civil summons ticket for a violation. Any person summoned or issued a ticket 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. Any person so appearing may enter a waiver of trial, admit liability and pay the civil penalty established for the violation.

(2) If a person charged with a violation does not elect to enter a waiver of trial and admit liability, the violation shall be tried in the general district court in the same manner and with the same right of appeal as provided for by law. In any such trial, the city shall have the burden of proving by a preponderance of

the evidence the liability of the alleged violator.

(3) An admission of liability or finding of liability under this section shall not be deemed an admission at a criminal proceeding, and no civil action authorized by this section shall proceed while a criminal action is pending.

(4) Any civil penalties imposed pursuant to this subsection shall be paid into the treasury of the city for the purpose of abating, preventing or mitigating environmental pollution.

SCHEDULE OF CIVIL PENALTIES

Violation	City Code Section
Failure to maintain cleaning and maintenance records	28-78(f)(1)
Failure to maintain yellow grease disposal records	28-78(f)(2)
Failure to maintain certified employee with completed grease control device training	28-76(b)
Failure to register grease control device(s)	28-76
Failure to use certified grease hauler for grease control device over rated over 50 gallons per minute	28-78(c)(6)
Failure to properly maintain grease control device	28-78(c)
Failure to allow inspection of grease control device	28-78(e)
Unauthorized use of additives including, but not limited to, products that contain solvents, emulsifiers, surfactants, caustics, acids, enzymes or bacteria	28-78(c)(5)
Failure to have grease a control device or devices meeting all applicable requirements of the Virginia Uniform Statewide Building Code	28-78(a)
Failure to make required modification or repair to grease control device	28-80

(Ord. No. 3181, 5-24-11; Ord. No. 3239, 6-12-12)

Sec. 28-82. - Severability.

The provisions of this division shall be severable, it being the intention of the city council that in the event one (1) or more of the provisions of this division are adjudged to be invalid or unenforceable, the validity and enforceability of the remaining provisions shall be unaffected by such adjudication.

(Ord. No. 3067, 2-24-09)

Chapter 28.5 - SMOKING

Footnotes:

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Cross reference— *Food and food establishments, Ch. 13; hotels and similar establishments, Ch. 15; cigarette tax, § 35-206 et seq.*

Sec. 28.5-1. - Legislative purpose and intent.

Based on a substantial body of scientific evidence and on the 1986 Report of the Surgeon General entitled "The Health Consequences of involuntary Smoking," the City of Virginia Beach hereby acknowledges that passively inhaled tobacco smoke poses a potential health hazard to persons exposed thereto. The purpose of this chapter is to protect the public health, safety and welfare by regulating the smoking of tobacco in designated public places in a manner that recognizes the competing interests of smokers and nonsmokers, and the burdens hereby imposed on persons in control of the places so regulated. The regulations contained herein are intended to be viewed as minimum standards and shall not be construed as limiting, in any manner, the authority of persons in control of public places to implement more stringent standards applicable to the particular establishment or organization.

(Ord. No. 1832, 2-27-89; Ord. No. 1858, 5-1-89)

Sec. 28.5-2. - Definitions.

The following words and phrases shall, for purposes of this chapter, have the meanings respectively ascribed to them:

(a) *Bar* or *lounge area* shall mean an area or a room utilized primarily for the sale of alcoholic beverages for consumption by patrons on the premises and in which the sale of food is merely incidental to the sale of alcoholic beverages. Although a restaurant may contain a bar or lounge area, the term "bar" or "lounge area" shall not be construed to encompass an entire restaurant or any dining area.

(b) *Child-care facility* shall mean any facility which is a "child-care center" or a "family day-care home" as defined by section 63.1-195 of the Code of Virginia, and any amendments thereto.

(c) *Health-care facility* shall mean any facility or institution providing individual care or treatment of diseases, whether physical, mental or emotional, or other medical, physiological or psychological conditions. Such facilities include, but are not limited to, hospitals, clinics, nursing homes, homes for the aged or chronically ill, laboratories, and waiting areas of any other health care provider.

(d) *Person* shall mean any person, firm, partnership, association, corporation, company or organization of any kind.

(e) *Public meeting and/or hearing* shall mean any meeting, assembly and/or hearing held in a public building or building leased for a public purposes which is open to the public for the conduct of the affairs of, and the transaction of business by, any legislative, administrative or advisory body or agency of the city, including boards, commissions, authorities, councils, committees, and any subordinate groups thereof, receiving or expending, and supported in whole or in part by, public funds.

(f) *Public place* shall mean an enclosed area available for use by, or accessible to, the general public during the normal course of business, conducted by either private or public entities.

(g) *Restaurant* shall mean any building, structure, or area used as, maintained as, advertised as, or held out to the public to be an establishment where food is made available to be consumed on the premises.

(h) *Retail* or *service establishment* shall mean any establishment which offers goods or services for sale to the general public.

(i)

Smoke or *smoking* shall mean the carrying or holding of a lighted pipe, cigar or cigarette of any kind, or any other lighted smoking equipment, or the lighting, inhaling or exhaling of a pipe, cigar, or cigarette of any kind.

(j) *Theater* shall mean any indoor facility or auditorium, open to the public, which is primarily used for, or designed for, the purpose of exhibiting any motion picture, stage production, musical recital, dance, lecture or other similar performance.

(Ord. No. 1832, 2-27-89)

Sec. 28.5-3. - Smoking prohibited in certain public places.

(a) It shall be unlawful for any person to smoke in any of the following public places:

(1) Elevators, regardless of capacity, except in an elevator located in a single-family dwelling.

(2) Retail and service establishments or financial institutions serving the general public, including, but not limited to, department stores, grocery stores, convenience stores, drugstores, clothing stores, shoe stores, hardware stores, banks, savings and loan institutions, hair salons and barbershops.

(3) Indoor service lines, cashier areas, and counter service areas.

(4) Public restrooms.

(5) Health care facilities, regardless of capacity.

(6) Rooms in which a public meeting or hearing is being held.

(7) Places of entertainment, including, but not limited to, theatres, concert halls, gymnasiums, auditoriums, or other enclosed arenas.

(8) Art galleries, libraries, museums, or similar cultural facilities.

(9) Educational facilities, whether public or private, in common areas such as classrooms, offices, hallways, auditoriums, and public meeting rooms.

(10) Child-care facilities.

(11) Indoor facilities used for recreational purposes.

(12) Any part of a restaurant, bingo hall or bowling alley designated a "no-smoking" area pursuant to the provisions of this chapter.

(13) Buildings owned or leased by the city or the school board used for public purposes with the exception of lawfully designated smoking areas.

(14) Meeting houses, community centers, group homes, or recreational facilities open to the public at large.

(15) Vehicles used regularly for public transportation including, but not limited to, transit buses and school buses.

(b) The owner or person in charge of any building, structure, space, place or area in which smoking is prohibited may designate separate rooms or areas in which smoking is permitted, provided that:

(1) The designated smoking area shall not exceed twenty-five (25) percent of that portion of the building, structure, space, place or area open to the general public.

(2) Notwithstanding the twenty-five (25) percent limitation, the designated smoking area may not encompass any area outlined in subsections (a) (1), (3), (4), (6), (12) and (15).

(3) Designated smoking areas shall be separate to the extent reasonably practicable from those rooms or areas entered by the public in the normal course of use of the particular business or institution.

(4) In designated smoking areas, ventilation systems and existing physical barriers shall be used when reasonably practicable to minimize the permeation of smoke into no-smoking areas.

(Ord. No. 1832, 2-27-89; Ord. No. 1858, 5-1-89)

Sec. 28.5-4. - Designated no-smoking areas in restaurants, bingo halls and bowling alleys.

(a) Any restaurant, bingo hall or bowling alley having a seating capacity of fifty (50) or more persons shall have a designated no-smoking area sufficient to meet customer demand. The designated no-smoking area shall be located in a separate room if one is available or, if no separate room is available, in a compact and contiguous area as far removed from areas where smoking is permitted (and closest to the best source of ventilation) as reasonably possible under applicable building, fire and city code regulations.

(b) Any restaurant, bingo hall or bowling alley required to have a designated no-smoking area shall post signs in accordance with the provisions of section 28.5-6 at each entrance to the establishment indicating that a no-smoking area is available.

(Ord. No. 1832, 2-27-89; Ord. No. 1858, 5-1-89)

Sec. 28.5-5. - Where smoking not regulated.

This chapter is not intended to regulate smoking in the following places and/or under the following conditions:

(a) Bars and lounge areas.

(b) Retail tobacco stores.

(c) Restaurants, conference/meeting rooms, and public and private assembly rooms while these places are being used for private functions.

(d) Private hospital rooms.

(e) Areas of enclosed shopping centers or malls that are external to the retail stores and are used by customers as a route of travel from one store to another, and that consist primarily of walkways and seating arrangements.

(f) Lobby areas of hotels, motels, and other establishments open to the public for overnight accommodation.

(Ord. No. 1832, 2-27-89; Ord. No. 1858, 5-1-89)

Sec. 28.5-6. - Posting of signs.

(a) Any person who owns, manages or otherwise controls any building or area in which smoking is regulated by this chapter shall post in an appropriate place in a clear, conspicuous, and sufficient manner "Smoking Permitted" signs or "No Smoking" signs (or a sign displaying the international "no smoking" symbol consisting

of a pictorial representation of a burning cigarette enclosed in a circle with a bar across it). Print on such signs shall be at least one inch in height and the international symbol, if used, shall have a circle of at least four (4) inches in diameter.

(b) Every restaurant, bingo hall and bowling alley regulated by this chapter shall post at or near its entrance a sign stating that a no-smoking section is available.

(c) "No Smoking" signs may, but are not required to, contain language that smoking is prohibited by city ordinance and that violation of the no-smoking prohibition is a Class 4 misdemeanor punishable by a fine up to one hundred dollars ($100.00).

(Ord. No. 1832, 2-27-89; Ord. No. 1858, 5-1-89; Ord. No. 1943, 2-5-90)

Sec. 28.5-7. - Structural modifications.

Persons regulated by the provisions of this chapter are encouraged to make such structural modifications to their respective buildings or structures as may be necessary to prevent or reduce the permeation of smoke from smoking areas into no-smoking areas; provided, however, that nothing in this chapter shall be construed as requiring any such person to make such modifications.

(Ord. No. 1832, 2-27-89)

Sec. 28.5-8. - Violations and penalties.

(a) It shall be unlawful for any person who owns, manages, operates or otherwise controls the use of any premises subject to the prohibitions or restrictions of this chapter to fail to comply with its provisions.

(b) It shall be unlawful for any person to smoke in any area prohibited or restricted by the provisions of this chapter.

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

(Ord. No. 1832, 2-27-89)

Sec. 28.5-9. - Compliance oversight and enforcement.

(a) The department of public health and/or any other department designated by the city manager shall perform an evaluation for compliance with all requirements of this chapter in the course of an otherwise mandated inspection.

(b) Any law enforcement officer may issue a summons for violation of any provision of this chapter.

(Ord. No. 1832, 2-27-89; Ord. No. 2234, 6-22-93)

Sec. 28.5-10. - Other applicable laws and policies.

This chapter shall not be interpreted or construed to permit smoking where it is otherwise prohibited or restricted by other applicable statutes and ordinances, or the policies of individual establishments or organizations.

(Ord. No. 1832, 2-27-89; Ord. No. 1858, 5-1-89)

Chapter 30 - SOIL REMOVAL, OTHER LAND-DISTURBING ACTIVITIES

Footnotes:

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***Cross reference—** Removing sand from shores, beaches, etc., § 6-13; disturbing or removing grass or other vegetation placed to catch sand for rebuilding dunes, § 6-14; permit for dredging, filling, etc., in waters, marshlands and lowlands, § 6-151; building regulations, Ch. 8; sewers, Ch. 28; streets and sidewalks, Ch. 33; swimming pools, Ch. 34; zoning ordinance, App. A; subdivision ordinance, App. B; site plan ordinance, App. C; stormwater management, App. D; Chesapeake Bay Preservation Area Ordinance, App. F.*

ARTICLE I. - IN GENERAL

Sec. 30-1. - Excavations for farm ponds or fish ponds for bona fide agricultural operations.

(a) This section shall only apply to farm ponds for bona fide agricultural operations, and not to borrow pits as defined in the city zoning ordinance (appendix A) or stormwater management facilities as defined in the stormwater management ordinance (appendix D).

(b) Prior to the excavation for a farm pond or fish pond, the property owner shall submit to the director of the department of agriculture a construction plan showing the location, dimension and depth of the proposed excavation and the intended use and location of the excavated material.

(c) The edge of any excavation for farm ponds or fish ponds for bona fide agricultural operations shall be located at least twenty-five (25) feet from any exterior property line and at least one hundred (100) feet from all existing or proposed public streets and highways.

(d) The director of planning may grant an exception to the setback requirements imposed by this section when he finds that due to existing conditions and circumstances, the location of a farm pond or fish ponds within the required setback area will not adversely affect the public health, safety and welfare. In reviewing requests for exceptions, the director of planning shall consider the following factors:

(1) Existing and planned uses of adjacent properties.

(2) Constructability without adversely impacting adjacent properties.

(3) Accessibility for maintenance without adversely impacting adjacent properties.

(4) Density of population in the immediate area.

(5) Traffic volume and safety issues on adjacent roadways.

(6) Design and structural integrity of adjacent roadways.

(7) Protection of trees and other environmental considerations.

(e) A violation of this section shall constitute a Class 3 misdemeanor.

(Ord. No. 1085, § 31.10, 8-25-80; Ord. No. 2004, 10-2-90; Ord. No. 2308, 2-7-95; Ord. No. 2393, 6-11-96)

Secs. 30-2—30-15. - Reserved.

ARTICLE II. - BORROW PITS

DIVISION 1. - GENERALLY

Sec. 30-16. - Definition.

For the purpose of this article, the term "borrow pit" means any operation involving the breaking or disturbing of the surface soil or rock, where the primary purpose of the operation is to facilitate or accomplish the extraction or removal of sand, soil, gravel, fill or other similar material. Specifically exempt from this definition are the following:

(1) Any excavation for roads, drainage, stormwater management facilities, as defined in the city stormwater management ordinance (Appendix D), or similar features necessarily incidental to, and in accordance with, the approved construction plans for a residential subdivision or other similar development activity; provided, however, if the depth or surface area of the excavation exceeds that of the approved construction plans and the excavated material is hauled offsite, an excavation permit and conditional use permit for a borrow pit must be obtained.

(2) Any excavation for the sole purpose of conducting a bona fide agricultural operation, including, but not limited to, excavations to improve drainage, provide watering facilities for livestock, create a holding lagoon for animal waste or farm ponds or fish ponds; provided that none of the excavated material may be hauled off site or sold.

(3) Any excavation or excavations on any single lot or parcel of land which total less than one-quarter (1/4) acre in area and less than twelve (12) feet in excavated depth as measured from the original ground level, to the lowest point of the excavation.

(4) Any trench, ditch or hole for utility lines, drainage pipes or other similar public works facilities or projects where the excavation is in accordance with the approved construction plans.

(Ord. No. 1085, § 31.1, 8-25-90; Ord. No. 2331, 6-6-95; Ord. No. 2369, 1-9-96; Ord. No. 2394, 6-22-96)

Sec. 30-17. - Violations of article.

Any violation of any of the provisions of this article shall be a misdemeanor punishable by a fine in an amount not to exceed one thousand dollars ($1,000.00) or by confinement in jail for a period not to exceed one (1) year, either or both.

(Ord. No. 1085, § 31.1, 8-25-80; Ord. No. 2144, 6-23-92)

Sec. 30-18. - Permitted only in appropriate zoning districts.

Borrow pits shall be allowed only as provided in the city zoning ordinance [appendix A].

(Ord. No. 1085, § 31.3, 8-25-80; Ord. No. 2144, 6-23-92)

Sec. 30-18.1. - Reserved.

Editor's note— Section 30-18.1, requiring registration of existing excavations from which borrow material is sold,

derived from Ord. No. 1085, § 31.7, adopted Aug. 25, 1980, was repealed by Ord. No. 2144, adopted June 23, 1992.

Sec. 30-19. - Site inspections and inspection fees.

The department of planning shall periodically inspect the sites of excavations for which permits are issued under this article to ensure compliance with this article and other provisions, as required by the city council, and a reasonable fee for such inspections shall be paid. The director of planning or his designee may determine the amount of the fee based upon the anticipated costs associated with the anticipated periodic inspections for compliance. Such fee shall be submitted to the director of planning and made payable to the treasurer of the city of Virginia Beach.

(Ord. No. 1085, § 31.5, 8-25-80; Ord. No. 2331, 6-6-95; Ord. No. 2394, 6-11-94)

Sec. 30-20. - Reserved.

Editor's note— Ord. No. 2394, adopted June 11, 1996, repealed § 30-20, which pertained to the fee for removal of material, and which derived from:

Ord. No.	Sec.	Date	Ord. No.	Sec.	Date
1085	31.8	8-25-80	1967	—	6-11-90
2144	—	-23-92	2331	—	6- 6-95

Secs. 30-21, 30-22. - Reserved.

Sec. 30-23. - Fencing.

Where deemed necessary by the director of planning, the holder of a permit issued under this article shall be required to erect a chain link type fence around the perimeter of the area to be excavated or being excavated. Such fence shall be erected to a height of six (6) feet and shall completely encircle such excavation. All gates and other entrances shall be kept locked at all times when not in use.

(Ord. No. 1085, § 31.9. 8-25-80; Ord. No. 2331, 6-6-95)

Secs. 30-24—30-26. - Reserved.

Sec. 30-27. - Slope of banks.

All slopes around the edge of excavated areas shall be left with a slope no greater than three (3) feet horizontal to one foot vertical, except that the director of planning may authorize a slope of one foot horizontal to one foot vertical from a depth of fourteen (14) feet below the elevation of the designed water surface of borrow pits that will be excavated to a depth greater than twenty (20) feet.

(Ord. No. 1085, § 31.9, 8-25-80; Ord. No. 2331, 6-6-95)

Sec. 30-28. - Abandonment of pit.

No pit shall be abandoned unless the owner has requested a final inspection from the department of planning, has submitted a final "as built" plat drawn by a certified engineer or land surveyor and has received a final release, in writing, from the director of planning, at which time any surety on a bond filed pursuant to section 30-37 of this article or section 227 of the city zoning ordinance shall be released.

(Ord. No. 1085, § 31.9, 8-25-80; Ord. No. 2331, 6-6-95)

Sec. 30-29. - Bottom of excavated area to be left in level state; topsoil restoration and planting.

(a) The bottom of all excavated areas, inundated or otherwise, shall be left in a level state.

(b) Topsoil restoration and planting shall be in conformance with the City of Virginia Beach erosion and sediment control requirements and specifications.

(Ord. No. 1085, § 31.9, 8-25-80; Ord. No. 2144, 6-23-92)

Sec. 30-30. - Reserved.

Editor's note— Ord. No. 2331, adopted June 6, 1995, amended the Code by deleting provisions formerly codified as § 30-30, which provided for the incorporation of certain state statutes, the Mineral Mining Regulations, Revegetation Guidelines and Drainage Handbook promulgated by the Virginia Department of Mines, Minerals and Energy by reference, which provisions derived from Ord. No. 2144, adopted June 23, 1992.

Secs. 30-31—30-35. - Reserved.

DIVISION 2. - PERMIT

Sec. 30-36. - Required; conditional use permit prerequisite to issuance.

(a) It shall be unlawful for any person to operate a borrow pit without first obtaining an excavation permit to do so from the department of planning.

(b) The department of planning shall not issue an excavation permit for any proposed excavation for which a conditional use permit has not been granted by the city council.

(Ord. No. 1085, §§ 31.2, 31.3, 8-25-80; Ord. No. 2144, 6-23-92; Ord. No. 2331, 6-6-95)

Sec. 30-37. - Application generally.

After approval by the city council of a conditional use permit for a borrow pit, the owner of record shall cause to be filed with the department of planning an application and site plan for an excavation permit. The application fee shall be fifty dollars ($50.00). The application shall include the following:

(1) The name and address of the owner of the property affected.

(2) The names and addresses of owners of all property abutting the property for which the excavation

permit is sought.

(3) If the applicant or owner is a corporation, the names and addresses of its corporate officers and registered agent.

(4) An aerial photograph of the area to be excavated, with the boundaries of such area clearly delineated.

(5) A copy of the current recorded survey or plat, if available, prepared by an engineer or land surveyor, certified by the commonwealth, and drawn to a scale of not less than one (1) inch equals two hundred (200) feet, submitted in five (5) copies.

(6) The boundaries of the area to be excavated by courses and distances.

(7) The current field topography, including the location of all watercourses.

(8) The means of vehicular access to the proposed excavation.

(9) A cross-section of any banks or walls to be established through the process of excavating.

(10) The number of cubic yards to be excavated.

(11) The areas proposed for the storage of overburden and other spoil during the process of excavating.

(12) The proposed date on which excavating will commence, the proposed date on which the excavation will be completed and the proposed date that all required restoration measures are to be completed.

(13) The location of all haul roads leading to public streets and highways within the area, as well as 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.

(14) 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.

(15) A statement listing the public streets and highways to be used as haul routes to access an arterial or major street or highway.

(16) A traffic maintenance control plan, including, but not limited to, sign type, size, color, lettering size and location.

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

(18) The location of all test wells and depth of borings, where required, which shall be within the setback requirements of this article. The location of test wells adjacent to residential areas shall be subject to approval of the department of planning.

(19) An erosion and sedimentation control plan.

(20) A statement of the methods to be used to maintain or repair any public street or highway to be used for hauling purposes. The department of planning shall determine the acceptability of the methods proposed by the applicant and, if deemed necessary, shall require the posting of a bond to insure against road damage due to the hauling.

(21) A copy of the mining permit issued by the Virginia Department of Mines, Minerals and Energy.

(Ord. No. 1085, §§ 31.4, 31.9, 8-25-80; Ord. No. 2144, 6-23-92; Ord. No. 2331, 6-6-95; Ord. No. 2394, 6-22-96)

Sec. 30-38. - Restoration plan to accompany application.

Each application for a permit under this division shall be accompanied by a plan for the restoration of excavated areas. Such plan shall include the following elements:

(1) *General plan for restoration.* A general land use plan for the parcel of property wherein the excavation will be conducted shall be prepared. This plan shall be in the form of an overlay for the aerial photograph required by section 30-37. It shall show the areas to be left in an inundated state, the proposed pattern of land use around inundated areas and all areas where supplementary planting is to be carried out.

(2) *Restoration contour plat.* A restoration contour plat shall be prepared on the same basis as the identification plat required by section 30-37. It shall show the proposed topography of the parcel of land that will be excavated for a distance of at least two hundred (200) feet from the edge of all excavated areas or to all external property lines that are within two hundred (200) feet of such area. Such contour plat shall have a contour interval of two (2) feet or less.

(3) *Description of restoration methods for renewal of topsoil and replanting.* A description of the methods and materials proposed for restoration of all areas that are not inundated shall be submitted. It shall specify the amount and type of planting, the depth to which topsoil is to be spread and the amount of fertilizer to be applied.

(Ord. No. 1085, § 31.9, 8-25-80; Ord. No. 2144, 6-23-92; Ord. No. 2331, 6-6-95)

Sec. 30-39. - Reserved.

Sec. 30-40. - Reserved.

Editor's note— Provisions formerly codified as § 30-40, pertaining to the applicant's bond, and derived from Ord. No. 1085, § 31.5, adopted Aug. 25, 1980; and Ord. No. 2144, adopted June 23, 1992, were deleted from the Code by Ord. No. 2331, adopted June 6, 1995.

Sec. 30-41. - Issuance.

After the filing of the permit application pursuant to section 30-37 of this article, approval of the plan, and the filing and acceptance of a bond, if required, the director of planning shall issue the excavation permit and cause surveillance of the work as it is performed.

(Ord. No. 1085, § 31.5, 8-25-80; Ord. No. 2144, 6-23-92; Ord. No. 2133, 6-6-95)

Sec. 30-42. - Transfer.

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

(Ord. No. 1085, § 31.6, 8-25-80; Ord. No. 2331, 6-6-95)

Sec. 30-43. - Voidance when conditional use permit becomes void.

In the event that the conditional use permit becomes void being activated, as provided in section 221 of the city zoning ordinance, the excavation permit issued under this division shall also become void.

(Ord. No. 1085, § 31.6, 8-25-80)

Cross reference— Zoning ordinance, App. A.

Sec. 30-44. - Expiration; extension.

An excavation permit henceforth issued under this division shall expire one (1) year from the date of issuance. Excavation permits issued prior to the date of adoption of this ordinance shall expire one (1) year from the date of adoption of this ordinance. The holder of the permit may thereafter apply annually to the department of planning for a renewal of the permit upon payment of a fifty dollar ($50.00) renewal fee and by providing the following information:

(1) A copy of the current mining permit issued by the Virginia Department of Mines, Minerals and Energy.

(2) Verification of all information required under section 30-37 of this article.

(3) A written verification of the number of cubic yards of material removed from the excavation site during the previous year.

(Ord. No. 1085, § 31.6, 8-25-80; Ord. No. 2144, 6-23-92; Ord. No. 2331, 6-6-95; Ord. No. 2394, 6-22-96)

Secs. 30-45—30-55. - Reserved.

ARTICLE III. - EROSION AND SEDIMENT CONTROL AND TREE PROTECTION

Footnotes:

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***Editor's note—** Ordinance No. 1907, adopted Aug. 21, 1989, amended Article III in its entirety, to read as herein set out. Former Art. III, §§ 30-56—30-62, 30-71—30-74, pertained to similar subject matter and derived from Code 1965, §§ 31-12—31-19; Ord. No. 957, adopted July 2, 1979; Ord. No. 1111, adopted Oct. 27, 1980; Ord. No. 1217, adopted Aug. 24, 1981; and Ord. No. 1270, adopted Apr. 26, 1982. Although Ord. No. 2342, adopted June 22, 1992, contained the entire text of this article, only those sections actually amended will carry reference to the ordinance in the history note.*

***State Law reference—** Erosion and sediment control law, Code of Virginia, § 10.1-560 et seq.; local control programs, § 10.1-562.*

DIVISION 1. - GENERALLY

Sec. 30-56. - Findings of council.

The city council has determined that the trees and the lands and waters comprising the watersheds of the city are great natural resources; that as a result of erosion of lands by both winds and water and sediment deposition in waters within the watersheds of the city, such waters are being polluted and despoiled to such a degree that fish, aquatic life,

recreation and other uses of lands and waters are being adversely affected; that the rapid shift in land use from agricultural to nonagricultural uses has accelerated the processes of soil erosion and sedimentation and tree removal; and that it is necessary to establish and implement, through the department of planning, a city-wide coordinated erosion and sediment control program to conserve and to protect the land, water, air, trees and other natural resources of the city.

(Ord. No. 1907, 8-21-89; Ord. No. 2144, 6-23-92)

Sec. 30-57. - Definitions.

As used in this article, the following words and terms shall have the meanings ascribed to them in this section, unless the context requires a different meaning:

Agreement in lieu of a plan means a contract between the VESCP authority and the owner which specifies conservation measures which must be implemented in the construction of a single-family residence; this contract may be executed by the VESCP authority in lieu of a formal site plan.

Applicant means any person submitting an erosion and sediment control plan for approval or requesting the issuance of a permit, when required, authorizing land-disturbing activities to commence.

Board means the State Water Control Board.

Certified inspector means an employee or agent of the City of Virginia Beach who (i) holds a certificate of competence from the board in the area of project inspection or (ii) is enrolled in the board's training program for project inspection and successfully completes such program within one (1) year after enrollment.

Certified plan reviewer means an employee or agent of the City of Virginia Beach who (i) holds a certificate of competence from the board in the area of plan review, (ii) is enrolled in the board's training program for plan review and successfully completes such program within one (1) year after enrollment, or (iii) is licensed as a professional engineer, architect, landscape architect or land surveyor pursuant to article 1 (§ 54.1-400 et seq.) of chapter 4 of title 54.1 of the Code of Virginia, as amended, or professional soil scientist as defined in § 54.1-2200 of the Code of Virginia, as amended.

Certified program administrator means an employee or agent of the City of Virginia Beach who (i) holds a certificate of competence from the board in the area of program administration or (ii) is enrolled in the board's training program for program administration and successfully completes such program within one (1) year after enrollment.

District or *soil and water conservation district* means the City of Virginia Beach, a political subdivision of this commonwealth.

Erosion and sediment control plan or *plan* means a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the conservation objectives.

Erosion impact area means an area of land not associated with current land-disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of two thousand five hundred (2,500) square feet or less used for residential purposes or to shorelines where the erosion results from wave action or other coastal processes.

Land-disturbing activity means any man-made change to the land surface which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the city, including, but not limited to, clearing, grading, excavating, transporting, and filling of land, except that the term shall not include:

(1) Minor land-disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;

(2) Individual service connections;

(3) Installation, maintenance or repair of any underground public utility lines when such activity occurs on an existing hard-surfaced road, street or sidewalk, provided the land-disturbing activity is confined to the area of the road, street or sidewalk which is hard-surfaced;

(4) Septic tank lines or drainage fields, unless included in an overall plan for land-disturbing activity relating to the construction of the building to be served by the septic tank system;

(5) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.1 of the Code of Virginia;

(6) Tilling, planting or harvesting of agricultural, horticultural or forest crops, livestock feedlot operations, or as additionally set forth by the Board in regulations, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested (artificially or naturally) in accordance with the provisions of Code of Virginia, chapter 11 (section 10.1-1100 et seq.), or is converted to bona fide agricultural or improved pasture use as described in Code of Virginia, subsection B of section 10.1-1163

(7) Repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;

(8) Agricultural engineering operation including, but not limited to, the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to comply with the Dam Safety Act, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation;

(9) Disturbed land areas of less than two thousand five hundred (2,500) square feet in size;

(10) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;

(11) Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by the wetlands board of the City of Virginia Beach, the Marine Resources Commission or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this article and the regulations adopted pursuant thereto;

(12) Emergency work to protect life, limb or property and emergency repairs; however, if the land-disturbing activity would have required an approved erosion and sediment control and tree protection plan if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the VESCP authority.

Natural channel design concepts means the utilization of engineering analysis and fluvial geomorphic processes to create, rehabilitate, restore, or stabilize an open conveyance system for the purpose of creating or recreating a stream that conveys its bankfull storm event within its banks and allows larger flows to access its bankfull bench and its floodplain.

Owner means the owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a property.

Peak flow rate means the maximum instantaneous flow from a given storm condition at a particular location.

Permit-issuing authority means the director of planning or his designees. Permittee means the person to whom the local permit authorizing land-disturbing activities is issued or the person who certifies that the approved erosion and sediment control plan will be followed.

Periodic inspections are required during or immediately following initial installation of erosion and sediment controls, at least once in every two week period, within 48 hours following any runoff producing storm event, and at the completion of the project prior to the release of any performance bonds.

Person means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town or other political subdivision of the commonwealth, governmental body, including a federal or state entity as applicable, any interstate body or any other legal entity.

Planning Department or *Director of Planning* shall also include any designees made by the Director of Planning.

Responsible land disturber means an individual holding a current responsible land disturber certificate or equivalent as determined by the state department of conservation and recreation.

Runoff volume means the volume of water that runs off the land development project from a prescribed storm.

State waters means all waters on the surface and under the ground wholly or partially within or bordering the commonwealth or within its jurisdiction.

Subdivision means the same as the term is designated within section 1.2 of Appendix B of the Code of the City of Virginia Beach. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided.

Virginia Erosion and Sediment Control Program or *VESCP* means a program approved by the Board that has been established by a VESCP authority for the effective control of soil erosion, sediment deposition, and nonagricultural runoff associated with a land-disturbing activity to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources and shall include such items where applicable as local ordinances, rules,

permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement where authorized in this article, and evaluations consistent with the requirements of this article and its associated regulations.

Virginia Erosion and Sediment Control Program Authority or *VESCP authority* means the City of Virginia Beach, also referred to as the city.

Water quality volume means the volume equal to the first one-half inch of runoff multiplied by the impervious surface of the land development project.

(Ord. No. 1907, 8-2-89; Ord. No. 2047, 4-2-91; Ord. No. 2144, 6-23-92; Ord. No. 2242, 6-22-93; Ord. No. 2300, 12-6-94; Ord. No. 2400, 6-25-96; Ord. No. 2440, 3-11-97; Ord. No. 2659, 8-28-01; Ord. No. 2778, 7-1-03; Ord. No. 3258, 8-28-12; Ord. No. 3345, 4-22-14)

Sec. 30-58. - VESCP; regulations, standards and specifications for erosion and sediment control and tree protection.

(a) The city council hereby adopts the regulations promulgated by the Board pursuant to section 62.1-44.15:52 of the Code of Virginia for the effective control of soil erosion, sediment deposition and nonagricultural runoff which must be met in any VESCP to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources. Said regulations, standards and specifications for erosion and sediment control are included in but [are] not limited to Chapter 3 of the "Virginia Erosion and Sediment Control Handbook," Third Edition, 1992 and the Virginia Erosion and Sediment Control Regulations and all future amendments thereto and editions thereof.

(b) The program and regulations provided for in this article shall be made available for public inspection at the office of the director of planning.

(Ord. No. 1907, 8-21-89; Ord. No. 2242, 6-22-93; Ord. No. 3138, 6-8-10; Ord. No. 3258, 8-28-12; Ord. No. 3345, 4-22-14, eff. 7-1-14)

Sec. 30-59. - Approved plan required for issuance of grading, building or other permits; security for performance; site stabilization.

(a) Prior to the issuance of any grading, building or other permit for activities involving land-disturbing activities, the applicant shall submit an application with an approved erosion and sediment control plan and certification that the plan will be followed. In addition, as a prerequisite to engaging in the land-disturbing activity as shown on the approved plan, permit or agreement in lieu of a plan, the person responsible for carrying out the plan or agreements in lieu of a plan shall provide the name of a responsible land disturber, who will be in charge of and responsible for carrying out the land-disturbing activity. Failure to provide the name of a responsible land disturber prior to engaging in land disturbing activities may result in revocation of the plan approval, and the person responsible for carrying out the plan shall be subject to the penalties provided in this article.

However, the planning department may waive the requirement for an agreement in lieu of a plan for construction of a single-family residence to provide the name of a responsible land disturber. If a violation occurs during the land-disturbing activity, then the person responsible for carrying out the agreement in lieu of a plan shall correct the

violation and provide the name of a responsible land disturber. Failure to provide the name of a responsible land disturber shall be a violation of this article.

(b) Prior to the issuance of any grading, building, or other permit for activities involving land-disturbing activities the director of planning shall require from the applicant therefor a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the city attorney, to ensure that measures could be taken by the city at the applicant's expense should the applicant fail, after proper notice, within the time specified to initiate or maintain appropriate conservation action which may be required of him by the approved plan as a result of his land-disturbing activity. If the city takes such conservation action upon such failure by the permittee, the city may collect from the permittee for the difference should the amount of the reasonable cost of such action exceed the amount of the security held. Within sixty (60) days of the achievement of adequate stabilization of the land-disturbing activity, such bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated. These requirements are in addition to all other provisions of law relating to the issuance of such permits and are not intended to otherwise affect the requirements for such permits.

(c) Prior to the issuance of any certificate of occupancy, or the final release of any permit authorizing a land-disturbing activity, all disturbed or denuded areas shall be stabilized in accordance with the Virginia Erosion and Sediment Control Law and Regulations by such methods as, but not limited to, temporary seeding, permanent seeding, sodding or soil stabilization blankets and matting. The building code official may authorize a temporary certificate of occupancy without the required soil stabilization if the failure to stabilize is due to circumstances beyond the control of the permit holder.

(Ord. No. 1907, 8-21-89; Ord. No. 2047, 4-2-91; Ord. No. 2144, 6-23-92; Ord. No. 2242, 6-22-93; Ord. No. 2659, 8-28-01; Ord. No. 2778, 7-1-03; Ord. No. 3138, 6-8-10)

Sec. 30-60. - Monitoring reports and inspections of land-disturbing activities.

(a) With respect to approved plans for erosion and sediment control and tree protection in connection with land-disturbing activities which involve the issuance of a grading, building or other permit, the director of planning or his designees shall (1) provide for periodic inspections of the land-disturbing activity, and require that a responsible land disturber will be in charge of and responsible for carrying out the land-disturbing activity and (2) may require monitoring and reports from the person responsible for carrying out the plan, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in providing for tree protection and controlling erosion and sediment. The owner, permittee or person responsible for carrying out the plan shall be given notice of the inspection. If the director of planning or his designee determines that there is a failure to comply with the plan, notice shall be served upon the permittee or person responsible for carrying out the plan by registered or certified mail to the address specified in the permit application or in the plan certification or by delivery at the site of the land-disturbing activities to the agent or employee supervising such activities. The notice shall specify the measures needed to comply with such plan and shall specify the time within which such measures shall be completed. Upon

failure to comply within the time specified, the permit may be revoked and the permittee or person responsible for carrying out the plan shall be deemed to be in violation of this article and, upon conviction, shall be subject to the penalties provided for by section 30-75.

(b) Upon receipt of a sworn complaint of a violation of this article from the representative of the department of planning the city manager or his designee may, in conjunction with or subsequent to a notice to comply as specified in section 30-60(a) above, issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken or, if land-disturbing activities have commenced without an approved plan as provided in section 30-71 of this article, requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained. Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the commonwealth, or where such land-disturbing activities have commenced without an approved plan or any required permits, such an order may be issued whether or not the alleged violator has been issued a notice to comply as specified in section 30-60(a) above. Otherwise, such an order may be issued only after the alleged violator has failed to comply with a notice to comply. The order for noncompliance with a plan shall be served in the same manner as a notice to comply, and shall remain in effect for seven (7) days from the date of service pending application by the director of planning or his designee or alleged violator for appropriate relief to the circuit court of the jurisdiction wherein the violation was alleged to have occurred. The order for disturbance without an approved plan or permits shall be served upon the owner by registered or certified mail to the address specified in the land records, shall be posted on the site where the disturbance is occurring, and shall remain in effect until such time as permits and plan approvals are secured, except in such situations where an agricultural exemption applies. If the alleged violator has not implemented the specified corrective measures within seven (7) days from the date of service of the order, the city manager or his designee may issue a subsequent order to the owner requiring that all construction and other work on the site, other than corrective measures, be stopped until such corrective measures are implemented. The subsequent order shall be served upon the owner by registered or certified mail to the address specified in the permit application or the land records of the locality in which the site is located. The owner may appeal the issuance of any order to the circuit court of the jurisdiction wherein the violation was alleged to have occurred. Any person violating or failing, neglecting or refusing to obey an order issued by the city manager or his designee may be compelled in a proceeding instituted in the circuit court of the jurisdiction wherein the violation was alleged to have occurred to obey same and to comply therewith by injunction, mandamus or other appropriate remedy. Upon completion and approval of corrective action, or obtaining an approved plan or any required permits, the order shall immediately be lifted. Nothing in this section shall prevent the city manager or his designee from taking any other action specified in section 30-75.

(Ord. No. 1907, 8-21-89; Ord. No. 2242, 6-22-93; Ord. No. 2400, 6-25-96; Ord. No. 2659, 8-28-01; Ord. No. 3258, 8-28-12)

Sec. 30-60.1. - Stop work orders by board; civil penalties.

(a) An aggrieved owner of property sustaining pecuniary damage resulting from a violation of an approved plan or required permit, or from the conduct of land-disturbing activities commenced without an approved plan or required permit, may give written notice of the alleged violation to the city and to the director of the

board.

(b) Upon receipt of the notice from the aggrieved owner and notification to the city, the director of the board shall conduct an investigation of the aggrieved owner's complaint.

(c) If the city has not responded to the alleged violation in a manner which causes the violation to cease and abates the damage to the aggrieved owner's property within thirty (30) days following receipt of the notice from the aggrieved owner, the aggrieved owner may request that the director of the board require the violator to stop the violation and abate the damage to his property.

(d) If (i) the director of the board's investigation of the complaint indicates that the city has not responded to the alleged violation as required by the VESCP, (ii) the city has not responded to the alleged violation within thirty (30) days from the date of the notice given pursuant to subsection (a) of this section, and (iii) the director of the board is requested by the aggrieved owner to require the violator to cease the violation, then the director of the board shall give written notice to the city that the director of the board will request the board to issue an order pursuant to subsection (e) of this section.

(e) If the city has not instituted action to stop the violation and abate the damage to the aggrieved owner's property within ten (10) days following receipt of the notice from the director of the board, the board is authorized to issue an order requiring the owner, permittee, person responsible for carrying out an approved plan, or person conducting the land-disturbing activities without an approved plan or required permit to cease all land-disturbing activities until the violation of the plan or permit has ceased, or an approved plan and required permits are obtained, as appropriate, and specified corrective measures have been completed.

(f) Such orders are to be issued only after a hearing with reasonable notice to the affected person of the time, place and purpose thereof; and they shall become effective upon service on the person by certified mail, return receipt requested, sent to the address specified in the land records of the city, or by personal delivery by an agent of the director of the board. However, if the board finds that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the commonwealth, it may issue, without advance notice or hearing, an emergency order directing such person to cease all land-disturbing activities on the site immediately and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend or cancel such emergency order.

(g) If a person who has been issued an order or emergency order is not complying with the terms thereof, the board may institute a proceeding in the appropriate circuit court for an injunction, mandamus, or other appropriate remedy compelling the person to comply with such order.

(h) Any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to subsection (g) of this section shall be subject, in the discretion of the court, to a civil penalty not to exceed two thousand dollars ($2,000.00) for each violation. Any civil penalties assessed by a court under this section shall be paid into the state treasury.

(Ord. No. 2242, 6-22-93; Ord. No. 3258, 8-28-12)

Sec. 30-61. - Program administration, plan review and inspection fee.

(a) At the time an erosion and sediment control plan is submitted a plan review fee in the amount of one hundred dollars ($100.00) shall be required. Additional fees include a permit fee in the amount of seventy-five dollars ($75.00) and inspection fees in the amount of one and five-tenths (1.5) percent of the total cost of construction as provided in the engineer's cost estimate for the stormwater management facility, with a fifty dollar ($50.00) minimum. Such fees shall be submitted to the director of planning or his designee and made payable to the treasurer of the City of Virginia Beach.

(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.

(c) The VESCP authority shall report to the Department of Environmental Quality, in a method and on a time schedule established by the Department of Environmental Quality, a listing of each land-disturbing activity in the locality for which a plan has been approved under this ordinance.

(Ord. No. 1907, 8-21-89; Ord. No. 2047, 4-2-91; Ord. No. 2144, 6-23-92; Ord. No. 2242, 6-22-93; Ord. No. 2440, 3-11-97; Ord. No. 2807, 5-11-04; Ord. No. 3258, 8-28-12; Ord. No. 3345, 4-22-14, eff. 7-1-14)

Sec. 30-62. - Right of entry.

(a) The VESCP authority or any duly authorized agent of the VESCP may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this chapter.

(b) In accordance with a performance bond with surety, cash escrow, letter of credit, or any combination thereof acceptable to the city attorney, a VESCP authority or any duly authorized agent of the VESCP may also enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions which are required by the permit conditions associated with a land-disturbing activity when a permittee, after proper notice, has failed to take acceptable action within the time specified.

(Ord. No. 3258, 8-28-12)

Secs. 30-63—30-70. - Reserved.

DIVISION 2. - EROSION AND SEDIMENT CONTROL AND TREE PROTECTION PLAN FOR LAND-DISTURBING ACTIVITIES

Sec. 30-71. - Regulated land-disturbing activities; submission and approval of control plan.

(a) The standards contained within the "Virginia Erosion and Sediment Control Regulations" and the Virginia Erosion and Sediment Control Handbook, as amended, are to be used by the applicant when making a submittal under the provisions of this ordinance and in the preparation of an erosion and sediment control plan. The VESCP authority, in considering the adequacy of a submitted plan, shall be guided by the same standards, regulations and guidelines. When the standards vary between the publications, the State regulations shall take precedence.

(b) Except as provided in section 62.1-44.15:56 of the Virginia Code (state agency and federal entity projects), no person may engage in any land-disturbing activity until such person has submitted to the planning department an erosion and sediment control and tree protection plan for the land-disturbing activity and the plan has been reviewed and approved by the planning department. Such plan must be in compliance with the regulations, references, guidelines, standards and specifications promulgated by the Board for the effective control of soil erosion and sediment deposition to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources. Said regulations, references, guidelines, standards and specifications for erosion and sediment control are included in, but not limited to, the "Virginia Erosion and Sediment Control Regulations" and the Virginia Erosion and Sediment Control Handbook, as amended.

(c) Where land-disturbing activities involve lands under the jurisdiction of more than one VESCP an erosion and sediment control plan may, at the option of the applicant, be submitted to the board for review and approval rather than to each jurisdiction concerned. Where the land-disturbing activity results from the construction of a single-family residence, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the director of planning or his designee.

(d) In accordance with Virginia Code Section 62.1-44.15:52:

(1) Stream restoration and relocation projects that incorporate natural channel design concepts are not man-made channels and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels; and

(2) Any land-disturbing activity that provides for stormwater management intended to address any flow rate capacity and velocity requirements for natural or man-made channels shall satisfy the flow rate capacity and velocity requirements for natural or man-made channels if the practices are designed to

(i) detain the water quality volume and release it over 48 hours;

(ii) detain and release over a 24-hour period the expected rainfall resulting from the one year, 24-hour storm; and

(iii) reduce the allowable peak flow rate resulting from the 1.5, 2 and 10-year, 24-hour storms to a level that is less than or equal to the peak flow rate from the site assuming it was in a good forested condition, achieved through multiplication of the forested peak flow rate by a reduction factor that is equal to the runoff volume from the site when it was in a good forested condition divided by the runoff volume from the site in its proposed condition, and shall be exempt from any flow rate capacity and velocity requirements for natural or man-made channels.

(Ord. No. 1907, 8-21-89; Ord. No. 2144, 6-23-92; Ord. No. 2242, 6-22-93; Ord. No. 3258, 8-28-12; Ord. No. 3345, 4-22-14, eff. 7-1-14)

Sec. 30-72. - Responsibility of property owner when work to be done by contractor.

For the purposes of sections 30-71 and 30-73 of this article, when land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission and obtaining approval of an erosion and sediment control and tree protection plan shall be the responsibility of the owner.

(Ord. No. 1907, 8-21-89)

Sec. 30-73. - Approval or disapproval.

(a) The planning department shall review erosion and sediment control plans submitted to it and grant written approval within forty-five (45) days of the receipt of the plan if it determines that the plan meets the requirements of the board's regulations and if the person responsible for carrying out the plan certifies that he will properly perform the conservation measures included in the plan and will conform to the provisions of this article.

(b) When a plan is determined to be inadequate, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the applicant within forty-five (45) days. The notice shall specify such modifications, terms and conditions that will permit approval of the plan. If no action is taken by the VESCP authority within the time specified above, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.

(Ord. No. 1907, 8-21-89; Ord. No. 2144, 6-23-92; Ord. No. 2242, 6-22-93; Ord. No. 3258, 8-28-12)

Sec. 30-74. - Changing approved plan.

An approved plan may be changed by the planning department in the following cases:

(1) Where inspection has revealed that the plan is inadequate to satisfy applicable regulations; or

(2) Where the person responsible for carrying out the approved plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this article, are agreed to by the planning department and the person responsible for carrying out the plan.

(Ord. No. 1907, 8-21-89; Ord. No. 2144, 6-23-92; Ord. No. 2400, 6-25-96; Ord. No. 3258, 8-28-12)

Sec. 30-75. - Penalty for violation of article.

(a) Violators of this article shall be guilty of a Class 1 misdemeanor.

(b) The appropriate permit-issuing authority, the city, or the board, may apply to the circuit court in any jurisdiction where the land lies to enjoin a violation or a threatened violation under this article without the necessity of showing that an adequate remedy at law does not exist.

(c) In addition to any criminal penalties provided under this article, any person who violates any provision of this article may be liable to the city or the board, as appropriate, in a civil action for damages.

(d) Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed two thousand dollars ($2,000.00) for each violation. A civil action for such violation or failure may be brought by the locality wherein the land lies. Any civil penalties assessed by a court shall be paid into the treasury of the locality wherein the land lies; except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the state treasury.

(e) With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the board, or any condition of a permit or any provision of this article, the board, the director of the board, the director of planning or his designee may provide, in an order issued by the board or such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in subsection (d) of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection (d).

(f) Upon the request of the city or the director of planning or his designee, the city attorney or the commonwealth's attorney shall take legal action to enforce the provisions of this article.

(g) Compliance with the provisions of this article shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion or sedimentation that all requirements of law have been met and the complaining party must show negligence in order to recover any damages.

(Ord. No. 1907, 8-21-89; Ord. No. 2242, 6-22-93; Ord. No. 2440, 3-11-97)

Sec. 30-76. - Appeals from decisions under article.

Final decisions under this article shall be subject to review by the court of record of the City of Virginia Beach, provided an appeal is filed within thirty (30) days from the date of any written decision adversely affecting the rights, duties or privileges of the person engaging in or proposing to engage in land-disturbing activities.

(Ord. No. 1907, 8-21-89)

Sec. 30-76.1. - Variances.

The VESCP authority may waive or modify any of the standards contained herein that are deemed to be too restrictive for site conditions. Such variance may be granted under the following conditions:

(1) At the time of plan submission, an applicant may request a variance to become part of the approved erosion and sediment control plan. The applicant shall explain the reasons for requesting such variances in writing. Approved variances shall be documented in the plan.

(2) During construction, the person responsible for implementing the approved plan may request a variance in writing from the VESCP authority. The VESCP authority shall respond in writing either approving or disapproving the request. If the request is not approved within ten (10) days of receipt of the request, the request shall be considered to be disapproved. Following disapproval, the applicant may resubmit the request with additional documentation.

(3) The VESCP authority shall consider variance requests judiciously, keeping in mind both the need of the applicant to maximize cost effectiveness and the need to protect off-site properties and resources from damage.

(Ord. No. 3258, 8-28-12)

Sec. 30-77. - Erosion and sediment control plan for erosion impact area.

In order to prevent further erosion a VESCP may require approval of a erosion and sediment control plan for any land identified in the VESCP as an erosion impact area.

(Ord. No. 1907, 8-21-89; Ord. No. 3258, 8-28-12)

Sec. 30-78. - Incorporation of Chesapeake Bay Preservation Area Ordinance and the Southern Rivers Watershed Management Ordinance.

The provisions of the Chesapeake Bay Preservation Area Ordinance and the Southern Rivers Watershed Management Ordinance and any future amendments thereto, are hereby adopted and incorporated by reference as requirements of this article in the areas of the city to which they apply. Such provisions shall be deemed to be in addition to, and not in lieu of, the provisions of this article except in cases of conflict, in which event the more restrictive provision shall apply.

(Ord. No. 2010, 11-6-90; Ord. No. 2242, 6-22-93; Ord. No. 3374, 9-16-14)

Cross reference— Chesapeake Bay Preservation Area Ordinance, App. F; Southern Watersheds Management Ordinance, App. G.