TO: CITY CODE USERS

FROM: CITY ATTORNEY'S OFFICE

THE CITY CODE CHAPTERS IN THIS FOLDER INCLUDE CHANGES ADOPTED BY THE COMMON COUNCIL THROUGH JUNE 30, 2009.

CHAPTER 1

GENERAL PROVISIONS

SECTION 1-1. HOW CODE DESIGNATED AND CITED.

The ordinances embraced in this and the following chapters and sections shall constitute and be designated the "Code of the City of Winchester, Virginia" and may be so cited. Such Code may also be cited as "Winchester City Code" (Code 1959, §1-1)

Cross reference--Reading of ordinance adopting a revision or codification of ordinances, §2-64.

State Law Reference--Authority of city to codify and recodify its ordinances, Code of Virginia, §15.1-37.3.

SECTION 1-2. DEFINITIONS AND RULES OF CONSTRUCTION.

In the construction of this Code and of all ordinances of the City, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the council or unless the context clearly requires otherwise:

Generally. The rules of construction given in Code of Virginia, Sections 1-13.1 to 1-13.36, shall govern, so far as they are applicable, the construction of all words not defined in this section or other sections of this Code.

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

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

Charter. The word "Charter" shall be the Winchester Charter, being Chapter 39 of the 1932 Acts of the Virginia General Assembly, as amended from time to time.

City. The word "City" shall mean the City of Winchester, in the Commonwealth of Virginia.

Code. Whenever the term "Code" or "this Code" is used without further qualification, it shall mean the "Code of the City of Winchester, Virginia, 1978," as designated in Section 1-1.

Computation of time. Whenever a notice is required to be given, or any other act to be done, a certain time before any proceeding, there must be that time, exclusive of the day for such proceeding, but the day on which such notice is given, or such act is done, may

be counted as part of the time; but when a notice is required to be given or any other act to be done within a certain time after any event, that time shall be allowed in addition to the day on which the event occurred.

Council. The term "council," "city council" or "common council" shall mean the city council of the City of Winchester.

County. The words "county" or "the county" shall mean the County of Frederick in the Commonwealth of Virginia.

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

Health department. The words "health department" shall mean the Winchester Frederick Health Department.

Health director. The words "health director" shall mean the health director of the Winchester-Frederick Health Department, or his authorized agent.

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

Joint authority. Words purporting to give authority to three (3) or more officers or other persons shall be construed as giving such authority to a majority of such officers or other persons.

Minor. The word "minor" shall mean any person under the age of eighteen (18) years.

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

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

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

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

Officers, boards, etc. Whenever reference is made to a particular officer, department, board, commission or other agency, without further qualification, it shall be construed as

if followed by the words "of the City of Winchester," unless otherwise specifically provided.

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

Person. The word person shall include individuals, firms, partnerships, corporations, companies, associations or joint stock associations and any combination of individuals of whatever form or character. It shall include any trustee, receiver, assignee or personal representative thereof carrying on or continuing a business, profession, trade or occupation, but shall not include a trustee, receiver or other representative appointed by a court to liquidate assets for immediate distribution, or a sergeant or a sheriff, or any deputy, selling under authority of process or writ of a court of justice.

Preceding, following. The words "preceding" and "following" mean next before and next after, respectively.

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

Signature or *subscription.* includes a mark when a person cannot write.

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

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

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

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

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

Time. Whenever particular hours are specified in this Code, the time applicable shall be official standard time or daylight saving time, whichever may be in current use in the City.

Written or *in writing.* shall be construed to include any representation of words, letters or figures, whether by printing or otherwise.

Year. The word "year" shall mean a calendar year. (Code 1959, §1-2)

State Law Reference--Similar definitions and rules of construction applicable to state law, Code of Virginia, §1-13, *et seq.*

SECTION 1-3. CATCHLINES OF SECTIONS.

The catchlines of the several sections of this Code printed in boldface type are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be titles of such sections, nor as any part of the section, nor, unless expressly so provided, shall they be so deemed when any of such sections, including the catchlines, are amended or re-enacted. (Code 1959, §1-5)

State Law Reference--Similar provisions as to sections of state code, Code of Virginia, §1-13.9.

SECTION 1-4. PROVISIONS CONSIDERED AS CONTINUATIONS OF EXISTING ORDINANCES.

The provisions appearing in this Code, so far as they are the same as those of the 1959 Code, and all ordinances adopted subsequent to the 1959 Code and included herein, shall be considered as continuations thereof and not as new enactments. (Code 1959, §1-3)

Cross reference--Ordinances generally, §2-61, *et seq*.

SECTION 1-5. MISCELLANEOUS ORDINANCES NOT AFFECTED BY CODE.

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

(a) Promising or guaranteeing the payment of money by or for the City or authorizing the issuance of any bonds or any evidence of indebtedness;

(b) Authorizing or otherwise relating to any contract;

(c) Granting any franchise or right;

(d) Appropriating funds or relating to an annual budget;

(e) Authorizing, providing for or otherwise relating to any specific public improvement project;

(f) Making any assessment;

(g) Establishing, extending or contracting the corporate limits of the City;

(h) Authorizing or otherwise relating to the sale, lease or conveyance of city property;

(i) The purposes of which have been accomplished;

(j) Which is temporary, although general in effect; or

(k) Which is special, although permanent in effect;

and all such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this Code.

SECTION 1-6. CODE DOES NOT AFFECT PRIOR OFFENSES, RIGHTS, ETC.

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

SECTION 1-7. SUPPLEMENTATION OF CODE.

(a) By contract or by city personnel, supplements to this Code shall be prepared and printed whenever authorized or directed by the council. A supplement to the Code shall include all substantive permanent and general parts of ordinances adopted during the period covered by the supplement and all changes made thereby in the Code. The pages of a supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the Code will be current through the date of the adoption of the latest ordinance included in the supplement.

(b) In preparing a supplement to this Code, all portions of the Code which have been replaced shall be excluded from the Code by the omission thereof from reprinted pages.

(c) When preparing a supplement to this Code, the codifier (meaning the person, agency or organization authorized to prepare the supplement) may make formal, non substantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified code. For example, the codifier may:

(1) Organize the ordinance material into appropriate subdivisions;

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

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

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

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

State Law Reference--Authority to supplement Code, Code of Virginia, §15.1-37.3.

SECTION 1-8. COPIES OF CODE AND SUPPLEMENTS TO BE AVAILABLE FOR PUBLIC INSPECTION.

At least three (3) copies of this Code and every supplement thereto shall be kept in the office of the city clerk and shall there be available for public inspection, during normal business hours.

State Law Reference--Similar provisions, Code of Virginia, §15.1-37.3.

SECTION 1-9. SEVERABILITY OF PARTS OF CODE.

If any part or parts, section or subsection, sentence, clause or phrase of this Code is for any reason declared to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Code. (Code 1959, §1-4)

SECTION 1-10. LIMITATION ON AMOUNT OF REAL ESTATE THAT MAY BE HELD BY CERTAIN SOCIETIES AND ASSOCIATIONS.

The trustees, for the use of any society of Freemasons, Odd Fellows, Sons of Temperance, or any other benevolent or literary association, or school league, or other groups organized for rural community civic purposes or improvement of farm life or operations of like purposes and not for profit, are hereby authorized to take and hold, within the corporate limits of the City, not exceeding ten (10) acres of land at any one time. However, a school league may, in addition to the ten (10) acres held by such trustees, hold not exceeding ten (10) acres as a home for the principal of the school for which the league is named, pursuant to Code of Virginia, as amended, §57-20.

Further pursuant to the Code of Virginia, §57-20, any lodge of the Benevolent and Protective Order of Elks may hold not exceeding thirty-five (35) acres of land and any association or post of the Veterans of Foreign Wars, American Legion, Spanish War Veterans, Disabled American Veterans or any similar association of Veterans of the Armed Forces of the United States chartered by an act of Congress may hold not exceeding seventy-five (75) acres of land. (Code 1959, §1-10)(Ord. No. 036-95, 9-12-95)

SECTION 1-11. CLASSIFICATION OF AND PENALTIES FOR VIOLATIONS; CONTINUING VIOLATIONS.

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

(1) *Class 1 misdemeanor:* By a fine of not more than two thousand five hundred dollars ($2,500.00), and by confinement in jail for not more than twelve (12) months, either or both.

(2) *Class 2 misdemeanor:* By a fine of not more than one thousand dollars ($1,000.00) and by confinement in jail for not more than six (6) months, either or both.

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

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

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

(c) Each day any violation of this Code or any other ordinance, rule or regulation referred to in this section shall continue shall constitute a separate offense, except where otherwise provided. (Code 1959, §1-6)(Ord. No. 036-95, 9-12-95)

State Law References--Penalties for violation of ordinances, Code of Virginia, §15.1-901; penalties for misdemeanors, Code of Virginia. §18.2-11.; authority of court trying case, upon conviction, to require bond conditioned that the person convicted will not violate the ordinance for the breach of which he was convicted for a period of not more than one year, Code of Virginia , §15.1-902; injunctive relief for continuing violations of ordinances, Code of Virginia, §15.1-905.

SECTION 1-12. PENALTY AND INTEREST FOR FAILURE TO PAY ACCOUNTS WHEN DUE.

Any person failing to pay any city account pursuant to any ordinance hereunder on or before its due date, other than taxes which are provided for in Chapter 27 and Chapter 28 (License fees), shall incur a penalty of ten percent (10%) or ten dollars ($10.00), whichever is greater, which shall be added to the amount of the account due from such person. No penalty shall be imposed for failure to pay any account if such failure was not in any way the fault of the debtor. The treasurer shall make decisions regarding the penalties.

Interest at the rate of ten percent (10%) annually from the first day following the day such account is due shall be collected upon the principal and penalty of all such accounts. (Ord. No. 036-95, 9-12-95)

State Law Reference--Code of Virginia, §15.1-37.3:6

SECTION 1-13. AMENDMENTS TO STATUES INCORPORATED BY REFERENCE.

When any provision of a State statue is incorporated into this Code or any ordinance or regulation of the City by reference, all amendments thereto made overtime shall be deemed to be incorporated by such reference. (Ord. No. 036-95, 9-12-95)

State Law Reference--Code of Virginia, §1-13.39.2.

SECTION 1-14. PROCESSING FEE ON CERTAIN INDIVIDUALS

Pursuant to Section 15.2-1613.1 of the Code of Virginia, 1950, as amended, there is hereby imposed a processing fee of twenty-five dollars ($25.00) on any individual admitted by either one of the district courts of the City of Winchester or the circuit court of the City of Winchester to any county, city, or regional jail following conviction of any offense. The fee shall be ordered by the court as a part of the individual's costs of court, and it shall be collected by the clerk, deposited into the account of the City Treasurer, and shall be used by the Sheriff of the City of Winchester to defray the costs of processing arrested persons into any of the said jails. (Ord. No. 017-2002, 7-9-02)

(Note: The effective date of this Ordinance shall be August 1, 2002.)

SECTION 1-15. ASSESSMENT OF COURT COST FOR COURTHOUSE SECURITY.

Pursuant to Section 53.1-120(D) of the Code of Virginia, 1950, as amended, there is hereby assessed a fee of ten dollars ($10.00) as part of the costs in each criminal or traffic case which is tried in either one of the district courts of the City of Winchester or in the Circuit Court of the City of Winchester and which results in conviction of any statute or ordinance. This said fee shall be collected by the clerk of the court in which the case is heard, remitted to the Treasurer of the City of Winchester, and held by the Treasurer subject to appropriation by the Common Council to the Sheriff of the City of Winchester for the funding of courthouse security personnel. (Ord. No. 017-2002, 7-9-02; Ord. No. 021-2003, 6-10-03; Ord. No. 2007-22, 6-26-07)

State Law Reference-- Virginia Code §15.2-120(D).

CHAPTER 2

ADMINISTRATION

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		Div. 1. Generally, §§2-23--2-46
		Div. 2. Standing Committees, §§2-47--2-60
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Art.	IX.	Data Processing Director & Finance Director, §§2-156--2-218
Art.	X.	Industrial Development Authority, §§2-219--2-271

ARTICLE I. IN GENERAL

SECTION 2-1. CITY SEAL--DESCRIBED.

There is adopted, as the seal of the City, a metallic disc, two inches in diameter with a border or outer circle, within which shall be engraved at the top of the circle, the words "City of Winchester," and at the bottom of the circle the word "Virginia." Within this circle shall be engraved a shield which shall be quartered and shall display thereon, in the upper left quarter, the Union Jack of Great Britain as it existed during the period when Winchester owed allegiance to that flag; in the upper right quarter, the flag of the Commonwealth of Virginia; in the lower left quarter, the cross and stars of the battle flag of the Confederate States of America; and in the lower right quarter, a portion of the union with three of the stars, three of the red stripes and two of the white stripes of the flag of the United States of America. At the top and center of the shield shall be a bust of a Shawnee Indian warrior. Below the shield shall be the motto "Fare Fac," and below that the date "1744." At the right of the shield shall be a decoration of a garland of the ivy vine, and at the left a laurel branch. This seal shall be so engraved as to produce the above- described design when it is impressed on paper. When the seal is reproduced in colors, the several quarterings, the Indian bust, the laurel and ivy shall be in their proper colors, and the lettering in the outer circle shall be in colonial blue upon a background of colonial buff. This seal shall be the authorized and official and corporate seal of the City and shall be accepted and used as such. (Code 1959, §1-8)

Charter reference--Authority to use corporate seal, §1.

Cross references--Air pollution commission, §3-2 *et seq*.; building official, §6-1; plumbing and gas inspector, §6-46; electrical inspector, §6-98; housing code board of appeals, §6-331 *et seq*.; elections, Ch. 7; fire department, §10-16 *et seq*.; fire marshal, §10-30 *et seq*.; fire prevention code board of appeals, §10-47(F-105.11); library board, §12-16 *et seq*.; park and recreation council, §18-1; park and recreation board, §18-16 *et seq*.; planning commission, §19-16 *et seq*.; police department, §20-16 *et seq*.; director of utilities, §29-1 *et seq*.; tree commission, §30-32 *et seq*.

SECTION 2-2. SAME--CUSTODIAN; USE.

The clerk of the council shall be custodian of the corporate seal of the City, and he shall affix it to such papers or documents as he may be authorized to affix it by ordinance or resolution of the council. (Code 1959, §2-47)

SECTION 2-3. CITY FLAG.

There is adopted as the flag of the City a scarlet field with a Saint Andrew's cross imposed, composed of three (3) stripes of equal width, the center stripe of colonial blue and the flanking stripes of colonial buff. The cross shall be outlined by a narrow white edge separating it from the scarlet field. In the center of the cross, at the intersection, shall be a scarlet shield superimposed and outlined by a narrow white edge, and charged upon the shield shall be a Norman lion regardant, in colonial buff color, a facsimile of the lions on the flag of the City of Winchester, England, after which Winchester, Virginia, was named. This flag shall be the authorized and official and corporate flag of the City and shall be accepted and used as such. (Code 1959, §1-9)

SECTION 2-4. ELECTION, TERM AND REMOVAL OF COUNCIL-ELECTED OFFICERS.

(a) Unless otherwise especially provided, beginning in 2007, every municipal officer elected by the council shall be elected at the first regular meeting of the council in the month of January, or as soon thereafter as practicable.

(b) Except as otherwise provided, the term of each officer elected as provided in subsection (a) above shall be one year and shall commence on the first day of February next succeeding the date of election. Every officer so elected shall hold his office until his successor is appointed and has qualified.

(c) The city council may, at its pleasure, remove any officer elected by the council.

(d) Any vacancy occurring in any municipal office, to which the holder is elected by the council, shall be filled by the council at a regular or adjourned meeting; provided, that no vacancy shall be filled at an adjourned meeting unless previous notice thereof shall have been given to all members of the council. All persons appointed to fill a vacancy shall hold office only during the unexpired term of the office in which such vacancy occurs. (Code 1959, §§2-22--2-26; Ord. of 9-20-76; Ord. No. 034-2004, 08-10-2004)

Charter reference--Appointment and removal of department heads, §5.

SECTION 2-5. BONDS OF OFFICERS AND EMPLOYEES.

(a) The city council shall designate the officers and employees of the City who shall be bonded and shall designate the amounts of such bonds. Nothing in this Code or the ordinance adopting this Code shall affect any ordinance prescribing the amount of bonds and all such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this Code.

(b) Bonds referred to in this section shall be filed with the clerk of the council; provided, that the bonds of constitutional officers shall be filed as provided by state law.

(c) All official bonds shall be given with such security as may be approved by the council and shall be made payable to the City, conditioned for the faithful performance and discharge of the duties of the office to which the person giving it has been appointed. Any person who shall fail, for thirty (30) days after his election or appointment, to give such bond and security as may be required of him shall thereby vacate such office. (Code 1959, §§2-28, 2-29)

State Law Reference--Authority of council to require official bonds, Code of Virginia, §15.1-797.

SECTION 2-6. COMPENSATION OF OFFICERS AND EMPLOYEES.

(a) Officers and employees of the City shall receive such compensation as the council may, by ordinance, determine.

(b) Nothing in this Code or the ordinance adopting this Code shall affect any ordinance prescribing or otherwise relating to the salaries, wages or other compensation of city officers or employees and all such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this Code. (Code 1959, §2-27)

State Law Reference--Compensation of officers and employees to be fixed by council, Code of Virginia, §15.1-797.

SECTION 2-7. MEMBERS OF POLICE DEPARTMENT, RESCUE SQUAD AND CERTAIN FIRE COMPANIES RECOGNIZED AS PART OF OFFICIAL SAFETY PROGRAM.

The city council hereby recognizes the members of the Winchester Police Department, the Winchester Volunteer Rescue Squad, Inc., Friendship Fire Company Number One, Inc., Charley Rouss Fire Company, Inc., Sarah Zane Fire Company, Inc., Shawnee Volunteer Fire Department, Inc., and South End Fire Company, Inc., as an integral part of the official safety program of the City, pursuant to Chapter 3, Article 1.1, Title 15.1 [§15.1-136.1 *et seq.*] of the Code of Virginia, titled "Line of Duty Act." (Ord. of 5-8-73)

Cross references--Fire department, §10-16 *et seq.*; police department, §20-16 *et seq*.

SECTION 2-8. DESIGNATION AND DUTIES OF LOCAL BOARD OF PUBLIC WELFARE.

Pursuant to Section 63.1-43 of the Code of Code of Virginia, the city manager shall be the Board of Social Services. The Department of Public Welfare and the local Board of Public Welfare are hereby designated as the Department of Social Services and the Local Board of Social Services respectively. The city manager, as the Board, shall discharge the duties and functions imposed upon the Board by Title 63.1 of the Code of Virginia, and by applicable ordinances of the City. (Ord. No. 037-88, 9-13-88).

SECTION 2-8.1. SOCIAL SERVICES ADVISORY BOARD.

There is hereby created a Social Services Advisory Board, pursuant to §63.2-305, *et seq.* of the Code of Virginia. The advisory board shall consist of nine (9) members appointed by the common council. The Board members shall serve for terms of four (4) years each. The city manager shall be an ex officio member, without a vote of the advisory board. Appointments to fill vacancies shall be for the unexpired term. The Advisory Board shall have the responsibilities and be subject to the limitations set forth in said §63.2-305, *et seq.* as amended from time to time. (Ord. No. 037-88, 9-13-88; Ord. No. 036-95, 9-12-95; Ord No. 010-2001, 3-13-01; Ord. No. 2007-46, 12-11-07)

SECTION 2.9. FISCAL YEAR.

The fiscal year of the City shall begin July first and end June thirtieth. Such fiscal year shall constitute the budget and accounting year. All officers and heads of departments,

offices, divisions, boards, commissions and agencies of the City of Winchester shall, on or before the first day of April of each year, beginning in 2009, prepare and submit to the City Manager an estimate of the amount of money deemed to be needed during the ensuing two fiscal years for his department, office, division, board, commission or

agency. If such person does not submit an estimate in accordance with this section, the City Manager shall prepare and submit an estimate in accordance with that department, office, board, commission or agency. The City Manager shall prepare and present to Council a budget for informative and fiscal-planning purposes only, containing a complete, itemized and classified plan of all contemplated expenditures and all estimated revenues and borrowings of the City for the ensuing fiscal year. The Council shall consider and approve such budget in such final form as a majority of the councilors shall agree, no later than the date set for the beginning of the fiscal year and shall fix a tax rate for the ensuing fiscal year at that time. (Code 1959, §7-1)(Ord. No. 044-93, 01-06-94; Ord. No. 036-95, 9-12-95; Ord. No. 027-2004, 08-10-2004; Ord. No. 2008-25, 06-10-08)

(Note: The effective date of this ordinance shall be January 1, 2009)
State Law Reference--Uniform fiscal year and fiscal year accounting procedures for cities, Code of Virginia, §15.1-13.2. See also Chapter 39 of the 1994 Acts of Assembly.

SECTION 2-10. FEE FOR PASSING BAD CHECK TO CITY.

Any person who shall utter, publish, or pass any check or draft for payment of taxes of any other sums to the City, which is subsequently returned for insufficient funds or because there is no account or the account has been closed, shall be assessed a fee of twenty-five dollars ($25.00) by the city treasurer. (Ord. of 1-14-75; Ord. No. 043-91, 11-12-91; Ord. No. 005-2000, 3-14-00).

State Law Reference--Authority for above section, Code of Virginia, §15.2-106.

SECTION 2-11. PUBLIC IMPROVEMENTS PAID FOR BY LOCAL ASSESSMENT.

(a) Whenever the city council shall propose to open or lay out or grade and pave any new street or to grade and pave or repair the pavement of any existing street or sidewalk, or to construct any bridge, culvert, or sewer, or to make any other public improvement within the corporate limits of the City, authorized to be paid for in whole or in part by a local assessment, it shall fix and determine the limits of the district within which the real estate will, in its opinion, be benefited by the proposed improvement.

(b) Such improvements may be ordered by the council and the cost thereof apportioned in pursuance of an agreement between the City and the abutting landowners and, in the absence of such an agreement, improvements, the cost of which is to be defrayed in whole or in part by such local tax assessment, may be ordered on a petition from not less than three fourths (3/4) of the landowners to be affected thereby, or by a two-thirds (2/3) vote of all the members elected to the council. But notice shall first be given as hereinafter provided to the abutting landowners, notifying them when and where they may appear before the Council to be heard in favor of or against such improvements.(Ord. No. 036-95, 9-12-95)

Cross references--Recommendations of planning commission relative to public improvements, §19-27; improvements on existing streets generally, §26-6 *et seq.*; building permit on existing street not to issue until applicant agrees to pay his share of cost of street improvements, §6-17.
State Law References--Assessments for local improvements, Code of Virginia, §§15.1-239 - 15.1-249.1.

SECTION 2-12. REPEALED. (Ord. No. 036-95, 9-12-95)

SECTION 2-13. ASSESSMENTS TO BE REPORTED TO TREASURER.

The amount assessed against each landowner, or for which he is liable by agreement, shall be reported as soon as practicable to the treasurer, who shall enter the same as provided for other taxes. (Ord. No. 036-95, 9-12-95)

State Law Reference--Code of Virginia, §15.1-242.

SECTION 2-14. NOTICE TO LANDOWNER OF AMOUNT OF ASSESSMENT.

When the assessment or apportionment is not fixed by agreement, notice thereof, and of the amount so assessed or apportioned, shall be given each of the then abutting owners and he shall be cited thereby to appear before the assessor, not less than ten days thereafter, at a time and place to be designated therein, to show cause, if any he can, against such assessment or apportionment. (Ord. No. 036-95, 9-12-95)

State Law Reference--Code of Virginia, §15.1-243.

SECTION 2-15. HOW NOTICE GIVEN; OBJECTIONS.

The notice required by Section 2-14 may be given by personal service on all persons entitled to such notice, except that notice to an infant or insane person may be served on his guardian or committee and notice to a nonresident may be mailed to him at his place of residence or served on any agent of his having the property in charge, or on the tenant of the freehold, or in any case when the owner is a nonresident, or when the owner's residence is not known, such notice may be given by publication in some newspaper published or having general circulation in the City once a week for four successive weeks. Or, in any case, in lieu of such personal service on the parties or their agents and of such publication, the notice to all parties may be given by publishing the same in some newspaper published or having general circulation in the City, once a week for two successive weeks. The second publication shall be made at least seven days before the parties are cited to appear. Any landowner wishing to make objections to an assessment or apportionment may appear in person or by counsel and state such objections.

If his objections are overruled, he shall, within thirty days thereafter, but not afterwards, have an appeal as of right to the circuit court of the City. When an appeal is taken, the

clerk of the council shall immediately deliver to the clerk of the circuit court the original notice relating to the assessment, with the judgment of the assessor endorsed thereon and the clerk of the court shall docket the same. (Ord. No. 036-95, 9-12-95)

State Law References--Code of Virginia, §§15.1-244, 15.1-245.

SECTIONS 2-16 - 2-22. RESERVED.

ARTICLE II. CITY COUNCIL GENERALLY

DIVISION 1. GENERALLY

SECTION 2-23. CONTINUING BODY.

The council shall be construed to be a continuing body. (Code l959, §2-1)

SECTION. 2-24. REGULAR MEETING DATE; CALL OR ORDER OF SPECIAL MEETING.

(a) The regular meetings of the council shall be held on the second Tuesday of each month.

(b) Special meetings of the council may be called by the president, or the vice-president when authorized to act for the president, at any time and, in case of his absence, inability or refusal, may be convened by the order in writing of three (3) members of the council, addressed to the clerk of the council. Every call or order for a special meeting shall contain a notice of the object of such meeting, and no other business shall be transacted unless two-thirds of the members present shall vote to take up such business. (Code 1959, §2-2) (Ord. No. 036-95, 9-12-95)

State Law Reference--Special meetings of council, Code of Virginia, §15.1-809.

SECTION 2-25. QUORUM.

A majority of the members of the council shall constitute a quorum. If a quorum shall fail to attend within fifteen (15) minutes after the appointed time of a meeting, those present may adjourn to such time as they may deem proper, and the clerk of the council shall enter the names of those present and absent upon the journal. (Code 1959, §2-3)

State Law Reference--Quorum for transaction of business, Code of Virginia, §15.1-812.

SECTION 2-26. ELECTION AND GENERAL DUTIES OF PRESIDENT.

(a) Biennially, at its first meeting in January beginning in 2007, the council shall elect one of its members president, who shall be the presiding officer of the council.

(b) The president of the council shall enforce the rules of the council, preserve order and appoint all standing and other committees, unless otherwise provided. The president shall decide all questions of order and may give his reasons therefor without vacating the chair. (Code 1959, §§2-4, 2-5; Ord. of 9-20-76; Ord. No. 033-2004, 8-10-04)

Note: The effective date of this ordinance shall be January 1, 2007.

Charter references--Vesting of administration and government of city, §3; creation and members of council. §4; powers and duties of council generally, §5; investigations by council §7; buying from councilmen, §15; vacancies in council, §23.
Cross reference--Disrupting council meetings, §16-6.1.
State Law Reference--Presiding officer of council, Code of Virginia, §15.1-809.

SECTION 2-27. ELECTION AND DUTIES OF VICE-PRESIDENT.

Biennially, at the first meeting in January beginning in 2007, the council shall elect one of its members to be vice-president, who shall preside at council meetings in the absence of the president. (Code 1959, §2-6; Ord. of 9-20-76; Ord. No. 033-2004, 8-10-04).

Note: The effective date of this ordinance shall be January 1, 2007.
State Law Reference--Vice-President of council, Code of Virginia, §15.1-809.

SECTION 2-28. PRESIDENT PRO TEMPORE.

In case of the absence of the president and vice-president, the council shall elect a president pro tempore. (Code 1959, §2-7).

State Law Reference--Code of Virginia, §15.1-809.

SECTION 2-29. CLERK TO PRESIDE UNTIL VICE-PRESIDENT ELECTED.

Biennially, at the first meeting in July, and until either a president or a vice-president has been elected, the clerk of council shall preside; provided that, if the clerk of council is absent, the members of the council may elect a temporary president who shall preside until a president or vice-president has been chosen. (Code 1959, §2-8; Ord. of 9-20-76).

SECTION 2-30. APPEALS FROM DECISION OF CHAIR.

Any member of the council may appeal to the council from any decision of the chair, the question being, "Shall the decision of the chair stand as the judgment of the council?" Such appeal, unless it refers to a question of order, may be debated. The decision of the chair shall remain final unless a majority of the members present vote against the decision.
(Code 1959, §2-9).

SECTION 2-31. ORDER OF PROCEEDINGS.

At meetings of the council, the order of the proceedings shall be as follows:

(a) Roll call (Absentees to be noted).
(b) Public hearings.
(c) Approval of minutes.
(d) Correspondence.
(e) Reports, if any, of treasurer, commissioner of the revenue, finance director, and city manager, which reports may be made orally or in writing.
(f) Reports of standing committees, in such order as established by resolution or motion of Council.
(g) New business.
(h) Adjournment.

(Code 1959, §2-10; Ord. of 10-11-77; Motion adopted 6-12-79 minutes; Ord. No. 023-81, 9-8-81; Ord. No. 040-87, 12-08-87; Ord. No. 017-89, 7-11-89;
Ord. No. 036-95, 9-12-95)

(B) Any item to be placed on the Agenda for a regular meeting of Council, as described in Section 2-24(a) of this Code, shall be in the hands of the City Clerk not later than Noon on the Wednesday next preceding such meeting, and the Clerk shall, immediately thereafter, publish and distribute the Agenda to all members of Council. No items may be added to such Agenda except by unanimous vote of those members present at the said regular meeting. (Ord. No. 011-99 of 05-11-99)

SECTION 2-32. SUSPENSION OF RULES.

Council may temporarily suspend any of its rules by vote of two-thirds of the members present. (Code 1959, §2-11).

SECTION 2-33. HOW DEBATE CONDUCTED.

At meetings of the council, the question shall be stated by the chair before debated and, in any debate, no member shall speak more than once on the same question until all others have spoken who desire to do so, nor more than twice upon the same question, except by consent of the council.

SECTION 2-34. CALLING FOR AYE AND NAY VOTE .

At meetings of the council, the ayes and nays on any question may be called for at any time before proceeding to any other business, and shall be ordered upon the demand of any three (3) members of the council.

SECTION 2-35. MOTION TO RECONSIDER.

At meetings of the council, no motion to reconsider a question which has been decided shall be entertained unless it is made by a member who voted with the prevailing side, and unless the motion to reconsider is made at the same session of the council at which the question to be reconsidered was decided. All motions to reconsider shall be decided by a majority vote of the members present. (Code 1959, §2-14) .

SECTION 2-36. MOTION TO ADJOURN.

At meetings of the council, the motion to adjourn shall always be in order, except:

(1) When a member is on the floor;
(2) When the ayes and nays are being called;
(3) When the previous question has been ordered;
(4) When a motion to adjourn has been put and lost without any other business intervening.

No motion to adjourn shall be debatable.

SECTION 2-37. ADDRESSING COUNCIL.

At meetings of the council, no person who is not a member of the council shall orally address it unless leave to do so has been applied for through some member of the council and granted by unanimous consent. (Code 1959, §2-16).

SECTION 2-38. LEAVE TO WITHDRAW.

After a member of the council has been entered by the clerk of the council as present at any meeting, he shall not, without leave of two-thirds of the members of the council present, absent himself from such meeting until the adjournment. (Code 1959, §2-17).

SECTION 2-39. PREREQUISITES TO ACTION ON CLAIMS AGAINST CITY.

No claim against the City shall be acted upon at any meeting of the council unless the same has been placed in the hands of the committee on finance at least three (3) days prior to the session of the council at which it is reported. (Code 1959, §2-18).

SECTIONS 2-40 - 2-46. RESERVED.

DIVISION 2. STANDING COMMITTEES

SECTION 2-47. STANDING COMMITTEES ENUMERATED.

Council from time to time by resolution shall establish the several standing committees of Council. Council shall designate the number of members of each and the duties of each. Three (3) members of any Committee which has four (4) members must be present to constitute a quorum. If three (3) members do not attend, the Committee chair may recommend to the clerk items for Council's agenda. (Code 1959, §2-19; Ord. of 10-11-77; Ord. No. 040-87, 12-08-87; Ord. No. 017-89, 7-11-89; Ord. No. 036-95, 9-12-95)

SECTION 2-48. COMPOSITION.

The President shall appoint the members of the several standing committees. (Code 1959, §2-20; Ord. No. 040-87, 12-8-87; Ord. No. 017-89, 7-11-89). (Resolution No. 1991-11)

SECTION 2-49. MATTERS REFERRED.

To the standing committees enumerated in Section 2-47 there shall be referred all matters pertaining to their several departments. (Code 1959, §2-21).

SECTIONS 2-50. VACANCY/REMOVAL OF COUNCIL APPOINTEES .

(a) Any employee appointed by Council, including but not limited to the City Manager and City Attorney, may be removed from office by a majority vote of council called by motion and second for a "Vote of No Confidence" by any members of Council in an open meeting.

(b) Where a vacancy occurs in the office of City Manager, it shall be the duty of the President of Council to ensure that the functions of the City Manager set forth in this Code of Ordinances and the Code of Virginia are carried out until such time as Council may appoint an Interim City Manager, or permanent replacement in accordance with Section 5(d) of the City Charter.

(Ordinance No. 2007-15, 6-12-07)

State Law Reference: Code of Virginia,§15.2-1423

SECTION 2-51 - 2-60. RESERVED.

ARTICLE III. ORDINANCES AND RESOLUTIONS

SECTION 2-61. TO BE REDUCED TO WRITING AND APPROVED AS TO FORM.

Every ordinance or resolution presented to the city council shall be reduced to writing and approved by the city attorney as to form. (Code 1959, §2-48).

SECTION 2-62. APPROPRIATION ORDINANCES TO IDENTIFY SOURCE OF INCOME.

Every ordinance making an appropriation shall identify the source of the income that will be required to meet the appropriation, to the end that the annual ordinance appropriating the public revenue may show the source and extent of each appropriation in excess of the current year's revenue. (Code 1959, §2-51).

SECTION 2-63. ORDINANCES - REFERRAL TO AND ACTION BY STANDING COMMITTEE; PLACING ON CALENDAR.

Whenever an ordinance or a resolution that partakes of the nature of an ordinance is offered by any member of the council, it shall be referred by the president to the standing

committee which has jurisdiction over the subject matter of the ordinance or resolution, which committee shall, before the next meeting of council, report such ordinance or resolution in proper form to the clerk of the council. The same, when reported upon by the committee, shall be placed upon the calendar to be kept by the clerk of council in the order in which the same is reported. (Code 1959, §2-49; Ord. No. 040-87, 12-8-87).

Charter references--Power to enact ordinances, §1.03; power to pass regulations for general welfare of city and its citizens, §16.

State Law References--General power to enact ordinances and to prescribe punishment for violation thereof, Code of Virginia, §15.1-13; Appropriation Ordinances, Code of Virginia, §15.1-819.

SECTION 2-64. READING OF ORDINANCES PRIOR TO ADOPTION.

(a) Prior to adoption by the city council, every ordinance shall be read two (2) times by title. Except as provided in subsection (b) of this section, the substance text of every ordinance shall be furnished by the clerk of council to each member of the council prior to its second reading. The text of the ordinance shall also be provided by the clerk of council to each citizen requesting same. No proposed ordinance shall be read twice at any one meeting of council.

(b) Budget and appropriation ordinances contained in a revision or codification of the ordinances of the City, including new or changed ordinances therein contained, shall be excepted from the provisions of subsection (a) of this section requiring furnishing of written text of ordinances, and said requirements as pertaining to such ordinances shall be deemed to have been met upon:

- Publication of budget or appropriation ordinances as provided by law and the furnishing of same to members of the council present at the meeting at which such ordinances are considered for adoption.

- Distribution as provided in subsection (a) above of the written text of so much thereof of a revision or codification of all ordinances of the City, including new or changed ordinances therein contained, as is not embodied within the numbered chapters and sections of such revision or codification. (Ord. No. 013-83, 4-12-83)

(c) Each committee shall consider the question of timing when proposing ordinances for Council's consideration, balancing the proposal's review time with the need for expediency, the proposal's complexity, and its potential impact.

(d) A public hearing shall be held for every ordinance. Except as prescribed by city ordinance, code or regulation or State law, the following procedures for the hearing shall be used:

1. Advertising shall be done one time in a newspaper of general circulation in the City at least ten (10) days prior to the hearing. The advertisement shall identify the substance of the ordinance and the time and place of the hearing.

2. No request by a councilor shall be necessary for the advertising and holding of the hearing. (Ord. No. 036-95, 9-12-95)

SECTION 2-65. REQUIRED VOTE ON AND EFFECTIVE DATE OF ORDINANCES.

Unless otherwise specifically provided by the Constitution of Virginia, the Code of Virginia, the City Charter, or other general or special law, any ordinance may be adopted by majority vote of those present and voting at any lawful meeting and, an ordinance shall take effect from its passage, or upon a date fixed by the Council in the text of the ordinance. (Code 1959, §2-48; Ord. No. 024-99, 8-11-99)

SECTION 2-66. WHEN VOTE TO BE RECORDED.

Upon any vote on any ordinance or resolution or other motion which involves or will require the appropriation of money in excess of one hundred dollars ($100.00), or the levy of taxes or the contracting of any debt on behalf of the City, the ayes and nays shall be entered upon the journal. (Code 1959, §2-50).

SECTION 2-67. RECORDING AND INDEXING.

The clerk of council shall keep a book to be styled the "General Ordinance Book", in which shall be recorded all ordinances or resolutions of a general and permanent character. This book shall be accurately indexed. (Code 1959, §2-52).

SECTION 2-68. PUBLICATION OF ORDINANCES.

When so required by the city council or by state law, the clerk of council shall have ordinances published. (Code 1959, §2-53).

SECTION 2-69. NEW ORDINANCES NOT TO AFFECT PRIOR OFFENSES, RIGHTS, ETC.

No new ordinance shall be construed to repeal a former ordinance as to any offense committed against the former ordinance or as to any act done, any penalty, forfeiture or punishment incurred, or any right accrued or claim arising under the former ordinance, or in any way whatever to affect any such offense or act so committed or done, or any penalty, forfeiture or punishment so incurred, or any right accrued, or claim arising before the new ordinance takes effect, save only that the proceedings thereafter shall conform, so far as practicable, to the ordinance in force at the time of such proceedings. (Code 1959, §2-54)

State Law Reference--Similar provisions applicable to state statutes, Code of Virginia, §1-16.

SECTION 2-70. REPEAL OF ORDINANCE NOT TO REVIVE FORMER ORDINANCE.

When an ordinance which has repealed another shall itself be repealed, the previous ordinance shall not be revived without express words to that effect. (Code 1959, §2-55)

State Law Reference--Similar provisions applicable to state statute, Code of Virginia, §1-17.

SECTION 2-71. WAIVER OF SECTIONS 2-63 AND 2-64 PERMITTED.

Unless otherwise specifically provided by the Constitution of Virginia, the Code of Virginia, the City Charter, or other general or special law, the Council may, at any lawful meeting, by unanimous vote of those present and voting, adopt a motion to waive all of the requirements stated in Sections 2-63 and 2-64 of this Code, and proceed, thereafter, to consider the adoption of any ordinance without resort to any of the procedures described in said Sections. Any such ordinance thereafter adopted in accordance with Section 2-65 of this Code, shall have the same force and effect as any other ordinance of the Council, and shall take effect as provided by said Section. (Ord. No. 024-99, 8-11-99)

SECTIONS 2-72 - 2-81. RESERVED.

ARTICLE IV. MAYOR

SECTION 2-82. GENERAL POWERS AND DUTIES.

The mayor may perform such duties and shall have such powers as are conferred by the Charter and ordinances of the City and the general laws of the Commonwealth. (Code 1959, §2-32)

Charter references--Mayor as member of council and his voting power §4; powers and duties of mayor, §6.

SECTION 2-83. ANNUAL REPORT TO COUNCIL.

The mayor shall make a general report to the council, at its first regular meeting in January of each year, of the condition of the City in relation to its government, finances and improvements, with such recommendations as he may deem proper. (Code 1959, §2-31)

SECTION 2-84. VICE-MAYOR.

The office of vice-mayor is hereby created and established pursuant to Section 3.01 of the Charter (Code 1959, §2-33)

Charter reference-- Office of mayor created, §3; Vice-mayor to act in absence of mayor, §3.01; election and term of mayor, §4.

State Law References--Veto power generally, Code of Virginia of 1950, as amended, §15.1-817, Veto power of Mayor of items of appropriation, §15.1-818 and Constitution of Virginia, Article VII, §7; salaries and expenses of office, §15.1-939 to 15.1-945; council to elect Mayor and Vice-Mayor, §15.1-40.3.

SECTIONS 2-85 - 2-95. RESERVED.

ARTICLE V. CITY MANAGER

SECTION 2-96. GENERAL POWERS AND DUTIES.

The city manager shall devote his entire time to the duties of his office and shall, as provided in Section 5, subsection (d) of the Charter, have the general charge and management of the administrative affairs and work of the City, including the several heads of departments and employees of the City, except in regard to health, library, parks and recreation, schools, and welfare. (Code 1959, §2-34; Ord. of 3-9-76)

Charter references--Petition for condemnation proceeding signed by city manager, §1.02(b); investigations by city manager, §7; recommendation for transfer of unexpended balance of appropriation, §11.

SECTION 2-97. DEPARTMENT HEADS TO RECEIVE ORDERS FROM CITY MANAGER.

All heads of departments under the control of the city manager, as provided in Section 2-96, shall receive their instructions and orders entirely from and through him. (Code 1959, §2-35)

SECTION 2-98. ANNUAL REPORTS.

The city manager shall make out and have printed annual reports of all departments of the City under his control. (Code 1959, §2-36)

SECTIONS 2-99--2-109. RESERVED.

ARTICLE VI. CITY ATTORNEY

SECTION 2-110. ELECTION AND QUALIFICATIONS.

The council shall elect a city attorney. The person so elected shall have been admitted to practice law in the courts of the Commonwealth of Virginia. (Code 1959, §2-37)

Charter reference--Authority of council to employ city manager, §5(d).

State Law Reference--Employment of city manager by city not adopting any of the alternative forms of government under Chapter l9 of Title 15.1 of the state code, Code of Virginia, as amended, §15.1-795.

SECTION 2-111. DUTIES.

The city attorney shall perform for the City such duties as may be required of him by the council. (Code 1959, §2-38)

SECTIONS 2-112--2-122. RESERVED.

ARTICLE VII. CLERK OF THE COUNCIL

SECTION 2-123. ELECTION; FILLING OF VACANCY.

The city council shall elect a clerk of the council. Any vacancy occurring in his office shall be filled for the unexpired term. (Code 1959, §2-39)

SECTION 2-124. APPOINTMENT OF CLERK PRO TEMPORE.

In case of the absence of the clerk of the council after the organization of the council, the presiding officer may appoint a clerk pro tempore. (Code 1959, §2-40)

SECTION 2-125. DUTIES AS CLERK OF COMMITTEES.

The clerk of the council shall be, ex officio, clerk of the committees of the council, and shall attend all meetings of such committees when required by the chairman thereof. (Code 1959, §2-46)

SECTION 2-126. ISSUANCE AND SERVICE OF NOTICES GENERALLY.

The clerk of the council shall issue and place in the hands of the proper officer to be served all such notices as may be required to be issued under the provisions of this Code or other ordinance of the City. Any such notice shall be issued in the manner prescribed by law and shall be attested by him as clerk of the council. He shall file in his office the return of the officer upon any such notice. (Code 1959, §2-45)

SECTION 2-127. ISSUANCE OF NOTICES OF CALLED COUNCIL MEETINGS; ATTENDANCE AT MEETINGS.

The clerk of the council shall issue notices to each member of the council in case of a called meeting. He shall attend all meetings of the council. (Code 1959, §2-41)

SECTION 2-128. DUTIES WITH RESPECT TO MINUTE BOOK.

(a) The clerk of the council shall keep a book, to be styled the "Minute Book," in which shall be recorded the full proceedings of each and every meeting of the council. This book shall be kept accurately indexed.

(b) The clerk of the council shall keep a minute record in the journal of all petitions presented, all motions made or resolutions or ordinances introduced, to what

committee referred, and the final action thereon when the report of the committee is made. (Code 1959,§2-42)

Cross reference--Duty of clerk with respect to "General Ordinance Book," §2-67.
State Law Reference--Appointment, etc. Code of Virginia, §15.1-797.

SECTION 2-129. GENERAL DUTIES AS CUSTODIAN OF CITY DOCUMENTS.

Except as otherwise provided, the clerk of the council shall keep all bonds and contracts taken by order of the council and shall take charge of and carefully preserve all books, papers, records and other documents of the City that are not specially placed in the charge and keeping of some other officer. He shall prepare and record, in some book to be kept for the purpose, a list of all such documents which shall show the general character of each document and the date of its receipt by the clerk of the council. He shall not permit the original copy of any such document to be taken from his custody without leave of the council or unless required by law. All such documents shall be kept in a safe to be provided by the council or in a suitable place in the vault in the office of the clerk of the circuit court. (Code 1959, §2-44)

SECTION 2-130. DUTY TO FURNISH COPIES OF CERTAIN DOCUMENTS.

The clerk of the council shall, when any petition, communication, resolution or any other paper is referred to any committee of the council, deliver, within forty-eight (48) hours after the session of the council at which such reference is made, a copy of the same to the chairman of the committee to which the same is referred. The clerk of the council shall make out and deliver to the finance director, within forty-eight (48) hours after any session of the council, a copy of every ordinance or resolution adopted at the session appropriating money, and he shall, upon request, furnish a copy of any ordinance or proceeding of the council or of any public document in his custody to such officer of the City as may be entitled thereto. (Code 1959, §2-43)(Ord. No. 036-95, 9-12-95)

SECTIONS 2-131--2-141. RESERVED.

ARTICLE VIII. TREASURER

SECTION 2-142. BOOKS TO BE UNDER CONTROL OF COUNCIL.

The books of the treasurer shall be subject to the control of the council and shall, at any

time when required, be exhibited to the council or to such committee as the council may designate. (Code 1959, §7-7).

SECTION 2-143. COLLECTION OF AND ACCOUNTING FOR REVENUE.

The treasurer shall collect all taxes, license taxes and assessments levied by the council and he may receive all rents and other income or revenue of the City which it is not made the duty of some other officer to collect. He shall account for the same as the ordinances of the City may prescribe. (Code 1959, §7-4).

Cross reference--Taxation, Ch. 27.

SECTION 2-144. DUTIES WITH RESPECT TO BONDS OR OTHER EVIDENCE OF CITY'S INDEBTEDNESS.

The treasurer shall keep an account of each bond or other evidence of debt issued or executed by the City, which account shall show:

(1) The amount of each bond or other evidence of indebtedness and its character;
(2) The date when issued, when due and where payable;
(3) Under what law it was issued;
(4) If registered, in whose name it is registered;
(5) Its rate of interest and when and where payable; and
(6) What interest has been paid and to whom paid.

He shall cancel all coupons paid by him and retain the same until he has settled his accounts for the fiscal year. (Code 1959, §7-5).

SECTION 2-145. REPORTS TO FINANCE DIRECTOR.

(a) The treasurer shall deliver daily to the finance director a report showing an analysis of receipts by funds collected during the preceding business day and deposited in the bank.

(b) The treasurer shall report to the finance director, on the first day of each month, the balance in his account in each of the City depositories on the last day of the preceding month. (Code 1959, §7-6)(Ord. No. 049-95, 10-17-95)

Charter references--Office of treasurer created, §3; election and term of treasurer, §22.

State Law References--Salary, Code of Virginia. §14.1-55; terms of office Code of Virginia, §24-86, Constitution of Virginia; Article VII, §4; Election §15.1-40.1; Bonds §15.1-44, *et seq.*

SECTIONS 2-146 - 2-149. RESERVED.

SECTION 2-150. TAX FIELD OFFICE.

There is hereby created the tax field office, to be operated by a city employee entitled "field auditor", whose duty it shall be to investigate and ascertain whether each person engaged in any business or profession for which a license is required under this Code or any other ordinance of the City has secured a proper license, and whether each person in the City responsible for the payment of personal property taxes has reported and paid such taxes. In any case in which the amount of tax for such license is based on sales or purchases for the amount of business done, the field auditor shall have the power to summon the person engaged in such business or profession before him for examination under oath, and to require the production of any books, accounts, reportings, or records of such person for inspection by the auditor.

The auditor shall also have the power to summon any person responsible for payment of personal property taxes for examination under oath, and to require the production of any books, accounts, reports, or records of such person for inspection by the auditor.

The field auditor is further authorized and empowered to make such other and further investigations, examinations, and audits of the records, books, reportings, and accounts of such person as he shall deem proper in order to determine accurately the amount of license taxes properly payable or, in appropriate cases, the amount of personal property taxes properly payable. If it shall appear that the purchases, sales or amount of business, or any other matter pertinent to the assessment of license taxes, or any schedules of personal property have been incorrectly reported or returned, the field auditor shall report his findings to the commissioner of the revenue, who shall, if he is satisfied that an incorrect report or return has been made, assess a proper license tax or personal property tax in accordance with the findings of the inspector.

Any person who shall fail to appear before the auditor to produce the records, books, reportings, or accounts required by this section, when duly summoned, or shall refuse to permit the auditor to make such other and further investigation and audit of the books and papers as aforesaid, shall be guilty of a misdemeanor punishable as provided in §1-11. The field auditor shall have the authority to have a summons or warrant of arrest issued for any person in violation of the provisions of this section, and shall have the authority to represent the City in the prosecution for any such violation.

In the performance of his duties hereby imposed, the field auditor shall be subject to the supervision and direction of the commissioner of the revenue. (Ord. No. 028 -87, 11-10-87)

SECTIONS 2-151 - 2-155. RESERVED.

ARTICLE IX. DATA PROCESSING DIRECTOR AND FINANCE DIRECTOR

SECTION 2-156. DATA PROCESSING DIRECTOR; APPOINTMENT; DUTIES.

There is hereby created the office of data processing director. The data processing director shall be appointed by the city manager and shall have general charge and management of the data processing work of the City and such other duties as the council or the City manager may require. (Ord. No. 036-95, 9-12-95)

SECTION 2-157. OFFICE CREATED; APPOINTMENT.

There is hereby created the office of finance director. The finance director shall be appointed by the city manager. (Code 1959, §7-9; Ord. of 4-13-76)(Ord. No. 049-95, 10-17-95)

SECTION 2-158. GENERAL POWERS AND DUTIES.

The finance director shall, under the control of the city manager, have the general charge and management of the accounting work of the City. He shall perform such duties as are required by him by the terms of this article and other ordinances of the City, and such other duties as the council or the city manager may require. (Code 1959, §7-9; 7-10; Ord. of 04-13-76)(Ord. No. 036-95, 9-12-95)

SECTION 2-159. DEPUTY DIRECTOR.

The city manager shall designate, on the recommendation of the finance director, a deputy finance director who shall be an employee of the director's office and shall perform such duties as may be assigned to him from time to time by the director. In the absence of the finance director, the deputy director shall act and have the same powers and duties as the director. (Code 1959, §7-11)(Ord. No. 049-95, 10-17-95)

SECTION 2-160. RECORDS GENERALLY.

The finance director shall keep complete records reflecting the financial condition and the results of operations of the water utility and such other records as he or the council or manager may deem necessary and advisable. All records shall be maintained, insofar as practicable, in accordance with accepted principles and procedures prescribed for municipalities. (Code 1959, §7-13) (Ord. No. 049-95, 10-17-95)

Cross reference--Water utility, §29-22, *et seq.*

SECTION 2-161. PREPARATION AND CUSTODY OF FISCAL ACCOUNTS AND RECORDS; SUPERVISION OF OFFICE.

The finance director shall superintend and be responsible for the proper and accurate preparation and custody of all fiscal accounts and records of the City, except those maintained by the treasurer. He shall have direct supervision over his office and shall be responsible for the proper operation thereof. (Code 1959, §7-12)(Ord. No. 049-95, 10-17-95)

SECTION 2-162. MANNER OF KEEPING ACCOUNTS.

The finance director shall keep all accounts necessary to reflect, at all times, the resources, obligations, revenues, expenditures and surplus of each fund. Such accounts shall be kept in detail and by funds in such a manner as to show at all times the estimated revenue, realized revenue and unrealized estimated revenue, and the appropriations, expenditures, encumbrances and unencumbered appropriations for each department and agency of the City government. The appropriations and expenditures shall be classified by functions and by objects, if the latter is deemed necessary. (Code 1959, §7-13)(Ord. No. 049-95,10-17-95)

SECTION 2-163. DUTY AS TO TREASURER.

The finance director shall charge the treasurer, whose duty it is to collect the revenues of the City, with the whole amount of taxes of all types, including penalties, licenses of all types, including penalties, utility bills, including penalties, and other revenues which it is the duty of the treasurer to endeavor to collect, and shall credit the treasurer with all collections made by the treasurer and reported to the finance director. (Code 1959, §7-14)(Ord. No. 049-95, 10-17-95)

SECTION 2-164. TRANSFERS BETWEEN FUNDS OR DEPARTMENTS, ETC.

The finance director shall not make or enter in the books of accounts any cash or appropriation transfer between funds or departments, bureaus or agencies except upon order of the council or its properly delegated agent. (Code 1959, §7-37)(Ord. No. 049-95, 10-17-95)

Charter reference--Authority of council to transfer appropriation to other purpose or object, §11.

SECTION 2-165. DEDUCTION OF AMOUNTS DUE CITY.

Any amount which may be due the City may be deducted and withheld by the finance director from any and all accounts and payrolls payable by the City, and the director shall pay the vendor or employee the balance due on his account or compensation after such deduction. (Code 1959, §7-29)(Ord. No. 049-95, 10-17-95)

SECTION 2-166. AUTHORITY TO CALL ON OTHER OFFICERS AND EMPLOYEES FOR INFORMATION, RECORDS, ETC.

The finance director is authorized to call on the city attorney, treasurer, commissioner of the revenue or any other officer or employee of the City for any information, books, records, or accounts in the possession of any such person which he deems necessary to enable him to make up any monthly, annual or other report. (Code 1959, §7-41)(Ord. No. 049-95, 10-17-95)

SECTION 2-167. INSPECTION OF BOOKS AND RECORDS BY OTHER OFFICERS.

All books, records, and papers in the custody of the finance director shall be open for the inspection of the members of the council, the city manager, the city attorney or any other officer of the City who, in the discharge of his duties, may have occasion to examine them. (Code 1959, §7-42)(Ord. No. 049-95, 10-17-95)

SECTION 2-168. REPORTS GENERALLY.

The finance director shall prepare all financial reports and data requested by the council or city manager and in addition shall prepare and submit monthly financial reports to the council, city manager, and department heads at the regular meeting of the council. Such monthly financial reports shall show the general status of all city funds and accounts as of the last day of the preceding calendar month. (Code 1959, §7-38)(Ord. No. 049-95, 10-17-95)

SECTION 2-169. ANNUAL FINANCIAL REPORT.

The finance director shall prepare an annual report showing the financial condition of all funds of the City as of the close of the fiscal year, the receipts and disbursements and the results of operation of all funds for the fiscal year. He shall submit such report to the council and city manager within sixty (60) days after the close of the fiscal year. (Code 1959, §7-40)(Ord. No. 049-95, 10-17-95)

SECTIONS 2-170 - 2-218. RESERVED.

ARTICLE X. INDUSTRIAL DEVELOPMENT AUTHORITY

SECTION 2-219. CREATION OF INDUSTRIAL DEVELOPMENT AUTHORITY.

Pursuant to Chapter 33, Title 15.1 of the Code of Virginia, as amended ("Industrial Development and Revenue Bond Act"), there is hereby created a political subdivision of the Commonwealth of Virginia named the "Industrial Development Authority of the City of Winchester". (Ord. No. 005-85, 4-09-85; Ord. No. 036-95, 9-12-95)

State Law Reference--Industrial Development and Revenue Bond Act, Code of Virginia, §15.1-1373 *et seq.*

SECTION 2-220. POWERS OF AUTHORITY.

The Industrial Development Authority of the City of Winchester shall have such public and corporate powers as set forth in the Industrial Development and Revenue Bond Act, including such powers as may be set forth in said Act from time to time.

All proceedings heretofore taken by the Authority within the powers granted industrial development authorities pursuant to the Act are hereby validated and confirmed.

The terms and provisions of this article shall become effective on date of adoption by the Common Council of the City of Winchester, Virginia. (Ord. No. 005-85, 4-09-85; Ord. No. 036-95, 9-12-95)

SECTIONS 2-221 - 2-271. RESERVED

CHAPTER 3

AIR POLLUTION CONTROL

SECTION 3-1. RULES OF CONSTRUCTION.

For the purposes of this chapter:

(a) Smoke shall be considered "dense" when its density is equal to or greater than number two (2) of the Ringelmann Chart adopted in Section 8.

(b) "Steam boiler" shall not be construed to include any steam boiler used only for the heating of private residences, except when such residences contain three (3) or more family units. (Code 1959, §§3-1, 3-4)

SECTION 3-2. APPOINTMENT OF AIR POLLUTION OFFICER.

The city manager shall appoint an air pollution officer. (Ord. No. 040-88, 10-11-88)

SECTION 3-3. INSPECTIONS TO ENFORCE CHAPTER.

The members of the police department or the officer designated by the city manager to act as the city air pollution officer may inspect boilers, heating plants, industrial incinerators and like equipment and establishments for the purpose of enforcing this chapter. In addition, the city manager may employ, engage, or obtain from time to time, if needed, a competent person for the purpose of making such inspections and otherwise enforcing this chapter. (Code 1959, §§3-2, 3-11, Ord. No. 040-88, 10-11-88)

SECTION 3-4. RIGHT OF ENTRY TO ENFORCE CHAPTER.

The members of the police department or the officer designated by the city manager to act as the air pollution officer may enter any premises in the daytime or nighttime for the purpose of making inspections referred to in Section 3-3 and of enforcing this chapter. (Code 1959, §3-12; Ord. No. 040-88, 10-11-88)

Charter reference--Power of city to preserve health of inhabitants, §1.03.

Cross references--Building regulations, Ch. 6; erosion and sedimentation control, Ch. 9; tax exemption for certified pollution control equipment, Chapter 27.

State Law References--Air pollution control, Code of Virginia, §10.1-1300 *et seq.*; submission of local ordinances to state air pollution control board, §10.1-1321; notification of local government, §10.1-1310.1; Right of entry of members of state air pollution control board, Code of Virginia, §10.1-1315.

SECTION 3-5. PENALTY AND LIABILITY FOR VIOLATIONS OF CHAPTER.

Any person convicted of a violation of any provision of this chapter shall be punished by a fine of not more than one thousand dollars ($1,000.00). All persons participating in any such violation, either as owners, proprietors, lessees, agents, tenants, managers, superintendents, engineers, firemen or janitors, or otherwise, shall severally be liable therefor and subject to such fine. (Code 1959, §3-8)

State Law References--Penalties for violation of state air pollution control law and rules, Code of Virginia, §10.1-1320; See also §10.1-1309.1, Penalties for violations of special orders of the Air pollution Control Board; Judicial Review of State Penalties, §10.1-1311.

SECTION 3-6. SEALING OF EQUIPMENT FOR REPEATED VIOLATIONS.

In the event that any person shall have been notified in writing by the air pollution officer- of three (3) violations of this chapter within any one-year period, then the commission may seal the equipment causing the violation to prevent further use until such time as necessary corrections have been made and approved by the air pollution commission. (Code 1959, §3-10; Ord. No. 040-88, 10-11-88)

SECTION 3-7. SPECIFICATION OF TIME FOR BLOWING DOWN OR CLEANING FLUES, ETC.

The air pollution officer may specify the time of day or night during which flues and like structures or apparatus may be blown down or cleaned. (Code 1959, §3-13; Ord. No. 040-88, 10-11-88)

SECTION 3-8. STANDARD FOR GRADING DENSITY OF SMOKE.

For the purpose of grading the density of smoke, the Ringelmann Chart, as published and used by the United States Bureau of Mines, which is hereby made a part of this chapter, shall be the standard. Two (2) copies of such chart shall be deposited with the city manager. (Code 1959, §3-3)

SECTION 3-9. ESCAPE OF DENSE SMOKE, CINDERS, FUMES, ETC.--PROHIBITED.

Except as otherwise provided, it shall be unlawful for any person to cause or allow to escape into the open air such quantities of dense smoke, cinders, soot, fly-ash, noxious acids, fumes, gases, dust, dirt or other materials in such place or manner as to cause injury, detriment, nuisance or annoyance to any other person or damage to any other property. (Code 1959, §3-5)

SECTION 3-10. SAME--EXCEPTIONS.

The following exceptions to the provisions of Section 3-9 shall be permitted:

(a) When a fire box is being cleaned out, or a new fire being built therein, smoke shall be permitted of a density of number two (2) smoke or less, as shown on the Ringelmann Chart adopted in Section 3-8, for a period of, or periods aggregating, nine (9) minutes or less in any one hour, or of a density in excess of number two (2) smoke, as shown on such chart, for a period of, or periods aggregating, six (6) minutes or less in any one hour.

(b) When melting from cold charges in commercial metal melting equipment, smoke shall be permitted of a density of number two (2) or less, as shown on the Ringelmann Chart, for a period of, or periods aggregating, nine (9) minutes or less in any two (2) hour period and of a density in excess of number three (3) smoke, as shown on the Ringelmann Chart, for a period of, or periods aggregating, six (6) minutes or less in any two (2) hour period. (Code 1959, §3-6)

CHAPTER 4

ALARM SYSTEMS

SECTION 4-1. DEFINITIONS.

For the purpose of this chapter, the following words and phrases shall the meanings respectively ascribed to them by this section:

Alarm Board shall mean a facility within the Communications Center located within the Public Safety Building, which is designed to receive direct signals from alarm system.

Alarm Monitoring shall mean a function of the Emergency Communications Center whereby emergency alarms will be monitored and received and police, fire, or rescue units dispatched per policy.

Alarm Subscriber shall mean the person who has primary control over the residence or commercial premises in which an alarm is installed or the person who contracts for such alarm services.

Alarm System shall mean an assembly of equipment and/or devices arranged to signal the presence of a hazard requiring urgent attention and to which police, fire & rescue and/or other emergency personnel are expected to respond.

Application for Connection shall mean a form to be completed in its entirety and submitted to the Emergency Communications Center prior to connection of an alarm within the Emergency Communications Center.

Application Fee shall mean a fee set forth in this chapter in the amount of $100, which is to be submitted with the completed application to the Emergency Communications Center prior to initiation of any monitoring by the Emergency Communications Center.

Audible Alarm shall mean a device designed for the detection of unauthorized entry or fire on protected premises which generates an audible sound when it is activated.

Automatic Dialing Device shall mean a device which is interconnected to a telephone line and is programmed to a selected and predetermined telephone number and which transmits by pre-recorded voice message or signal the existence of a hazard requiring urgent attention and to which police, fire & rescue, or other emergency personnel are expected to respond.

Bank shall mean a financial institution which is required by Federal law or regulation to maintain an alarm system or other device for notification of criminal activity related to robbery or burglary.

Chief of Police shall mean the chief of police of the City of Winchester or his designee.

Communications Supervisor shall mean the individual within the Emergency Communications Center responsible for day to day operations.

Digital Decoder shall mean a device within the Emergency Communications Center that receives coded information via telephone circuits, decodes the information, and provides the Emergency Communications Center with information enabling them to dispatch emergency personnel.

Emergency Medical Services Alarm shall mean an alarm that denotes the existence of a medical emergency requiring the summons and response of emergency medical personnel.

False Alarm shall mean any communication generated by an alarm system, sent directly or indirectly to police, or fire & rescue for the purpose of securing their response when, in fact, there is no hazard requiring urgent attention from either the police and/or fire & rescue personnel. False alarms include negligently or accidentally activated signals; signals which are the result of faulty, malfunctioning, or improper]y installed or maintained equipment; signals which are purposely activated to summon emergency assistance when requirement for such assistance does not exist; and signals for which the actual cause is not determined. False alarms shall not include signals activated by unusually severe weather conditions or other causes which are identified and determined by the chief of police and/or fire & rescue chief as related to their specific areas of responsibility.

Fire Alarm shall mean a signal from an alarm system denoting the existence of fire on the protected premises, or such alarm system requiring the response of emergency response personnel.

Fire Chief shall mean the fire & rescue chief of the fire & rescue department of the City of Winchester.

Person shall mean any individual, group of persons, firm, partnership, association of any kind, company or corporation.

Protected Premises shall mean the premises upon which an alarm system has been placed for the purpose of detecting a hazard as described in this section.

Subscriber shall mean an individual and/or firm that has an alarm system monitored within the Emergency Communications Center and has complied with all provisions set forth within this chapter.

Subscriber Monitoring Fee shall mean the assessment of $25.00 per month/$300.00 per year for each subscriber payable to the City of Winchester for which the Emergency Communications Center will perform the alarm monitoring function.

User shall mean any person using an alarm system regardless of whether the person owns the premises on which the alarm system is located. (Ord. No. 031-83, 9-13-83; Ord. No. 013-2002, 5/14/02)

(Note: The effective date of this Ordinance is July 1, 2002)

State Law Reference--Code of Virginia, §15.2-911.

SECTION 4-2. AUTOMATIC DIALERS.

(a) **D**ialing devices designed to automatically dial and transmit a prerecorded message or signal directly into the Emergency Communications Center may be programmed to dial a special telephone line terminating in the Emergency Communications Center, provided that the owner or lessee of such device has received approval from the chief of police, fire & rescue, or their designees, and complies with all other provisions in this section.

(b) The owner or lessee of an automatic dialing device which is programmed to dial a special telephone line transmitting directly into the Emergency Communications Center shall pay the City an application fee of fifty dollars ($50.00) per year to help defray administrative and operational costs of the system.

(c) Every business or person selling or leasing any automatic dialing device which is programmed to dial a special designated telephone line transmitting directly into the Emergency Communications Center shall either:

(1) Provide or make available at all times repair service for such device should it malfunction, and provide the alarm user written information which will enable the alarm user to properly operate and maintain the device. Additional information shall include telephone numbers where services for such device may be obtained at all times; or

(2) Furnish the alarm user, if the device is to be serviced by the user, a manual or other detailed information which enables the alarm user to properly operate, service, and maintain the device together with written information, including telephone number, concerning where service may be obtained.

(3) Provide “hands on” training to the owner regarding how to properly operate the device.
(Ord. No. 031-83, 9-13-83; Ord. No. 013-2002, 5/14/02)

(Note: The effective date of this Ordinance is July 1, 2002)

SECTION 4-3. AUTOMATIC DIALING DEVICE; RESTRICTIONS.

It shall be unlawful for any salesman, installer, or user to install or operate an automatic dialing device which is programmed to transmit a prerecorded message or coded signal directly to the Emergency E-9-1-1 telephone number, or to any other telephone line not designated by the Emergency Communications Center for this purpose.

(a) Any person who installs, operates, or maintains an automatic dialing device which is programmed to transmit a prerecorded message or code signal directly to an E-9-1-1 telephone number, or to any other telephone line not designated by the Emergency Communications Center for this purpose shall be deemed guilty of a Class 3 misdemeanor.

(b) Any person who possesses or controls an automatic dialing device which transmits a prerecorded message or code signal directly to an E-9-1-1 telephone number, or to any other telephone line not designated by the Emergency Communications Center for this purpose where there is no actual threatened emergency or criminal activity shall be deemed guilty of a Class 2 misdemeanor.

(c) This section shall apply only to those automatic dialing devices interconnected to the Emergency Communications Center .
(Ord. No. 031-83, 9-13-83; Ord. No. 013-2002, 5/14/02)

(Note: The effective date of this Ordinance is July 1, 2002)

SECTION 4-4. AUDIBLE ALARMS; POSTING OF NOTICE.

Every person maintaining or using an audible alarm shall post a current notice containing the type of alarm, the names and telephone numbers of the persons to be notified for rendering repairs or service and securing the protected premises during any hour of the day or night when the audible alarm is activated. Such notices shall be posted near the alarm in a position so that it is legible from the ground level adjacent to the location of the audible alarm. Any violation of this section shall be a Class 4 misdemeanor. (Ord. No. 031-83, 9-13-83; Ord. No. 013-2002, 5/14/02)

(Note: The effective date of this Ordinance is July 1, 2002)

SECTION 4-5. AUDIBLE ALARM DEACTIVATION.

Any audible alarm once activated must be silenced within thirty (30) minutes, either manually or by an automatic cutoff device. Any violation of this section shall be a Class 4 misdemeanor. (Ord. No. 031-83, 9-13-83)

SECTION 4-6. CONNECTION TO DIGITAL DECODER; REQUIREMENTS.

At the discretion of the Emergency Communications Center Supervisor any person may connect an alarm system directly to the digital decoder within the Emergency Communications Center upon the following conditions:

(a) Conformance to procedures and guidelines promulgated by the Emergency Communications Center.

(b) Submission of Emergency Communications Center forms to be provided of written request containing the following information:

(1) The name, address, and telephone number of the person making the request.

(2) The address and telephone number of the premises secured by the alarm system.

(3) The names, addresses, and telephone numbers of the person installing, the person maintaining, and the person owning the alarm system.

(4) The name, address, and telephone number of at least (4) persons to be contacted in the event of an alarm or alarm malfunction; and

(5) Monitoring fee is defined as an annual fee in the amount of $300.00 annually, payable to the City of Winchester on or before January 1st of each year for the Emergency Communications Center to perform the alarm monitoring function.

(6) The time, date, and name of the person who performed “hands on” training to teach the user proper alarm use.

(7) Any additional relevant information required by the chief of police.

(c) Alarm owners or lessees desiring to subscribe to the monitoring services of the Emergency Communications Center shall pay a non-refundable application fee at such time as the Application for Connection is submitted to the Emergency Communications Center for review. Subscribers of record will be provided with a new application upon adoption of this ordinance. Upon submittal of the new application, the application fee will be payable.
(Ord. No. 031-83, 9-13-83; Ord. No. 013-2002, 5/14/02)

(Note: The effective date of this Ordinance is July 1, 2002)

SECTION 4-7. RESPONSIBILITY OF SUBSCRIBER AFTER APPROVAL BY EMERGENCY COMMUNICATIONS CENTER.

Following approval of an alarm system connection by the Emergency Communications Center Supervisor the user shall be responsible for:

(a) Cost of installation and hook up to the decoder.

(b) Maintenance and testing of the alarm system.

(c) Continuous training of all employees and other persons who may have occasion to activate the alarm system. Such training program shall emphasize the proper setting, activation, and resetting of alarms.

(d) Execution of a written agreement absolving the City of Winchester from responsibility or obligation as to any omission or commission resulting from termination of the user's alarm system at the decoder in the Emergency Communications Center.

(e) Acknowledgement that the subscriber or their designee is responsible to have a representative immediately respond to the alarmed premises when requested by police and/or fire & rescue personnel.
(Ord. No. 031-83, 9-13-83; Ord. No. 013-2002, 5/14/02)

(Note: The effective date of this Ordinance is July 1, 2002)

SECTION 4-8. FALSE ALARMS; COLLECTION AND PAYMENT OF FEES AND PENALTIES.

(a) The owner or lessee of any alarm or automatic dialing device shall be penalized a fee of one hundred dollars ($100.00) for each false alarm in excess of three (3) transmitted by such device in any twelve-month period which resulted in a response by police, fire, rescue, or other emergency services personnel.

(b) The discretion as to which alarms are false shall be with the fire & rescue chief with fire alarms and the police chief with all other alarms based on information provided to the Emergency Communications Center by on-scene personnel from the applicable response agency.

(c) The City Treasurer shall administer collection of fees and penalties imposed by this chapter, based on information provided to him/her by the Emergency Communications Center.
(Ord. No. 031-83, 9-13-83; Ord. No. 013-2002, 5/14/02)

(Note: The effective date of this Ordinance is July 1, 2002)

SECTION 4-9. DISCONNECTION FROM DIGITAL DECODER.

Disconnection from the digital decoder shall occur in the event of the occurrence of three (3) or more false alarms originating from the same user location within any ninety (90) day period or in the event that a user fails to pay any fees and penalties imposed by this chapter within thirty (30) days of billing.

Such subscriber's alarm device may have monitoring continued if prior to expiration of a period of fifteen (15) days from the date of such notice the user remits all outstanding fees and penalties and provides evidence satisfactory in the judgment of the Emergency Communications Center that corrective action to prevent additional false alarms have been taken; otherwise, the Emergency Communications Center shall disconnect. (Ord. No. 031-83, 9-13-83; Ord. No. 013-2002, 5/14/02)

(Note: The effective date of this Ordinance is July 1, 2002)

SECTION 4-10. RECONNECTION TO DIGITAL DECODER.

An alarm system which has been disconnected from the digital decoder pursuant to Section 4-9 of this chapter may at the discretion of the Emergency Communications Center, when applicable, be reinstated. A reinstatement fee of one hundred dollars ($100.00) will be required to reinstate. (Ord. No. 031-83, 9-13-83; Ord. No. 013-2002, 5/14/02)

(Note: The effective date of this Ordinance is July 1, 2002)

SECTION 4-11. RETROACTIVE APPLICATION TO EXISTING ALARM BOARD CONNECTIONS.

The subscriber of any alarm system connected to the Emergency Communications Center on the effective date of this ordinance shall by written communication within thirty (30) days thereof notify the Emergency Communications Center of their intention to retain the connection of their alarm system to the alarm board in accordance with the provisions of this chapter.

Any user who after thirty (30) days from the effective date of this ordinance has failed to communicate this intention to retain the services of the Emergency Communications Center shall be disconnected. (Ord. No. 031-83, 9-13-83; Ord. No. 013-2002, 5/14/02)

(Note: The effective date of this Ordinance is July 1, 2002)

SECTION 4-12. INTENTIONAL FALSE ALARMS PROHIBITED.

It shall be deemed a Class 1 misdemeanor for any person to knowingly and willfully:

(a) Call or summon, without just cause, by telephone or other method any police, fire or rescue apparatus or personnel;

(b) Activate any alarm system to summon police, fire or rescue apparatus, or any other emergency personnel;

(c) Maliciously activate any manual or automatic fire alarm in any building used for public assembly or any other public use, including but not limited to schools, theaters, stores, office buildings, shopping centers and malls, coliseums and arenas, whether or not fire apparatus responds. (Code of 1959, §16-5)(Ord. No. 031-83, 9-13-83; Ord. No. 013-2002, 5/14/02)

(Note: The effective date of this Ordinance is July 1, 2002)

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

SECTION 4-13. USE OF ALARM WITHOUT PERMIT.

No user shall allow any alarm system or automatic dialing device which terminates in the Emergency Communications Center located in the Public Safety Building to become operational without first obtaining written permission from the Emergency Communications Center as required by this chapter. Violation of this section is punishable as a Class 3 misdemeanor. (Ord. 031-83, 9-13-83; Ord. No. 013-2002, 5/14/02)

(Note: The effective date of this Ordinance is July 1, 2002)

SECTION 4-14. LIMITATION OF LIABILITY.

The City of Winchester shall be under no duty or obligation to a subscriber or any other person under any provision of this chapter and shall not be held liable for actions, failure to act, or conditions including, but not limited to, any defects in an alarm system or any delays in transmission or responses to any alarm. (Ord. No. 031-83, 9-13-83; Ord. No. 013-2002, 5/14/02)

(Note: The effective date of this Ordinance is July 1, 2002)

SECTION 4-15. NON-APPLICABILITY.

ALARM SYSTEMS

(a) The provisions of this chapter shall not be applicable to audible alarms affixed to automobiles, boats, boat trailers, or recreational vehicles; or to alarm systems which generate a signal limited to the premises and intended to alert only persons on the premises.

(b) Governmental agencies or departments are exempt from fees required by this
(c) chapter.(Ord. No. 031-83, 9-13-83)

CHAPTER 5

ANIMALS AND FOWL

Art. I. In General, §§5-1--5-20
Art. II. Dogs, §§5-21--5-27
Art. III. Migratory and Nonmigratory Waterfowl, §§5-40 --5-43

ARTICLE I. IN GENERAL

SECTION 5-1. VIOLATIONS OF CHAPTER.

Except as otherwise specifically provided, any person violating any provision of this chapter shall be guilty of a Class 4 misdemeanor. (Code 1978, §4-1).

SECTION 5-2. REPEALED.

(Ord. No. 003-85, 3-12-85)

SECTION 5-3. REPEALED.

(Ord. No. 003-85, 3-12-85)

SECTION 5-4. LIVESTOCK OR FOWL RUNNING AT LARGE.

It shall be unlawful for any person to permit any livestock or fowl owned or kept by him to run at large within the corporate limits of the City. (Code 1959, §§4-1, 4-4; Ord. No. 003-85, 3-12-85)

State Law References--Authority to prohibit animals and fowl running at large, Code of Virginia, §15.1-870; strays, §55-202, *et seq.*

SECTION 5-5. STOPPING OR PARKING CONVEYANCE CARRYING LIVE ANIMALS RESTRICTED.

Except in instances of actual breakdown or refueling, it shall be unlawful for any person driving any conveyance carrying livestock or fowl to park or stop such conveyance at the

curb of the street or upon any driveway within the City. (Code 1959, §4-8; Ord. No. 003-85, 3-12-85).

Cross reference--Application of traffic regulations to persons riding or driving animals, §14-7.

State Law Reference--General authority of city to regulate animals and fowl, Code of Virginia, §15.1-870.

SECTION 5-6. CRUELTY TO ANIMALS GENERALLY.

(a) Any person who mistreats or neglects any animal as hereinafter described shall be guilty of a Class 1 misdemeanor.

1. Overdrives, overloads, tortures, ill-treats, abandons (except as provided in Section 5-7 of this chapter); willfully inflicts inhumane injury or pain not connected with bona fide scientific or medical experimentation to; cruelly or unnecessarily beats, maims, mutilates, or kills any animals, whether belonging to himself or another; deprives any animal of necessary sustenance, food, drink, shelter; or causes any of the above things or, being the owner of such animal, permits such acts to be done by another; or

2. Willfully sets on foot, instigates, engages in, or in any way furthers any act of cruelty to any animal; or

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

(b) The word "animal" as used in this section shall be construed to include birds and fowl.

(c) Nothing in this section shall be construed as prohibiting the dehorning of cattle. (Code 1959, §4-5; Ord. No. 003-85, 3-12-85)

State Law References--Similar provisions, Code of Virginia, §§18.2-403.1, 3.1-796.122; authority for this section and Section 5-6.1 and 5-6.2, §15.1-870.

SECTION 5-6.1. SHELTER REQUIRED.

It shall be unlawful for any person to keep a dog or other animal outdoors without providing the animal with shelter that may reasonably be expected to protect the animal from physical suffering or impairment of health due to exposure to the elements or adverse

weather. This shelter shall be of adequate size for the dog or other animal for which it is intended, shall be constructed with a solid base, and shall be of material which will repel the elements and help maintain the body temperature of the dog or other animal. Uninsulated metal barrels shall not be deemed to provide adequate shelter as required herein. (Ord. No. 003-85, 3-12-85).

State Law Reference--Similar provisions, Code of Virginia, §3.1-796.122.

SECTION 5-6.2. MEANS OF SECUREMENT.

It shall be unlawful for any person to fasten any dog or other animal outdoors with chains unless the chains are so placed or attached, with a swivel or otherwise, so that they cannot become entangled with themselves or other objects or with the chains of other dogs. Such chains shall be of a type commonly used for the size of dog involved, and shall be attached to the dog by means of a well fitted collar. Such chains shall be at least three times the length of the dog, or other animal as measured from tip of nose to base of tail, and shall allow the animal convenient access to adequate shelter as required by Section 5-6.1. (Ord. No. 003-85, 3-12-85)

SECTION 5-7. ABANDONING DOMESTIC ANIMAL.

Any person who shall abandon any dog, cat, or other domesticated animal in any public place, including the right-of-way of any public highway, road, or street, or on the property of another, shall be guilty of a Class 3 misdemeanor. (Ord. No. 003-85, 3-12-85)

State Law References--Similar provisions, Code of Virginia, §§3.1-796.122, 18.2-403.2.

SECTION 5-8. SHOOTING, ETC., BIRDS, ETC.

It shall be unlawful for any person to shoot, trap, or willfully harm any migratory or non-migratory bird or its nest and eggs, except the English sparrow, the starling, and the pigeon, within the corporate limits of the City. (Code 1959, §4-6, Ord. No. 003-85, 3-12-85)

Cross reference--General prohibition against discharging firearms, §16-7.

SECTION 5-9. DEPOSITING DEAD ANIMAL ON STREET OR SIDEWALK OR ALLOWING IT TO REMAIN UNBURIED.

If any person casts or otherwise deposits any dead animal into a road, alley or sidewalk, or knowingly permits any dead animal to remain unburied upon his property when offensive

to the public, such person shall be guilty of a Class 3 misdemeanor. (Code 1959, §4-7; Ord. No. 003-85, 3-12-85)

Cross reference--Littering streets and sidewalks, §11-3.

State Law References--Similar provisions, Code of Virginia, §§18.2-403.3, 18.2-323; disposal of dead dogs, §3.1-796.121; burial or cremation of dead animals generally, §18.2-510.

SECTION 5-10. RABIES EMERGENCY DECLARED.

A rabies emergency is hereby declared in the City of Winchester, and shall be deemed in existence until such time as the health director determines based on medical evidence that the emergency no longer exists. (Ord. No. 007-83, 3-08-83)

State Law Reference--Control of Rabies, Code of Virginia, §32.1-48.1, *et seq.*

SECTION 5-11. RABIES VACCINATION OF CATS.

(a) It shall be unlawful for any person to keep, harbor, or have in his custody or control for longer than fourteen (14) days any cat over the age of four (4) months, unless such cat has been vaccinated with a rabies vaccine licensed for use by the United States Department of Agriculture Veterinary Biologics Section. Such vaccinations must have been performed within the time span for which the vaccine is licensed.

(b) Rabies vaccination receipts, issued by a licensed veterinarian at the time of vaccination, shall be carefully preserved by the owner or custodian of a cat and exhibited promptly upon request for inspection by any animal warden or any other law enforcement officer.

(c) This section shall remain in effect so long as the rabies emergency declared by Section 5-10 of this chapter remains in effect. (Ord. No. 007-83, 3-08-83; Ord. 007-89, 2-14-89)

State Law Reference--Similar provisions, Code of Virginia, §3.1-196.97:1.

SECTION 5-12. UNVACCINATED ANIMALS - IMPOUNDMENT.

Any dog, cat, or other domesticated animal found in the City and not vaccinated as provided by this chapter which bites any other domesticated animal or any person shall be impounded by the animal warden or any other law enforcement officer, and shall be held for a period of ten (10) days.

Upon expiration of the ten (10) day period referenced herein, any animal not claimed by its owner may be disposed of by giving it into the possession of the Society for the Prevention of Cruelty to Animals (S.P.C.A.). (Ord. No. 003-85, 3-12-85)

SECTION 5-13. ANIMALS WITHIN THE CITY LIMITS.

(a) For the purposes of this section, the term "dangerous animal" refers to birds of prey, ferrets, lizards, snakes, and weasels.

(b) It shall be unlawful for any person who owns, possesses, or has control of a dangerous animal to permit such animal to be on the public sidewalks and streets located in the City of Winchester except for the following:

(1) Any animal in an escape-proof container.
(2) Any animal used as a part of a display, act, circus, parade or similar event sponsored by the Apple Blossom Festival or any other event of a public nature which has the prior approval of the City.(Ord. No. 026-93, 9-14-93)

Note: This section was designated Section 5-14 by Ord. No. 026-93, but has been renumbered Section 5-13.

SECTION 5-14. KEEPING LIVESTOCK AND FOWL WITHIN THE CITY LIMITS.

(a) For the purposes of this section:

(1) The term "livestock" refers to all breeds of cattle, goats, horses, llamas, sheep, and swine, including miniatures of each.
(2) The term "fowl" refers to all breeds of chickens, ducks, geese, guineafowl, peafowl, swans, and turkeys.

(b) It shall be unlawful for any person to raise or keep livestock or fowl within the City with the Exception of the following:

(1) The property on which the livestock or fowl is kept is at least two acres in size, and
(2) The livestock or fowl are securely fences or are otherwise prevented from escape.

(c) On properties of two or more acres, one animal unit is allowed for each acre in the property which is set aside for animal use.

(1) An animal unit consists of:
- (a) one (1) bull, cow, llama, or steer; or
- (b) three (3) horses; or
- (c) six (6) goats, sheep, or swine or any combination thereof; or
- (d) twelve (12) chickens, ducks, geese, guineafowl, peafowl, or swans or any combination thereof.

(2) For horses, goats, sheep, swine, chickens, ducks, geese, guineafowl, peafowl or swans the number of animals shall be rounded to the next higher whole unit.

(3) For the purposes of subsection (c), an animal shall not be counted until it reaches the age of eight months.

(d) Animals' owners shall be subject to the City sound restrictions (Chapter 17 of this Code) with regard to noises. (Ord. No. 026-93, 9-14-93)

Note: This section was designated as Section 5-15 by Ord. No. 026-93, but has been renumbered to Section 5-14.

SECTIONS 5-15 - 5-20. RESERVED.

ARTICLE II. DOGS

SECTION 5-21. LICENSE TAX.

(a) A license tax is hereby imposed on dogs required to be licensed under Section 3.1-796.87 of the Code of Virginia, in the following annual amounts:

(1)	Males and females	$ 8.00
(2)	Neutered males and spayed females	$ 4.00
(3)	Replacement tag for lost tag	$ 1.00

(b) The owner of any dog not paying the license tax herein imposed by April 30th of any year or as otherwise provided in subsection (c) or in section 5-23, shall pay two dollars ($2.00) per dog in addition to the rate prescribed by subsection (a) above. (Ord. No. 008-97, 4-8-97)

(c) The additional license tax after April 30th of any year imposed by paragraph (b) of this section shall be waived upon presentation to the city treasurer of a statement, signed by the owner of the dog under penalty of perjury, certifying that the dog was not owned by him or her in the Commonwealth of Virginia prior to May 1st of the license year; or that the dog was obtained after April 30th of the

license year, but not earlier than thirty days prior to making application for license; or that the dog was not four (4) months old or older prior to May 1st of the license year. (Ord. No. 026-79; Code 1978, §4-21; Ord. No. 003-85, 3-12-85; Ord. No. 007-89, 2-14-89; Ord. No. 038-90, 11-13-90; Ord. No. 025-91, 5-14-91; Ord No. 009-96, 05-14-96)

State Law Reference--Duty of City to prescribe dog license tax, Code of Virginia, §3.1-796.87.

SECTION 5-22. RABIES VACCINATION - REQUIRED.

(a) It shall be unlawful for any person to own, keep, hold or harbor any dog over the age of four (4) months within the City, unless such dog shall have been vaccinated with a type of rabies vaccine which is approved by the state department of health. Dogs vaccinated under the age of four (4) months must be revaccinated within twelve (12) months. Vaccinations may be given for twelve (12) to thirty-six (36) months. (Ord. No. 008-97, 4-8-97)

(b) Any person transporting a dog into this City from some other jurisdiction shall conform with the requirements of this section within thirty (30) days. (Code 1959, §4-10; Ord. of 7-11-78; Ord. No. 003-85, 3-12-85; Ord. No. 007-89, 2-14-89)

State Law References--Control of Rabies, Code of Virginia, §32.1-48.1, *et seq*; Similar provision as to licensing, §3.1-796-85.

SECTION 5-23. SAME - CERTIFICATE AND TAG.

(a) At the time of vaccination of a dog pursuant to Section 5-22, a suitable and distinctive collar tag and certificate of vaccination shall be issued to the dog owner. The collar tag shall be affixed to the dog's collar and must be worn at all times when the dog is not on the owner's property or in the immediate control of a responsible person.

(b) The certificate of vaccination issued under this section shall be signed by a licensed veterinarian and shall certify that the dog has been vaccinated in accord with the provisions of Section 5-22 of this chapter. The certificate shall show the date of the vaccination; the type of vaccine used; the rabies collar tag number; a brief description of the dog, including its sex and breed; and the name of the dog's owner.

(c) Upon presentation to the Treasurer of a current vaccination certificate and payment of the license tax, the Treasurer shall issue a dog license. The license shall be for a period of twelve (12) months, beginning April 1 of the year of application. The Treasurer may issue a dog license for a maximum of three (3)

years upon presentation of a multi-year vaccination certificate and the payment of the annual tax for the period of the dog license, so long as the license period does not exceed the vaccination certificate effective period. When the dog license has been issued, the certificate of vaccination shall be so marked and returned to the dog owner. (Ord. No. 008-97, 4-8-97)

(d) It shall be unlawful for any person to present a certificate of vaccination pursuant to subsection (c) above for a dog other than the dog for which it was issued. (Code 1959, §§4-11, 4-14, 4-15; Code 1978, §4-23; Ord. No. 003-85, 3-12-85; Ord. No. 025-91, 5-14-91)

State Law Reference--Evidence of vaccination prerequisite to issuance of dog license, Code of Virginia, provisions similar to subsection (d) above, Similar provision, Code of Virginia, §3.1-796.97.
Note: Ordinance No. 008-97 effective May 1, 1997.

SECTION 5-24. RUNNING AT LARGE.

(a) It shall be unlawful for any person to permit his or her dog to run at large as hereinafter defined. For the purpose of this section, a dog shall be deemed to run at large while roaming, running, or self-hunting off the property of its owner or custodian and not under its owner's or custodian's physical control.

(b) It shall be the duty of the animal warden and every law enforcement officer to apprehend any dog found running at large contrary to the provisions of this section and to impound such dog in the City pound or other suitable place. The animal warden or other duly designated law enforcement officer upon receiving any dog shall make complete registry, entering the breed, color, and sex of such dog and whether licensed. If licensed, the animal warden or other duly designated law enforcement officer shall enter the name and address of the owner and the number of the license tag. (Ord. of 2-11-75; Code 1978, §4-24; Ord. No. 026-79, 11-13-79; Ord. No. 003-85, 3-12-85)

State Law References--Authority, Code of Virginia, §3.1-796.93, §3.1-796.98, §3.1-796.100.

SECTION 5-24.1. DURATION OF IMPOUNDMENT; DISPOSITION OF UNCLAIMED DOGS.

It shall be the duty of the animal warden or other designated law enforcement officer to keep all dogs impounded in accordance with Section 5-24 of this chapter until redeemed or for a period of seven (7) days. If at the expiration of seven (7) days from the date of notice to the owner or the posting of notice as provided by Section 5-24.1 such dog shall not have been redeemed, it may be disposed of in a humane manner or given into the

possession of the Society for the Prevention of Cruelty to Animals (S.P.C.A.). (Ord. No. 003-85, 3-12-85; Ord. No.043-95, 9-12-95)

State Law Reference--Code of Virginia, §3.1-796.96.

SECTION 5-24.2. NOTICE TO OWNER OF IMPOUNDED DOG; REDEMPTION.

The operator or custodian of the pound shall make a reasonable effort to ascertain if the animal has a tag, license or tattooed identification. If such identification is found on the animal, a reasonable effort shall be made to return the animal to its owner. If the owner cannot be found, the operator or custodian shall attempt to place the animal for adoption before humanely destroying the animal. Such identified animal shall be held for a minimum of five (5) additional days beyond the period set out in Section 5-24.1. If the rightful owner of any animal confined may be readily identified, the operator or custodian of the pound shall make a reasonable effort to notify the owner of the animal's confinement within the next forty-eight (48) hours following its confinement. If the owner cannot be reasonably located, written notice shall be posted for two (2) days at two (2) or more conspicuous locations in the City describing the dog and the time and the place the dog was apprehended. In the event any animal confined pursuant to Section 5-24 is claimed by its rightful owner, the owner shall be charged as follows:

For impounding any dog	$ 10.00
For keeping any dog	$ 5.00 per day
For posting notice	$ 3.00

(Ord. No. 043-95, 9-12-95; Ord. No. 049-95, 10-17-95)

State Law Reference--Code of Virginia, §3.1-796.96.

SECTION 5-25. QUARANTINE IN CASE OF EMERGENCY.

When in the judgment of the health director an emergency shall be deemed to exist in the City or any section thereof due to a widespread rabies epizootic, for the protection of the public health the health director may declare a quarantine in the City or section thereof as may be affected, and restrict all dogs to the owners' premises or to the immediate custody of a responsible person for the duration of such emergency as it is set forth. (Code 1959, §4-16; Code 1978, §4-25; Ord. No. 003-85, 3-12-85)

State Law Reference--Authority of Council to adopt ordinances to prevent spread of rabies, Code of Virginia.

SECTION 5-26. BARKING OR HOWLING DOGS.

(a) The harboring or keeping of any dog which, by loud, frequent, habitual barking or howling, shall cause annoyance and disturb the peace and quiet of any person or neighborhood shall be unlawful.

(b) Any person annoyed by such loud, frequent, or habitual barking or howling may enter his own written complaint by summons returnable to the general district court. (Code 1959, §4-22; Code 1978, §4-26; Ord. No. 026-79, 11-13-79; Ord. No. 003-85, 3-12-85)

SECTION 5-27. DANGEROUS OR VICIOUS DOGS.

(a) The provisions of Section 3.1-796.93:1 of the Code of Virginia, 1950, as is in effect on July 1, 2006, are, hereby, incorporated by as though each and every word of said Section appeared here, the sole exception being that Section 3.1-796.93:1(J)(3), which imposes a felony penalty, is not incorporated. (Ord. No. 020-99, 7-13-99; Ord. No. 034-2006, 11-14-06)

(b) The phrases "Class 1 misdemeanor" and a "Class 2 misdemeanor" found at Section 3.1-796.93:1 of the Code of Virginia shall have the identical meanings as the same phrases found and defined at Section 1-11 (a)(1) of this Code. (Ord. No. 020-99, 7-13-99; Ord. No. 034-2006, 11-14-06)

State Law Reference--Code of Virginia, § 3.1-796.93:1.

ARTICLE III. MIGRATORY AND NONMIGRATORY WATERFOWL

SECTION 5-40. Intent.

(a) The large number of fowl attracted by feeding and baiting in and around Winchester increases the presence of harmful bacteria, which present a threat to public health and well being. Fecal matter from waterfowl contributes to the nutrient loading of water bodies thereby resulting in lessened water quality. Large numbers of waterfowl feeding, trampling and defecating cause damage to terrain and constitute a nuisance and health hazard to citizens, and a danger to the animals and environment.

(b) The purpose of this article is to control the feeding and baiting of migratory and nonmigratory waterfowl (hereinafter referred to as "fowl") in order to protect the public health and property and the water quality of lakes, ponds, rivers and streams in Winchester by reducing the amount of fecal matter from these fowl deposited in the water and on the adjacent shoreline and waterfront property caused in part by the feeding and baiting of these fowl by the public.

(c) This article is adopted under the authority granted pursuant to §29.1-527.1 of the Code of Virginia with strict compliance with the requirements including but not limited to notification prior to adoption of this article to the Department of Game and Inland Fisheries.

SECTION 5-41. Prohibition.

It shall be unlawful for any person upon public property in the City of Winchester in areas designated by appropriate signage erected at the discretion of the City Manager to:

(a) Feed or bait any migratory or non-migratory waterfowl.

(b) Create any condition which results in a congregation of migratory or non-migratory waterfowl on public property which:

(1) Results in an accumulation of waterfowl feces or droppings;
(2) Results in damage to flora, fauna or public property or safety or welfare;
(3) Results in a threat or nuisance to the public health, safety or welfare; or
(4) Results in a threat to the health, safety or welfare of said migratory or non-migratory waterfowl.

(c) This article shall not apply upon lands within a national or state park or forest or wildlife management area.

SECTION 5-42. Definitions.

The following definitions shall apply unless the context clearly indicates another meaning:

FEEDING and BAITING -- The placing, exposing, depositing, distributing or scattering, directly or indirectly, of shelled corn, shucked or unshucked, wheat or other grains, breads, salt or any other feed or nutritive substance, in any manner or form, so as to lure, attract or entice fowl to, on or over any such areas where such feed items and/or materials have been placed, exposed, deposited or scattered.

WATERFOWL and FOWL – Any waterfowl of the family Anatidae (ducks and geese) either migratory, nonmigratory or resident fowl.

SECTION 5-43. Violations and penalties.

Any person violating any provisions of this article shall, upon conviction, pay a civil penalty not less than $5 or more than $50, and shall pay the cost of prosecution. For each subsequent offense, he shall pay a civil penalty of not less than $25 or more than $50 and shall pay the cost of prosecution.

State Law Reference – Code of Virginia§29.1-527.1.

(Ord. No. 2008-43, 10/14/08)

CHAPTER 6

BUILDING REGULATIONS

Art. I. In General, §§6-1--6-15
Art. II Uniform Statewide Building Code, §§6-16--6-45
Div. 1. Generally, §§6-16--6-24
Div. 2. Permit Fees, §§6-25--6-35
Div. 3. Annual Elevator Certification, §§6-36--6-65
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Art. V. Identification and Inspection of Rental Dwelling Units, §§6-87--6-140
Div. 1. Generally, §§6-87--6-89
Div. 2. Notification and Inspection; Certificates of Compliance, §§6-90 --6-93
Div. 3. Inspection Fees and Enforcement; Revocation of Certificate, §§6-94 --6-130
Div. 4. Fees, §§6-131
Art. VI. Spot Blight [Abatement], §6-132-- 6-140
Art. VII. Amusement Device Regulations, §§6-141--6-142
Art. VIII. Enforcement, §§6-143--6-175

(Ord. Dated 8-9-76; Ord. No. 016-80, 9-9-80; Ord No. 004-90, 2-13-90; Ord. No. 023-92, 12-8-92; Ord. No. 040-95, 9-12-95; Ord. No.039-2003, 12-9-03; Ord. No. 017-2005, 5-10-05;Ord. No. 029-2005, 9-13-05Ord. No. 2008-05,01-08-08)

Editor's note--Ord. No. 016-80, adopted Sept. 9, 1980, repealed and re-enacted Code 1959, Ch. 5. At the discretion of the editor, said ordinance had been codified as amending Ch. 5, Arts. I-IV of the amended Code 1959, with the exception of 5-1 and 5-17, which sections did not derive from the former Ch. 5. In order to facilitate reference, the section numbers assigned in Ord. No. 016-80 have been included in the history note following the amended provisions.

Prior to amendment by Ord. No. 016-80, Arts. I-IV derived from an ordinance of Aug. 9, 1976, 5-1 - 5-14, 5-16 - 5-33, 5-36 - 5-54, an ordinance of April 11, 1978, and an ordinance of March 13, 1979.

Art. VI was not amended in 1980 and derived from an ordinance of Jan. 11, 1978. Art. VII derived from Ord. No. 021-83, June 14, 1983. Art. VIII derived from Ord. No. 011-89, March 14, 1989.

Ord. No. 008-83, 6-14-83; Ord. No. 027-83, 8-9-83; Ord. No. 006-84, 4-10-84; Ord. No. 016-87, 6-9-87; Ord. No. 023-87, 8-11-87; Ord. No. 026-87, 8-11-87; Ord. No. 025-88, 6-14-88; Ord. No. 054-88, 12-13-88; and Ord. No. 011-89, 3-14-89 incorporated amendments.
Ord. No. 004-90, adopted February 13, 1990, repealed and re-enacted Chapter 5 in its entirety.

Ord. No. 023-92, adopted December 9, 1992, and effective January 1, 1993, repealed and re-enacted Chapter 5 in its entirety. In order to facilitate reference, the section numbers assigned in Ord. No. 004-90 have been included in the history note following the amended provisions.

Ord. No. 040-95 adopted September 12, 1995, repealed and re-enacted Chapter 5 (now Chapter 6) in its entirety as a part of the 1995 City Code Recodification.

Cross references - Air pollution control, Ch. 3; erosion and sedimentation control, Ch. 9; fire prevention and protection, Ch. 10; waste resulting from building operations not to be collected by city, 11-23; planning, Ch. 19; streets and sidewalks, Ch. 26; street numbers for buildings, 26-3; establishing building lines, 26-4; water, wastewater, Ch. 29; protection of trees during building operation, 30-23.

ARTICLE I. IN GENERAL

SECTION 6-1. BUILDING OFFICIAL. GENERALLY.

(a) Office established. There is hereby established in the City the office of the building official, who shall be appointed by the city manager. The building official shall be qualified and certified as required by the Virginia Uniform Statewide Building Code.

(b) Duties. The building official shall issue permits, enforce all regulations which may be adopted by the common council and the Commonwealth of Virginia for the control of building construction, and keep permanent records of his work. (Ord. Dated 8-9-76, 5-3, 5-4; Ord. No. 016-80, 5-3, 5-4, 9-9-80; Ord. No. 004-90, 5-1, 2-13-90; Ord. No. 023-92, 5-1, 12-8-92)

Building Code Reference--USBC Section 102.2.2.

SECTION 6-2. INSPECTION OF CERTAIN STRUCTURES.

Notwithstanding any other provision of law, the building official, his designee and any other official of the City responsible for the safety of buildings may inspect any of the buildings or structures listed herein, whether permanent or temporary, including buildings or structures owned by the Commonwealth or its political subdivisions, and the equipment therein periodically to the insure compliance with the Virginia Uniform Statewide Building Code:

(a) Buildings or structures used to store hazardous materials;

(b) Buildings or structures to be used or occupied by twenty (20) or more persons who are employed, lodged, housed, assembled, served, entertained or instructed therein; and

(c) The common areas of residential structures containing four (4) or more units.

(Ord. No. 004-88, 5-2.1, 11-15-88; Ord. No. 004-90, 5-2, 2-13-90; Ord. No. 023-92, 5-2, 12-8-92)

State Law Reference--Code of Virginia, §36-105.

SECTION 6-3. BOARD OF BUILDING CODE APPEALS; CONTINUATION OF EXISTENCE; POWERS AND DUTIES.

There is established pursuant to the Virginia Uniform Statewide Building Code a Building Code Board of Appeals. It shall have such powers and duties as set forth in the Virginia Uniform Statewide Building Code, Volumes I and II, as amended. The Board shall have the power to establish time and places for meetings, and to establish procedures and forms necessary or convenient to the execution of its duties. (Ord. No. 023-87, 5-4, 8-11-87; Ord. No. 004-90, 5-4, 2-13-90; Ord. No. 023-92, 5-4, 12-8-92)

State Law Reference--Code of Virginia, §36-105.

SECTION 6-4. MEMBERSHIP. COMPENSATION; TERM.

(a) The Board of Building Code Appeals shall consist of five (5) members and three (3) alternate members. At least one member shall be a builder with at least ten (10) years experience in building, and at least one other member shall be a licensed professional engineer or surveyor. All appointments shall be made by the Common Council.

(b) The members shall serve without compensation. No employee or official of the City may serve as a Board member.

(c) The terms of existing Board members shall continue in effect throughout said member's terms. Thereafter, the terms shall be for five (5) years for members and one (1) year for alternate members. The members may be reappointed. Members may be removed without cause by the Common Council. Vacancies shall be filled for the unexpired term. (Ord. No. 023-87, 5-5, 8-11-87; Ord. No. 004-90, 5-5, 2-13-90; Ord. No. 023-92, 5-5, 12-8-92)

SECTION 6-5. MEETINGS.

The Board may hold regular meetings, and shall meet when an appeal is filed under the provisions of the Virginia Uniform Statewide Building Code. (Ord. No. 023-87, 5-6, 8-11-87; Ord. No. 004-90, 5-6, 2-13-90; Ord. No. 023-92, 5-6, 12-8-92)

Building Code Reference--USBC Section 116.0.

SECTION 6-6. TECHNICAL ASSISTANTS.

The City may employ personnel to assist the building official in the duties of the building department and in the inspection of building, plumbing, gas fitting, mechanical and electrical trades, known as technical assistants. These positions shall be appointed by the city manager. The technical assistants shall make inspections, reports, and record keeping as directed by the building official. Technical assistants shall be qualified and certified as

required by the Virginia Uniform Statewide Building Code within one year of appointment. (Ord. No. 023-92, 5-46, 5-98, 5-126, 12-8-92)

Building Code Reference--USBC Sections 102.3, 102.3.1, and 103.3.

SECTION 6-7. CRIMINAL PENALTIES FOR VIOLATIONS OF VIRGINIA UNIFORM STATEWIDE BUILDING CODE, VOLUME I

It shall be unlawful for any "owner", as defined by Section 36-97 of the Code of Virginia, 1950, as amended, or any other person, firm or corporation to violate any provisions of the Virginia Uniform Statewide Building Code, Volume I, as amended. Any violation of such provisions shall be deemed a misdemeanor, and any "owner", as defined by said Section 36-97 of the said Code of Virginia, or any other person, firm or corporation who is convicted of such violation, shall be punished by a fine of not more than $2,500. If the violation remains uncorrected at the time of conviction, the court shall order such violator to abate or remedy the violation in order to comply with said Chapter. Except as otherwise provided by the court for good cause shown, any such violator shall abate or remedy the violation within six (6) months of the date of conviction. Each day during which the violation continues after the court-ordered abatement period has ended shall constitute a separate offense. Any person convicted of a second offense committed within less than five (5) years after a first offense under this chapter shall be punished by a fine of not less than $1,000 or more than $2,500. Any person convicted of a second offense committed within a period of five (5) to ten (10) years of a first offense under this chapter shall be punished by a fine of not less than $500 or more than $2,500. Any person convicted of a third or subsequent offense committed within ten (10) years of an offense under this chapter shall be punished by confinement in jail for not more than ten (10) days and a fine of not more than $2,500, either or both.

SECTION 6-8. VIOLATIONS OF VIRGINIA UNIFORM STATEWIDE BUILDING CODE, VIRGINIA MAINTENANCE CODE; MISDEMEANOR, CIVIL PENALTIES.

(a) Violations of Chapter 1, Section 105, Unsafe structures or structures unfit for human habitation shall be deemed a misdemeanor. Penalties shall be as set out in §36-106(A) of the Code of Virginia as amended.

(b) Violations resulting or that results in a dwelling not being a safe, decent and sanitary dwelling, as defined in §25.1-400 Code of Virginia, shall be deemed a misdemeanor. Penalties shall be as set out in §36-106(B) Code of Virginia as amended.

(c) In lieu of criminal penalties otherwise chargeable under the Virginia Uniform Statewide Building Code, Virginia Maintenance Code and in accordance with

§36-106(C) of the Code of Virginia as amended, except for any violation resulting in injury to any person or persons, the following civil penalties shall be imposed upon any person who violates the provisions thereof after compliance with the initial notice has not been achieved:

Failure to obtain any required inspection:

First summons, per day	$100.00
Second or subsequent summonses, per day	$150.00

Violation of any other provision of Virginia Maintenance Code of the Virginia Uniform Statewide Building Code:

First summons, per day:	$ 75.00
Second or subsequent summonses, per day	$150.00

Failure to display or maintain street numbers:

First summons	$ 25.00
Second or subsequent summonses, per summons	$ 50.00

(b) With the exception of the street numbering provisions of Section 26-3, each day during which a violation exists shall constitute a separate violation. However, a series of violations arising from the same operative set of facts shall not give rise to the levying of a civil penalty more frequently than once in any ten (10) day period, and shall not result in civil penalties exceeding a total of three thousand dollars ($3,000.00).

(Ord. No. 021-2005, 6-14-05; Ord. No. 2008-04, 01-08-08)

SECTION 6-9. VACANT BUILDING REGISTRATION; PENALTY

The following words, terms and phrases, when used in this article, shall have the meaning ascribed to them in this section:

Owner means the person shown on the current real estate assessment books or current real estate assessment records.

Vacant Building means a building that:

No person or persons actually, currently conducts a lawfully licensed business; or,

No person or person(s) lawfully resides or lives in the building as the legal or equitable owner(s) or tenant-occupant(s), or owner-occupants, or tenant(s) on a permanent, non-transient basis; or,

All residential and business activity has ceased; or,

Has been declared unsafe or unfit for human habitation as defined in the Virginia Maintenance Code and ordered vacated by the Building Official and or his designee; and,

Does not include buildings which are undergoing construction, renovation, or rehabilitation and which are in compliance with all applicable ordinances, codes, and regulations, and for which construction, renovation or rehabilitation is proceeding diligently to completion.

(a) The owner of a vacant building which has been continuously vacant for a period of twelve (12) months or more must register the building annually with the Building Official. Such registration shall be on a form prescribed by the Building Official. A building shall be deemed "continuously vacant", as that term is used in this subsection, even if it is sporadically or intermittently occupied during the twelve (12) month period.

(b) The annual fee for such registration shall be Twenty-Five Dollars ($25.00). The fee shall be paid at the time that the building is initially registered. For each subsequent year, or any part of such year, that the building remains continuously vacant, an annual and non-refundable fee of Twenty-Five Dollars ($25.00) shall be paid within fifteen (15) days of the anniversary date of the building's initial registration.

(c) Failure to register a vacant building as required by this section shall be punishable by a civil penalty not exceeding Fifty Dollars ($50.00). Failure to register in conservation and rehabilitation districts designated by the Common Council for the City of Winchester, or other areas designated as blighted pursuant to section 36-49.1:1 of the Code of Virginia, 1950, as amended, shall be punishable by a civil penalty not exceeding Two Hundred Fifty Dollars ($250.00).

(d) The Building Official, or his or her designee, shall mail a Notice of violation to the owner(s) of the vacant building, at the address to which property tax notices are sent, at least thirty (30) days prior to the assessment of the civil penalty.
(Ord. No. 028-2005, 9-13-05; Ord. No. 2008-29, 6-10-08)

State Law Reference—Code of Virginia, §15.2-1127.

SECTIONS 6-10 - 6-15. RESERVED.
(Ord. No. 004-90, 2-13-90; Ord. No. 023-92, 12-8-92)

ARTICLE II. UNIFORM STATEWIDE BUILDING CODE VOLUME ONE, NEW CONSTRUCTION CODE

DIVISION 1. GENERALLY.

SECTION 6-16. AVAILABILITY OF COPIES.

Copies of the current edition of the Virginia Uniform Statewide Building Code, Volume I, New Construction Code, as adopted in conformity with Chapter 6 of Title 36 of the Code of Virginia, and amendments thereto are on file in the office of the Building Official, Rouss City Hall, where they are available for public examination on Monday through Friday from 8:00 A.M. to 5:00 P.M., holidays excepted. (Ord. Dated 8-9-76, 5-2; Ord. No. 016-80, 5-2, 9-8-80; Ord. No. 011-89, 5-16, 3-13-89; Ord. No. 004-90, 5-16, 2-13-90; Ord. No. 023-92, 5-16, 12-8-92; Ord. No. 040-95, 9-12-95)

SECTION 6-17. PREREQUISITES TO ISSUANCE OF BUILDING PERMITS ON EXISTING STREETS.

No building permit required by the Virginia Uniform Statewide Building Code will be issued on an existing street unless: (i) the applicant has entered into a street improvement contract with the City providing for the payment of the applicant's share of the cost of the street improvements; and, (ii) unless water and sewer service is available as defined herein, or unless the applicant has executed an agreement for water and sewer extensions and an agreement to hold harmless and indemnify the City for any loss occasioned by the lack of available water and sewer.

As used in this section, water service is available when it is operational in such form so as to allow the City fire department to respond to a fire in the structure for which the building permit is applied, at the applicant's property line or within 300 feet of said structure. Sewer service is available when it is operational at the applicant's property line. (Code 1959, 22-12; Ord. No. 025-88, 5-17, 6-14-88; Ord. No. 004-90, 5-17, 2-13-90; Ord. No. 023-92, 5-17, 12-8-92.)
Cross references--Public improvements paid for by local assessment, 2-11; streets and sidewalks, Ch. 26; water and sewers, Ch. 29.
State Law Reference—Code of Virginia , §36-97, *et seq*.

SECTION 6-18. PREREQUISITE FOR FOOTING INSPECTION.

Whenever any proposed setback or yard is less than the required setback or yard plus two (2) feet, the owner or developer shall provide, at the time of footing inspection, survey markers locating the required setback or yard, which have been set and certified by a land surveyor licensed under the laws of the Commonwealth of Virginia. Survey markers may be offset up to but not exceeding four (4) feet. The amount of offset shall be clearly indicated on the survey marker. The markers shall remain in place and undisturbed until the completion of the foundation wall. (Ord. No. 011-89, 5-18, 3-14-89; Ord. No. 004-90, 5-18, 2-13-90)

SECTION 6-19. PREREQUISITES TO ISSUANCE OF CERTIFICATES OF USE AND OCCUPANCY.

No Certificates of Use and Occupancy will be issued until the following conditions have been met:

(1) The building is in compliance with the Virginia Uniform Statewide Building Code, applicable edition and amendments.

(2) All required public improvements serving the subdivision or property not part of a subdivision are complete, operational and accepted into the City system. Such public improvements include, but are not limited to, streets, storm drainage systems, water and sewer service.

(3) All required site plan improvements are complete and operational or the completion is covered by bond as provided by the Zoning Ordinance of the City of Winchester, Virginia.

(4) An as-built site plan prepared and signed by a surveyor licensed under the laws of the Commonwealth of Virginia has been filed. This requirement shall apply only to structures proposed to be located within two (2) feet of any applicable yard or setback required by Zoning Ordinance. This requirement shall not apply to structures accessory to single-family residential structures. Said site plan shall not be smaller in scale than 1 inch to 50 feet drawn in accordance with an accurate boundary survey and shall show:

- The location of all structures including porches, decks and stoops
- Perimeter dimensions of structures, including habitable or encroaching overhangs
- The nearest perpendicular distance from lot lines with at least one side tied at two or more corners
- Utility and access easements
- Paved areas
- Improvements required by the Winchester Zoning Ordinance

(5) Any required zoning variances or special exceptions have been obtained or applied for in accordance with the City of Winchester Zoning Ordinance. (Ord. No. 011-89, 5-19, 3-14-89; Ord. No. 004-90, 5-19, 2-13-90; Ord. No. 023-92, 5-19, 12-08-92)

SEC**T**ION 6-20. **REPEALED**. (Ord. No. 021-2005, 6-14-05)

SECTION 6-21 - 6-24. **RESERVED**. **(**Ord. No. 004-90, 2-13-90; Ord. No. 023-92, 12-08-92)

DIVISION 2. BUILDING PERMIT FEES

SECTION 6-25. EXEMPTION FROM FEE.

No fees shall be required under this division for work performed directly for the City through its own employees, agents or contractors. (Ord. No. 027-83, 5-25, 8-9-83; Ord. No. 004-90, 5-25, 2-13-90; Ord. No. 023-92, 5-25, 12-8-92; Ord. No. 040-95, 9-12-95)

SECTION 6-26. REPEALED.

(Ord. No. 017-97, 07-8-97)

SECTION 6-27. PRESCRIBED. GENERALLY.

A permit for the construction or alteration of a building, structure, sign, plumbing, gas or mechanical work shall be charged a fee according to the following schedule. Fees shown are based on a per square foot basis unless otherwise indicated. In addition to these fees, an additional 1.75% shall be charged to support the Virginia Building Code Academy and other training programs in accordance to the Virginia Uniform Statewide Building Code.

New Construction and additions:

Residential and institutional construction (Churches, schools, etc.).
- Finished floor area ..... $ 00.16
- Unfinished floor area ..... $ 00.12
- Minimum fee ..... $ 40.00

Commercial and industrial
- Finished floor area ..... $ 00.24
- Minimum fee ..... $ 60.00

Industrialized buildings or shells, including slab and foundation (warehouse, etc.) ..... $ 00.20

Remodeling and/or finishing of shell space.
- Residential ..... $ 00.14
  - Minimum ..... $ 40.00
- Institutional, commercial or industrial ..... $ 00.16
  - Minimum ..... $ 60.00

Garage or carport ..... $ 00.14

Accessory building or structure ..... $ 00.14

Prefabricated homes with third party inspection seal (each) (plus foundation permit) $120.00

Replacement, special items, and services:

Deck or porch (each) ..... $ 50.00

Demolition (each) ..... $ 80.00

Plus bond ..... $ 500.00

(Note: An irrevocable letter of credit from a financial institution in the amount of $500.00 may be placed on file with the city treasurer in place of a bond.)

Asbestos removal permit ..... $ 60.00

Automotive lifts (per unit) ..... $ 40.00

Dumbwaiters (each) ..... $ 40.00

Elevators (each) $100.00

Escalators (each - per floor) ..... $ 40.00

Fence (over 6 feet - per 50 linear feet) ..... $ 40.00

Retaining wall (per 50 feet) ..... $ 40.00

Fireplace, chimney, or wood stove (each) ..... $ 40.00

Foundation only (each) ..... $ 80.00

Moving building (plus foundation permit) $100.00

Radio towers and like structures (each) ..... $ 40.00

Re-roofing (per job location):
- Residential ..... $ 50.00
- Non-residential $100.00

Re-siding (per job location) ..... $ 50.00

Sign permit (per sign) ..... $ 40.00

Swimming pool (each)
Residential .....$ 60.00
Non-residential $100.00
Storage tanks (under or above ground - each)
Removal .....$ 50.00
Installation .....$ 80.00
Temporary structures .....$ 60.00
Tents on residential property .....$ 40.00
Tents on non-residential property.....$ 60.00
Bleachers and grandstands (per site) .....$ 40.00
Safety glass replacement.....$ 30.00

Services:

Temporary certificate of occupancy
Residential (per unit) .....$ 60.00
All other $150.00
Renewal (all TCO's)..... $100.00
Permit renewal .....$ 50.00
Refunds - All permits -
Permits less than $20.00 and minimum and base fees.....No Refund
No work started.....75% of the fee above the minimum or base fee.
Work started.....Based on percentage of work complete.
Not to exceed 50% of permit fee. Base fee is non-refundable.
Annual permit (where approved)..... $200.00
Re-inspection (failure to be ready or second rejection).....$ 50.00
Pre-application plan preview
Residential one and two family ....$ 60.00
Residential (three units) $100.00
Additional per unit ....$ 20.00
Non-residential.....$200.00

New plans on previously approved project requiring a new plan review (per s.f.).....$ 00.04

Change of use inspection
Residential .....$ 40.00
Commercial, industrial $100.00
Occupancy inspection
One and two family residential .....$ 40.00
Other residential (per unit) .....$ 60.00
Non residential $100.00

For work not specifically listed above or unable to be evaluated, the fee shall be 6.00 per $1,000 or fraction thereof, of estimated cost, which includes materials and labor.

Plumbing Work:

Base permit fee:
Residential (per unit) .....$ 30.00
Non-residential (per unit or floor) .....$ 40.00
Water service inspection .....$ 16.00
Sewer service inspection .....$ 16.00

Per fixture (includes floor drain, hose connections, and outlets) ..... $ 7.00
Re-inspection (failure to be ready or second rejection) ..... $ 50.00
Prefabricated homes with third party inspection seals ..... $ 40.00
Cross connection device (each) ..... $ 10.00
Maximum $200.00
Irrigation sprinkler system (base) ..... $ 40.00
Additional per head ..... $ 3.00

Mechanical Work:

Base permit fee:
Residential (per unit) ..... $ 20.00
Non-residential (per unit or floor) ..... $ 30.00
Heat pumps and Air Conditioning (per unit) ..... $ 30.00
Each additional ton over 5 ..... $ 10.00
Maximum per unit $240.00
Furnace or boiler to 100,000 BTU (per unit) ..... $ 30.00
Each additional 100,000 BTU's ..... $ 10.00
Maximum $240.00
Fire dampers (each) ..... $ 5.00
Crematorium and incinerators (each) ..... $ 80.00
Commercial range hoods (each) ..... $ 50.00
Refrigeration systems (per unit) ..... $ 50.00
Each additional ton over 5 ..... $ 10.00
Oil burners conversion or replacements ..... $ 60.00
Re-inspection (failure to be ready or second rejection) ..... $ 50.00
Other mechanical work not specified ..... $6.00 per $1000 or fraction there of, of estimated cost, $40.00 minimum

LP Gas Work:

Base permit fee:
Residential (per dwelling unit) ..... $ 20.00
Non-residential ..... $ 30.00
Per appliance or outlet ..... $ 7.00
Re-inspection (failure to be ready or second rejection) ..... $ 50.00

Natural Gas Work:

Note: The Shenandoah Gas Company provides funding for inspection of all natural gas work performed in the City. Permits are required, but there are no fees charged to the customer.

Fire Protection:

Automatic Sprinklers:
Residential (13D) ..... $ 50.00
Limited Area (per 20 heads) ..... $ 50.00
Commercial (NFiPA systems) (base fee) ..... $ 60.00

Additional per head.....$ 1.00
Fire pumps (per pump) .....$ 80.00
Standpipe systems (per riser).....$ 80.00
Underground fire line (per line) .....$ 60.00
Water fixed spray, Foam, Carbon Dioxide, Halogenated, Dry chemical, Wet chemical systems (base fee).....$ 60.00
Additional per head/outlet .....$ 2.00
Fire alarm systems (base fee).....$ 60.00
Additional per device.....$ 1.00
Re-inspection fees:
Hydrostatic retest (after one test) $100.00
Fire alarm systems (after two inspections)
Base fee .....$ 50.00
Additional per device .....$ 00.50
Change from approved plans requiring new plan review
Base fee .....$ 50.00
Additional per added or moved device or head .....$ 00.50
All other (failure to be ready or second rejection) .....$ 50.00

Electrical:

*Note: Electrical inspections are performed by a third party firm under contract with the City of Winchester. Permit fees are collected by the third party firm as agent for the building official. A fee of $1.50 shall be paid by the third party firm to the City for each permit obtained.

Annual Elevator Certification:

Passenger or Freight elevators (each) .....$ 20.00
Escalators (each) .....$ 20.00
Dumbwaiters (each) .....$ 20.00
Man Lift .....$ 20.00

Amusement Devices:

Each Kiddie Ride .....$15.00 or $7.50 approved 3rd party inspection
Each Major Ride .....$25.00 or $12.50 approved 3rd party inspection
Each Spectacular Ride .....$45.00 or $22.50 approved 3rd party inspection

(Ord. Dated 8-9-76, 5-5 - 5-13; Ord. No. 016-80, 5-5 - 5-13; Ord. No. 027-83, 5-26, 8-9-83; Ord. No. 006-84, 5-26, 4-10-84; Ord. No. 016-87, 5-26, 6-9-87; Ord. No. 026-87, 5-26, 8-11-87; Ord. No. 004-90, 5-27, 2-13-90; Ord. No. 023-92, 5-27, 5-37, 5-66, 5-76, 5-85, 5-113, 5-132, 12-8-92; Ord. No. 040-95, 9-12-95; Ord. No. 026-2002, 10-8-02; Ord. No. 032-2003, 10-14-03)

State Law Reference--Code of Virginia, §36-105, authority to levy fees to defray cost of enforcement of building code.

Building Code Reference--USBC Section 108.1-2.

SECTIONS 6-28 - 6-35. RESERVED.
(Ord. No. 004-90, 2-13-90)

DIVISION 3. ANNUAL ELEVATOR CERTIFICATION.

SECTION 6-36. ANNUAL ELEVATOR CERTIFICATION.

All elevators, escalators, dumbwaiters, and man lifts shall be annually certified in accordance with the Virginia Uniform Statewide Building Code. A copy of this certification shall be received in the office of the building official by March 1 of each year. Upon receipt and acceptance of this certification, the building official shall issue a certificate of compliance to the owner/operator. This certificate shall be posted in a conspicuous place on or near the device. This certification will be the responsibility of the owner/operator of the device and inspected and tested by a third party inspection firm approved by the building official. The third party inspector shall be certified through the Virginia Department of Housing and Community Development or able to obtain the same. (Ord. No. 004-90, 5-36, 2-13-90; Ord. No. 023-92, 5-36, 12-8-92)

SECTION 6-37. FEES.

Application for the certificate of compliance shall be made on forms provided by the building official. The applicant shall pay to the city treasurer a fee in accordance with Section 6-27. (Ord. No. 004-90, 5-37, 2-13-90; Ord. No. 023-92, 5-37, 12-8-92)

SECTIONS 6-38 - 6-65. RESERVED.

(Ord. No. 004-90, 2-13-90; Ord. No. 023-92, 5-46 -5-65, 12-8-92)

ARTICLE III. ELECTRICITY.

DIVISION 1. PERMIT.

SECTION 6-66. APPLICATIONS; PAYMENT OF FEES.

It shall be the duty of any person installing wire, conduits, apparatus, fixtures or other appliances for the use or transmission of electricity for light, heat, power or other purposes falling within the provisions of this chapter first to file application for an electrical permit. The authorized third party inspection service shall pay a fee as prescribed in Section 6-27. (Ord. No. 023-92, 5-96 -5-98, 12-8-92)

SECTIONS 6-67 - 6-80. RESERVED.

(ORD. NO. 023-92, 12-8-92)

ARTICLE IV. BUILDING MAINTENANCE CODE

DIVISION 1. GENERALLY.

SECTION 6-81. ADOPTED; AVAILABILITY OF COPIES.

The Virginia Uniform Statewide Building Code, Volume II, Building Maintenance Code, 1990 edition including any later amendments made thereto over time, including later editions are hereby adopted and incorporated by reference. Copies of said Code and amendments are on file in the office of the Building Official, Rouss City Hall, where they are available for public examination on Monday through Friday, from 8:00 a.m. to 5:00 p.m., holidays excepted. (Ord. No. 023-87, 5-136, 8-11-87; Ord. No. 011-89, 5-136, 3-14-89; Ord. No. 004-90, 5-136, 2-13-90; Ord. No. 023-92, 5-136, 12-8-92; Ord. No. 040-95, 9-12-95)

SECTION 6-82. CODE OFFICIALS ANNUAL REPORT.

(a) The building official shall also be the building code official and shall make reports and keep records of the activities for the enforcement of the Property Maintenance Code. (Ord. No. 023-87, 5-137, 8-11-87; Ord. No. 004-90, 5-137, 2-13-90; Ord. No. 023-92, 5-137, 12-8-92)

SECTION 6-83. REMOVAL, REPAIR, ETC., OF BUILDINGS AND OTHER STRUCTURES.

(1) The owners of property shall, at such time or times as the building official may prescribe, remove, repair or secure any building, wall or any other structure which might endanger the public health or safety of the City of Winchester;

(2) The City, through its own agents or employees, may remove, repair or secure any building, wall or any other structure which might endanger the public health or safety of other residents of the City of Winchester, wherein the owner of such property after reasonable notice and a reasonable time to do so, has failed to remove, repair or secure said building, wall or other structure;

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

(4) Every charge authorized by this section with which the owner of any such property shall have been assessed and which remains unpaid shall constitute a lien against such property ranking on a parity with liens for unpaid local taxes and enforced in the same manner as provided in Articles 3 and 4 of Chapter 39 of Title 58.1 of the Code of Virginia. (Ord. No. 023-92, 12-8-92)

State Law Reference--Code of Virginia, §15.1-11.2.

SECTION 6-84. GENERAL MAINTENANCE REQUIREMENTS.

Every dwelling unit shall be maintained in a clean and sanitary condition by the occupant. The shared or public parts of every structure shall be maintained by the owner in a clean and sanitary condition free from any accumulation of rubbish or garbage. (Ord. Dated 1-11-78, 11-9; Ord. No. 004-90, 5-140, 2-13-90; Ord. No. 023-92, 5-140, 12-8-92)

Cross reference -- Accumulations of garbage and refuse, 11-35, *et seq*.

SECTION 6-85. STORAGE AND DISPOSAL OF GARBAGE.

Every dwelling unit shall have adequate garbage disposal facilities or garbage storage containers meeting the requirements of Chapter 11 of this Code. Every occupant of a building or part thereof shall dispose of his garbage in a clean and sanitary manner by placing it in such containers. (Ord. Dated 1-11-78, 11-10; Ord. No. 004-90, 5-141, 2-13-90; Ord. No. 023-92, 5-141, 12-8-92)

SECTION 6-86. SMOKE DETECTORS IN EXISTING BUILDINGS.

Smoke detectors shall be installed in the following existing structures:

(1) Any building containing one or more dwelling units;

(2) Any hotel or motel;

(3) Any rooming house;

Smoke detectors shall be battery or AC powered units installed in conformance to the Uniform Statewide Building Code. The owner shall inspect and furnish a certificate to a tenant at the beginning of each tenancy and at least annually that all detectors are present, have been inspected, and are found to be in good working order. With exception to hallways, stairwells and other common or public areas of multifamily buildings, interim testing, repair and maintenance of smoke detectors in rented or leased units shall be the responsibility of the tenant; however, the owner shall be obligated to service, repair or replace any malfunctioning smoke detector within five days of receipt of written notice from the tenant that such smoke detector is in need of service, repair, or replacement. (Ord. No. 023-92, 12-8-92)

State Law Reference--Code of Virginia, §15.1-29.9.

ARTICLE V. IDENTIFICATION AND INSPECTION OF RENTAL DWELLING UNITS

DIVISION 1. GENERALLY

SECTION 6-87. PURPOSE AND INTENT.

This Article is hereby amended and reenacted so as to bring it into compliance with Code of Virginia (1950), as amended, Section 36-105.1:1.

Section 36-105.1:1 of the Code of Virginia (1950), as amended, authorizes the City of Winchester to inspect residential rental dwelling units for compliance with the Building Code and to promote safe, decent and sanitary housing for its citizens; and

Further, the City Council finds that such inspections required by this Article of specific properties located within Rental Inspection Districts as set forth herein are necessary to protect the public health, safety and welfare of the occupants of dwelling units and other citizens inside the designated district(s).

Therefore, the City Council finds that a program to inspect certain rental property and issue certificates of compliance within the City of Winchester should therefore be implemented pursuant to Code of Virginia (1950), as amended, Section 36-105.1:1.

(Ord. No. 039-2003, 12-9-03; Ord. No. 017-2005, 5-10-05)

SECTION 6-88. DEFINITIONS.

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

Conditions which immediately affect safe, decent and sanitary living conditions of persons occupying a residential rental dwelling unit include items that violate fire safety; lack of or poor condition of sanitary facilities; absence of implied or expressed heating systems or equipment; items which affect the safe operation of electrical and mechanical systems; items which affect structural integrity of the building and/or the ability of the building envelope to keep out weather, or one or more other conditions that if not corrected would be reasonably expected to become conditions that affect the safe, decent and sanitary living conditions of the occupants.

Disqualifying violation includes those conditions which affect safe, decent and sanitary living conditions of persons occupying a residential rental dwelling unit, or other

conditions that violate the provisions of the Virginia Uniform Statewide Building Code, or multiple building code violations that indicate in their totality that the dwelling unit is not being properly maintained.

Dwelling Unit means a building or structure or part thereof that is used for a home or residence by one or more persons who maintain a household. The term dwelling unit shall not include hospitals, nursing homes, convalescent homes or similar facilities providing medical care to the aged, infirm or disabled.

Residential Rental Dwelling Unit means any dwelling unit leased or rented or offered for rent for occupancy. However, a dwelling unit occupied in part by the owner thereof shall not be construed to be a residential rental dwelling unit unless a tenant occupies a part of the dwelling unit which has its own cooking and sleeping areas, and a bathroom unless otherwise provided in the Zoning Ordinance by the Common Council of the City of Winchester.

Multiple-Family Rental Development means any development, consisting of ten (10) or more dwelling units under common ownership on the same parcel of land and includes all of the multifamily buildings which are a part of the multifamily development.

Owner means the person shown on the current real estate assessment books or current real estate assessment records.

Responsible Party means an Owner of a dwelling unit or any individual, group of individuals, corporation, partnership, limited liability company or other entity having the authority, single or in combination with another, to enter into agreement for the occupancy of a dwelling unit covered by this article, any or all of whom are subject to the requirements of this article.

(Ord. No. 039-2003, 12-9-03; Ord. No. 017-2005, 5-10-05)

SECTION 6-89. RESIDENTIAL RENTAL INSPECTION DISTRICT ESTABLISHED; APPLICABILITY.

(a) After holding a duly advertised public hearing as required by Section 36-105.1:1(C)(1) of the Code of Virginia, the Common Council of the City of Winchester finds that within the Rental Inspection District described in subsection (b) herein below (i) there is a need to protect the public health, safety and welfare of the occupants of dwelling units inside the designated rental inspection district(s); (ii) the residential rental dwelling units within the designated rental inspection district are either (a) blighted or in the process of deteriorating, or (b) the residential rental dwelling units are in need of inspection by the Building Official or his or her designee to prevent deterioration, taking into account the number, age and condition of residential rental dwelling units inside the rental inspection district; and (iii) the inspection of residential dwelling units inside the

rental inspection district is necessary to maintain safe, decent and sanitary living conditions for tenants and other residents living in the rental inspection district.

(b) Based on the finds of the Common Council for the City of Winchester as set forth in Section 6-89(a) hereinabove, the following area(s) are included and declared to be rental inspection districts which shall be subject to all provisions of this Article:

1. The general area beginning at the Corporate Limits to North Braddock to Richards Avenue to Pennsylvania Avenue to Oates Avenue to North Loudoun to the Corporate Limits

2. The general area beginning at the Corporate Limits to North Kent Street to East Piccadilly to East Lane to Woodstock Lane to North Pleasant Valley Road to Virginia Avenue to Van Fossen Street to Kern Street to Fairview Avenue to Hastings Street to Smithfield Avenue to the Corporate Limits.

3. The general area beginning at South Pleasant Valley Road to East Cork Street to Purcell Street to Woodstock Lane to the Corporate Limits to Woodland Avenue to Elm Street to Orchard Avenue to National Avenue to North Pleasant Valley Road.

4. The general area beginning at Valley Avenue to Jubal Early Drive then back to Bellview Avenue to South Loudoun Street to South Braddock Street to Lamden Avenue to Valley Avenue also including Glaize Avenue.

5. The general area beginning at Fairmont Avenue to West Piccadilly Avenue to Washington Street to Handley Boulevard to South Braddock Street to Valley Avenue to Southwerk Avenue to Millwood Avenue to South Kent Street to East Cork Street to East Lane to East Piccadilly Street to North Cameron Street to Oates Avenue back to Commercial Street to North Loudoun to North Avenue to Fairmont Avenue.

A map showing the rental inspection districts described in Section 6-89(b) is hereby adopted as a part of this article, and shall be available for public inspection in the Department of Inspections.

(c) The Common Council for the City of Winchester may designate additional rental inspection districts, or alter or eliminate current rental inspection districts, after notice to all property owners within the proposed district, and after a public hearing thereon. In evaluating additional areas for rental district designation, the City Council shall consider the aforementioned criteria in subsection (a) above.

(d) The Common Council for the City of Winchester may designate an individual residential rental dwelling unit outside the rental inspection district to be subject to the provisions of

Article V based on a separate finding for each dwelling unit that (i) there is a need to protect the public health, welfare and safety of the occupants of that individual dwelling unit; (ii) the individual dwelling unit is either (a) blighted or (b) in the process of deteriorating; or (iii) there is evidence of violations of the building code that affects the safe, decent and sanitary living conditions for tenants living in such individual dwelling unit.

(e) Based on the individual findings of the Common Council for the City of Winchester as set forth in Section 6-89(d) hereinabove, the following individual dwelling unit(s) are included and declared to be rental inspection districts which shall be subject to all provisions of this Article:

1. Individual Dwelling Unit 2217 Harrison Street, Tax Map #269-02--7A-><03
(Ord. No. 039-2003, 12-9-03; Ord. No. 017-2005, 5-10-05; Ord. No. 2008-07, 01-08-08)

DIVISION 2. NOTIFICATION AND INSPECTION; CERTIFICATES OF COMPLIANCE

SECTION 6-90. NOTIFICATION.

(a) Upon implementation of this article, the City of Winchester Department of Inspections shall give written notice by personal delivery or first class U.S. mail to all property owners located within the rental inspection district(s) of the requirement to notify the Department of Inspections of any real property of the owner located in a rental inspection district that is a residential rental property as defined hereinabove. The mailing of said notice by the Building Official, or his or her designee, shall be deemed sufficient notice for purposes of this article.

(b) The owner of any residential rental dwelling unit located within a rental inspection district shall notify the Department of Inspections in writing no later than sixty (60) days from receipt of the notice required in subsection (a) above, which property is a residential rental dwelling unit. Such notice and information shall be submitted on a form provided by the Department of Inspections. The form shall require the following information:

(1) Address of the residential rental dwelling unit.
(2) The name(s) of each owner of the residential rental dwelling unit and the street address(es) of the primary residence of each owner of the residential rental dwelling unit.
(3) The name and street address of any designated responsible party other than the owner.

(c) Within thirty (30) days of giving the notification required under Section 6-90(b), the owner shall contact the City of Winchester Department of Inspections and arrange for an initial inspection of the residential rental dwelling unit by the Building Official or his or her designee.

(d) The owner of any residential rental unit located in a rental inspection district shall within thirty (30) days of title transfer, notify the Department of Inspections of any change of ownership of the residential rental dwelling unit. Failure to provide

such information shall be subject to penalties under Section 6-98(b) after notification is provided under Section 6-90(a).

(e) Any owner who fails to timely give any notice as required by this section shall be in violation of this article and shall be subject to such penalties and enforcement remedies as provided in Section 6-98 herein below. However, failure to give timely notice in accordance with paragraph (b) of this section shall not be deemed a violation if the Department of Inspections has not complied with paragraph (a) of this section.
(Ord. No. 039-2003, 12-9-03; Ord. No. 017-2005, 5-10-05)

SECTION 6-91. INSPECTION REQUIRED.

(a) The Responsible Party of each residential rental dwelling unit located in a rental inspection district shall arrange and permit an initial inspection and subsequent inspections of such residential dwelling unit as provided in this section and Section 6-92 by the Building Official or his or her designee. If the dwelling unit to be inspected is occupied at the time of a required inspection, it shall be the duty of the owner thereof to notify the occupants of such inspection and make the residential dwelling unit available for inspection. Unless a residential rental unit in a rental inspection district is exempted from inspection under this article, or receives a forty-eight (48) month certificate of compliance, the term of a certificate of compliance issued for any residential rental dwelling unit in a rental inspection district shall be for a term of twelve (12) months beginning with the first day of the month next following the month of issuance.

(b) The initial inspection of each residential rental dwelling unit which is subject to inspection under this article shall take place no later than one hundred and eighty (180) days from the date that the owner thereof contacts the Department of Inspections to schedule such inspection. However, should the owner of a residential rental dwelling unit which is subject to inspection under this article, fail to give timely notice as required by Section 6-90, the Building Official, or his or her designee, shall inspect such unit within a reasonable time of becoming aware of such unit. Each residential rental unit for which a certificate of compliance or forty-eight (48) month certificate of compliance as described in Section 6-92 below has been issued shall be again inspected within 30 days from the expiration of the certificate or earlier revocation of a forty-eight (48) month certificate of compliance.

If the inspection reveals that a residential rental dwelling unit has violations, the Building Official, or his or her designee, shall indicate the existence of such violations on the Inspection Report together with the date by which such violations must be remedied, which date shall be determined by the Building Official, or his or her designee, and which date shall be reasonable. Failure to list any violation shall not be deemed a waiver of such violation. The required repairs

must be verified by a follow-up inspection. If a follow-up inspection reveals that the owner has failed to remedy the noted violations by the specified date, the Building Official, or his or her designee, may proceed with any remedy provided for the enforcement of the Virginia Uniform Statewide Building Code.

As to violations which do not immediately affect the safe, decent and sanitary living conditions for persons living in such unit, and provided that all inspection fees shall have been remitted in advance, the Building Official, or his or her designee, may permit such time extensions as the Building Official, or his or her designee, shall deem reasonably necessary to allow for remediation of the violations. However, as to violations which are disqualifying violations and which pose an immediate threat to the safe, decent and sanitary living conditions for persons living in such unit, then the Building Official, or his or her designee, shall not issue an extension of time.

(c) Reinspection shall be for the purpose of determining compliance by the owner with the list of specific violations on the Inspection Report furnished to the owner by the Building Official, or his or her designee. However, if upon reinspection, the Building Official, or his or her designee, discovers other violations that were not listed on the written list of specific violations previously furnished to the owner, the Building Official, or his or her designee, shall furnish the owner with a supplemental list of violations and shall provide the owner a reasonable opportunity to correct same.

(d) If inspection of a residential rental dwelling unit reveals one or more disqualifying violations, the Building Official, or his or her designee, shall not issue a certificate of compliance until the disqualifying violations are satisfactorily remedied. If conditions warrant, however, the Building Official, or his or her designee, may require that the residential rental dwelling unit be vacated or remain unoccupied until brought into compliance, pursuant to his authority under Code of Virginia, (1950), as amended, Section 36-98, et seq., the Virginia Uniform Statewide Building Code. Upon compliance, the Building Official, or his or her designee, shall, as provided in Section 6-92 of this article, issue a twelve (12) month certificate of compliance.

(e) No initial or periodic inspection pursuant to this article shall take place more than one time each year, calculated from the date of the initial or periodic inspection. The Department of Inspections has the authority under the Virginia Uniform Statewide Building Code to require the owner of the dwelling unit to submit to such follow-up inspections as deemed necessary to achieve compliance. However, nothing in this article shall modify the authority of the Building Official, or his or her designee, to conduct any other inspections, as allowed under the provisions of the Virginia Uniform Statewide Building Code, and inspections for obtaining a certificate of compliance under this article do not supplant or preclude any other inspection authorized under the Virginia Uniform Statewide Building Code.

(f) Should the owner fail to timely contact the Department of Inspections within the required time in order to schedule any inspection required under this article, or should such owner fail to allow such inspection to proceed on the date for which it was scheduled, the owner shall be in violation of this article and shall be subject to such penalties and enforcement remedies as provided in Section 6-98 herein below.

(g) Should a residential rental dwelling unit be sold, or the title thereto be otherwise transferred to another owner during the term of a certificate of compliance or forty-eight (48) month certificate of compliance issued for such unit, the term of such certificate shall end as of the last day of the month next following the month of transfer of ownership and the new owner shall contact the Department of Inspections and arrange for inspection of the unit; provided, however, that if the last inspection of the unit pursuant to this article occurred during the calendar year of transfer of ownership, the existing certificate shall not expire until the end of such calendar year.

(h) Requests for an inspection may be made by telephone, provided the Building Official, or his or her designee, shall, in all cases, receive notice from the owner and payment of any applicable inspection fee(s) prior to conducting an inspection required under this article.

(Ord. No. 039-2003, 12-9-03; Ord. No. 017-2005, 5-10-05)

SECTION 6-92. CERTIFICATES OF COMPLIANCE; APPLICATION; EXEMPTIONS.

(a) The following shall apply to all residential rental dwelling units located within inspection districts, which are not exempted under Subsection 6-92(b). However, a residential rental dwelling unit for which a current certificate of compliance has been issued prior to the effective date of this ordinance shall not be subject to further inspection under this article until such certificate of compliance expires; provided however, that during such period the pre-existing certificates of compliance shall be subject to revocation. Upon revocation or expiration of the certificate, such unit shall be subject to reinspection on the same basis as a certificate of compliance issued under this section. A temporary certificate of compliance issued prior to the effective date of this ordinance shall not qualify as a pre-existing certificate of compliance.

(1) Prior to expiration of the twelve (12) month certificate of compliance or forty-eight (48) month certificate of compliance, or upon revocation of a forty-eight (48) month certificate of compliance, the owner of the residential rental dwelling unit covered thereby shall contact the

Department of Inspections and arrange for an inspection of such unit. Except in the case of an inspection following revocation of a forty-eight (48) month certificate of compliance, periodic inspections shall take place no later than thirty (30) days from the date of application for said inspection.

(2) A residential rental dwelling unit which upon inspection under this article reveals no disqualifying violations, or with one or more violations that do not affect the safe, decent and sanitary living conditions for persons living in such unit, shall not be subject to further annual inspection under this article for forty-eight (48) months from date of such annual inspection, except as provided in Section 6-95, and a forty-eight (48) month certificate of compliance shall be issued for such unit.

(b) The following shall be exempt from inspection:

(1) No inspection shall be required within forty-eight (48) months of the issuance of a certificate of occupancy for newly constructed dwelling units. Thereafter said unit shall in all respects become subject to the requirements of this article.

(2) All hotels, motels, inns, bed and breakfast establishments, and other similar facilities to the extent occupied by transients shall be exempt from compliance with this article unless a dwelling unit is occupied in excess of thirty (30) days.

(3) No inspection shall be required within forty-eight (48) months of the issuance of a certificate of completion for a substantially remodeled dwelling unit. Substantially remodeled is defined as reconstruction, rehabilitation of a dwelling unit which the cost equals or exceeds fifty percent (50%) of the market value of the property. Thereafter said unit shall in all respects become subject to the requirements of this article.

(Ord. No. 039-2003, 12-9-03; Ord. No. 017-2005, 5-10-05)

SECTION 6-93. MULTIPLE-FAMILY RENTAL DEVELOPMENT.

(a) If a multiple family rental development contains more than ten (10) residential rental dwelling units, in the initial and periodic inspections, the Building Official, or his or her designee, shall inspect no less than two (2) units and not more that ten percent (10%) of the residential rental dwelling units.

(b) Notwithstanding the number of residential rental dwelling units inspected, the Building Official, or his or her designee, shall charge the fee authorized by this article for inspection of no more than ten (10) dwelling units.

(c) Notwithstanding subsection (b) above, if the Building Official, or his or her designee, determines upon inspection of the dwelling units that there are within one or more of such units violations of the Virginia Uniform Statewide Building Code that affect the safe, decent and sanitary living conditions for the tenants of such multiple family rental development, the Building Official, or his or her designee, may inspect as many dwelling units as he or she deems reasonably necessary to assure compliance with the Virginia Uniform Statewide Building Code in which case, the fee shall be based upon a charge per dwelling unit inspected.

(Ord. No. 039-2003, 12-9-03; Ord. No. 017-2005, 5-10-05)

DIVISION 3. INSPECTION FEES AND ENFORCEMENT; REVOCATION OF CERTIFICATE

SECTION 6-94. ISSUANCE OF CERTIFICATE; FEES.

(a) Except as provided in Section 6-93 above, there shall be inspection fees for each dwelling unit inspected as established by Section 6-131 of this code.

(b) No inspection shall be performed, nor any certificate of compliance issued, unless all fees have been paid.

(Ord. No. 039-2003, 12-9-03; Ord. No. 017-2005, 5-10-05)

SECTION 6-95. REVOCATION OF CERTIFICATE OF COMPLIANCE; REINSTATEMENT.

(a) If a residential rental dwelling unit covered by a certificate of compliance is found in violation of the Virginia Uniform Statewide Building Code during the term of such certificate of compliance, the Building Official, or his or her designee, may revoke such certificate of compliance and such unit shall thereupon become subject to annual inspections and the issuance of a twelve (12) month certificate of compliance.

(b) If a twelve (12) month certificate of compliance is issued after the inspection necessitated by the violation of the Virginia Uniform Statewide Building Code **and revocation of the extended certificate of compliance, then said residential rental dwelling unit shall again be eligible for an extended certificate of compliance** only after the annual certificate of compliance has expired and as of the first subsequent periodic inspection when no disqualifying violations are found.

(Ord. No. 039-2003, 12-9-03; Ord. No. 017-2005, 5-10-05)

SECTION 6-96. RESERVED.

SECTION 6-97. APPEALS; EFFECTS.

(a) Any person aggrieved by any determination or decision of the Building Official, or his or her designee, made pursuant to this article shall have the right to appeal such determination or decision in accordance with the provisions of the Virginia Uniform Statewide Building Code, and amendments thereto.

(b) Nothing in this article shall be construed to limit, impair, alter or extend the rights and remedies of persons in their relationship of landlord and tenant as such rights and remedies exist under applicable law.

(c) Nothing in this article shall be construed to relieve or exempt any person from otherwise complying with all applicable laws, ordinances, standards and regulations pertaining to the condition of buildings and other structures.

(d) Nothing in this article shall be construed to limit the authority of the Building Official, or his or her designee, to perform inspections in accordance with applicable law.

(Ord. No. 039-2003, 12-9-03; Ord. No. 017-2005, 5-10-05)

SECTION 6-98. VIOLATIONS OF CHAPTER; PENALTIES; RIGHT OF ENTRY.

(a) Any person willfully failing to comply with the inspection requirements of this article or the Virginia Uniform Statewide Building Code shall be subject to the penalties established in Sections 6-7 and 6-8 of this code.

(b) Any person willfully failing to comply with the notice requirements of this article shall be subject to a Fifty Dollar ($50.00) civil penalty to be assessed every thirty (30) days from the date notice is due for each property for which they fail to provide notice that they own a residential rental dwelling unit that is subject to this article.

(c) The remedies set forth in (a) and (b) of this section are not exclusive remedies for non-compliance with the requirements of this article and the Building Official, or his or her designee, shall take such further actions as allowed by all applicable law in order to obtain compliance with the requirements of this article, including,

but not limited to, seeking injunctive relief under Section 15.2-1432 of the Code of Virginia (1950), as amended, and obtaining inspection warrants as provided in Section 36-105(C)(3) of the Code of Virginia (1950) as amended. For the purposes of enforcing the provisions of this article, the Building Official, or his or her designee, shall have the right to conduct reasonable inspections of dwelling units and residential rental dwelling units located in the rental inspection district(s) at reasonable times subject to reasonable prior notice to the owner or occupant.

(Ord. No. 039-2003, 12-9-03; Ord. No. 017-2005, 5-10-05)

SECTION 6-99. SEVERABILITY.

If any of the sections, paragraphs, sentences, clauses or phrases of this chapter shall be declared unconstitutional or invalid by the valid judgment of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect the validity of the chapter in its entirety or any of the remaining sections, paragraphs, sentences, clauses, and phrases.

(Ord. No. 039-2003, 12-9-03)

SECTION 6-100 - 6-130. RESERVED.

DIVISION 4. FEES

SECTION 6-131. RESIDENTIAL RENTAL INSPECTION DISTRICT – INSPECTION FEES.

The following inspection fees shall be imposed for the inspection of each dwelling unit within the designated rental inspection district(s):

INSPECTION	FEE PER DWELLING UNIT
Initial/Periodic inspection (to include one follow-up)	$35.00
Follow-up inspection	$50.00

(Ord. No. 017-2005, 5-10-05)

ARTICLE VI. SPOT BLIGHT

SECTION 6-132. SPOT BLIGHT ABATEMENT

(a) The City of Winchester, in accordance with Code of Virginia, 1950, as amended, Sections 36-49.1:1 *et seq*. may acquire or repair any blighted property, as defined in (b) below, by exercise of the powers of eminent domain provided in Title 25 of Code of Virginia, 1950, as amended, and further, shall have the power to hold, clear, repair, manage, or dispose of such property for purposes consistent with this section. In addition, the City may recover the cost of any repair or disposal of such property from the owner.

(b) "Blighted area" means any area that endangers the public health, safety or welfare; or any area that is detrimental to the public health, safety, or welfare because commercial, industrial, or residential structures or improvements are dilapidated, or deteriorated or because such structures or improvements violate minimum health and safety standards. This definition includes, without limitation, areas previously designated as blighted areas pursuant to the provisions of this Section.

"Blighted property" means any individual commercial, industrial, or residential structure or improvement that endangers the public's health, safety, or welfare because the structure or improvement upon the property is dilapidated, deteriorated, or violates minimum health and safety standards, or any structure or improvement previously designated as blighted pursuant to §36-49.1:1 of the Code of Virginia, under the process for determination of "spot blight."

"Real property" means all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise and the indebtedness secured by such liens.

"Slum" means, in accordance with State Code, any area where dwellings predominate that, by reason of dilapidation, overcrowding, lack of ventilation, light or sanitary facilities, or any combination of these factors, is detrimental to safety, health, or morals.

"Spot blight" means a structure or improvement that is a blighted property as defined in this section.

"Spot blight abatement plan" means the written plan prepared by the owner or owners of record of the real property to address spot blight. If the owner or owners of record of the real property fail to respond as provided in this section, the City can prepare a spot blight abatement plan to address the spot blight with

respect to an individual commercial, industrial, or residential structure or improvement, but may only implement such plan in accordance with the provisions of this Section.

(c) The City Manager, or his designee, shall make a preliminary determination that a property is blighted in accordance with this section. The City Manager or his designee shall send a Notice, conforming to the applicable requirements of §36-27(b) of the Code of Virginia, via certified mail, postage prepaid, to the record owner or owners at their last known address as contained in the records of the treasurer, the current real estate tax assessment records, or the records of such other officer responsible for collecting taxes in the City, specifying the reasons why the property is considered blighted. The owner shall have thirty (30) days within which to respond in writing with a plan to cure the blight within a reasonable time.

(d) If the owner fails to respond within the thirty (30) day period with a written spot blight abatement plan that is acceptable to the City Manager or his designee, the City may (i) request the Planning Commission to conduct a public hearing and make findings and recommendations that shall be reported to City Council concerning the repair or other disposition of the property in question; and (ii) in the event a public hearing is scheduled, shall prepare a written spot blight abatement plan for the repair or other disposition of the property.

(e) Not less than three (3) weeks prior to the date of the public hearing before the Planning Commission, the Commission shall provide by regular and certified mail, notice of such hearing to:

(i) the owner of the blighted property or the agent designated by him for receipt of service of notices concerning the payment of real estate taxes within the locality; and

(ii) the abutting property owners in each direction, including those property owners immediately across the street or road from the property; and

(iii) the representative neighborhood association, if any, for the immediate area.

The notice shall include the plan for the intended repair or other disposition of the property. The notice of the public hearing shall be published at least twice, with not less than six (6) days elapsing between the first and second publication in a newspaper published or having general circulation in the locality in which the property is located.

The notice also shall be posted on the property.

The notice shall specify the time and place of the hearing at which persons affected may appear and present their views, not less than six (6) days nor more than twenty-one (21) days after the second publication.

(f) The Planning Commission, at this public hearing, shall determine whether:

(1) The owner has failed to cure the blight or present a reasonable plan to do so;

(2) The property is blighted;

(3) The plan for the repair or other disposition of the property is in accordance with the City's comprehensive plan, and the comprehensive zoning ordinances; and

(4) The property is located within an area listed on the National Register of Historic Places. In such instances, the Planning Commission shall consult with the Architectural Review Board, regarding the proposed repair or other disposition of the property by the City Council.

(g) The Planning Commission shall report its findings and recommendations concerning the property to the City Council. City Council, upon receipt of such findings and recommendations, may after an advertised public hearing, affirm, modify, or reject the Planning Commission's findings and recommendations. If the repair or other disposition of the property is approved, the City Manager or his designee may carry out the approved plan to repair or acquire and dispose of the property in accordance with the approved plan, the provisions of this section, and applicable law.

The City shall have a lien on all property so repaired or acquired under an approved plan to recover the cost of (i) improvements made by the City to bring the blighted property into compliance with applicable building codes and (ii) disposal, if any. The lien on such property shall bear interest at the legal rate of interest established in §6.1-330.53 of the Code of Virginia, beginning on the date the repairs are completed through the date on which the lien is paid. The lien shall be filed in the Circuit Court of the City of Winchester and shall be subordinate to any prior liens of record. City Council may recover its costs of repair from the owner of record of the property when the repairs were made at such time as the property is sold or disposed of by such owner. If the property is acquired by the City through eminent domain, the cost of repair may be recovered when City Council sells or disposes of the property. In either case, the costs of repair shall be recovered from the proceeds of any such sale.

(h) If the blighted property is occupied for personal residential purposes, City Council, in approving the plan, shall not allow for the acquisition of such property if it would result in a displacement of the person or persons living in the premises. The provisions of this subsection shall not apply to acquisition, under an approved plan, by the City of property which has been condemned for human habitation for more than one year. In addition, if the City is exercising the powers of eminent domain in accordance with Title 25 of Code of Virginia, it may provide for temporary relocation of any person living in the blighted property provided the relocation is within the financial means of such persons.

(i) In lieu of the acquisition of blighted property by the exercise of the powers of eminent domain as herein provided and in lieu of the exercise of other powers granted in subsections (a) through (h), City Council by ordinance, may declare any blighted property to constitute a nuisance, and thereupon abate the nuisance pursuant to Code of Virginia, 1950, as amended, Section 15.2-900 or 15.2-1115. Such ordinance shall be adopted only after written notice by certified mail to the owner or owners of the property at the last known address of such owner as shown on the current real estate tax assessment books or current real estate tax assessment records.

If the owner does not abate or remove the nuisance and the City abates or removes the nuisance at its expense, the costs of the removal or abatement of the nuisance shall be a lien on the property and such lien shall bear interest at the legal rate of interest established in §6.1-330.53 of the Code of Virginia, beginning on the date the removal or abatement is completed through the date on which the lien is paid.

(j) The provisions of this section shall be cumulative and shall be in addition to any remedies for spot blight abatement that may be authorized by law.

(Ord. No. 029-2005, 9-13-05; Ord. No. 2007-34, 9-11-07)

State Law Reference—Code of Virginia, §36-49.1:1.

SECTION 6-133 - 6-140. RESERVED.

ARTICLE VII. AMUSEMENT DEVICE REGULATIONS

SECTION 6-141. ADOPTED; AVAILABILITY OF COPIES.

Copies of the Virginia Amusement Device Regulations, current edition and amendments are on file in the office of the Building Official, Rouss City Hall, where they are available for public examination on Monday through Friday from 8:00 a.m. to 5:00 p.m., holidays excepted. (Ord. No. 011-89, 5-240, 3-11-89; Ord. No. 004-90, 5-181, 2-13-90; Ord. No. 023-92, 5-181, 12-8-92; Ord. No. 029-2005, 9-13-05)

SECTION 6-142. APPLICATION; PERMIT FEES.

Applications for a permit shall be made for constructing and operating an amusement device permanently fixed to a site or reassembling and operating any portable amusement device. Each application shall be accompanied with a fee as prescribed in Section 6-27 of this Code.

Definitions of the three ride classifications shall be those set out in the Code of Virginia. (Ord. No. 040-95, 9-12-95)

ARTICLE VIII. ENFORCEMENT

SECTION 6-143. AUTHORITY TO ISSUE SUMMONSES

(1) The Zoning Administrator and his deputies are hereby authorized to issue summonses for any zoning violation which is identified in the Uniform Schedule of Civil Penalties contained in this Article.

(2) The Code Official is hereby authorized to issue summonses for any property maintenance violation which is identified in the Uniform Schedule of Civil Penalties contained in this Article.
(Ordinance No. 2008-05, 01-08-08)

State Law Reference –Code of Virginia §15.2-2209

SECTIONS 6-144. UNIFORM SCHEDULE OF CIVIL PENALTIES AND SUMMONS FORMAT.

The following Uniform Schedule of Civil Penalties is hereby adopted by the City of Winchester:

City of Winchester
Department of Zoning and Inspections
Uniform Schedule of Civil Penalties

Fail to display Street Numbers (CC -26-3, IPMC 304.3)	1st $25.00 2nd and subsequent violations $50.00
Fail to obtain any required inspection (CC-6-91(f))	1st $100.00 2nd and subsequent violations $150.00
Fail to provide Notification of Rental Housing (CC-6-90(b))	$50.00
Fail to register Vacant Building (CC-6-9)	$50.00
Zoning Violations (scheduled in Sec. 21-3, Z.O.)	1st $200.00 2nd and subsequent violations $500.00
Violations of the Virginia Maintenance Code (CC-6-8)	1st $75.00 2nd and subsequent violations $150.00
Weeds and Tall Grass (fail to cut) (CC-30-50) Trash and Rubbish (fail to remove) (CC-11-36)	1st and subsequent from same set of facts $50.00 2nd within 12 months $200.00 similar violations not of same facts

All summonses referenced in Section 6-143 of this Code shall be issued on the following approved format:

(FRONT PAGE VIEW)

SUMMONS FOR CIVIL PENALTY FOR ENVIRONMENTAL/BUILDING VIOLATION
CITY OF WINCHESTER GENERAL DISTRICT COURT
5 N. Kent Street, Winchester, Virginia 22601

Va. Code § 10.1-569

RETURN DATE _____ **FILE NO.** _____

CITY OF WINCHESTER

_____
PLAINTIFF

V.

_____
DEFENDANT(S)

_____

_____
ADDRESS

_____

_____

SUMMONS FOR ENVIRONMENTAL / BUILDING VIOLATION / CITY CODE VIOLATION

TO ANY AUTHORIZED OFFICER:

You are hereby commanded to summon the Defendant(s) to appear on _____, (Date)
200__, at _____ (Time) before this Court to contest the alleged violation of:

City Ordinance Section	Nature of Violation	Location of Violation	Date and Time of Violation	Amount of Civil Penalty
				$
				$
				$
				$
				$
				$
			SUBTOTAL	$
			COSTS	$
			TOTAL	$

_____ Date Issued

_____ City of Winchester, Code Official, Zoning Administrator, or Designee

Copy to: Clerk, City of Winchester General District Court

NOTICE: YOU MAY ELECT TO PAY THE CIVIL PENALTY ESTABLISHED FOR THE ABOVE VIOLATION(S) OR YOU MAY ELECT TO STAND TRIAL. SEE INSTRUCTIONS ON REVERSE.

I certify that I mailed a copy of this document to the defendant(s) named herein at the address shown hereon.

_____ DATE _____ PLAINTIFF

TO DEFENDANT: You are not required to appear; however, if you fail to appear, judgment may be entered against you.

CASE DISPOSITION

JUDGMENT that Plaintiff(s) recover against ☐ named Defendant(s) ☐ _____ _____(Other) $_____ net of any credits with interest at _____% from date of judgment until paid, and $_____ costs.

☐ **JUDGMENT FOR** ☐ **NAMED DEFENDANT** ☐ _____
☐ **NON-SUIT** ☐ **DISMISSED** _____

Defendant(s) present? ☐ **YES** ☐ **NO**

_____ **DATE ENTERED** _____ **JUDGE**

ATTORNEY FOR PLAINTIFF:
CITY OF WINCHESTER ATTORNEY'S OFFICE

_____
ATTORNEY FOR DEFENDANT(S):

CONTESTED CASES:
Will be heard on return date.
Will be set for later date
BILL OF PARTICULARS: _____
GROUNDS OF DEFENSE: _____

(BACK PAGE VIEW)

ATTENTION:

IT IS IMPORTANT THAT YOU READ THESE INSTRUCTIONS CAREFULLY.

1. **IF YOU ELECT TO PAY THE CIVIL PENALTY:**
   a. **Sign this summons in the space provided below.**
   b. **Determine from the front of this summons the total amount of civil penalty and costs specified for the violation(s) for which you have been charged as well as the amount of any related costs.**
   c. **Mail this summons and a check or money order in the amount specified payable to "City of Winchester" to the OFFICE OF THE TREASURER, P.O. BOX 263, WINCHESTER, VIRGINIA 22604; or**
   d. **Pay the penalty amount and costs in person at the Office of the Treasurer by bringing this summons and a check or money order to 15 North Cameron Street, Winchester, Virginia 22601.**
   e. **NOTE: Payment must be received by the Office of the Treasurer no later than five days prior to the return date. Timely delivery by mail is at the sender's risk. For further information concerning payment of the civil penalty contact the Office of the Treasurer at 540-667-1815.**

WAIVER OF TRIAL AND ADMISSION OF LIABILITY [FOR ADVANCE PAYMENT]

By signing this form, I certify that I have read this SUMMONS and I am entering my written rather than personal appearance in the court case resulting from the violation(s) charged on the front of this Summons. I understand that I have a right to a trial, which I am giving up. I also understand that my signature is an admission of liability and will have the same force and effects as a finding of liability by the judge. However, I understand that an admission is not deemed to be a criminal conviction for any purpose. Understanding all this, I admit liability to the violation(s) charged, waive my right to a court hearing, and enclose the civil penalty prescribed. **I FURTHER HEREBY AGREE TO ABATE OR REMEDY THE VIOLATION WITHIN SIX MONTHS AFTER THE DATE OF PAYMENT OF THIS CIVIL PENALTY**

Signature _____ Date _____

2. **IF YOU ELECT TO STAND TRIAL:** Trial will be conducted on the return date. If you fail to appear, judgment may be entered against you. If you have questions you may consult a lawyer. A lawyer will not be appointed for you. If you intend to hire a lawyer, you should do so immediately. NOTE: If you are found liable in a court hearing, a judgment will be entered against you. For further information concerning the violation, contact Vincent Diem, Zoning Administrator for the City of Winchester, at 540-667-1815.

SCHEDULE OF CIVIL PENALTIES

VIOLATION	AMOUNT OF CIVIL PENALTY
Violation of City of Winchester Environmental Ordinance Each day during which a violation exists is a separate offense.	$100.00

Name: _____ Address: _____	Name: _____ Address: _____
☐ Personal Service Tel. No. _____ ☐ Being unable to make personal service, a copy was delivered in the following manner: Delivered to family member (not temporary sojourner or named above after giving information of its purport). List name, age of recipient, and relation of recipient to party named above.	☐ Personal Service Tel. No. _____ ☐ Being unable to make personal service, a copy was delivered in the following manner: Delivered to family member (not temporary sojourner or named above after giving information of its purport). List name, age of recipient, and relation of recipient to party named above.
☐ Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above. (Other authorized recipient not found.) ☐ Served on Secretary of the Commonwealth. Date _____ Serving Officer _____	☐ Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above. (Other authorized recipient not found.) ☐ Served on Secretary of the Commonwealth. Date _____ Serving Officer _____
☐ Not found for _____	☐ Not found for _____

3. **MULTIPLE VIOLATIONS**: If you have been summoned for multiple violations, you may elect to stand trial on one or more violations and pay the civil penalty on the remaining violation(s). To do so you must indicate below on which violation(s) you have elected to stand trial and for which violations you have elected to pay the civil penalty and must appear in court on the return date.

I elect to stand trial on the following violation(s) only and have read Paragraph 2, above.
1. _____ 2. _____ 3. _____

Signature _____ Date _____

I elect to waive trial, admit liability and pay the established civil penalty on the following violation(s) only. I have read the instructions, waiver of trial and admission of liability in Paragraph 1 above and understand that they apply to the violation(s) I am listing below. **I HEREBY AGREE TO ABATE OR REMEDY THE VIOLATIONS LISTED BELOW WITHIN SIX MONTHS AFTER THE DATE OF PAYMENT FOR THESE CIVIL PENALTIES.**

1. _____ 2. _____ 3. _____

Signature _____ Date _____

(Ord. No. 2008-06, 01-08-2008)
State Law Reference – Code of Virginia, §15.2-2209

SECTIONS 6-145 – 6-175. RESERVED.
(Ord. No. 023-92, 12-8-92)

CHAPTER 7

ELECTIONS

Art. I. In General, §§7-1--7-16
Art. II. Designation of Precincts and Polling Places, §§7-17--7-21
Art. III. Central Absentee Precinct, §7-22

ARTICLE I. IN GENERAL

SECTION 7-1. DIVISION OF CITY INTO WARDS.

The City shall be divided into four wards. (Code 1959, §24-2; Ord. of 4-13-71; Ord. No. 032-2004, 8-10-04)

Charter reference--City divided into four wards, §4.
State Law Reference—Va. Const. Art. 7, §5

SECTION 7-2. CITY WARDS DESCRIBED.

A. FIRST WARD

The first ward of the City shall comprise the following territory: Beginning at the point of the Winchester and Western Railroad tracts, west of Pennsylvania Avenue, where Fairmont Avenue meets the northern corporate limits; thence southward along the middle of the Winchester and Western Railroad tracks to the middle of their intersection with Wyck Street; thence eastward along the middle of Wyck Street to the middle of its intersection with Loudoun Street; thence southward along the middle of Loudoun Street to the middle of its intersection with Valley Avenue and Gerrard Street; thence southward along the middle of Valley Avenue to the middle of its intersection with Winchester and Western Railroad tracks; thence westward along the middle of the Winchester and Western Railroad tracks until they intersect with the western corporate limits; thence northward along the western corporate limits to the northern corporate limits; thence eastward along the northern corporate limits to the point of beginning. (Code 1959, §§24-3, 24-4; Ord. of 4-13-71; Ord. No. 024-81, 9-8-81; Ord. No. 042-91, 11-12-91; Ord. No. 045-2001, 11-28-01; Ord. No.032-2004, 8-10-04; Ord. No. 2009-01, 1-13-09; Ord. No. 2009-07; 3-10-09)

B. SECOND WARD

The second ward of the City shall comprise the following territory: Beginning at the northernmost point of the City at the Winchester and Western Railroad tracts, west of Pennsylvania Avenue, where Fairmont Avenue meets the northern corporate limits; thence southward along the middle of the Winchester and Western Railroad tracks to the middle of their intersection with Wyck Street; thence eastward along the middle of Wyck Street to the middle of its intersection with Loudoun Street; thence southward along the middle of Loudoun Street to the middle of its intersection with Valley Avenue and Gerrard Street; thence eastward along the middle of Gerrard Street to the middle of its intersection with Kent Street; thence northward along the middle of Kent Street to the middle of its intersection with Pall Mall Street; thence eastward along the middle of Pall Mall Street to the middle of its intersection with the CSX Railroad tracks; thence northward along the middle of the CSX Railroad tracts to the middle of their intersection with Cork Street; thence eastward along the middle of Cork Street to the middle of its intersection with Pleasant Valley Road; thence northward along the middle of Pleasant Valley Road to the middle of its intersection with Berryville Avenue; thence eastward along the middle of Berryville Avenue to the middle of its intersection with Baker Lane; thence northward along the middle of Baker Lane to its intersection with the northern corporate limits; thence westward along the northern corporate limits to the point of beginning.
(Code 1959, §24-4; Ord. of 4-13-71; Ord. No. 032-2004, 8-10-04; Ord. No. 2009-01, 1-13-09; Ord. No. 2009-07, 3-10-09)

C. THIRD WARD

The third ward of the City shall comprise the following territory: Beginning at the point where the middle of Baker Lane intersects with the northern corporate limits; thence eastward along the northern corporate limits to it intersection with the eastern corporate limits; thence southward along the eastern corporate limits to the middle of its intersection with Jubal Early Drive; thence westward along the middle of Jubal Early Drive to the middle of its intersection with Loudoun Street; thence northward along the middle of Loudoun Street to the middle of its intersection with Bellview Avenue; thence westward along the middle of Bellview Avenue to the middle of its intersection with Braddock Street; thence Northward along the middle of Braddock Street to the middle of its intersection with Lambden Avenue; thence westward along the middle of Lambden Avenue to the middle of its intersection with Valley Avenue; thence northward along the middle of Valley Avenue to the middle of its intersection with Gerrard Street and Valley Avenue; thence eastward along the middle of Gerrard Street to the middle of its intersection with Kent Street; thence northward along the middle of Kent Street to the middle of its intersection with Pall Mall Street; thence eastward along the middle of Pall Mall Street to the middle of its intersection with the CSX Railroad tracks; thence northward along the middle of the CSX Railroad tracks to the middle of their intersection with Cork Street; thence eastward along the middle of Cork Street to the middle of its intersection with Pleasant Valley Road; thence northward along the middle of Pleasant

Valley Road to the middle of its intersection with Berryville Avenue; thence eastward along the middle of Berryville Avenue to the middle of its intersection with Baker Lane; thence northward along the middle of Baker lane to the point of beginning.
(Ord. No. 032-2004, 8-10-04; Ord. No. 2009-01, 1-13-09; Ord. No. 2009-07, 3-10-09)

D. FOURTH WARD

The fourth ward of the City shall comprise that portion of the City lying south of the following line: Beginning at the point where the middle of Jubal Early Drive intersects with the eastern corporate limits; thence westward along the middle of Jubal Early Drive to the middle of its intersection with Loudoun Street; thence northward along the middle of Loudoun Street to the middle of its intersection with Bellview Avenue; thence westward along the middle of Bellview Avenue to the middle of its intersection with Braddock Street; thence northward along the middle of Braddock Street to the middle of its intersection with Lambden Avenue; thence westward along the middle of Lambden Avenue to the middle of its intersection with Valley Avenue; thence southward along the middle of Valley Avenue to the middle of its intersection with Winchester and Western Railroad tracks; thence westward along the middle of Winchester and Western Railroad tracks to the western corporate limits.
(Ord. No. 032-2004, 8-10-04)

Charter references--Election of mayor and councilmen, §4; Authority of council to issue certificates of debt or bonds, §18; Authority of council to issue bonds for the purpose of refunding bonds; election of city treasurer, §22; election to fill vacancies in city council, §23.

State Law References--Establishment of precincts, Code of Virginia, §24.1-36, *et seq.*; Elections, Code of Virginia, Title 24.2.

SECTION 7-3. RESERVED.

SECTION 7-4. WARDS TO CONSTITUTE PRECINCTS.

Each of the wards of the City as described in Section 7-2, shall constitute at least one precinct as provided in Article II of this chapter. (Code 1959, §24-5; Ord. of 4-13-71; Ord. No. 023-2005, 7-12-05; Ord. No. 2009-01, 1-13-09; Ord. No. 2009-07, 3-10-09)

SECTION 7-5. HOUSE OR LOT SITUATED IN TWO WARDS.

When any house or lot in the City shall be situated partly in two (2) wards, it shall be considered as lying in that ward in which the greater part thereof shall be. (Code 1959, §24-1; Ord. No. 023-2005, 7-12-05)

SECTIONS 7-6 - 7-16. RESERVED.

ARTICLE II. DESIGNATION OF PRECINCTS AND POLLING PLACES

SECTION 7-17. FIRST WARD, FIRST PRECINCT – POLLING PLACE.

The First Ward, First Precinct shall be comprised of all of that area described as follows: Beginning at the point of the western corporate limits and the middle of Amherst Street; thence eastward along the middle of Amherst Street to the middle of its intersection with Boscawen Street; thence southeast and eastward along the middle of Boscawen Street to middle of its intersection with Loudoun Street; thence southward along the middle of Loudoun Street to its intersection with Valley Avenue and Gerrard Street; thence southward along the middle of Valley Avenue to the middle of its intersection with the Winchester and Western Railroad tracts; thence westward along the middle of the Winchester and Western Railroad tracts until it intersects with the western corporate limits; thence northward along the western corporate limits to the point of beginning. The polling place for this precinct shall be the First Christian Church of Winchester at 75 Merrimans Lane.
(Code 1959, §24-6; Ord. of 4-13-71; Ord. of 6-1-76; Ord. No. 042-91, 11-12-91; Ord. No. 004-2002, 2-12-02; Ord. No. 038-2004, 8-24-04; Ord No. 06-2007, 4-10-2007; Ord. No.
2009-01, 1-13-09; Ord. No. 2009-07, 3-10-09).

SECTION 7-17A. FIRST WARD, SECOND PRECINCT - POLLING PLACE.

The First Ward, Second Precinct shall be comprised of all of that area described as follows: Beginning at the point of the western corporate limits and Winchester and Western Railroad tracts, west of Pennsylvania Avenue, where Fairmont Avenue meets the northern corporate limits; thence southward along the middle of the Winchester and Western Railroad tracks to the middle of their intersection with Wyck Street; thence eastward along the middle of Wyck Street to the middle of its intersection with Loudoun Street; thence southward along the middle of Loudoun Street to the middle of its intersection with Boscawen Street; thence westward along the middle of Boscawen Street to the middle of the intersection with Amherst Street; thence westward along the middle of Amherst Street to the western corporate limits; thence northward along the western

corporate limits to the northern corporate limits; thence eastward along the northern corporate limits to the point of beginning. The polling place for this precinct shall be the Christ Episcopal Church at 114 West Boscawen Street.

(Code 1959, §24-6; Ord. of 4-13-71; Ord. of 6-1-76; Ord. No. 042-91, 11-12-91; Ord. No. 004-2002, 2-12-02; Ord. No. 038-2004, 8-24-04; Ord No. 06-2007, 4-10-2007; Ord. No. 2009-01, 1-13-09; Ord. No. 2009-07, 3-10-09).

SECTION 7-18. SECOND WARD, FIRST PRECINCT – POLLING PLACE.

The Second Ward, First Precinct of the City shall comprise the following territory: Beginning at the northernmost point of the City at the Winchester and Western Railroad tracts, west of Pennsylvania Avenue, where Fairmont Avenue meets the northern corporate limits; thence southward along the middle of the Winchester and Western Railroad tracks to the middle of their intersection with Wyck Street; thence eastward along the middle of Wyck Street to the middle of its intersection with Loudoun Street; thence southward along the middle of Loudoun Street to the middle of its intersection with Valley Avenue and Gerrard Street; thence eastward along the middle of Gerrard Street to the middle of its intersection with Kent Street; thence northward along the middle of Kent Street to the middle of its intersection with Pall Mall Street; thence eastward along the middle of Pall Mall Street to the middle of its intersection with the CSX Railroad tracks; thence northward along the middle of the CSX Railroad tracts to the middle of their intersection with Cork Street; thence eastward along the middle of Cork Street to the middle of its intersection with Pleasant Valley Road; thence northward along the middle of Pleasant Valley Road to the middle of its intersection with Berryville Avenue; thence eastward along the middle of Berryville Avenue to the middle of its intersection with Baker Lane; thence northward along the middle of Baker Lane to its intersection with the northern corporate limits; thence westward along the northern corporate limits to the point of beginning. The polling place for this ward shall be Virginia Avenue Charlotte DeHart Elementary School located at 550 Virginia Avenue. (Code 1959, §24-7; Ord. of 4-13-71; Ord. No. 009-82, 6-8-82; Ord. No. 042-91, 11-12-91; Ord. No. 004-2002, 2-12-02; Ord. No. 038-2004, 8-24-04; Ord. No. 2009-07, 3-10-09)

SECTION 7-19. THIRD WARD, FIRST PRECINCT – POLLING PLACE.

The Third Ward, First Precinct, shall be comprised of all that area described as follows: Beginning at the point where the middle of Baker Lane intersects with the northern corporate limits; thence eastward along the northern corporate limits to it intersection with the eastern corporate limits; thence southward along the eastern corporate limits to the middle of its intersection with Jubal Early Drive; thence westward along the middle of Jubal Early Drive to the middle of its intersection with Loudoun Street; thence northward along the middle of Loudoun Street to the middle of its intersection with Bellview Avenue; thence westward along the middle of Bellview Avenue to the middle of its

intersection with Braddock Street; thence Northward along the middle of Braddock Street to the middle of its intersection with Lambden Avenue; thence westward along the middle of Lambden Avenue to the middle of its intersection with Valley Avenue; thence northward along the middle of Valley Avenue to the middle of its intersection with Gerrard Street; thence eastward along the middle of Gerrard Street to the middle of its intersection with Kent Street; thence northward along the middle of Kent Street to the middle of its intersection with Pall Mall Street; thence eastward along the middle of Pall Mall Street to the middle of its intersection with the CSX Railroad tracks; thence northward along the middle of the CSX Railroad tracks to the middle of the intersection with Cork Street; thence eastward along the middle of Cork Street to the middle of its intersection with Pleasant Valley Road; thence northward along the middle of Pleasant Valley Road to the middle of its intersection with Berryville Avenue; thence eastward along the middle of Berryville Avenue to the middle of its intersection with Baker Lane; thence northward along the middle of Baker lane to the point of beginning. The polling place for this ward shall be the War Memorial Building located in Jim Barnett Park. (Ord. of 4-13-71; Ord. No. 042-91, 11-12-91; Ord No. 014-2001, 4-10-01; Ord. No. 038-2004, 8-24-04; Ord. No. 2009-07, 3-10-09)

SECTION 7-20. FOURTH WARD, FIRST PRECINCT – POLLING PLACE.

The Fourth Ward, First Precinct shall be comprised of all that portion of the City lying south of the following line: Beginning at the point where the middle of Jubal Early Drive intersects with the eastern corporate limits; thence westward along the middle of Jubal Early Drive to the middle of its intersection with Loudoun Street; thence northward along the middle of Loudoun Street to the middle of its intersection with Bellview Avenue; thence westward along the middle of Bellview Avenue to the middle of its intersection with Braddock Street; thence northward along the middle of Braddock Street to the middle of its intersection with Lambden Avenue; thence westward along the middle of Lambden Avenue to the middle of its intersection with Valley Avenue; thence southward along the middle of Valley Avenue to the middle of its intersection with Winchester and Western Railroad tracks; thence westward along the middle of Winchester and Western Railroad tracks to the western corporate limits. The polling place for this ward shall be the Frederick Douglass Elementary School located at 100 Cedarmeade Avenue.

(Code 1959, §24-8; Ord. of 4-13-71; Ord. of 3-9-77; Ord. No. 042-91, 11-12-91; Ord. No. 004-2002, 2-12-02; Ord. No. 038-2004, 8-24-04; Ord. No. 2009-07, 3-10-09)

SECTION 7-21. REPEALED. (Ord. No. 038-2004, 8-24-04)

ARTICLE III. CENTRAL ABSENTEE PRECINCT

SECTION 7-22. CENTRAL ABSENTEE PRECINCT.

There is hereby established a central absentee precinct for all elections held in the City of Winchester.

The location of this central absentee precinct shall be the Community Room at the Timbrook Public Safety Building, 231 East Piccadilly Street, Winchester, Virginia. (Ord. No. 022-91, 5-14-91; Ord. No. 049-95, 10-17-95; Ord. No. 022-98, 9-8-98; Ord. No. 014-2001, 4-10-2001; Ord. No. 036-2004, 08-10-2004; Ord. No. 07-2006, 3-14-06; Ord. No. 2009-07, 3-10-09)

State Law Reference--Code of Virginia, §24.1-233.1.

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CHAPTER 8

ENTERPRISE ZONE

Art. I. General Provisions, §§8-1--8-15
Art. II. Tax Rebates, §§8-16--8-25
Art. III. Exemption from Land Development Fees, §§8-26--8-40
Art. IV. Substantially Rehabilitated Property, §§8-41--8-44

ARTICLE I - GENERAL PROVISIONS

SECTION 8-1. PURPOSE.

The purpose of this chapter is to establish an enterprise zone as authorized and guided by the Code of Virginia, § 59.1-251 *et seq.*, to improve the economic conditions of the downtown area of Winchester. (Ord. No. 033-95, 9-12-95)

SECTION 8-2. APPLICABILITY.

The provisions of this chapter shall apply only to the area described herein and designated by the Commonwealth of Virginia as an enterprise zone. If for any reason the Commonwealth of Virginia ceases to recognize the area as an enterprise zone, the provisions of this chapter shall be void. (Ord. No. 033-95, 9-12-95)

SECTION 8-3. ADMINISTRATION.

The Local Zone Administrator of the Winchester Enterprise Zone shall be the city manager. The Administrator shall determine and publish the procedure for obtaining the benefits created by this chapter. (Ord. No. 033-95, 9-12-95)

SECTION 8-4. DEFINITIONS.

When used in this chapter, the definitions found in Code of Virginia §59.1-271, *et seq.*, as amended from time to time, shall control and are incorporated herein by reference. (Ord. No. 033-95, 9-12-95)

Editor's note--Ord. No. 033-95 adopted on September 12, 1995 enacted this chapter.

SECTION 8-5. BOUNDARIES.

The enterprise zone shall be that area located within the following boundary lines:

Commencing at the Northeast Corner of the intersection of Cecil Street and Braddock Street;
thence east along the North line of Cecil Street to Cameron Street;
thence north along the West line of Cameron Street to the North side of Clifford Street;
thence east along the North line of Clifford Street to Kent Street;
thence north along the West line of Kent Street to the north side of Cork Street;
thence east along the North side of Cork Street to the West side of East Lane;
thence north along the West side of East Lane to the Southwest corner of the intersection of East Lane and Fairfax Lane;
thence West along the south side of Fairfax Lane to the intersection with West Lane;
thence North along the west side of West Lane to the South side of Elk St.;
thence West along the South side of Elk St. to the intersection of Elk Street and Chase Street;
thence North along the west side of Chase Street to the South side of Kern Street;
thence West along the south side of Kern Street to the West side of Kent Street;
thence North along the West side of Kent Street to the south side of the public way crossing the CSXT railroad tracks;
thence West along the south side of the public way crossing the CSXT railroad tracks to the east side of Cameron Street;
thence South along the east side of Cameron Street to the South side of North Avenue;
thence West along the south side of North Avenue to the east side of Loudoun Street;
thence south along the east side of Loudoun Street to the South side of Fairfax Lane;
thence west along the south side of Fairfax Lane to the east side of Washington Street;
thence south along the east side of Washington Street to the North side of Cork Street;
thence east along the north side of Cork Street to the East side of Braddock Street;
thence south along the east side of Braddock Street to the point of beginning, as shown on the map which is adopted as a part of this ordinance. (Ord. No. 033-95, 9-12-95)

SECTIONS 8-6 - 8-15. RESERVED.

ARTICLE II. TAX REBATES

SECTION 8-16. TAXES ELIGIBLE FOR REBATE.

Qualified business firms shall receive a rebate of a percentage of the following local taxes:

a. The meals tax imposed by Winchester City Code § 27-70 *et seq.*

b. The motel tax imposed by Winchester City Code § 27-90 *et seq.*

c. The machinery and tools tax imposed by Winchester City Code § 27-50.

d. The utility tax on local telephone usage imposed by Article V of Chapter 27 of the Winchester City Code.

e. The business, professional and occupational license taxes imposed by Chapter 28 of the Winchester City Code. (Ord. No. 033-95, 9-12-95)

SECTION 8-17. AMOUNT OF REBATE.

The amount of each type of tax rebate under §8-16 shall be a percentage of that tax paid by the firm each year. The percentage rebated each year shall be determined by the following schedule:

Year 1 . . . . . 100%
Year 2 . . . . . 80%
Year 3 . . . . . 60%
Year 4 . . . . . 40%
Year 5 . . . . . 20%

Year 1 is the calendar year following the year in which the firm becomes a qualified business firm. Qualified business firms shall receive the tax rebates established by this article for five years. If a business ceases to be a qualified business firm during a year in which the rebates apply, any rebates shall be prorated for the months the business was a qualified business firm. (Ord. No. 033-95, 9-12-95)

SECTION 8-18. PROCEDURE FOR REBATE.

Qualified business firms shall pay the taxes listed in this article in the manner prescribed by the Winchester City Code. Business firms shall apply to the Local Zone Administrator for certification as a qualified business firm. Upon certification and proof that no taxes are currently due, the qualified business firm shall be entitled to the rebates created by this article. The schedule for rebating the taxes shall be regulated by the Local Zone Administrator. Failure of the firm to pay in full by the due date any of the taxes

listed in this article, shall result in forfeiture of the rebate of that tax for that year. (Ord. No. 033-95, 9-12-95)

SECTIONS. 8-19 - 8-25. RESERVED.

ARTICLE III. EXEMPTION FROM LAND DEVELOPMENT FEES

SECTION 8-26. QUALIFIED ZONE RESIDENTS

For purposes of this article, the term "qualified zone resident" shall have the meaning provided in the Code of Virginia §59.1-280.1(D), as amended from time to time. The term shall also include a person who has entered into a contract to purchase or lease land within the enterprise zone, who will become a "qualified zone resident" except that such person does not yet hold title to the land at the time the fee is incurred. (Ord. No. 033-95, 9-12-95)

SECTION 8-27. BUILDING CODE FEES.

Qualified zone residents shall be exempt from the application fee imposed by Winchester City Code §6-26 and the building permit fees imposed by Winchester City Code §6-27. (Ord. No. 033-95, 9-12-95)

SECTION 8-28. WATER AND SEWER AVAILABILITY CHARGE.

Qualified zone residents shall be exempt from the availability charge imposed by Winchester City Code §29-7(c) on water and sewer connections. (Ord. No. 033-95, 9-12-95)

SECTION 8-29. ZONING ORDINANCE FEES.

Qualified zone residents shall be exempt from the fees imposed by §23-8-1 *et seq.* of the Zoning Ordinance. (Ord. No. 033-95, 9-12-95)

SECTION 8-30. SUBDIVISION ORDINANCE FEE.

Qualified zone residents shall be exempt from the charge for the submission of a subdivision plat imposed by the Subdivision Ordinance §4-8. (Ord. No. 033-95, 9-12-95)

SECTION 8-31. NONWAIVER.

This article shall not be construed to waive the requirement of any application, permit, or approval from the City as mandated by other code sections. Nothing in this article shall be construed as waiving the right of the City of Winchester to collect any fines or penalties imposed by other sections of the Code. (Ord. No. 033-95, 9-12-95)

SECTIONS 8-32 - 8-40. RESERVED.

ARTICLE IV. SUBSTANTIALLY REHABILITATED PROPERTY

SECTION 8-41. RESIDENTIAL REAL ESTATE.

Any residential real estate within an Enterprise Zone, upon which there is an existing structure which is no less than fifteen (15) years old, and which has been improved as to increase the assessed value thereof by no less than forty percent (40%), without increasing the total square footage by more than fifteen percent (15%) shall qualify for the real estate tax exemptions granted by Winchester City Code § 27-29. (Ord. No. 033-95, 9-12-95)

SECTION 8-42. COMMERCIAL OR INDUSTRIAL REAL ESTATE.

Any commercial or industrial real estate within an Enterprise Zone, upon which there is an existing structure which is no less than fifteen (15) years old, and which has been so improved as to increase the assessed value thereof by no less than sixty percent (60%), without increasing the total square footage by more than fifteen percent (15%) shall qualify for the real estate tax exemptions granted by Winchester City Code § 27-29. (Ord. No. 033-95, 9-12-95)

SECTION 8-43. DEFINITIONS.

The definitions and eligibility requirements of Division D of Article II of Chapter 27 of the Winchester City Code shall apply to this article *mutatis mutandis*. (Ord. No. 033-95, 9-12-95)

SECTION 8-44. RESTRICTIONS.

No property owner may apply for an exemption under this article on the basis of a building permit issued prior to the establishment of the enterprise zone. (Ord. No. 033-95, 9-12-95)

WINCHESTER CODE

CHAPTER 9

WATER PROTECTION

Art. I. In General, §§9-1--9-19
Art. II. Erosion and Sediment Control, §§9-20--9-49
Div. 1. In General, §§9-20--9-29
Div. 2. Erosion and Sediment Control Plan for Land Disturbing Activities, §§9-30--9-49
Art. III. Stormwater Management and Water Quality, §§9-50--9-79
Div. 1. In General, §§9-50--9-55
Div. 2. Plan Requirements: Water Quantity and Water Quality Protection, §§9-56--9-79
Art. IV. Stream Buffers, §§9-80--9-99
Art. V. Storm Sewer Discharges, §§9-90--9-95

ARTICLE I. IN GENERAL

SECTION 9-1. SHORT TITLE.

This Chapter shall be known and may be cited as the City's "Water Protection Ordinance."

SECTION 9-2. AUTHORITY.

This Chapter is adopted pursuant to authority conferred by the Virginia Erosion and Sediment Control Law (Virginia Code §§ 10.1-560 et seq.), the Virginia Stormwater Management Act (Virginia Code §§10.1-603.1 et seq.), Virginia Code §10.1-2108 of the Chesapeake Bay Preservation Act, and the federal Clean Water Act.

SECTION 9-3. PURPOSES.

The City Council finds that this Chapter is necessary to protect the health, safety and general welfare of the citizens of the City and the Commonwealth of Virginia and to prevent water from being rendered dangerous to the health of persons living in the City, and is supported by the findings of related studies that have been conducted. Therefore, the specific purposes of this Chapter are to:

Editor's Note: Ordinance No. 15-2006, adopted April 11, 2006, repealed and re-enacted Chapter 9 in its entirety.

Inhibit the deterioration of public waters and waterways resulting from land disturbing activities;
Protect the safety and welfare of citizens, property owners, and businesses by minimizing the negative impacts of increased stormwater runoff from new land development and redevelopment;
Control nonpoint source pollution, erosion and sedimentation, and stream channel erosion;
Maintain the integrity of existing stream channels and networks for their biological functions, drainage, and natural recharge of groundwater;
Protect the condition of public waters for all reasonable public uses and ecological functions;
Provide for the long-term responsibility for and maintenance of stormwater management facilities and best management practices;
Facilitate the integration of stormwater management and pollution control with other City ordinances and with federal, Commonwealth of Virginia and local programs, policies, regulations and guidelines; and
Prohibit illicit connections and discharges to the City's municipal storm sewer system.

SECTION 9-4. RULES OF CONSTRUCTION.

This Chapter protects paramount public interests and shall be liberally construed to effectuate its several purposes. The following rules of construction shall apply in the construction of this Chapter, unless such application would be contrary to the purposes of this Chapter or the context clearly indicates otherwise:

(1) All references to any statute, ordinance, regulation, guideline, handbook, manual or standard shall be to such statute, ordinance, regulation, guideline, handbook, manual or standard as it exists on the date of adoption of this Chapter and includes any amendment thereafter or reissue in a subsequent edition.
(2) Any reference to "this Article," "Article II," "Article III," or "Article IV" shall include references to all applicable references of Article I.
(3) All references to "days" shall be to calendar days.
(4) All references to a "fee schedule" shall mean and refer to a schedule of the fees and charges associated with the various applications, inspections, permits and approvals required by this Chapter, as approved and amended by the City Council from time to time. All required fees shall be made payable to the City Treasurer.

SECTION 9-5. DEFINITIONS.

The following terms, whenever used or referred to in this Chapter, shall have the respective meanings set forth below, unless the context clearly requires a contrary meaning or any such term is expressly defined to the contrary elsewhere in this Chapter:

Agreement in lieu of a plan means a contract between the program 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 program authority in lieu of a formal erosion and sediment control plan.

Applicant means any person submitting a plan for approval, or requesting the issuance of a permit, when required, authorizing land disturbing activities to commence.

Authorized City official means includes any officer or employee of the department of Public Services and Engineering authorized by the City Engineer to act pursuant to this Chapter, except for where the context clearly indicates otherwise

Best management practices ("BMP's") means schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or storm conveyance systems. BMP's also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, or combination of practices that is determined by the Commonwealth of Virginia, a designated area-wide planning agency, or the program authority, to be the most effective, practical means of preventing or reducing the amount of surface water runoff and pollution generated by nonpoint sources to a level compatible with water quality goals.

Board means: (i) as used in Article I, the Virginia Soil and Water Conservation Board, and (ii) as used in Article II, the Virginia Board of Conservation and Recreation.

Certified inspector means an employee or agent of the program authority implementing the City's local erosion and sediment control program who (1) holds a certificate of competence from the Virginia Soil and Water Conservation Board in the area of project inspection or (2) is enrolled in that 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 program authority implementing the City's local erosion and sediment control program, who (1) holds a certificate of competence from the Virginia Soil and Water Conservation Board in the area of plan review, (2) is enrolled in that Board's training program for plan review and successfully completes such program within one (1) year after enrollment, or (3) is licensed as a professional engineer, architect, certified landscape architect or land surveyor pursuant to Virginia Code § 54.1-400, et seq.

Certified program administrator means an employee or agent of the program authority implementing the City's local erosion and sediment control program who (1) holds a certification of competence from the Virginia Soil and Water Conservation Board in the area of program administration, or (2) is enrolled in that Board's training program for program administration and successfully completes such program within one (1) year after enrollment.

Channel means a natural stream or human-made waterway.

City means the City of Winchester, Virginia.

Clean Water Act means the federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

Conservation plan, erosion and sediment control plan or plan and specifications 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 necessary interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.

Conservation standards, criteria or specifications means the criteria, guidelines, techniques, and methods for the control of erosion and sedimentation whether promulgated by the program authority or contained in (1) the Virginia Erosion and Sediment Control Handbook and other regulations promulgated by the Virginia Soil and Water Conservation Board or (2) the Stormwater Management Handbook and other regulations promulgated by the Virginia Department of Conservation and Recreation.

Development, land development and *land development project* as used within this Chapter each refer to any manmade change to, or construction on, a land surface that potentially changes its runoff characteristics.

Director, for the purposes of Article V of this Chapter, shall mean and include the City's Director of Public Services or the City Engineer, and the employees and agents authorized by either of them to exercise authority or to take enforcement action under the provisions of Article V.

Discharge means to dispose, deposit, spill, pour, inject, dump, leak or place by any means, and also refers to that which is disposed, deposited, spilled, poured, injected, dumped, leaked or placed by any means.

Drainage Basin means a watershed.

Erosion and sediment control plan means a document which sets forth the major soil and water resources conservation measures that will be implemented to assure that the unit or units of land will be so treated to achieve the conservation objectives of this Chapter, and which may also include appropriate illustrations in the form of maps or a site plan, and appropriate narratives, such as a soil and water plan inventory and management information with needed interpretations, a record of decisions contributing to conservation treatment, and any specifications submitted with the plan.

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 five thousand (5,000) square feet or less used for residential purposes.

Illegal discharge and *illicit discharge* each means and refers to any discharge to the City's municipal separate storm sewer system ("MS4") that is not composed entirely of stormwater, except: (i) discharges pursuant to a Virginia Pollutant Discharge Elimination System (VPDES) permit; (ii) discharges resulting from firefighting activities; and (iii) any discharges specifically authorized within Article V of this Chapter.

Illicit connection means either of the following: (i) any drain or conveyance, whether on the surface or subsurface that allows an illegal discharge to enter the storm drain system including but not limited to any conveyances that allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted or approved by the Program Authority; or (ii) any drain or conveyance connected from a commercial or industrial land use to the storm drain system that has not been documented in plans, maps, or equivalent records approved by the Program Authority.

Land disturbing activity means any land change which may result in soil erosion from water or wind and the movement of sediments into waters or onto lands in the City or adjacent jurisdictions, including, but not limited to, clearing, grading, excavating, transporting and fill 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 that are less than five thousand (5,000) square feet.
(2) Installation, maintenance or repair of any other underground public utility mains or lines, when such activity occurs on an existing hard surfaced road, street or sidewalk and the land disturbing activity is confined to the area of the road, street or sidewalk which is hard surfaced.
(3) Construction, installation, maintenance or repair of any type of individual utility service connections.
(4) Septic tank lines or drainage fields unless included in an overall plan for land disturbing activity relating to construction of a building to be served by a septic tank system.
(5) Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of a railroad company.
(6) Disturbed land areas of less than five thousand (5,000) square feet in size.
(7) Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles.
(8) 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 plan, if the activity were not an emergency, then the land area disturbed shall be shaped and established in accordance

with the requirements of the Virginia Erosion and Sediment Control Handbook.

Linear development means a land development that is linear in nature, such as (but not limited to): (i) the construction of electric and telephone utility lines and natural gas pipelines; (ii) the construction of railroad tracks, rights-of-way, bridges, communication facilities and related facilities; and (iii) highway construction projects.

Local erosion and sediment control program means an outline of the various methods employed by the City to regulate land disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program, including, without limitation, City ordinances, policies and guidelines, technical materials, inspection, enforcement and evaluation.

Mitigation plan means a plan, a component of a stormwater management/BMP plan, erosion and sediment control plan, or an agreement in lieu of a plan that describes how encroachments into a stream buffer will be mitigated through runoff treatment, re-vegetation, the addition of extra buffer areas, or other appropriate measures.

Municipal Separate Storm Sewer System (MS4) means the system of conveyances (including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the City of Winchester and designed or used for collecting or conveying stormwater, and that is not used for collecting or conveying sewage.

Nonpoint source pollution means pollution whose sources cannot be pin-pointed but rather is washed from the land surface in a diffuse manner by stormwater runoff.

Owner means the owner of the freehold of land, or the owner of a lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person in control of a property. As used herein, *owner* also refers to, in the appropriate context: (i) any person authorized to act as the agent for the owner, (ii) any person who submits an erosion and sediment control plan or stormwater management plan for approval, or requests issuance of a permit, when required, authorizing land disturbing activities or land development to commence, and (iii) any person responsible for complying with an approved erosion and sediment control plan, agreement in lieu of a plan, or an approved stormwater management plan.

Permit means any building permit, grading permit, or other permit, including the approval of any site plan or subdivision plat, which is required to be issued by any board, commission, officer, employee or agency of the City as a prerequisite to any land development.

Permittee means (i) the person to whom a permit authorizing land disturbing activities is issued, (ii) the person who certifies that an approved erosion and sediment control plan will be followed, or (iii) the person who certifies that an approved stormwater

management plan will be followed.

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 this state, any interstate body, or any other legal entity.

Plan Approving Authority means the City Engineer of the City of Winchester, Virginia, who is responsible for determining the adequacy of a plan submitted for land disturbing activities on a unit or units of land and for approving plans.

Pollutant refers to, without limitation, paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnances and accumulations; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues resulting from construction of a building or structure; noxious or offensive matter of any kind; and other, similar substances that cause or contribute to water pollution.

Program Administrator means the City Engineer for the City of Winchester, Virginia.

Program Authority means the department of Public Services and Engineering. Except for where the context clearly indicates otherwise, the term “program authority” includes any officer or employee of the department of Public Services and Engineering authorized by the City Engineer to act pursuant to this Chapter.

Public waters means and refers to the waters refers to the public waters and waterways of the United States and of the Commonwealth of Virginia.

Redevelopment for purposes of this Chapter means and refers to construction of buildings and structures as replacement(s) for existing improvements.

Residential development means a tract or parcel of land developed or to be developed as a single unit under single ownership or unified control, and which is to contain three or more residential dwelling units.

Storm sewer system means the City’s municipal system of roads, streets, catch basins, retention and detention basins, curbs, gutters, ditches, pipes, lakes, ponds, channels, storm drains and other facilities located within the City which are designed or used for collecting, storing or conveying stormwater, or through which stormwater is collected, stored or conveyed.

Stormwater means any surface flow, runoff and drainage consisting of water discharged across the land surface, or through conveyances, to one or more waterways, from any form of natural precipitation.

Stormwater management facility maintenance agreement means an agreement that binds the owner or other designated parties to maintain and inspect stormwater management facilities constructed in accordance with this Chapter, based on specific terms and conditions of the agreement.

Stormwater management plan means a document containing material that describes how existing runoff characteristics will be maintained within a land development project, that describes controls for the management of the rate of stormwater discharge, and that describes any best management practices provided for water quality protection. A stormwater management plan may include a narrative section, a map or site plan, pertinent calculations and specifications included with the plan.

Stream buffer means an area of land at or near a tributary streambank and/or nontidal wetland that has an intrinsic water quality value due to the ecological and biological processes it performs or is otherwise sensitive to changes which may result in significant degradation to the quality of state waters.

Subdivision means the division, including resubdivision, of any lot, tract or parcel of land into two (2) or more lots, tracts or parcels, for the purpose, whether immediate or future, of sale or building development.

Watershed means a defined land area drained by a river, stream or drainage ways, or system of connecting rivers, streams, or drainage ways such that all surface water within the area flows through a single outlet.

Wetlands, non-tidal means wetlands other than tidal wetlands that are inundated or saturated by surface or groundwater at a frequency and duration to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U.S. Environmental Protection Agency pursuant to section 404 of the federal Clean Water Act.

SECTION 9-6. DESIGNATION OF PROGRAM AUTHORITY; POWERS AND DUTIES.

(a) The City Council hereby designates the department of Public Services and Engineering as the program authority for Articles II, III, and IV.

(b) The program authority shall administer and enforce the provisions of this Chapter, acting by and through authorized City officials and employees.

(c) The program authority shall establish reasonable regulations and interpretive guidelines for the administration of this Chapter. Such regulations and guidelines shall be consistent with this Chapter and all applicable federal and Commonwealth of Virginia statutes and regulations (including, without limitation, the provisions of Va. Code §9.1-570 and §10.1-603.7, and they shall be subject to the approval of City

Council).

(d) Within one year of the date of adoption of this Chapter the program authority shall assure that the erosion and sediment control program set forth in Article II is administered by a certified program administrator, a certified plan reviewer, and a certified project inspector. Such positions may be filled by the same person.

(e) The program authority shall take appropriate enforcement actions to achieve compliance with this Chapter, and shall maintain a record of enforcement actions for all active land disturbing activities and land developments.

(f) The program authority is authorized to cooperate with any federal or state agency in connection with plans for erosion and sediment control or stormwater management. The program authority may also recommend to the City manager any proposed agreement with such agency for such purposes, which agreement shall be executed, if at all, by the City manager on behalf of the City.

SECTION 9-7. SAVING PROVISION.

The adoption of this Chapter shall not abate any pending action, liability, or penalty of any person accruing or about to accrue, nor waive any right of the City under any provision in effect prior to the date of adoption of this Chapter, unless expressly provided for in this Chapter. Any erosion and sediment control plan, runoff control permit and, to the extent they pertain to stormwater management, any final site plan or plat, approved prior to the date of adoption of this Chapter shall remain in full force and effect, and all rights and remedies of the City in enforcing such plans, permits and plats are hereby preserved.

SECTION 9-8. APPEALS FROM DECISIONS UNDER THIS CHAPTER.

(a) Any person who is aggrieved by a decision of the program authority pursuant to this Chapter shall have the right of review of such action by the City Council. Any such appeal shall be filed in writing with the clerk of the City Council within ten (10) days of the date of such decision.

(b) An appeal received by the City Council pursuant to this section shall be referred to the planning commission for review and findings of fact. The planning commission shall review the appeal at its next regular meeting following the date the notice of appeal is received by the clerk of council, and shall report its findings to City Council. The City Council shall review the appeal within thirty (30) days after the date of the planning commission meeting.

(c) The City Council shall consider evidence presented by the owner, the program authority, and any other aggrieved person. The council shall render its decision in writing and may affirm, reverse or modify the program authority's decision. The council's decision shall constitute the final decision of the City on the matter(s)

which are the subject of the appeal.

(d) Any person aggrieved by a final decision of the City Council pursuant to this section shall have the right of review of such decision by the circuit court of the City. Any such appeal shall be filed in writing with the circuit court within thirty (30) days of the council's final decision.

(e) For the purposes of this section, "aggrieved person" is limited to the owner, a permittee, owners of adjacent and downstream property and any interested governmental agency or officer thereof.

SECTION 9-9. COMPLIANCE WITH CHAPTER PREREQUISITE TO ISSUANCE OF PERMITS AUTHORIZING LAND DEVELOPMENT ACTIVITIES.

A grading, building or other permit for activities involving land disturbing activities may be issued by the program authority only as provided herein:

(a) The owner shall submit with his application for such permit a proposed erosion and sediment control plan and/or stormwater management plan, as may be required by this Chapter, for review and approval pursuant to this Article, or an approved erosion and sediment control plan and/or stormwater management plan and certification that the plan(s) will be followed. The permit-issuing department shall not issue a permit until all such required plans have been approved and the required certification(s) are submitted.

(b) Prior to issuing a permit, the permit-issuing department shall require, or in the case of an agreement in lieu of a plan may require, the owner to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the program authority, to ensure that measures could be taken by the City at the applicant's expense, should he/she fail, after proper notice, within the time specified to initiate or maintain appropriate corrective action which may be required of him/her by the approved plan as a result of his/her land disturbing activity.

(c) A bond or other surety required by the permit-issuing department shall not exceed the total of the estimated cost to initiate, maintain and repair all structures, systems, and measures identified within an approved plan, and to comply with all other terms and conditions of the plan.

(1) The amount of the bond or other surety shall be based on unit prices for new public or private sector construction in the City of Winchester, Virginia, and a reasonable allowance for estimated administrative costs and inflation which shall not exceed 25% of the estimated cost to initiate, maintain and repair all structures, systems, and measures identified within an approved plan, and to comply with all other terms

and conditions of the plan.

(2) The performance bond or other surety shall be provided from a date prior to the issuance of any permit from the permit-issuing department or agency until 60 days after the requirements of the approved stormwater management plan have been completed, as determined by the program authority.

(3) If approved by the program authority, the owner may submit the performance bond or other surety as part of, or included in, any performance bond or surety required in connection with a site plan, subdivision plat or other required approval.

(d) If the program authority is required to take corrective action pursuant to this Article, then the City may collect from the owner the amount by which the reasonable cost of such corrective action exceeds the amount of the surety.

(e) Within sixty (60) days of the achievement of adequate stabilization of the land disturbing activity in any land development project or section thereof, the bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the owner or terminated based upon the percentage of stabilization accomplished in the project or section thereof.

SECTIONS 9-10 – 9-19. RESERVED.

ARTICLE II. EROSION AND SEDIMENT CONTROL

DIVISION 1. IN GENERAL

SECTION 9-20. PERMIT REQUIRED FOR LAND DISTURBING ACTIVITIES.

No person shall engage in any land disturbing activity within the City until he has acquired a permit from the Program Administrator.

SECTION 9-21. DETERMINATION OF LAND DISTURBING ACTIVITY.

The determination of whether an activity is a land disturbing activity for purposes of this Article shall be made as provided herein:

(a) The program authority shall determine whether an activity is a land disturbing activity, including any claim by an owner that the activity is exempt from the requirements of this Article.

(b) If a land disturbing activity includes activity at a separate location, including but not limited to borrow and disposal areas, the program authority may either:

(1) Consider the off-site activity as being part of the land disturbing activity, and require an erosion and sediment control plan to be submitted and approved; or
(2) If the off-site activity is already covered by an erosion and sediment control plan approved by the City, require the owner to provide proof of the approval and to certify that the plan will be implemented in accordance with this Article.

(c) If a property will be developed in phases, the determination of whether an activity constitutes a land disturbing activity shall be determined by considering the development of the property as a whole, regardless of the phasing of the development.

(d) Land disturbing activity of less than 5,000 square feet on individual lots in a residential development shall not be exempt from this Article if the total land disturbing activity in the residential development is equal to or greater than 5,000 square feet.

(e) Upon the determination by the program authority that an activity is a land disturbing activity the owner shall immediately comply with the requirements of this Article.

SECTION 9-22. DETERMINATION OF EROSION IMPACT AREA.

The determination of whether an erosion impact area exists on property shall be rendered as provided herein:

(a) The program authority shall determine whether an erosion impact area exists on a property and the property and the owner thereof are subject to the requirements of this Article. The program authority shall make this determination after an investigation brought either on his own initiative or upon the complaint of any citizen.

(b) Upon making a determination that an erosion impact area exists, the program authority shall immediately notify the owner of the property, in writing, of its determination. The notice shall be served by certified mail to the address of the owner based on the most recent tax records of the City, or by personal delivery. The written notice shall (i) instruct the owner to submit an erosion and sediment control plan for review and approval as provided in this Article, and (ii) state the date by which the plan must be submitted.

(c) Upon receipt of the notice required by this section, the owner shall immediately submit to the program authority a conservation plan designed to prevent further erosion, and the owner shall in all other aspects comply with the requirements of the notice and of this Article. The owner shall not permit any portion of the land that is the subject of the notice to remain in a condition such that soil erosion and sedimentation causes reasonably avoidable damage or harm to adjacent or downstream property, roads, streams, lakes or ponds.

(d) For good cause shown, the program authority may grant to an owner an extension of time to comply with the requirements of this section and this Article.

SECTIONS 9-23 – 9-29. RESERVED.

DIVISION 2. EROSION AND SEDIMENT CONTROL PLAN FOR LAND DISTURBING ACTIVITIES

SECTION 9-30. APPLICABILITY.

This Article shall apply to any land disturbing activity. Each owner shall comply with the requirements of this Article, as provided herein:

(1) Prior to engaging in any land disturbing activity, or allowing any land disturbing activity to occur, on his property;
(2) At all times during any land disturbing activity until it is completed, including all times when the land disturbing activity is performed by a contractor engaged in construction work; and
(3) When notified by the program authority that an erosion impact area exists on his land, and the notice requires the owner to submit an erosion and sediment control plan in order to control erosion and sedimentation.

SECTION 9-31. RESPONSIBILITIES OF OWNER OF LAND WHEN WORK TO BE CONDUCTED BY CONTRACTOR.

Whenever a land disturbing activity is proposed to be conducted by a contractor performing construction work pursuant to a construction contract, the preparation, submission and approval of the required erosion and sediment control plan shall be the responsibility of the owner of the land.

SECTION 9-32. CONFORMITY TO COMMONWEALTH OF VIRGINIA HANDBOOK.

Except as modified below, all plans and specifications submitted under this Article shall be in conformance with the standards, specifications and criteria of the Virginia Erosion and Sediment Control Handbook and those regulations promulgated by the Virginia Soil

and Water Conservation Board, including, without limitation, the criteria, techniques and methods set forth in 4VAC50-30-40, as amended. The following subsections are hereby changed of VAC 50-30-40 of the Virginia Erosion and Sediment Control Regulations:

(1) The provision found in Subsection 19b. (1) is deleted.

SECTION 9-33. REVIEW AND INSPECTION FEE.

A plan review and inspection fee shall be submitted at the time of filing any erosion and sediment control plan. This fee shall be an amount as set forth within the most recent fee schedule approved by City Council.

SECTION 9-34. EROSION AND SEDIMENT CONTROL PLAN.

Each owner subject to this Article shall submit to the program authority for review and approval an erosion and sediment control plan as provided herein:

(a) The owner shall submit a completed application on a form provided by the program authority, together with three (3) copies of an erosion and sediment control plan that satisfies the requirements of this section, and a certification stating that all requirements of the approved plan will be complied with.

(b) The plan shall include specifications for temporary and permanent controls of soil erosion and sedimentation in such detail as the program authority shall deem reasonably adequate, considering the nature and extent of the proposed land disturbing activity, and a statement describing the maintenance responsibilities of the owner to assure that the land disturbing activity will satisfy the purposes and requirements of this Article. As a minimum, the plan shall follow the format and conform to the approved standards and specifications for control techniques as set forth in the "Virginia Erosion and Sediment Control Handbook", which by reference is adopted as a part of this Chapter. The plan shall be consistent with the criteria, techniques and methods as set forth in the Minimum Standards (§ 4 VAC 50-30-40) of the Virginia Erosion and Sediment Control Regulations adopted by the Virginia Soil and Water Conservation Board. The plan shall identify the person

holding a certificate of competence, as described in Virginia Code § 10.1-561, who shall be in charge of and responsible for carrying out the land disturbing activity.

(c) The program authority may require additional information as may be necessary for its complete review of the plan.

(d) In lieu of paragraphs (a)-(c), above, if the land disturbing activity involves land also under the jurisdiction of another local erosion and sediment control program, the owner may, at his option, choose to have a conservation plan

approved by the Virginia Department of Conservation and Recreation, Division of Soil and Water Conservation. The owner shall notify the program authority of such plan approval by such board.

(e) Electric, natural gas and telephone utility companies, interstate and intrastate natural gas pipeline companies and railroad companies shall file general erosion and sediment control specifications annually with the Board for review and written comments. The specifications shall apply to:

(1) Construction, installation or maintenance of electric, natural gas and telephone utility lines, and pipelines; and;

(2) Construction of the tracks, rights-of-way, bridges, communication facilities and other related structures and facilities of the railroad company.

Individual approval of separate projects within subdivisions 1 and 2 of this subsection is not necessary when Board approved specifications are followed, however, projects included in subdivisions 1 and 2 must comply with Board approved specifications. Projects not included in subdivisions 1 and 2 of this subsection shall comply with the requirements of the City of Winchester erosion and sediment control program.

(f) State agency projects are exempt from the provisions of this ordinance except as provided for in the Code of Virginia, Sec. 10.1-564.

(Ord. No. 2007-21, 07-10-07)

SECTION 9-35. REVIEW AND APPROVAL OF EROSION AND SEDIMENT CONTROL PLAN.

Each erosion and sediment control plan submitted pursuant to this Article shall be reviewed and approved as provided herein:

(a) The plan shall be reviewed by the program authority to determine its compliance with the requirements of this Article and with applicable Commonwealth of Virginia laws and regulations.

(b) During its review of the plan, the program authority may correspond with the owner from time to time to review and discuss the plan with the owner, and shall inform the owner in writing of any modifications, terms, or conditions required to be included in the plan in order for it to be approved.

(c) Except as provided in paragraph (d), below, the program authority shall approve or disapprove a plan in writing within forty-five (45) days from the date a complete application was received. The decision of the program authority shall be based on the plan's compliance with the requirements of this Article and with applicable Commonwealth of Virginia laws and regulations. If the plan is disapproved, the specific reasons for such disapproval (with reference to the relevant ordinances, laws or regulations) shall be stated in the decision. The decision shall be communicated to the applicant by mail or delivery.

(d) If the program authority fails to act on the plan within 45 days from the date the complete application was received by it, then the plan shall be deemed approved.

(e) If the owner is required to obtain approval of a site plan or subdivision plat, the program authority shall not approve an erosion and sediment control plan unless and until the site plan or plat is approved as provided by law. For purposes of this paragraph, a site plan or plat may be deemed approved by the program authority if its approval is conditioned upon the approval of an erosion and sediment control plan pursuant to this Article, and the program authority determined that review and approval of the erosion and sediment control plan will not affect approval of the site plan or plat. The program authority may approve an erosion and sediment control plan prior to approval of a required site plan or plat in the following circumstances:

(1) To correct any existing erosion or other condition conducive to excessive sedimentation which is occasioned by any violation of this Chapter or by accident, act of God, or other cause beyond the control of the owner, provided that the activity proposed shall be strictly limited to the correction of such condition;
(2) To clear and grub stumps and other activity directly related to the selective cutting of trees, as may be permitted by law;
(3) To fill earth with spoils obtained from grading, excavation or other similar, lawful activities;
(4) To construct temporary access roads, provided that the area disturbed shall be returned to substantially its previous condition, with no significant change in surface contours, within thirty (30) days of the completion of such temporary use, or within thirteen (13) months of the commencement of any land disturbing activity on the land which is related to such temporary use, whichever period shall be shorter.
(5) To establish burrow, fill, or waste areas, if permitted by the City's zoning ordinance.

SECTION 9-36. AGREEMENT IN LIEU OF A PLAN.

(a) If land disturbing activity is for the purpose of establishing or modifying a single

family detached dwelling, the program authority may allow an agreement in lieu of a plan for the construction of such dwelling, provided:

(1) The single family dwelling is located on an individual lot which is not part of a subdivision; or
(2) The single family dwelling is located within a residential development or subdivision, and the individual lots are being developed by different property owners; or
(3) The single family dwelling is located within a subdivision that no longer has an active erosion and sediment control plan; and
(4) The agreement in lieu of a plan identifies the person holding a certificate of competence, as described in Virginia Code 10.1-561, who shall be in charge of and responsible for carrying out the land disturbing activity.

(b) In determining whether to allow an agreement in lieu of a plan, the program authority shall include as part of its consideration the potential threat to water quality and to adjacent land resulting from the land disturbing activity. When an agreement in lieu of a plan is authorized and approved by the program authority, the program authority and the owner shall have all of the rights, responsibilities and remedies set forth in this Article as though such agreement in lieu of a plan was an erosion and sediment control plan.

SECTION 9-37. AMENDMENT OF APPROVED PLAN.

The program authority may change an approved erosion and sediment control plan, and/or require an owner to submit an amended plan, in the following circumstances:

(1) An inspection reveals that the plan is inadequate to satisfy the requirements of this Article; or
(2) The owner 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 program authority and the owner; or
(3) The land disturbing activity was not commenced during the one hundred eighty (180) day period following plan approval, or ceased for more than one hundred eighty (180) days, and the existing plan has been evaluated to determine whether it still satisfies the requirements of this Article and Commonwealth of Virginia erosion and sediment control criteria and to verify that all design factors are still valid, and it has been determined that the plan is inadequate. In such a case, the land disturbing activity shall not be resumed until a modified plan is submitted and approved as provided in this Article.

SECTION 9-38. DUTY TO COMPLY, MAINTAIN AND REPAIR.

Upon approval by the program authority of an erosion and sediment control plan, each

owner shall:

(1) Comply with the approved plan when performing, or allowing to be performed, any land disturbing activities, or activities to correct an erosion impact area;
(2) Maintain and repair all erosion and sediment control structures and systems to ensure continued performance of their intended function;
(3) Comply with all requirements of this Article; and
(4) Have a person holding a certificate of competence, as described in Virginia Code §10.1-561, in charge of and responsible for carrying out the land disturbing activity. This person shall be designated prior to commencement of land disturbing activity. (Ord. No. 2007-21, 07-10-07)

SECTION 9-39. INSPECTION AND MONITORING.

(a) As a condition of approval of an erosion and sediment control plan, the program authority may require the owner to monitor and report to the program authority as provided herein:

(1) Any monitoring conducted shall be for the purpose of ensuring compliance with the erosion and sediment control plan, and to determine whether the measures required in the plan are effective in controlling erosion and sediment.
(2) The condition requiring monitoring and reporting shall state: (i) the method and frequency of such monitoring, and (ii) the format of the report and the frequency for submitting reports.

(b) The program authority shall inspect any land disturbing activity or erosion impact area as provided herein:

(1) The program authority shall conduct periodic inspections of land disturbing activities and erosion impact areas to determine compliance with the approved erosion and sediment control plan, and to determine whether such approved plan and permit as implemented are adequate to satisfy the requirements of this Article.
(2) Except as provided in paragraph (3), below, inspections shall be conducted
(i) during or immediately following initial installation of erosion and sediment controls; (ii) at times indicated by Commonwealth of Virginia conservation standards; and (iii) upon completion of the land development project prior to the release of any surety. The inability of the program authority to conduct inspections within the time periods set forth within this paragraph shall not be deemed to be a failure of the program authority to perform a mandatory duty or a ministerial function, and no liability to the City, the program authority, or to any official or employee thereof shall arise therefrom.

(3) Notwithstanding paragraph (2), above, the program authority is authorized to establish an alternative inspection program which ensures compliance with an approved erosion and sediment control plan. Such alternative inspection program shall be: (i) approved by the Virginia Soil and Water Conservation Board prior to implementation; (ii) established in writing; (iii) based on a system of priorities which, at a minimum, address the amount of disturbed project area, site conditions, and stage of construction; (iv) documented by inspection records; and (v) maintained and available for public review in the department of Public Services and Engineering.

(4) The program authority shall have the right to enter upon property subject to an erosion and sediment control plan for the purposes of conducting an inspection as provided in this section or an investigation pertaining to an erosion or sedimentation complaint. The owner shall be given notice of the inspection. Such notice may be either verbal or in writing.

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SECTION 9-40. DETERMINATION OF NONCOMPLIANCE WITH PLAN.

Upon a determination by the program authority that an owner has failed to comply with an approved erosion and sediment control plan, the following procedures shall apply:

(a) The program authority shall immediately serve upon the owner a written notice to comply. The notice shall (i) instruct the owner to take corrective measures immediately, when immediate action is necessary to prevent erosion or sedimentation problems; (ii) state specifically the measures needed to come into compliance with the approved plan; and (iii) state a reasonable time for compliance. The notice shall be served by certified mail to the address provided by the owner in the application for approval of the plan, by personal delivery to the owner, or by personal delivery to an agent or employee at the site of the permitted activities who is supervising such activities.

(b) If the owner fails to take corrective measures stated in the notice to comply within the time specified in the notice, the permit-issuing department may revoke any permit it has issued related to the land disturbing activity and the owner shall be deemed to be in violation of this Article. Furthermore, he/she shall be deemed to be in violation of this Chapter and shall be subject to the penalties provided by the Chapter.

(c) If the owner fails, within the time specified in the notice, to take the corrective measures for compliance stated in the notice, the program authority, upon finding that such action is reasonably necessary to protect the public health, safety and welfare, may take all corrective measures it deems necessary in order to protect the public health, safety and welfare, and shall be entitled to recover the expenses of such action from the owner.

(d) Upon receipt of a sworn complaint of a violation of this Article or of an approved erosion and sediment control plan, from an employee or representative of the program authority responsible for ensuring program compliance, the Program Administrator or designee may, in conjunction with or subsequent to a notice of violation, 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, requiring that all of the land disturbing activities be stopped until an approved plan and any required permits have been obtained.

(1) Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands, sediment deposition in waters, or water quality problems within the watersheds of the Commonwealth, or where the 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. Otherwise, such an

(2) order may be issued only after the alleged violator has failed to comply with a notice to comply.
(3) A stop-work order shall be served in the same manner as a notice to comply, and it shall remain in effect for seven (7) days from the date of service, pending application by the enforcing authority or alleged violator for appropriate relief to the circuit court.
(4) If the alleged violator has not obtained an approved plan or any required permits within seven (7) days from the date of service of a stop-work order, the City engineer or his designee may issue an order to the owner requiring that all construction or other work on the site, other than corrective measures, be stopped until an approved plan and any required permits have been obtained. Such an order shall be served upon the owner by certified mail to the address specified in the permit application.
(5) The owner may appeal the issuance of any stop-work order to the circuit court.
(6) Final decision of the Plan Approving Authority under this Chapter shall be subject to review by the circuit court of the City provided an appeal is filed within thirty (30) days from the date of the final written decision adversely affecting the rights, duties or privileges of the person engaging or proposing to engage in land disturbing activities.
(7) Any person violating or failing, neglecting or refusing to obey an order issued by the City engineer or his designee may be compelled in a proceeding instituted in the circuit court to obey the order and to comply therewith, by injunction, mandamus or other appropriate remedy.
(8) Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted.
(9) Nothing in this section shall prevent the Program Administrator or his/her designee from taking any other action authorized by this Chapter or by any other provision of law.

SECTION 9-41. CERTIFICATION OF PROGRAM PERSONNEL.

As required by Commonwealth of Virginia law, the City's erosion and sediment control program shall meet, within one (1) year following the adoption of this section, the following minimum standards for effectiveness:

(1) An erosion and sedimentation control plan shall not be approved until it is reviewed by a certified plan reviewer;
(2) Inspections of land disturbing activities shall be conducted by a certified inspector; and
(3) The City's erosion control program shall contain a certified program administrator, a certified plan reviewer and a certified project inspector, who may be the same person.

SECTION 9-42. PENALTIES, INJUNCTIONS AND OTHER LEGAL ACTIONS.

(a) Any person violating the provisions of this Article shall, upon conviction, be guilty of a Class 1 misdemeanor.

(b) The following may apply to the circuit court for injunctive relief to enjoin a violation or a threatened violation of this Article, without the necessity of showing that an adequate remedy at law does not exist:

(1) The City.
(2) The owner of property that has sustained damage or that is in imminent danger of being damaged; however, an owner of property shall not apply for injunctive relief unless (i) he has notified in writing the person who has violated the provisions of this Article, and the program authority, that a violation of this Article has caused, or creates a probability of causing, damage to his property, and (ii) neither the person who has violated this Article nor the program authority has taken corrective action within 15 days to eliminate the conditions which have caused, or create the probability of causing, damage to the owner's property.

(c) In addition to any criminal penalties provided for a violation of this Chapter, any person who violates any provision of this Chapter may be liable to the City in a civil action for damages.

(d) Each violation of any regulation or order of the Board, any provision of this Chapter, or any provision of Title 10.1, Chapter 5, Article 4 of the Code of Virginia shall be subject to a civil penalty of one hundred dollars ($100.00). Each day during which the violation is found to have existed shall constitute a separate offense. However, in no event shall specified violations arising from the same set of facts result in civil penalties which exceed a total of three thousand dollars ($3,000.00), except that a series of violations arising from the commencement of land disturbing activities without an approved plan for any site shall not result in civil penalties which exceed a total of $10,000. An appropriate official or employee of the program authority, or a certified inspector for the City, may issue a summons for collection of the civil penalty and the action may be prosecuted by the City.

(e) 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 $2,000.00 for each violation. A civil action for such violation or failure may be brought by the City against such person.

(f) With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the Program Administrator issued under this Chapter

any condition of a permit issued under this Chapter or any provision of this Chapter, the Program Administrator may provide, in an order issued against such person, for the payment of civil charges for violations in specific sums, not to exceed $2,000.00. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection (d) or (e) of this section.

(g) Any civil penalties assessed by a court pursuant to this section shall be paid into the City treasury, except that where the violator is the locality itself, or its agent, the court shall direct the penalty to be paid into the Commonwealth of Virginia treasury.

SECTIONS 9-43 -9-49. RESERVED.

ARTICLE III. STORMWATER MANAGEMENT AND WATER QUALITY

DIVISION 1. IN GENERAL

SECTION 9-50. STORMWATER MANAGEMENT PLAN; APPLICABILITY.

(a) Each owner shall comply with the requirements of this Article prior to commencing any land development, or allowing any land development to occur, on his property, for residential, commercial, industrial or institutional use, and at all times thereafter.

(b) No person may commence development of any land until he has submitted a stormwater management/best management plan (BMP) to the City and has obtained the City's approval of that plan. No building permit, site plan approval or other permit for activities involving land development shall be issued by any City department or official, unless a stormwater management/BMP plan has been approved by the program authority consistent with the provisions of this division.

SECTION 9-51. STORMWATER MANAGEMENT/BMP PLAN; REQUIREMENTS.

Each person subject to this Article shall submit to the program authority for review and approval a stormwater management/BMP plan as provided herein:

(a) Together with the required stormwater management/BMP plan, the owner of property proposed for development or redevelopment shall submit:

(1) An application on a form provided by the program authority;
(2) Any required application fee, as set forth within the most recent fee schedule approved by City Council.
(3) A certification stating that all land clearing, construction, land

development and drainage will be done according to the approved plan;

(4) Specifications for stormwater management and best management practices in order to satisfy the requirements of Division 2 of this Article. The program authority may require the owner to submit maps, calculations, detail drawings, reports, a listing of all major permit decisions and any other information as are determined by the program authority to be necessary to allow a complete review of the plan.

(b) For purposes of this section, major permit decisions include, but are not limited to, decisions pertaining to zoning map amendments, special use permits, grading permits, building and erosion and sediment control plans and any permit related to the land development required under Commonwealth of Virginia or federal law.

SECTION 9-52. REVIEW AND APPROVAL OF STORMWATER MANAGEMENT/BMP PLAN.

Each stormwater management/BMP plan submitted pursuant to this Article shall be reviewed and approved as provided herein:

(a) The plan shall be reviewed by the program authority to determine its compliance with the requirements of this Article and with applicable federal and Commonwealth of Virginia laws and regulations. Where a proposed stormwater management plan includes facilities or BMPs for which design requirements and specifications, and/or maintenance requirements, are specified within the Virginia Stormwater Management (SWM) Handbook and/or the Virginia Stormwater Management Regulations set forth within 4 VAC 3-20 et seq., the program authority shall utilize those design requirements, specifications and/or maintenance requirements in reviewing and making decisions as to the acceptability of such facilities or BMPs under this Article.

(b) The plan shall be reviewed by the program authority to determine whether it complies with the requirements of section 9-51 and all other requirements of this Article.

(c) During its review of the plan, the program authority may meet with the owner from time to time to review and discuss the plan with the owner, and to request any additional data as may be reasonably necessary for a complete review of the plan.

(d) The program authority shall approve or disapprove a plan within forty-five (45) days from the date a complete application was accepted for review. The decision of the program authority shall be based on the plan's compliance with this Article. If the plan is disapproved, the reasons for such disapproval shall be stated in the decision.

(e) Each stormwater management/BMP plan approved by the program authority shall be subject to the following:

(1) The owner shall comply with all applicable requirements of the approved plan, this Article, the Virginia Stormwater Management Act (Virginia Code §§ 10.1-603.2 et seq.), and the Commonwealth of Virginia stormwater management regulations set forth in 4 VAC 3-20-10 et seq.;
(2) The owner shall certify that all land clearing, construction, land development and drainage will be done according to the approved plan;
(3) Land development shall be conducted only within the area specified in the approved plan;
(4) The rights granted by virtue of the approved plan shall not be transferred, assigned or sold unless a written notice of transfer, assignment or sale is filed with the program authority and the recipient of such rights provides the certification required by provision (e)(2);
(5) The program authority may require, in conjunction with its approval of a plan, that the owner first enter into a stormwater management/BMP facilities maintenance agreement as provided in section 9-63;
(6) The program authority shall be allowed, after giving reasonable notice to the owner, occupier or operator of the land development, to conduct periodic inspections as provided in section 9-67; and
(7) The program authority may require, as a condition of plan approval, that the owner enter into a right of entry agreement or grant an easement for purposes of inspection and maintenance. If such agreement or easement is required, the program authority shall not be required to give notice prior to conducting an inspection.

(f) Nothing in this section shall require approval of a plan or part thereof that is determined by the program authority to pose a danger to the public health, safety, or general welfare or to deviate from sound engineering practices.

Commonwealth of Virginia law reference--Va. Code § 10.1-603.8.

SECTION 9-53. MONITORING AND REPORTING.

As a condition of approval of a stormwater management/BMP plan, the program authority may require the owner to monitor and report to the program authority as provided herein:

(a) Any monitoring conducted shall be for the purpose of ensuring compliance with the stormwater management/BMP plan and to determine whether the plan provides effective stormwater management.

(b) The condition requiring monitoring and reporting shall state the method and frequency of such monitoring.

(c) The condition requiring monitoring and reporting shall state the format of the report and the frequency for submitting reports.

Commonwealth of Virginia law reference--Va. Code § 10.1-603.8.

SECTION 9-54. ISSUANCE OF PERMIT; SURETY.

A grading, building or other permit for activities involving land development may be issued by a permit-issuing department only as provided herein:

(a) The owner shall submit with his application for such permit an approved stormwater management/BMP plan and certification by the owner that all land clearing, construction, land development and drainage will be done according to the approved plan. The permit-issuing department shall not issue a permit until such approved plan and certification are submitted.

(b) Prior to the issuance of any such permit, the permit-issuing department shall require the owner to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the permit-issuing department and the City attorney, to ensure that measures could be taken by the permit-issuing department or the program authority at the owner's expense should he fail, after proper notice as provided in section 9-68, to take timely corrective action specified in the notice. The performance bond or other surety shall be provided from a date prior to the issuance of any permit by the permit issuing department until sixty (60) days after the requirements of the approved stormwater management/BMP plan have been completed, as determined by the program authority.

(c) A performance bond or other surety required by the permit-issuing department pursuant to paragraph (b) shall not exceed the total of the estimated cost to initiate, maintain and repair all stormwater management facilities, practices and other appropriate actions which may be required of the owner pursuant to the approved stormwater management/BMP plan as a result of the land development. The amount of the bond or other surety shall be based on unit price for new public or private sector construction in the City of Winchester, Virginia, and a reasonable allowance for estimated administrative costs and inflation which shall not exceed twenty-five (25) percent of the estimated cost to initiate, maintain and repair all stormwater management facilities, practices and other appropriate actions which may be required of the owner pursuant to the approved stormwater management/BMP plan.

(d) If the program authority is required to take corrective action pursuant to section 9-68 upon the failure of the owner to do so, the City may collect from the owner for the difference if the amount of the reasonable cost of the corrective action exceeds the amount of the surety.

(e) Within sixty (60) days of the completion of the requirements of the approved stormwater management/BMP plan, as determined by the program authority, the bond or other surety, or any unexpended or unobligated portion thereof shall be refunded to the owner or terminated. Thereafter, compliance with the requirements of this Article shall be assured by a maintenance agreement entered into by and between the owner and the program authority, which agreement shall be in a form approved by the City attorney.

Commonwealth of Virginia law reference--Va. Code § 10.1-603.8.

SECTION 9-55. FEES.

Each owner seeking approval of a stormwater management/BMP plan shall pay a fee upon submittal of such plan, and shall pay a fee for each inspection, in amounts as set forth in the most recent fee schedule approved by City Council.

Commonwealth of Virginia law reference--Va. Code § 10.1-603.10.

DIVISION 2. PLAN REQUIREMENTS: WATER QUANTITY AND WATER QUALITY PROTECTION

SECTION 9-56. STORMWATER MANAGEMENT FACILITIES AND CHANNELS.

Stormwater management facilities and modifications to channels required as part of a stormwater management/BMP plan shall be designed, installed and constructed as provided herein:

(1) Stormwater management facilities, best management practices, and modifications to channels shall be designed and constructed in compliance with applicable local, Commonwealth of Virginia and federal laws, regulations, and standards, including, but not limited to the Federal Clean Water Act; the Virginia Stormwater Management Act (VA Code §§10.1-603.2 et seq) and the stormwater management regulations promulgated by the state Board of Conservation and Recreation, set forth within 4 VAC 3-20-10 et seq.; the National Flood Insurance Program; and the City of Winchester Stormwater Management Design Manual.

(2) Stormwater management facilities and best management practices shall be designed and sited to capture, to the maximum extent practicable, the runoff from the entire land development project area and, in particular, areas of impervious cover within the development project area.
(3) Hydrologic parameters shall reflect the ultimate buildout in the land development project area and shall be used in all engineering calculations.
(4) Post-development runoff rate of flow shall be maintained, as nearly as practicable, as the pre-development runoff characteristics, subject further to the requirements of §9-52.
(5) The number, type, and siting of stormwater management facilities shall be designed so as to preserve natural channel characteristics and natural groundwater recharge on a site to the extent practical.

Commonwealth of Virginia law reference--Va. Code § 10.1-603.3.

SECTION 9-57. NON-STRUCTURAL MEASURES.

Non-structural measures may be used in conjunction with or in place of structural measures in order to satisfy the requirements of this Article, as provided herein:

(1) The program authority may allow non-structural measures to satisfy, partially or in whole, the requirements of this Article, if such measures are identified in accepted technical literature, are acceptable to the program authority based on its exercise of sound professional judgment, and the program authority finds that the measures achieve equivalent benefit for water quantity and/or quality protection as would otherwise be provided by structural measures.
(2) *Non-structural measures* include, but are not limited to, minimization of impervious surfaces, stream buffer reforestation, providing additional stream buffer areas, wetland restoration, waste reuse and recycling, and development design that reduces the rate and volume of runoff.

Commonwealth of Virginia law reference--Va. Code § 10.1-603.3.

SECTION 9-58. CONTROL OF PEAK RATE AND VELOCITY OF RUNOFF.

(a) Each stormwater management/BMP plan shall require that land and receiving waterways which are downstream from the land development be protected from stormwater runoff damage, as provided herein:

(1) To protect downstream properties and receiving waterways from flooding, the ten (10) year post-development peak rate of runoff from the land development shall not exceed the ten (10) year pre-development peak rate of runoff.
(2) To protect downstream properties and receiving waterways from channel erosion, the two (2) year post-development peak rate and velocity of runoff

from the land development shall not exceed the two (2) year pre-development peak rate and velocity of runoff.

(3) If the land development is in a watershed for which a hydrologic and/or hydraulic study has been conducted or a stormwater model developed, the program authority may modify the requirements of paragraphs (1) and (2) so that runoff from the land development is controlled in accordance with the findings in the study or model, or to prevent adverse watershed stormflow timing, channel degradation, and/or localized flooding problems.

(4) In addition to the requirements of paragraphs (1) and (2), the program authority may require that the plan include additional measures to address damaging conditions to downstream properties and receiving waterways caused by the land development.

(b) Pre-development and post-development runoff rates determined for purposes of paragraph (a) shall be verified by calculations that are consistent with accepted engineering practices, as determined by the program authority.

(c) Notwithstanding any other provisions of this Article, the following activities are exempt from the requirements of this section:

(1) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1 of the Code of Virginia;

(2) Tilling, planting or harvesting or agricultural, horticultural, or forest crops;

(3) Construction, extension or replacement of a building or buildings on a site of 5,000 square feet or less, not including cases where development is to be done in phases and the total land disturbance for all phases is greater than 5,000 square feet;

(4) Land development or a portion of a land development on land which is designated as lying within a flood plain, except in cases where the flood plain has been modified by permitted fill or other activities in compliance with the zoning ordinance;

(5) Land development or a portion of a land development where the land is adjacent to a flood plain, and the owner has demonstrated to the reasonable satisfaction of the program authority that off-site improvements or other provisions for the disposition of surface water runoff would equally or better serve the public interest and safety, and that such method of disposition would not adversely affect downstream properties or stream channels; and

(6) Any land development related to a final site plan or plat approved by the appropriate governing authority prior to the effective date of this Chapter.

(d) The program authority may exempt a land development or part thereof from some or all of the requirements of this section if all of the following conditions are satisfied:

(1) The land development or a part thereof is within a water supply protection area or other rural land;
(2) The program authority determines that the application of the requirements of this Article would cause damage to the environment to an extent which exceeds the benefits of the strict application of all of the requirements of this Article;
(3) All requirements which are determined by the program authority to not apply to the land development or part thereof shall be set forth in the stormwater management/BMP plan; and
(4) The granting of an exemption of any requirement of this Article will not create a threat to the public health, safety or welfare, or to the environment.

Commonwealth of Virginia law reference--Va. Code § 10.1-603.3.

SECTION 9-59. BEST MANAGEMENT PRACTICES.

(a) Each stormwater management/BMP plan shall require that best management practices be provided in conjunction with or in addition to stormwater management facilities designed for water quantity treatment, as provided herein:

(1) Best management practices shall be designed and sited to capture runoff from the entire land development project area and, in particular, areas of impervious cover within the land development, to the maximum extent practicable.
(2) Best management practices shall be designed to remove the difference between post-development and pre-development total phosphorus loads in cases where post-development loads exceed pre-development loads.
(3) Calculation methods and expected removal ranges for various best management practices shall be included in the design manual maintained by the program authority.

(b) Notwithstanding any other provisions of this Article, the following activities are exempt from the requirements of this section:

(1) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1 of the Code of Virginia;
(2) Tilling, planting or harvesting or agricultural, horticultural, or forest crops; and
(3) Single-family dwelling units separately built and not part of a division of land, including additions or modifications to existing single-family detached dwelling units, except if the land disturbance exceeds 5,000 square feet.

Commonwealth of Virginia law reference--Va. Code § 10.1-603.3.

SECTION 9-60. CONTRIBUTION TO REGIONAL STORMWATER MANAGEMENT PROGRAM.

(a) Each stormwater management/BMP plan shall require that the owner contribute to a regional stormwater management program, as provided herein:

(1) If the land development is located within the watershed of a regional stormwater management program established by the county which requires pro rata share contributions, the owner shall pay a pro rata share of the cost of the facility in accordance with any ordinance of the county establishing the program.
(2) An owner's payment pursuant to paragraph (1) shall relieve the owner of the requirements of section 17-314, if the regional program is designed to control the peak rate and velocity of runoff, and/or the requirements of section 17-315, if the regional program is designed to provide best management practices. An owner's payment pursuant to paragraph (1) shall not relieve an owner of his responsibility to comply with any other requirement of this Chapter, except as provided in this section.

Commonwealth of Virginia law reference--Va. Code § 10.1-603.3.

SECTION 9-61. REVIEW; APPROVAL.

Each stormwater management plan submitted pursuant to this Article shall be reviewed and approved as provided herein:

(1) The plan shall be reviewed by the program authority to determine its compliance with the requirements of this Article and with applicable federal and Commonwealth of Virginia laws and regulations. Where a proposed stormwater management plan includes facilities or BMPs for which design requirements and specifications, and/or maintenance requirements, are specified within the Virginia Stormwater Management (SWM) Handbook and/or the Virginia Stormwater Management Regulations set forth within 4 VAC 3-20 et seq., the program authority shall utilize those design requirements, specifications and/or maintenance requirements in reviewing and making decisions as to the acceptability of such facilities or BMPs under this Article.
(2) During its review of the plan, the program authority may meet and correspond with the owner from time to time to review and discuss the plan with the owner, and to request any additional data as may be reasonably necessary for a complete review of the plan.
(3) The program authority shall approve or disapprove a plan within 45 days from the date a complete application was received. The decision of the program authority shall be based on the plan's compliance with the requirements of this Article and with applicable Commonwealth of Virginia laws and regulations. The decision shall be in writing and shall be communicated to the

(4) Nothing in this Article or section shall require approval of a plan, or any portion thereof, that is determined by the program authority to pose a danger to the public health, safety, or general welfare, or to deviate from sound engineering practices.

SECTION 9-62. CONDITIONS OF APPROVAL.

Each stormwater management plan approved by the program authority shall be subject to the following:

(a) The owner shall comply with all applicable requirements of this Article, the Virginia Stormwater Management Act (Va. Code §§10.1-603.2 et seq), the Commonwealth of Virginia stormwater regulations set forth in 4 VAC 3-20-10 et seq, and the Virginia Stormwater Management Handbook.

(b) The owner shall certify in writing that all land clearing, construction, land development and drainage will be done according to the approved plan.

(c) Land development shall be conducted only within the area specified within the approved plan.

(d) The rights granted by virtue of the approved plan shall not be transferred, assigned or sold unless a written notice of transfer, assignment or sale is filed with the program authority and the recipient of such rights provides the certification required by provision (b), above.

(e) The program authority shall be allowed, after giving reasonable notice to the owner, occupier or operator of the land development, to conduct periodic inspections of the land development to determine the owner's compliance with the provisions of this Article. The program authority may require, as a condition of approval of a stormwater management plan, that the owner enter into a right of entry agreement, or grant an easement, for purposes of inspection and maintenance. If such agreement or easement is required, the program authority shall not be required to give notice prior to conducting an inspection.

(f) As a condition of approval of a stormwater management plan, the program authority may require the owner to monitor and report to the program authority as follows:

Any monitoring conducted by the owner shall be for the purpose of ensuring compliance with the approved stormwater management plan and to determine whether the plan provides effective stormwater management.

The condition(s) requiring monitoring and reporting shall state the method and frequency of such monitoring.

The condition(s) requiring monitoring and reporting shall state the format of the report and the frequency for submitting reports.

SECTION 9-63. DUTY TO COMPLY, MAINTAIN AND REPAIR; MAINTENANCE AGREEMENT.

(a) The owner shall maintain and repair all structural and nonstructural stormwater management measures required by the plan, as follows:

(1) The owner shall be responsible for the operation and maintenance of such measures and shall pass such responsibility to any successor owner, unless such responsibility is lawfully transferred to the City or to another governmental entity.

(2) If an approved stormwater management plan requires structural or nonstructural measures, the owner shall execute a stormwater management facilities maintenance agreement prior to the program authority granting final approval for any site plan or other development for which a permit is required. The agreement shall be recorded in the office of the clerk of the circuit court for the City of Winchester and shall run with the land. If an owner certifies that it cannot exercise its rights under a purchase agreement until a site plan or other development receives final approval from the City, the program authority may grant its final approval without a signed agreement, provided that the agreement is signed and recorded as provided herein prior to issuance of any certificate of occupancy for the development project. The required stormwater management facilities maintenance agreement shall be in a form approved by the City attorney and shall, at a minimum:

(i) Designate for the land development the owner, governmental agency, or other legally-established entity which shall be permanently responsible for maintenance of the structural or non-structural measures required by the plan;

(ii) Pass the responsibility for such maintenance to successors in title; and

(iii) Ensure the continued performance of the maintenance obligations required by the plan and by this Article.

SECTION 9-64. AMENDMENT OF APPROVED STORMWATER MANAGEMENT PLANS.

An approved stormwater management plan may be changed or amended only as provided herein:

(a) The program authority may change an approved stormwater management/BMP plan as provided herein:

(1) The owner shall submit additional data identified in section --- (plan requirements) in order to allow the program authority to determine whether any such change will comply with the requirements of this Article.

(b) The owner shall submit to the program authority a written request and justification for a change or amendment of an approved stormwater management plan, and shall provide such data as may be required by the program authority in order to determine whether the proposed change will comply with the requirements of this Article.

(c) The program authority shall conduct its review and shall make its decision with respect to the proposed change in accordance with the procedures for initial submission and approval of a stormwater management plan.

(d) If the proposed change to the approved plan complies with the requirements of this Article, the program authority shall approve such proposed change in writing.

(e) An owner shall make no changes to an approved plan without first complying with this section.

SECTION 9-65. EXCEPTIONS.

Other than requests for permission to develop within a required stream buffer, which requests shall be handled pursuant to §9-74, a request for an exception to the requirements of this Article shall be made and reviewed as follows:

(a) A written request for an exception shall be submitted to the program authority, which shall immediately forward a copy of the request to the City attorney's office. The request shall address the factors listed in paragraph (c), below.

(b) After receiving and considering a recommendation from the program authority, the City Council shall grant or deny a request for an exception within 60 days from the date of the program authority's receipt of the request.

(c) A request for exception may be granted by the City Council, upon finding that:

(1) A stormwater management plan has been submitted to the program authority for review in accordance with this Article, and the plan demonstrates that reasonable alternatives to the exception have been considered and determined to not be feasible through attempts to meet the provisions of this Article, the use of non-structural measures, the use of a mitigation plan, or by other means;
(2) The exception requested is the minimum necessary to afford relief;
(3) Reasonable and appropriate conditions can be imposed to ensure that the purposes of this Article are satisfied; and
(4) The sole basis for the request is not economic hardship, which shall be deemed an insufficient reason to grant an exception.

SECTION 9-66. DEDICATION OF FACILITIES TO THE PUBLIC.

The owner of a stormwater management facility required by this Article may offer for dedication any such facility, together with such easements and appurtenances as may be reasonably necessary, as provided herein:

(a) Any such offer shall be made in writing and delivered to the office of the City attorney, with a copy to the program authority. The owner, at his sole expense, shall provide any documents or information requested by the program authority or the City Council. The program authority shall make a preliminary assessment as to whether the dedication of such facility is appropriate and will promote the public health, safety and general welfare. In making its assessment, the program authority shall inspect the facility in question and shall determine whether it has been properly maintained and is in good repair. The program authority shall estimate the annual cost of maintenance and repair of the facility, and of the remaining useful life of the facility. The program authority shall forward a report of its assessment to the City Council.

(b) The City Council shall review the offer, taking into account the recommendations of the program authority and other City staff or officials, and may accept or refuse the offer of dedication.

(c) If the City Council decides to accept the offer of dedication, the document dedicating the stormwater management facility shall be recorded in the office of the clerk of the circuit court for the City of Winchester.

(d) If the dedication of a stormwater management facility is required by City ordinance as a condition of approval of a subdivision plat, then the applicable provision of the City's subdivision ordinance shall apply in lieu of this section.

SECTION 9-67. INSPECTIONS.

The program authority shall inspect any land subject to an approved stormwater management plan, as provided herein:

> During the installation of stormwater management measures, or the conversion of erosion and sediment control measures into stormwater management measures, the program authority shall conduct periodic inspections to determine whether such measures are being installed as provided in the approved plan.
>
> Upon completion of the installation of stormwater management measures, the program authority shall conduct periodic inspections to determine whether such measures are being maintained as provided in the approved plan, or to investigate a complaint pertaining to the plan.
>
> The inspections shall be conducted at least annually, measured from the date the installation or implementation of the stormwater management measures is deemed by the program authority to be complete. The inability of the program authority to conduct inspections within the time periods set forth in this paragraph shall not be deemed to be a failure of the program authority to perform a mandatory duty or a ministerial function, and no liability to the City, the program authority, or any official or employee thereof shall arise therefrom.
>
> The program authority shall be allowed, after giving notice to the owner, occupier or operator of the land development, to conduct any inspection required by this section. The notice may be either verbal or in writing. Notice shall not be required if the program authority and the owner have entered into a right of entry agreement, or if the owner has granted to the program authority an easement for purposes of inspection and maintenance.

SECTION 9-68. DETERMINATION OF NONCOMPLIANCE WITH PLAN; PROCEDURE.

(a) Upon a determination by the program authority that an owner has failed to comply with an approved stormwater management plan, the following procedures shall apply:

(1) The program authority shall serve upon the owner a written notice to comply. The notice shall be served by certified mail, to the owner's address of record with the City assessor's office, or by personal delivery to the owner, or by personal delivery to an agent or employee at the site of the permitted activities

who is supervising such activities. The notice shall:

(i) Instruct the owner to take corrective measures immediately, when immediate action is necessary to prevent or abate drainage, erosion, or water pollution problems;
(ii) Specify the measures required to comply with the plan;
(iii) Specify the time within which such required measures must be completed; and

(2) If the owner fails to take corrective measures stated in the notice, within the time specified in the notice, then the City may revoke any building permit or other permit for activities involving the land development, and the owner shall be deemed to be in violation of this Article.

(3) If the program authority determines, upon completion of a maintenance inspection, that maintenance or repair of the measures has been neglected, or that any stormwater management facility is a danger to public health or safety, it may perform the work necessary to assure that such measures or facilities are not a danger to public health or safety, and shall be entitled to recover the costs of such work from the owner.

SECTION 9-69. PENALTIES, INJUNCTIONS AND OTHER LEGAL ACTIONS.

Enforcement of this Article shall be as follows:

(a) Any person who violates any provision of this Article shall be guilty of a misdemeanor and shall be subject to a fine not exceeding one thousand dollars ($1,000.00), or up to 30 days imprisonment for each violation, or both.

(b) The City may apply to the circuit court to enjoin a violation or threatened violation of the provisions of this Article, without the necessity of showing that an adequate remedy at law exists.

(c) Without limiting the remedies that may be obtained pursuant to this section, the City may bring a civil action against any person for violation of any provision of this Article, or of any term or condition of a permit, plan, or maintenance agreement. The action may seek the imposition of a civil penalty of not more than two thousand dollars ($2,000.00) against the person for each violation.

(d) With the consent of any person who has violated or failed, neglected or refused to obey, or comply with any permit, obligation or a plan or agreement, or any provision of this Article, the program authority may provide, in an order issued by the program authority against such person, for the payment of civil charges for violations in specific sums, not to exceed the limit specified above in paragraph (c). Such civil charges shall be in lieu of any civil penalty which could be

imposed under paragraph (c).

SECTION 9-70. REVIEW OF CERTAIN PROGRAM AUTHORITY ACTIONS.

Any person who is aggrieved by any action of the program authority because of its disapproval of a plan submitted pursuant to this Article, or in the interpretation of the provisions of this Article, shall have the right to apply for and receive a review of such action by the City Council, as provided herein:

(a) An appeal shall be filed in writing with the clerk of the board of supervisors within thirty (30) days of the date notice of the action is given by the program authority or, if an exception to the requirements of this Article as provided in section 17-308 is requested and denied, within thirty (30) days of the date notice of the denial of such exception. Notice shall be deemed to be given on the date that it is mailed or is hand delivered.

(b) When reviewing the program authority's action, the City Council shall consider evidence and opinion presented by the aggrieved person, the program authority, and such other persons as shall be deemed by the City Council to be necessary for a complete review of the matter. The City Council may affirm, reverse or modify the program authority's action. The decision of the City Council shall be final, subject only to review by the circuit court as provided in Virginia Code § 10.1-603.13.

(c) For the purposes of this section, the term *person aggrieved* shall be limited to the owner, owners of adjacent or down-stream property, and any interested governmental agency or officer thereof.

SECTIONS 9-71 - 9-79. RESERVED.

ARTICLE IV. STREAM BUFFERS

SECTION 9-80. DUTY TO RETAIN OR ESTABLISH STREAM BUFFER.

(a) Except as otherwise provided in this Article, any land adjacent to the following listed waters, and/or nontidal wetlands adjacent to these streams, shall provide buffers for the purposes of retarding runoff, preventing erosion, and filtering nonpoint source pollution from runoff:

(1) Abrams Creek
(2) Town Run

(3) Hogue Run
(4) Buffalo Lick Run
(5) Redbud Run

(b) A required stream buffer shall be no less than thirty-five (35) feet wide on each side of the stream, which buffer shall be measured horizontally from the top of the stream bank.

(c) Existing stream buffers shall be retained, except as allowed in §9-83(d).

(d) Each required stream buffer shall be maintained and incorporated into the design of the land development to the fullest extent possible.

(e) Within a required stream buffer, no indigenous vegetation shall be disturbed or removed, except as follows:

(1) Activities pertaining to the management of the stream buffer, identified in §9-81 of this Article;
(2) Development activities authorized in a stream buffer, identified in §9-83;
(3) Activities authorized in §9-82;
(4) Tilling, planting or harvesting of agricultural or horticultural crops in home gardens.

(f) With respect to developments that are required to have an approved site plan, and involving land containing existing and/or required stream buffers, contour lines shall be shown at two-foot intervals. In any case where any proposed development requires an approved plan other than a site plan, the location of existing and required stream buffers shall be shown on such plan.
(Ord. No. 2007-14, 5-8-07)

SECTION 9-81. MANAGEMENT OF A STREAM BUFFER.

Each stream buffer required to be established or maintained pursuant to this Article shall be managed as provided herein:

(a) The target vegetative cover in a stream buffer area shall be an indigenous riparian forest with ground cover, shrub and tree canopy layers.

(b) Within twenty-five (25) feet of the top of the stream bank and on land classified as nontidal wetland:

(1) Indigenous riparian vegetation shall be preserved, or, where it does not exist, it shall be restored or allowed to evolve by natural succession;
(2) Dead, diseased, and dying trees may be removed;
(3) Fallen trees that are blocking stream channels, or trees with undermined root systems in imminent danger of falling, may be removed where stream

bank erosion is a current or potential problem that outweighs any positive effects the fallen tree or trees may have on the stream ecosystem;

(4) Removal or pruning of invasive shrub and vine species is allowed, provided that such removal or pruning is done in a manner that prevents erosion;

(5) Unpaved pathways and trails may be constructed and maintained in a manner that will effectively control erosion and to minimize adverse impacts to the buffer, subject to applicable provisions of §9-83, below; and

(6) Stormwater channels may be constructed and maintained in a manner that will prevent erosion and minimize adverse impacts to the buffer.

Beyond twenty-five (25) feet from the top of the stream bank to the limits of the required buffer:

(1) Dead, diseased and dying trees may be removed;

(2) Trees 6 inches in diameter or greater, measured 48 inches from the ground, shall be preserved;

(3) Removal or pruning of invasive shrub and vine species shall be allowed, provided that such removal or pruning is done in a manner that prevents erosion; and

(4) Unpaved pathways and trails may be constructed and maintained in a manner that will effectively control erosion and minimize adverse impacts to the buffer, subject to applicable provisions of §9-83, below.

(5) Stormwater channels may be constructed and maintained in a manner that will prevent erosion and minimize adverse impacts to the buffer.

(d) Where an existing structure (i.e. building, street, road, bridge, etc.) is located within the buffer, vegetation, not including the ground cover, can be removed within 15 feet of the structure. Removal of additional vegetation can be allowed if required by State or Federal requirements or if necessary for the health, safety or welfare of the City's citizens and approved by the City Engineer.

SECTION 9-82. DEVELOPMENT EXEMPT FROM STREAM BUFFER REQUIREMENTS.

The following types of development shall not be required to retain, establish or manage a stream buffer, provided that the requirements of this section are satisfied:

(a) The construction, installation, operation and maintenance of electric, gas and telephone transmission lines, railroads, and activities of the Virginia Department of Transportation, and their appurtenant structures, which are

accomplished in compliance with the Erosion and Sediment Control Law (Virginia Code §§10.1-560 et seq.) or an erosion and sediment control plan approved by the Virginia Soil and Water Conservation Board.

(b) The construction, installation and maintenance by public agencies of water, sewer, electric and gas lines, including lines constructed by private entities for dedication to public agencies, provided that:

(1) To the extent practical, the location of such lines shall be outside required stream buffer areas;
(2) No more land shall be disturbed than is necessary to construct, install and maintain the water or sewer lines; and
(3) Construction, installation and maintenance of such lines shall comply with applicable federal, state and local requirements and permits and be conducted in a manner that protects water quality.

SECTION 9-83. DEVELOPMENT AUTHORIZED IN A STREAM BUFFER.

If otherwise authorized by applicable regulations of the City's zoning ordinance, the following land development activities shall be allowed in a stream buffer area, provided that the requirements of this section are satisfied and performance standards established by the program authority are met:

(a) A building or structure which existed on the date of adoption of this Chapter may continue at such location. However, nothing in this section authorizes the continuance, repair, replacement, expansion or enlargement of such building or structure except as authorized by the City's zoning ordinance.

(b) On-site or regional stormwater management facilities, and temporary erosion and sediment control measures, provided that:

(1) To the extent practical the location of such facilities shall be outside the stream buffer;
(2) No more land shall be disturbed than is necessary to provide for construction and maintenance of the facility;
(3) The facilities are designed and constructed so as to minimize impacts to the functional value of the stream buffer and to protect water quality; and
(4) Facilities located within a floodplain adhere to floodplain regulations and are designed and located, to the extent practical, to maintain their water quantity and/or water quality control value during flood conditions.

(c) Water dependent facilities, passive recreation access (such as unpaved pathways and trails), historic preservation, and archaeological activities, provided that all applicable federal, state, and local permits are obtained.

(d) Development in a stream buffer, where authorized by the program authority in the circumstances described below, may be allowed if a mitigation plan is submitted to and approved by the program authority pursuant to §9-84:

(1) On a lot which was of record prior to the date of adoption of this Chapter, if

(i) Establishment or preservation of the stream buffer would result in the loss of a building site, and there are no other available building sites outside the stream buffer on the lot, or
(ii) The proposed development consists of redevelopment not exceeding the current level of encroachment resulting from existing improvements, or
(iii) The proposed development is for construction of an accessory building or structure (including, without limitation, an accessory apartment) permitted by the City's zoning ordinance.

(2) On a lot on which development within the stream buffer will consist of an ecological/wetland restoration project;
(3) On a lot on which the development in the stream buffer will consist of the construction and maintenance of a driveway or roadway, and the program authority determines that the stream buffer would prohibit reasonable access to a portion of the lot which is necessary for the owner to have a reasonable use of the lot;
(4) On a lot on which the development in the stream buffer will consist of the construction and maintenance of a paved pathway or trail not exceeding five (5) feet in width;
(5) On a lot which was of record prior to the date of adoption of this Chapter, on which development within the stream buffer will consist of the construction, installation and maintenance of water and sewer facilities or sewage disposal systems, and the program authority determines that the stream buffer would prohibit the practicable development of such facilities or systems.
(6) On a lot on which the development in the stream buffer will consist of the construction and maintenance of the Green Circle Trail System.
(Ord. No. 2007-14, 5-8-07)

SECTION 9-84. MITIGATION PLAN REQUIRED.

Each owner who seeks to develop in a stream buffer pursuant to §9-83(d) shall submit to the program authority for review and approval a mitigation plan as provided herein:

(a) The owner shall submit a mitigation plan that satisfies the applicable requirements of this section; the required fee, as set forth within the most recent fee schedule approved by City council; and a certification stating that all requirements of the approved plan will be complied with.

(b) The mitigation plan shall be reviewed by the program authority to determine whether it complies with the requirements of this section and all other requirements of this Article. The program authority shall approve or disapprove a mitigation plan within 30 days of the date that a complete plan was accepted for review. The decision shall be in writing and shall be communicated to the owner. If the plan is disapproved, the reasons for such disapproval shall be stated in the decision.

(c) Each mitigation plan shall:

(1) Identify the impacts of proposed development on water quality and lands within the stream buffer;
(2) Identify the alternatives to development in the stream buffer that have been explored by the applicant;
(3) Ensure that, where development does take place within a stream buffer, it will be located on those portions of a site and in a manner that will be least disruptive to the natural functions of the stream buffer;
(4) Demonstrate and assure that development will be conducted using best management practices;
(5) Specify mitigation which will address water quality and stream buffer impacts; and
(6) Contain other information requested by the program authority.

(d) Each mitigation plan shall be evaluated by the program authority based on the following criteria:

(1) Whether all reasonable alternatives to development in the stream buffer have been explored and exhausted;
(2) Whether the development in the stream buffer is the minimum necessary and is to be conducted in a manner that will be least disruptive to the natural function of the stream buffer; and
(3) Whether best management practices will effectively mitigate adverse impacts from the encroachment on the stream buffer and its natural functions.

SECTION 9-85. INSPECTIONS

The program administrator shall inspect any land subject to establishing a vegetated stream buffer to insure that the buffers are installed as per the criteria outlined in Article IV.

SECTIONS 9-86 - 9-89. RESERVED.

ARTICLE V. STORM SEWER DISCHARGES

SECTION 9-90. FINDINGS AND DETERMINATIONS.

(a) Pollutants in stormwater from many sources are largely uncontrolled and have an adverse impact upon the quality of receiving waters. Major sources of stormwater that cause water quality impacts include construction sites, illicit connections, illegal discharges and industrial activities.

(b) Amendments to the federal Clean Water Act (CWA) in 1987 required the United States Environmental Protection Agency to establish National Pollutant Discharge Elimination System (NPDES) requirements for municipal separate storm sewer (MS4) systems. NPDES regulations require the City to control through ordinance, permit, contract or other available means (collectively, the City's "stormwater management program") the contribution of pollutants into waters of the United States.

(c) This Article is adopted as an integral part of the City's stormwater management program.

SECTION 9-91. DISCHARGES TO THE CITY'S STORM SEWER SYSTEM.

(a) It shall be unlawful and a violation of this Article to:

(1) Throw, drain, or otherwise discharge into the City's storm sewer system any pollutants or waters containing pollutants other than stormwater;
(2) Connect, or cause or allow to be connected, any sanitary sewer to the storm sewer system, any such connections owned or authorized by the City prior to April 11, 2006;
(3) Cause or allow any illicit connection to the City's storm sewer system; or
(4) Violate any condition or provision of this Article, or any permit or approval granted to allow any stormwater discharges to the City's storm sewer system.

(b) Subject to the provisions of subsection (c) of this section, the following activities shall not be considered illicit discharges:

(1) Water line flushing;
(2) Landscape irrigation;
(3) Diverting stream flows or rising groundwater, or infiltration of

uncontaminated groundwater;

(4) Public safety activities, including, but not limited to, law enforcement and fire fighting;

(5) Pumping of uncontaminated groundwater from potable water sources, foundation drains, irrigation waters, springs, or water from crawl spaces or footing drains;

(6) Lawn watering;

(7) Individual car washing on residential properties;

(8) De-chlorinated swimming pool discharges (less than 1 PPM chlorine);

(9) Street washing;

(10) Any activity authorized by a valid National Pollutant Discharge Elimination System (NPDES) permit, waiver or discharge order, a Virginia Pollutant Discharge Elimination System (VPDES) permit, waiver or discharge order, or a Virginia Pollution Abatement (VPA) permit;

(11) Any activity by a governmental entity in accordance with federal, state, and local regulations and standards for the maintenance or repair of drinking water reservoirs or drinking water treatment or distribution systems; and

(12) Any activity by the City, its employees and agents, in accordance with federal, state and local regulations and standards, for the maintenance of any component of its stormwater management system.

(13) Discharges specified in writing by the director as being necessary to protect public health and safety.

(14) Dye testing, following notification to the City engineer.

(c) If any of the activities listed in subsection (b), above, of this section are found to be sources of pollutants to public waters, the Program Authority (as defined in §9-5 of this Chapter) shall so notify the person performing such activities and shall order that such activities be stopped or conducted in such manner as to avoid the discharge of pollutants into such waters. The failure to comply with any such order shall be unlawful and a violation of this Article.

SECTION 9-92. WATERCOURSE PROTECTION.

Every person owning property through which a watercourse passes, or such a person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity or the watercourse.

SECTION 9-93. INDUSTRIAL OR CONSTRUCTION ACTIVITY DISCHARGES.

Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of such compliance may be required in a form acceptable to the Program Authority prior to allowing discharges to the City's storm sewer system.

SECTION 9-94. INSPECTIONS AND MONITORING.

(a) The Program Authority shall be permitted to enter and inspect properties and facilities at reasonable times as often as may be necessary to determine compliance with this ordinance. The Program Authority shall have authority to carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with the provisions of this Article, including the prohibition of illicit discharges to the storm sewer system. The Program Authority may monitor stormwater outfalls or other components of the municipal storm sewer system as may be appropriate in the administration and enforcement of this Article.

(b) The Program Authority shall have the authority to require pollution prevention plans from any person whose discharges cause or may cause a violation of a VPDES permit.

SECTION 9-95. ENFORCEMENT, PENALTIES, REMEDIES.

(a) A willful violation of the provisions of this Article shall constitute a Class 1 misdemeanor. Each day that a continuing violation of this Article is maintained or permitted to remain shall constitute a separate offense.

(b) Any person who commits any act prohibited by this Article shall be liable to the City for all costs of testing, containment, cleanup, abatement, removal and disposal of any substance unlawfully discharged into the storm sewer system.

(c) Any person who commits any act prohibited by this Article shall be subject to a civil penalty in an amount not to exceed one thousand dollars ($1,000.00) for each day that a violation continues. The court assessing such penalty may, at its discretion, order that the penalty be paid into the treasury of the City for the purpose of abating, preventing or mitigating environmental pollution.

(d) The City may bring legal action to enjoin the continuing violation of this Article. The existence of any other remedy, at law or in equity, shall be no defense to any such action.

(e) The Program Authority shall have authority to order that any activity found to be in violation of this Article be stopped or conducted in such a manner as to avoid the discharge of sewage, industrial wastes or other wastes into the storm sewer system.

(f) Any discharge caused or permitted to exist in violation of any provisions of this

Article constitutes a threat to the public health, safety and welfare, and is hereby declared and deemed a public nuisance. Following receipt of written notice of such nuisance from the Program Authority, if the responsible person fails to abate or obviate such nuisance, then the City may do so and charge and collect the cost thereof from the responsible person, in any manner provided by law (including, without limitation, any manner provided by law for the collection of state or local taxes).

(g) The remedies listed in this ordinance are not exclusive of any other remedies available under any applicable Federal, State or local law.

(h) The remedies set forth in this section 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.

CHAPTER 10

FIRE PREVENTION AND PROTECTION

Art. I. In General, §§10-1--10-15
Art. II. Fire Department Generally, §§10-16--10-29
Art. III. Fire Marshall, §§10-30--10-45
Art. IV. Fire Prevention Code, §§10-46--10-59
Art. V. Family Day Care Homes, §§10-60--10-80

ARTICLE I. IN GENERAL

SECTION 10-1. SALE, INSTALLATION, ETC. OF FIRE PROTECTION, SUPPRESSION OR DETECTION EQUIPMENT OR SYSTEMS.

(a) Any person engaged in selling, servicing, testing, leasing, installing, inspecting, altering, modifying, repairing or removing any portable or fixed fire protection, suppression, or detection equipment or system in the City shall be registered with and operate under a permit issued by the Fire Chief. The fee for such permit shall be as indicated in Section 10-48.

(b) Any person engaged in the activities listed in (a) above shall demonstrate proof of qualification, in a manner prescribed by the Fire Chief.

(c) Any person engaged in the activities listed in (a) above shall do so in accordance with the practices, standards, codes and requirements of the National Fire Protection Association, International Code Council, Statewide Fire Prevention Code, Code of the City of Winchester, and the orders of the Fire Chief.

(d) Failure to comply with the provisions of this section shall be cause for revocation of the permit and shall constitute a class one (1) misdemeanor punishable by confinement in jail for not more than twelve (12) months and a fine of not more than two thousand five hundred dollars ($2,500), either or both.
(Ord. of 7-13-76; Ord. No. 007-2004, 2-10-04)

Cross references--Building regulations, Ch. 6; flammable or explosive waste materials not to be collected by city, §11-23; parking near fire hydrants or entrances to fire station or in fire lanes, §14-46.

State Law Reference-- Code of Virginia, Title 27; authority of city to make regulations for purpose of guarding against danger from accidents by fire, Code of Virginia, § 15.2-1118.

SECTION 10-2. RESPONSE TO NUISANCES; REIMBURSEMENT OF COSTS.

For the purposes of this section, the following terms shall have the following meanings:

1. A nuisance shall include, but not be limited to, dangerous or unhealthy substances which have escaped, spilled, been released or which have been allowed to accumulate in or on any place and all unsafe, dangerous, or unsanitary public or private buildings, walls, structures which constitute a menace to health and safety of the occupants thereof the public.

2. Responsible party shall include, but not be limited to, the owner, occupier, or possessor of the premises where the nuisance is located, the owner or agent of the owner of the material which escaped, spilled, or was released, and the owner or agent of the owner who was transporting or otherwise responsible for such material and whose acts or failures to act caused such public nuisance.

The Common Council, by the Fire Chief or City Manager, may, in addition to any other remedy provided by law, require any responsible party to abate, raze or remove a public nuisance, and may maintain an action to require same.

If the public nuisance presents an imminent and immediate threat to life or property, in the decision of the Fire Chief, the Council, by the Fire Chief or his or her designee, may abate, raze or remove the nuisance or have it removed. In such case, an action may be maintained to recover the costs incurred by the City in such abatement, razing, or removal. (Ord. No. 015-90, 4-10-90; Ord. No. 003-91, 1-15-91; Ord. No. 007-2004, 2-10-04)

State Law References--, Code of Virginia, Title 27; authority of city to make regulations for purpose of guarding against danger from accidents by fire, Code of Virginia, § 15.2-1118, authority of city for abatement or removal of nuisances, Code of Virginia, §15.2-1115.

SECTIONS 10-3 - 10-15. RESERVED.

ARTICLE II. FIRE DEPARTMENT GENERALLY

SECTION 10-16. WINCHESTER FIRE AND RESCUE DEPARTMENT; APPOINTMENT, TERM AND REMOVAL OF CHIEF.

(a) The Winchester Fire Department shall be renamed the Winchester Fire and Rescue Department. Any reference to the Winchester Fire Department in this code or any other regulations of the City of Winchester shall be deemed to be a reference to the Winchester Fire and Rescue Department.

(b) The City Manager shall appoint a Fire Chief, such appointment to be for an indefinite period, subject to removal at any time by the City Manager upon written charges of misconduct, or failure to carry out printed regulations of the Fire and Rescue Department or written orders of the City Manager. (Ord. of 4-13-76, §8-1; Ord. No. 007-91, 2-12-91)

SECTION 10-17. GENERAL POWERS AND DUTIES OF CHIEF.

(a) Subject to control of the City Manager, Fire Chief is hereby given full power and authority over the department.

(b) The Fire Chief shall be responsible for the efficient operation of the fire department, with the approval of the City Manager. He shall have the authority to appoint such officers as may be necessary to operate the department, and to make and enforce reasonable rules and regulations not to conflict with state laws or city ordinances.

(c) At and during a fire or fire drill, the authority of the Fire Chief shall be unrestricted and he/she shall not be subject to any orders or directions whatsoever at such time. (Ord. of 4-13-76, §8-2; Ord. No. 2008-48, 11/11/08)

(d) The Fire Chief, the Fire Official, the Fire and Rescue Department, or other responsible authority shall have the authority to investigate the cause, origin and circumstances of any fire explosions or other hazardous condition in accordance with Section 27-15.1 of the Code of Virginia, 1950, as amended. (Ord. No. 007-2004, 2-10-04; Ord. No. 2008-48, 11/11/08)

Cross references--Members of certain fire companies recognized as part of official safety program, §2-7; authority of fire department officials to direct traffic, §14-9; automatic telephone calls or alarms to fire department, §14-2; calling fire-fighting apparatus without case and malicious activation of fire alarms in public buildings, §14-3.

State Law References--Use of equipment in emergencies beyond territorial limits of city, Code of Virginia, §27-1; contracts of cities to furnish fire protection, §27-2; fire departments and fire companies in cities, §§27-6.1-27-22.

SECTION 10-18. FAILURE TO OBEY ORDERS OF CHIEF OR COMMANDING OFFICER AT SCENE OF FIRE.

It shall be unlawful for any person at the scene of a fire to refuse or neglect to obey the orders of the Fire Chief or, in his absence, the commanding officer of the fire department as designated by the Fire Chief. A violation of this section shall constitute a Class 4 misdemeanor.
(Ord. of 4-13-76, §8-3; Ord. No. 007-2004, 2-10-04)

State Law Reference--Similar provisions, Code of Virginia, §27-15.1.

SECTION 10-19. PARTICIPATION OF MINORS IN ACTIVITIES OF VOLUNTEER FIRE COMPANIES; SUBMISSION OF APPLICATION; FIRE CHIEF TO FORMULATE AND ADOPT RELATED REGULATIONS.

Any minor sixteen years of age or older who desires to participate in the activities of the volunteer fire companies of the City of Winchester must submit the proper application form, which may be obtained in the office of the Fire Chief.

Said application shall be prepared by the Fire Chief in a form consistent with the terms and requirements of this article, and the Fire Chief is hereby authorized to formulate and adopt regulations required to achieve compliance with this article.

A completed application shall be submitted to the Fire Chief of the volunteer company with which such minor wishes to work, and must include the notarized signatures of parents work, and work, and must include the birth date of, or guardian(s) of the minor attesting to the applicant, verifying the information contained in the application, and consenting to his or her participation in firefighting activities.

The company Fire Chief shall forward each application, together with his or her recommendation, to the Fire Chief. Following determination that the minor meets criteria for ion in volunteer firefighting activities, the Fire Chief shall notify the appropriate company chief that the application has been approved. (Ord. No. 022-86, 12-09-86)

SECTION 10-19.1. CERTIFICATION

Before any minor may work or participate in activities of a volunteer fire company in this City he or she must, within six months of the date of the Fire Chief's approval of his or her application, complete training and attain certification under National Fire Protection Association 1001 Level One Firefighter Standards. (Ord. No. 022-86, 12-09-86)

SECTION 10-19.2. PARTICIPATION PERMITTED PENDING CERTIFICATION; LIMITATIONS.

Prior to attaining certification as required in subsection 10-19.1, a minor 16 years of age or older who has applied pursuant to this article may participate in the activities of a volunteer company. Such participation shall, however, exclude use of power equipment into burning structures with the exception of structures designated for and used in conjunction with firefighter training activities.

Such minor may, however, enter a burned structure during a non-emergency overhaul state of use power equipment if under the direct supervision of a battalion chief, deputy chief, department lieutenant, captain, or the Fire Chief. (Ord. No. 022-86, 12-09-86)

SECTION 10-20. PARTICIPATION OF MINORS UNDER THE AGE OF 16 PROHIBITED; EXCEPTION.

With the exception of individuals enrolled in the Boy Scouts of America Explorer Program, participation of minors under the age of 16 in activities of volunteer f ire companies in the City of Winchester is prohibited. (Ord. No. 022-86, 12-09-86)

State Law Reference--Subsection 40.1-79.1 providing authority for participation of minors sixteen years of age and older contingent upon adoption of ordinance by governing body.

SECTIONS 10-21 - 10-29. RESERVED.

ARTICLE III. FIRE MARSHAL

SECTION 10-30. APPOINTMENT OF FIRE MARSHAL AND ASSISTANTS.

The Fire Chief shall appoint a Fire Marshal for the City. In the absence of an appointed Fire Marshal, the Fire Chief shall be the appointed Fire Marshal and shall have the powers and perform the duties of the Fire Marshal. Assistant Fire Marshals may be appointed to assist the Fire Marshal and shall have the powers and perform the duties of the Fire Marshal. (Ord. of 10-11-77, §8-4; Ord. No. 2008-48, 11/11/08)

State Law Reference--Authority to appoint fire marshal and assistants, Code of Virginia, §§27-30, 27-36.

SECTION 10-31. OATH OF OFFICE.

The Fire Marshal and his assistants, before entering upon their duties, shall take an oath before the clerk of the circuit court for the City to faithfully discharge the duties of such office. The certificate of such oath shall be returned to the clerk of the city council and preserved by him. (Ord. of 10-11-77, §8-8)
State Law Reference--Similar provisions, Code of Virginia, §27-37.

SECTION 10-32. GENERAL POWERS AND DUTIES; COMPENSATION.

The Fire Marshal and his assistants shall have the powers and duties set forth in Chapter 3 of Title 27 (§27-30 *et seq.*) of the Code of Virginia. They shall receive no additional compensation beyond that received as fire department personnel. (Ord. of 10-11-77, §8-5; Ord. No. 2008-48, 11/11/08)

SECTION 10-33. POWER TO ARREST, TO PROCURE AND SERVE WARRANTS AND TO ISSUE SUMMONS.

In addition to such other duties as may be prescribed by the law, the Fire Marshal and his assistants shall have the authority to arrest, to procure and serve warrants of arrest, and to issue summons in the manner authorized by general law for violation of local fire prevention and fire safety and related ordinances, subject, however, to the limitations prescribed in Section 27-34.2 of the Code of Virginia. (Ord. of 10-11-77, §8-6)

State Law Reference--Local fire marshals, Code of Virginia, §27-30 *et seq*.

SECTION 10-34. POWER TO ORDER IMMEDIATE COMPLIANCE WITH LAW, ETC., OR PROHIBIT USE OF BUILDING OR EQUIPMENT.

The Fire Marshal and his assistants shall have the authority to exercise, in the same manner and subject to the same conditions, the powers conferred upon other authorities by Section 27-81(b) of the Code of Virginia, subject to the limitations prescribed in Section 27-34.3 of the Code of Virginia. (Ord. of 10-11-77, §8-7)

SECTIONS 10-35 - 10-45. RESERVED.

ARTICLE IV. FIRE PREVENTION CODE.

SECTION 10-46. ADOPTION; AVAILABILITY OF COPIES.

The Virginia Statewide Fire Prevention Code, 2006 Edition including any later amendments made thereto over time, and the Local Supplement as amended, are hereby adopted and incorporated herein by reference. Copies are available for examination during normal business hours, Monday through Friday in the Fire and Rescue Department Administrative office, Timbrook Public Safety Building. (Ord. of 4-12-78; Ord. No. 022-88, 4-12-88; Ord. No. 007-93, 02-09-93; Ord. No. 029-97 10-14-97; Ord No. 007-2004, 2-10-04; Ord. No. 2008-48, 11/11/08)

State Law References--Authority to adopt fire prevention code, Code of Virginia, §§27-97 and 27-98.

SECTION 10-47. REPEALED.

(Ord. No. 007-93, 02-09-93)

SECTION 10-48. PERMIT FEES.

The fee for any permit required by the Statewide Fire Prevention Code adopted by this article shall be fifty dollars ($50.00), except that the fee for a permit to sell, store or use fireworks shall be two hundred dollars ($200.00). Operational permit fees may be waived for non-profit organizations or for community wide events, by the Fire Chief or his or her designee. (Ord. of 7-13-76; Ord No. 022-88, 4-12-88; Ord. No. 007-2004, 2-10-04; Ord. No. 2008-48, 11/11/08)

SECTION 10-49. REPEALED.

(Ord. No. 029-90, 7-10-90)

SECTIONS 10-50 - 10-59. RESERVED.

ARTICLE V. FAMILY DAY CARE HOMES

SECTION 10-60. APPLICABILITY.

The provisions of this article shall pertain to all new and existing family day care homes as defined in Section 63.2-100 of the Code of Virginia, as amended.

This article shall apply only to those family day care homes where five (5) through nine (9) children are cared for.

Facilities caring for more than nine (9) children shall comply with the Fire Prevention Code and regulations set forth by the Virginia Department of Social Services. (Ord. No. 005-83, 3-08-83; Ord. No. 007-2004, 2-10-04)

SECTION 10-61. INSPECTIONS.

The fire official shall inspect all family day care homes at least once each calendar year. The purpose of this inspection will be to ascertain and cause to have corrected any conditions liable to cause a fire, endanger the life of occupants, contribute to the spread of fire, interfere with firefighting operations, or any violations of the provisions or intent of this code or any other ordinance affecting fire safety. (Ord. No. 005-83, 3-08-83).

SECTION 10-62. RIGHT OF ENTRY.

Whenever necessary for the purpose of enforcing the provisions of this article, or whenever the fire official has reasonable cause to believe that there exist on such premises conditions which constitute a fire hazard, the fire official may enter such premises during normal hours of operation for the purpose of making an inspection. Prior to entry the fire official shall present proper credentials and request entry. If such entry is refused, the fire official shall have recourse to every remedy provided by law to secure entry. (Ord. No. 005-83, 3-08-83)

SECTION 10-63. PERMITS.

It shall be unlawful to engage in family day care home activities without obtaining and maintaining a valid permit as issued by the Fire and Rescue Department.

Permits as required by this article shall be maintained on the designated premises, and shall at all times be subject to inspection by the fire official. (Ord. No. 005-83, 3-08-83; Ord. No. 007-2004, 2-10-04)

SECTION 10-64. APPEALS.

Decisions of the fire official may be appealed to the Local Board of Fire Prevention Code Appeals (BFPCA) as prescribed in Section 112.0 Appeals, of the Statewide Fire Prevention Code. (Ord. No. 005-83, 3-08-83; Ord. No. 007-2004, 2-10-04)

SECTIONS 10-65 - 10-70. RESERVED.

SECTION 10-71. MEANS OF EGRESS.

(a) Each floor occupied by children shall have not less than two remote independent means of egress.

(b) Travel distance to an exit shall not exceed 150 feet. (Ord. No. 005-83, 3-08-83)

SECTION 10-72. DISCHARGE FROM EXITS.

(a) Areas utilized as sleeping areas for children and located above the floor of exit discharge shall be provided with an exit way, by enclosed stairway or other enclosed means, to outside grade level discharge.

(b) Where children are located no more than one story below the level of exit discharge (basement), at least one exit directly to the outside ground level shall be provided. Children shall not occupy areas more than one story below the level of exit discharge. (Ord. No. 005-83, 3-08-83; Ord. No. 007-2004, 2-10-04)

SECTION 10-73. ILLUMINATION OF MEANS OF EGRESS.

Means of egress shall be illuminated by normal means of illumination provided the facility is utilized during normal daylight hours. If the facility is utilized after daylight hours, the means- of egress shall be illuminated with approved emergency lighting units. Approved emergency lighting units shall comply with National Fire Protection Association 101, Line Safety (1997 edition). (Ord. No. 005-83, 3-08-83; Ord. No. 007-2004, 2-10-04)

SECTION 10-74. PORTABLE EXTINGUISHERS.

Portable fire extinguisher as specified by the National Fire Protection Association 10 (1998 edition) or by the fire official shall be installed in the following locations:

(1) Food preparation area(s);
(2) Area where central heating equipment is located;
(3) Other high hazard areas as specified by the fire official.
(Ord. No. 005-83, 3-08-83; Ord. No. 007-2004, 2-10-04)

SECTION 10-75. DETECTION EQUIPMENT.

Family day care homes shall have at least one (1) smoke detector installed. The location of the smoke detector will be such as to separate the living area from the area utilized by the children as a sleeping area.

In those facilities having more than one level or story, each level or story shall be equipped with at least one (1) smoke detector as specified and located by the fire official. When activated, the smoke detector shall provide an alarm suitable to warn all occupants within the facility.

All detection devices installed in accordance with this section shall meet the criteria set forth in National Fire Protection Association 72 National Fire Alarm Code (1996 edition). (Ord. No. 005-83, 3-08-83; Ord. No. 007-2004, 2-10-04)

SECTION 10-76. SPECIAL REQUIREMENTS.

(a) Every closet door latch shall be such that children can open the door from inside the closet.

(b) Bathroom door locks shall be designed to permit opening of the locked door from the outside in an emergency, and the opening device shall be readily accessible to the staff. (Ord. No. 005-83, 3-08-83)

SECTION 10-77. EVACUATION PLAN.

Each family day care home shall have an established evacuation plan for the facility. The plan shall be in written and/or schematic form, and shall be readily accessible to all staff members. Such evacuation plan shall also be available for review by parents and the fire official upon request. (Ord. No. 005-83, 3-08-83)

SECTION 10-78. HEATING EQUIPMENT.

(a) Unvented room heaters shall not be permitted. Kerosene, gas, and solid wood burning appliances shall be installed in accordance with the Statewide Fire Prevention Code and/or the Uniform Statewide Building Code.

(b) Heating equipment and associated components shall be maintained at regular intervals of not more than one (1) year periods. Heating equipment and associated components shall be maintained in a condition assuring operation in a safe

manner as related to fire safety. (Ord. No. 005-83, 3-08-83; Ord. No. 007-2004, 2-10-04)

SECTION 10-79. ELECTRICAL WIRING.

(a) Electrical wiring within family day care homes shall be in compliance with the National Fire Code as certified by the electrical inspector upon request of the fire official.

(b) Protective receptacle covers shall be installed on all unused receptacles so as to prevent children from introducing foreign objects into these receptacles and becoming injured. (Ord. No. 005-83, 3-08-83; Ord. No. 007-2004, 2-10-04)

SECTION 10-80. GENERAL.

Whenever the fire official, or his or her designee, shall find in or upon any family day care home structure or premises dangerous or hazardous conditions or materials as defined below, the fire official or his or her designee shall order same to be remedied or removed in accordance with the provisions of this Code.

(1) Any dangerous conditions which are liable to cause or contribute to the spread of fire in or upon said premises;

(2) Obstruction to or upon fire escapes, stairs, passageways, doors, or windows liable to interfere with the egress of occupants- or the operations of the fire department in case of fire;

(3) Accumulations of dust or waste material in air conditioning or ventilating systems or grease in kitchen or other exhaust ducts;

(4) Accumulations of grease on kitchen cooking equipment or oil, grease, or dirt upon, under, or around any mechanical equipment;

(5) Accumulations of rubbish, waste, paper, boxes, shavings, or other combustible material; and

(6) Hazardous conditions arising from defective or improperly used or installed electrical wiring, equipment, or appliances. (Ord. No. 005-83, 3-08-83; Ord. No. 007-2004, 2-10-04)

GRAFFITI ABATEMENT

CHAPTER 11.1

GRAFFITI ABATEMENT

Art. I. In General, §§11.1-1 through 11.1-4
Art. II. Abatement of graffiti nuisance, §§11.1-5 through 11.1-7
Art. III. Penalties, §11.1-8
Art. IV. Exemptions, §11.1-9

ARTICLE I. IN GENERAL

SECTION 11.1-1. PURPOSE AND INTENT.

It is the purpose and intent of this chapter to provide a procedure for removal of graffiti from walls and structures on both public and privately owned property in order to reduce blight and deterioration within the City of Winchester and to protect the public safety, and to provide for the recovery of costs of such removal.

SECTION 11.1-2. DEFINITIONS.

The following terms, as used in this chapter, shall have the meanings set forth below:

Zoning & Inspections Administrator shall mean the Winchester Zoning & Inspections Administrator, or his designee.

Graffiti shall mean writings, drawings, inscriptions, figures or marks of paint, ink, chisel, chalk, dye and other similar substance, or flyers, bills and similar materials, which have been placed on public or private property without the permission of the owner, manager or occupant of the property.

Placement of graffiti shall include any form or act of drawing, painting, scrawling, writing, marking, inscribing, scratching, gluing, posting or otherwise affixing graffiti to public or private property.

Public or private property shall mean the exterior surface of any building, or any street, alley, sidewalk, or other vehicular or pedestrian right-of-way, or any article of street furniture, utility or public service equipment, or other personal property located outdoors, whether owned by a public entity or by a private person or entity, and visible from any public right-of-way.

Editor's note: Ordinance No. 2008-28 adopted on June 10, 2008, enacted this chapter.

SECTION 11.1-3. GRAFFITI DECLARED A NUISANCE.

The existence of graffiti within the city limits of the City of Winchester, Virginia, as defined within this chapter, is declared by the Common Council of the City of Winchester to be obnoxious and a public and private nuisance and must be quickly abated to avoid the detrimental impact of such graffiti on the City and its residents, business owners, and visitors, and to prevent the further spread of such graffiti.

SECTION 11.1-4. GRAFFITI PROHIBITED.

(a) The placement of graffiti on any public or private property is declared to be a public nuisance and is prohibited.

(b) The failure of any property owner, manager or occupant of public or private property to remove or effectively obscure graffiti which has been placed upon property under such person's ownership or control, within five (5) days after the service of notice as provided in this chapter, is declared to be a public nuisance and is prohibited.

(c) Penalties for violations of this chapter are as set forth in Section 11.1-8 of this chapter.

ARTICLE II. ABATEMENT OF GRAFFITI NUISANCE

SECTION 11.1-5. IDENTIFICATION OF GRAFFITI AND NOTICE TO ABATE.

(a) *Notice and opportunity to abate.* Whenever the Zoning & Inspections Administrator, or his designee, becomes aware of the existence of graffiti on any public or private property, the Zoning & Inspections Administrator shall give, or cause to be given, written notice to remove or effectively obscure such graffiti to the owner of the property. Such notice may be served by personal service or certified mail, and shall be complete upon delivery or mailing. Such notice shall direct the recipient to remove or effectively obscure such graffiti within five (5) days of the date of the notice, or to grant the city written permission to enter upon the property and remove or effectively obscure such graffiti, and shall inform the recipient that, in the event of failure to comply, the City may enter upon the property and remove or effectively obscure such graffiti, in the manner provided in this chapter.

(b) *Abatement by city.* If the owner of the property upon which graffiti has been placed fails to remove or effectively obscure the graffiti, or to grant the City written permission to enter upon the property and remove or effectively obscure such graffiti, within five (5) days from service of the notice described in subsection (a), the Zoning & Inspections Administrator, or his designee, may enter upon the property and remove or effectively obscure the graffiti.

(c) *Waiver of liability.* The failure of the recipient of a notice given pursuant to subsection (a) to comply with the notice by removing or effectively obscuring such graffiti within five (5) days shall be deemed a waiver of any claim by or on behalf of the notice recipient or, if different, the owner of the property, against the City of Winchester for damage to the property arising out of the work or removing or obscuring the graffiti.

SECTION 11.1-6. MATERIALS.

In no case shall the City be required to clean, paint or repair any more extensive area than where the graffiti is located. Nor shall the City be required to restore the area to its original condition (e.g., color, texture).

SECTION 11.1-7. INCENTIVE PAYMENT FOR ABATEMENT

Where the property owner of the property where the graffiti is located complies with the notice to abate within five (5) days; or, proactively removes or effectively obscures the graffiti prior to the issuance of a notice to abate, the property owner shall be entitled to an incentive payment not to exceed fifty dollars ($50.00) payable by the City upon presentation of a copy of an official Winchester Police Department incident report, satisfactory proof of the cost of abatement and upon verification by the City of the cost expended for graffiti removal, as long as the graffiti was not caused by said owner.

ARTICLE III. PENALTIES

SECTION 11.1-8. PENALTIES.

(a) Any person who commits a violation of Section 11.1-4(a) shall be punished as provided for in Section 16-11 of this code.

(b) Abatement of the nuisance by the City as provided in Section 11.1-5(b) shall be the sole remedy for the violation of Section 11.1-4(b); except that the expense of the abatement and the administrative fee shall constitute a lien on real property of the owner ranking in parity with liens for unpaid real estate taxes and shall be reported to the City Treasurer who shall record the lien and collect the lien in the same manner in which City taxes levied upon real estate are authorized to be collected.

(c) Abatement by the City shall be exclusive of and in addition to any criminal penalty that may be imposed.

ARTICLE IV. EXEMPTIONS

SECTION 11.1-9. EXEMPTIONS.

This chapter shall not be construed to prohibit temporary, easily removable chalk or other water soluble markings on streets, sidewalks or other paved surfaces which are used in connection with traditional children's activities, such as drawings or bases for kickball, hockey, hopscotch and the like, or to prohibit markings placed on public or private property by the authorized representative of the City or a public utility to indicate the location of service lines and facilities.

CHAPTER 11

GARBAGE AND REFUSE

Art. I. In General, §§11-1--11-15
Art. II. Collection by City, §§11-16--11-24
Art. II-A. Disposal of Infectious Waste §§11-25--11-34
Art. III. Accumulation of Garbage and Refuse, §§11-35--11-39
Art. IV. Disposal of Yard Wastes, §§11-40-- 11-44

ARTICLE I. IN GENERAL

SECTION 11-1. VIOLATIONS OF CHAPTER.

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

SECTION 11-2. DEFINITION.

For the purposes of this Code, the code enforcement officer shall be a person designated by the city manager, who is employed by or serving under contract to the City to enforce one or more of the several public safety provisions of the Code, specifically including the provisions of this chapter. (Ord. No. 005-93, 02-09-93; Ord. No. 028-97, 10-14-97)

SECTION 11-3. LITTERING.

(a) No person shall sweep, throw, dump or otherwise dispose of trash, garbage, refuse or other unsightly matter, on a public highway, street, sidewalk or right-of-way, or on property adjacent to such highway, street, sidewalk or right-of-way, or on private property, or into a storm sewer inlet, without the written consent of the owner thereof or his agent.

(b) When any person is arrested for a violation of this section, and the matter alleged to have been dumped or disposed of has been ejected from a motor vehicle, the arresting officer may comply with the provisions of Section 14-2 of this Code in making such arrest.

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

(d) No person shall allow manure deposited by his/her animal to remain on any public highway, street, sidewalk, park, or other public property, or on private property without the written consent of the owner thereof or his agent. Nothing in this subsection shall limit the provisions of subsection (a). (Ord. No. 024-94, 09-13-94)

(e) A violation of this section shall constitute a Class 1 misdemeanor. (Code 1959, §§10-1 - 10-5, 22-24; Ord. of 6-14-78)

Cross references-- Requirements of housing code relative to storage and disposal of garbage, §6-143; spilling of garbage or refuse from vehicles, §26-11. Deposit of dead animals on street or sidewalk, §5-9; deposit of injurious or hazardous materials on streets and removal of same, §26-10; spilling vehicle load on streets, §26-11; depositing mud, rock, etc., on sidewalks, §26-12.

State Law References -- Authority of city to require property owners to remove garbage and refuse and city's right to operate a garbage and refuse collection and disposal service, Code of Virginia, §§15.1-11, 15.1-857; Similar provisions and authority of city to adopt above section, Code of Virginia, §33.1-346.

SECTIONS 11-4 - 11-15. RESERVED.

ARTICLE II. COLLECTION BY CITY

SECTION 11-16. NOTICE OF ARTICLE PROVISIONS; ESTABLISHMENT OF SCHEDULES AND METHODS OF COLLECTION.

The public works director is empowered and instructed to give due publicity and notice of the provisions of this article to the public, and to establish schedules for and methods of garbage and refuse collection and any other related regulations as may, from time to time, be necessary. (Code 1959, §10-11; Ord. of 6-14-78, Ord. No. 005-93, 02-09-93)

SECTION 11-17. GENERAL CONTAINER REQUIREMENTS.

(a) All garbage, consisting of food waste and organic matter, to be collected by the City shall be placed in watertight containers of durable construction, which shall be rust-resistant, nonabsorbent, easily washable, with tight fitting covers and handles, or properly sealed plastic or polyethylene refuse bags, the walls of which are at least two (2) mils in thickness. Such containers shall be not be less than five (5) nor more than twenty (20) gallons capacity and of sufficient construction to keep out water, to prevent disturbance by animals and entrance by insects, and to be safely handled by one collector without coming apart due to the contents or weather conditions.

(b) All refuse other than that provided for in subsection (a) above, or rubbish consisting of cans, bottles, rags, papers, and solid waste materials to be collected by the City shall be placed in cans, plastic or polyethylene bags, or other containers that can be safely handled without coming apart. Such containers may be of any size, not exceeding forty-two (42) gallons capacity, that can be handled safely by one collector, and filled to such a degree and so secured that they will not spill.

(c) Ashes to be collected by the City shall be placed separately in cans or other tight, non-combustible receptacles that can be safely handled without coming apart, and of not more than twenty (20) gallons capacity and filled not closer than two and one-half (2.5) inches from the top of the container to prevent spilling. (Code 1959, §§10-1-10-3; Ord. of 06-14-78, Ord No. 005-93, 02-09-93)

SECTION 11-18. GARBAGE TO BE DRAINED BEFORE PLACED IN CONTAINER.

Before garbage to be collected by the City is placed in containers, all the liquid portion shall be drained off into the sanitary sewer. (Code 1959, §10-1; Ord. of 06-14-78)

SECTION 11-19. BUNDLING OF BULK MATERIALS.

Tree branches, brush, cardboard containers and other bulk refuse materials need not be placed in containers, but will be collected by the City if flattened and tied in tight compact bundles that can be handled by one collector, not exceeding four (4) feet in length and eighteen (18) inches in diameter. (Code 1959, §10-3; Ord. of 06-14-78)

SECTION 11-20. WEIGHT OF BUNDLES, CONTAINERS AND CONTENTS.

The total weight of any one container, including its contents of garbage, ashes or rubbish, or of any one bundle of rubbish, to be collected by the City shall not exceed seventy-five (75) pounds. (Code 1959, §10-4; Ord. of 06-14-78)

SECTION 11-21. PLACEMENT FOR COLLECTION; REMOVAL OF UNCOLLECTED GARBAGE AND EMPTY CONTAINERS.

All garbage, ashes, or other waste material to be collected shall be placed on the curb or other approved place of collection not earlier than 6:00 p.m. on the day prior to and not later than 7:30 a.m. on the day of regular collection. All garbage not collected because of noncompliance with this article shall be removed at once. Empty cans shall be removed on the same day of collection. (Code 1959, §10-10; Ord. of 6-14-78; Ord. No. 013-81, 06-09-81)

SECTION 11-22. MAXIMUM AMOUNT TO BE COLLECTED.

The total amount of garbage, ashes and other refuse to be collected by the City at any one residence or business shall not exceed three (3) containers or bundles in any one collection, except in the primary and secondary downtown districts as defined in Section 25-1 of this Code. (Code 1959, §10-6; Ord. of 06-14-78; Ord. No. 013, 5-10-05)

SECTION 11-23. REFUSE NOT ACCEPTABLE FOR COLLECTION.

(a) No hazardous material, animal manure, human excreta, industrial waste, building waste, infectious waste or automobiles or parts will be collected by the City. Hazardous materials are defined as cleaning fluids, gasoline, crankcase oil, paints, plastics, rubber cuttings or other highly inflammable material or substances such as poisons, gases, caustics, explosives, radioactive materials or fine powdery earth used to filter cleaning fluid or other like refuse material or substance. In the event such refuse is found, the person placing such refuse for collection shall be required to remove and properly dispose of such refuse immediately. Excreta in diapers of infants or persons with a medical condition causing incontinence, shall be collected if such excreta is prepared for collection in compliance with this chapter. Further, this section shall not apply to animal waste prepared for collection in compliance with this chapter. (Ord. No. 005-93, 02-09-93; Ord. No. 020-94, 06-14-94)

(b) Radioactive materials, drugs, poisons and like substances shall be disposed of under the supervision of the director of health or some other qualified person.

(c) Ashes containing hot live coals or fire will not be collected by the City.

(d) Garbage and trash originating outside the corporate limits will not be collected by the City. (Code 1959, §§10-2, 10-7; Ord. of 6-14-78)

SECTION 11-23.1. MULTI-FAMILY PROJECTS - REFUSE DISPOSAL.

(a) Defined: For the purposes of this chapter, the term multi-family project means any apartment or other building, or buildings within the City consisting of more than four (4) dwelling units. Any multi-family project adding dwelling units at any time after the effective date of this ordinance shall be deemed a multi-family project for the purposes of this chapter if the additional units cause the total project units to increase from four (4) or less dwelling units to more than four (4) dwelling units. This section shall not apply to any project in which a majority of the units are occupied by the owners of the units, such as townhouses or condominiums.

(b) The owner or owners (hereinafter owner) of each multi-family project shall provide for its own refuse collection. The City shall not collect refuse from any such project.

(c) Refuse Storage Area-Requirements: The owner of each multi-family project shall provide one or more separate areas for storage of refuse on the project grounds. Each storage area shall have a concrete pad. If a dumpster-type container is to be used, the pad shall extend from the area to the adjacent street or parking area, and shall be of sufficient width to allow access by the refuse vehicles(s) serving the project. Each refuse storage area shall be enclosed by opaque gates and screening made of decay-resistant wood or masonry screening walls equal to or greater than the height of the container(s) placed on the storage area in compliance with this section. Landscaping as required by the zoning ordinance shall also be provided around the perimeter of the area.

(d) Refuse Containers-Requirements: The owner shall also provide container(s) in the separate storage area for deposit of trash, garbage and recyclables by the residents of the project. The containers may be of any size or type, but must be watertight, durable, rust-resistant, nonabsorbent, easily washable, with tight fitting covers or doors. Plastic bags shall not be sufficient to comply with this section. The owner shall ensure that all material is properly deposited and stored in the container(s).

If dumpster-type containers are used, the containers shall be fully closed when not being loaded or unloaded. The City shall not be required to provide collection from dumpster-type containers.

The owner shall provide an adequate number and size of containers to hold the refuse normally produced by the project served until it is to be collected. If the owner is responsible for collection, the collections must be made at least one time per week.

The owner shall be responsible to insure that a nuisance, as defined in §16-19 of this Code, shall not exist and that littering, as defined in §11-3 of this chapter, shall not result. It shall be the responsibility of the owner to ensure that all trash, garbage, refuse, litter and other substances, are properly stored within the provided containers and that the containers remain properly enclosed.

(e) The code enforcement officer shall be responsible for notifying property owners of violations of subsections (c) or (d) of this section. For any violation of this or any other section of this chapter requiring that trash, garbage, refuse, litter and other substances to be properly stored within the containers on the owner's property, if such violation continues for seven (7) or more days, after the officer has mailed a notice of violation, the Director may have the garbage, refuse, litter, trash and other substances removed. The cost and expenses thereof shall be chargeable to and paid by the owner of such property and may be collected by the City as taxes and levies are collected. In addition, for any violation of subsections (c) or (d), the code enforcement officer may take all actions to correct the violation allowed by law.

(f) A violation of any provision of this section shall constitute a Class 3 misdemeanor. If any person commits violations under this section three (3) times within any twelve (12) month period, the third and any subsequent violations within the twelve (12) month period shall constitute a Class 1 misdemeanor.

(g) The City shall continue to collect recyclable material from all multi-family projects.

(Ord. No. 005-93, 02-09-93; Ord. No. 028-97, 10-14-97; Ord. No. 013-2005, 5-10-05)

State Law Reference--Code of Virginia, §15.2.901.

SECTION 11-23.2. ENFORCEMENT.

All alleged violations of any provision of this chapter shall be reported to the public works director or his designee.

It shall be the duty of the public works director or his designee to investigate alleged violations of this chapter and procure warrants and other necessary process to effect criminal prosecution and/or civil enforcement if violations have occurred. (Ord. No. 005-93, 02-09-93)

SECTION 11-24. COLLECTION OF MATERIAL TO BE RECYCLED.

(a) Source separation of material, such as newspapers for recycling, shall be on a voluntary basis. Persons electing to participate in recycling efforts shall separately bundle, box or secure materials for recycling and deposit them at curbside on the days scheduled for pickup of recyclable material.

(b) Recyclable material in the form of discarded newspapers, metal, glass or other material for recycling shall be placed within the vicinity of the curb for pick-up, collection and recycling. Anyone other than the depositor of the material to be recycled or an agent or agency acting on behalf of the City Department of public Works who removes said refuse for his own use shall be guilty of a Class 4 misdemeanor.

(c) Refuse not suitable for recycling, consisting of those items designated by the public works director, shall be collected by the City or its agents only on those days not designated for collection of recyclable materials. Non-recyclable materials shall not be placed for collection on the days set for recycling collection unless otherwise provided in this Code. (Ord. No. 007-81, 04-14-89; Ord. No. 005-93, 02-09-93)

State Law References--Code of Virginia, §15.2-937, 15.2-928

ARTICLE II-A. DISPOSAL OF INFECTIOUS WASTE

SECTION 11-25. DEFINITIONS.

(A) Infectious waste. Any waste is an infectious waste if it is capable of producing an infectious disease. Any waste item which has been or may have been contaminated by an organism that may be pathogenic to humans and in which such organism may be present in sufficient quantities and with sufficient virulence to transmit disease shall be considered to be capable of producing an infectious disease. The following are also infectious waste:

1. Isolation wastes. Isolation wastes are all wastes resulting from the housing, treatment and management of a patient who is isolated because he is believed to have a contagious disease, including protective clothing and

other items resulting from visitation to the patient. Isolation waste is infectious waste if it may have been in contact with the patient or discharges, effusions, excreta or body fluids of the patient. The infectious nature of isolation wastes is governed in part by the organism of concern. The federal Center of Disease Control, Center for Infectious Diseases, Hospital Infections Program has published Guidelines for Isolation Precautions in Hospitals (1983) which recommends which materials to consider infective based on the specific organism of concern. When the organism of concern is known, isolation wastes that the guidelines recommend be considered infective material are infectious waste, and other wastes may be considered not to be infectious waste. However, wastes contaminated with infective materials/infectious wastes are infectious waste.

2. Cultures and stock of organisms and biologicals. Discarded cultures, stocks, specimens, vaccines and associated items that may have been contaminated by them are infectious wastes if they may contain organisms that may be pathogenic to humans. Discarded etiologic agents are infectious waste. Wastes from the production of biologicals and antibiotics that may have been contaminated by organisms that may be pathogenic to humans are infectious wastes.

3. Blood and blood products. Wastes consisting of human blood, human blood products (includes serum, plasma, etc.) and items contaminated by human blood are infectious waste.

4. Pathological wastes. All pathological wastes that are human tissues, organs, body parts, or body fluids are infectious waste.

5. Sharps. Used hypodermic needles, syringes, scalpel blades, pasteur pipettes, broken glass and similar devices that may be contaminated with organisms that are pathogenic to humans, and all sharps used in or related to patient care are infectious wastes.

6. Miscellaneous contaminated wastes. All wastes, discarded equipment and discarded products from the following facilities, or parts of a facility, are infectious waste if within them materials are managed that may contain organisms that may be pathogenic to humans (administrative, clerical and other areas where the possibility of contamination is minimal are not included):
   a. Surgeries, autopsy rooms, examination rooms and obstetrical rooms.
   b. Preparation rooms at mortuaries, funeral homes and similar facilities.
   c. Laboratories.

d. Pharmaceutical, research, commercial or industrial biological processes.
e. Any waste contaminated by or mixed with infectious waste.
f. Hemodialysis units.

7. Exclusions. The following items are not infectious wastes for the purposes of this ordinance:

a. Human remains, including those remains identified in Section A.4 under the control of a licensed physician or dentist while such remains are being used for medical purposes, or while in preparation by a licensed mortician for interment or cremation.

b. Wastes contaminated only with organisms which are not generally recognized as pathogenic to humans, even if those organisms cause disease in other animals or plants, and which are managed in complete accord with all regulations of the U. S. Department of Agriculture and the Virginia Department of Agriculture and Consumer Services.

c. Wastes that are clearly identifiable as wastes and which are pathogenic to humans only through direct ingestion. (Examples of these wastes are spoiled food or contaminated fish that may contain pathogens, but those pathogens are only transmitted if the material is eaten.)

d. Sharps generated by the occupants of a residence, which are placed in containers in compliance with §11-27, except a residence in a nursing home or other medical care facility. (Ord. No. 020-94, 06-14-94)

(B) Sharps. Used hypodermic needles, syringes, scalpel blades, pasteur pipettes, broken glass and similar devices. (Ord. No. 056-88, 12-13-88)

SECTION 11-26. REPEALED

SECTION 11-27. SHARPS - CONTAINER REQUIREMENTS.

Sharps shall be placed in sealed, rigid, puncture-resistant containers. The containers shall be placed in bags. (Ord. No. 056-88, 12-13-88; Ord. No. 020-94, 06-14-94)

The provisions of this ordinance shall become effective January 1, 1989. (Ord. No. 048-88, 12-13-88)

SECTION 11-28. COLLECTION FROM PRIVATE STREETS.

The public works director or his designee shall determine whether the City refuse vehicles can obtain safe access to refuse containers located along any private street or other private property and may refuse to collect if safe access is determined not to exist.

The City shall not be responsible for any maintenance of any private street used by the public works department for collection of refuse. If weather or other conditions exist which temporarily prevent safe access along a private street or over other private property or to any refuse collection receptacles, the director or his designee may decline to have refuse collected. (Ord. No. 020-94, 06-14-94).

SECTION 11-29. CONFINEMENT OF ANIMALS WHICH INTERFERE WITH COLLECTORS.

Occupants of premises shall facilitate the collection of garbage, trash or refuse by confining, during regular or special collection times, any animals which might interfere with the refuse collectors. (Ord. 020-94, 06-14-94)

SECS. 11-30 - 11-34. RESERVED.

ARTICLE III. ACCUMULATIONS OF GARBAGE AND REFUSE

SECTION 11-35. DEFINITION.

For the purposes of this article, the word "owner" shall include all persons holding title to any land or lot in the City; lessees, tenants and principal occupants of any land or lot in the City or agents of persons holding title to such lands or lots, having care, custody, control or management of the land or lot; and fiduciaries holding title to or having the care, custody, control, or management of land or lots in the City for others. (Code 1959, §11-5)

SECTION 11-36. PROHIBITED. CIVIL PENALTIES

(a) Owners of property within the City shall keep the exterior of such property free of trash, garbage, refuse, litter, animal manure, human excreta, appliances and inoperable mechanical equipment except those that are part of a business that is in compliance with the Winchester Zoning Ordinance and other substances which might endanger the health of the residents of the City. Appliances and mechanical equipment which are stored outside and have doors which are only operable from

the outside or may obstruct the exit by a person from the inside shall have the doors taken off and made inoperable or made secure from entry by lock and chain until the appliance has been removed.

(b) Where a landlord or other owner, (hereinafter, landlord), through his or her own work or through judicial process has caused the personal property of a tenant to be removed from any rented unit and placed outside of any building, whether onto the landlord's property or onto the public property adjacent thereto, the landlord shall cause such personal property to be completely removed from the landlord's property or public property within twenty-four (24) hours of the removal from the rental unit.(Code 1959, §11-5; Ord. No. 048-88, 11-15-88; Ord. No. 027-90, 7-10-90; Ord. No. 020-94, 06-14-94)

(c) Any owner who violates any provision of this section shall be subject to a civil penalty of Fifty Dollars ($50.00) for the first violation, or violations arising from the same set of operative facts. The civil penalty for subsequent violations not arising from the same set of operative facts within twelve (12) months of the first violation shall be Two Hundred Dollars ($200.00). Each business day during which the same violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same set of operative facts result in civil penalties that exceed a total of Three Thousand Dollars ($3,000.00) in a twelve (12) month period.

(d) Violations of any provision of this section shall be a Class 3 misdemeanor in the event three (3) civil penalties have previously been imposed on the same defendant for the same or similar violation, not arising from the same set of operative facts, with a twenty-four (24) month period. Classifying such subsequent violations as criminal offenses shall preclude the imposition of civil penalties for the same violation. (Ord. No. 2008-03, 1-8-08)

Cross references--Requirements that premises be kept free from accumulations of rubbish and garbage, City Code Section 6-84
State Law References--Code of Virginia, §§15.2-901 and 18.2-319

SECTION 11-37. NOTICE TO REMOVE.

Where substances of the nature set forth in Section 11-36 are found upon property within the City, the code enforcement officer shall immediately notify the owner of such property to remove such substances. Such notification shall be by registered or certified letter sent to the owner at his last known address, hand delivered by the code enforcement officer or served by a member of the police department. (Ord No. 028-97, 10-14-97)

If, after diligent inquiry, no address can be found for such owner or if such owner refuses to accept the letter referred to herein, the letter herein referred to shall be posted in a conspicuous place on the property. This section shall not apply to personal property

subject to §11-36(b). (Code 1959, §11-5; Ord. No. 048-88, 11-13-88; Ord. No. 019-89, 8-08-89; Ord. No. 028-91, 6-11-91; Ord. No. 020-94, 06-14-94)

Cross reference--Grass, weeds and other foreign growth on private property, §30-49 *et seq.*

SECTION 11-38. REMOVAL BY THE CITY.

(a) If the substances referred to in Section 11-36 have not been removed from the property by the owner within seven (7) days from the date the letter has been mailed or the notice posted pursuant to Section 11-37, or, in the case of personal property subject to §11-36(b), within the time prescribed in that subsection, the code enforcement officer may cause the removal by the City's forces or the City's agent of such substances from such property forthwith. (Ord. No. 020-94, 06-14-94; Ord. No. 028-97, 10-14-97)

(b) Where substances have been removed from property by order of the code enforcement officer pursuant to the provisions of this section, the cost of such removal shall be billed to the owner of the property. If such bill is not paid, it shall be added to the City real estate tax on such property and shall be a lien on such property to the same extent and effect as such real estate tax is. (Code 1959, §11-5; Ord. No. 048-88, 11-15-88; Ord. No. 028-91, 6-11-91; Ord. No. 005-93, 02-09-93; Ord. No. 028-97, 10-14-97)

SECTION 11-39. RESERVED

ARTICLE IV. DISPOSAL OF YARD WASTES

SECTION 11-40. NOTICE OF ARTICLE PROVISIONS, ESTABLISHMENT OR SCHEDULES AND METHODS OF COLLECTION

The Director of Public Works is empowered and instructed to give due publicity and notice of the provisions of this article to the public, and to establish schedules for and methods of yard wastes collection and any other related regulations as may, from time to time, be necessary.

SECTION 11-41. DEFINITIONS

Yard Waste: Any waste that consists of grass clippings, soft plant material, brush and leaves. Tree branches not exceeding two (2) inches in diameter shall also be designated as yard waste.

SECTION 11-42. PLACEMENT FOR COLLECTION; REMOVAL OF UNCOLLECTED YARD WASTES AND EMPTY CONTAINERS

All yard wastes to be collected shall be placed on the curb or other approved place of collection not earlier than 6:00 p.m. on the day prior to and not later than 7:30 a.m. on the day designated for collection. All yard wastes not collected due to non-compliance with this article shall be removed at once. Empty containers shall be removed on the same day of collection.

SECTION 11-43. CONTAINER REQUIREMENTS

(a) All yard waste to be collected by the City shall be placed in containers of durable construction or biodegradable bags made for such purpose. Such containers shall be not more than thirty-two (32) gallon capacity and of sufficient construction to be safely handled by one collector without coming apart due to the contents or weather conditions.

(b) Plastic bags shall not be used for the disposal of yard waste.

(c) Tree branches and brush need not be placed in containers, but will be collected by the City if tied in tight compact bundles that can be handled by one collector, not exceeding four (4) feet in length and eighteen (18) inches in diameter.

SECTION 11-44. WEIGHT OF BUNDLES, CONTAINERS AND CONTENTS

The total weight of any one container, including its contents of yard waste, or of any one bundle of yard waste, to be collected by the City shall not exceed seventy-five (75) pounds. (Ord. No. 019-2003, 5/13/03)

CHAPTER 12

HANDLEY LIBRARY

Art. I. In General, §§12-1--12-15
Art. II. Library Board, §§12-16--12-21

ARTICLE I. IN GENERAL.

SECTION 12-1. OFFENSES AGAINST LIBRARY PROPERTY.

Offenses against library property belonging to or in the custody of the Handley Library or any branch thereof shall be punished as provided by Chapter 5 of Title 42.1 of the Code of Virginia (1950), as amended. (Code 1959, §19-30; Ord. No. 025-79, 11-13-79)

SECTIONS 12-2 - 12-15. RESERVED.

ARTICLE II. LIBRARY BOARD

SECTION 12-16. CREATED; NAME.

Pursuant to the provisions of Section 42.1-38 of the Code of Virginia (1950), as amended, there is hereby created a regional library board to be known as the Handley Library Board (Regional). (Code 1959, §19-23; Ord. No. 025-79, 11-13-79)

SECTION 12-17. COMPOSITION; APPOINTMENT AND TERMS OF MEMBERS; VACANCIES.

The regional library board shall consist of ten (10) members. Four (4) members shall be appointed by the Common Council, five (5) shall be appointed by the Board of Supervisors of Frederick County, and one shall be appointed by the Board of Supervisors of Clarke County. Members shall be appointed for terms of four (4) years, commencing December 1, and ending November 30, except that the two new members appointed by the Frederick County Board shall serve initial terms of three (3) and four (4) years, respectively. No appointive members shall be eligible to serve more than two (2)

Editor's note--Code 1959, §19-31, relative to unauthorized removal of books and other property codified in this Code as §10-2, was repealed by Ord. No. 025-79, adopted Nov. 13, 1979.

successive terms. Vacancies shall be filled for unexpired terms by the governing body which made the original appointment. (Code 1959, §19-24, 19-26; Ord. No. 025-79, 11-13-79; Ord. No. 029-81, 11-10-81; Ord. No. 012-95, 03-14-95)

Cross reference--Damaging property generally, §16-11.

State Law References--Libraries, Code of Virginia, Title 42.1; local and regional libraries, §42.1-33 *et seq*., Code of Virginia, §42.1-39

SECTION 12-18. COMPENSATION OF MEMBERS.

A member shall not receive a salary or other compensation for services as a member, but necessary expenses actually incurred shall be paid from the library fund. (Code 1959, §19-25; Ord. No. 025-79. 11-13-79)

State Law Reference--Code of Virginia, §42.1-39.

SECTION 12-19. ORGANIZATION MEETING; ELECTION OF OFFICERS; QUORUM.

The members of the regional library board shall, immediately after their election and qualification, meet and organize. They shall elect a chairman, a vice-chairman and such other officers as they may deem necessary. The board shall adopt such by-laws, rules and regulations for their own guidance and for their government as may be expedient. (Code 1959, §19-27; Ord. No. 025-79, 11-13-79)

State Law Reference--Code of Virginia, §42.1-39.

SECTION 12-20. GENERAL POWERS AND DUTIES.

(a) *Control and management of library facilities.* The regional library board shall have the control and management of the Handley Library and any other branches, substations, reading rooms or other library facilities which it may establish. It shall make and adopt bylaws, rules and regulations for its own guidance and for the control and management of its library facilities and program as may be deemed necessary and expedient.

(b) *Care of grounds and rooms.* The regional board shall have the care of the Handley Library building and grounds and of such other buildings and grounds or rooms as it shall operate.

(c) *Employment of librarian and other personnel.* The regional board may employ a librarian and such other agents as may be necessary to accomplish the purposes for which this regional board is created.

(d) *Expenditure of moneys.* The regional board shall have control of the expenditure of all moneys appropriated to it by the council, board of supervisors, or other governmental body or coming to it from the Handley Board of Trustees or from any other source for the maintenance and operation of the library facilities under its control. The regional board shall have the right to accept donations and bequests of money, personal property, or real estate for the establishment and maintenance of the regional free library system or endowments for same. (Code 1959, §19-28; Ord. No. 025-79, 11-13-79)

SECTION 12-21. REPORTS AND BUDGETS.

At least once each year as may be requested by the City of Winchester, the County of Frederick or the County of Clarke, the regional library board shall make a full report showing the progress of the library's facilities and usage, the state of its fiscal assets, its collections and the plans of the board for the future. There shall also be submitted a properly audited financial report showing receipts from all sources and all disbursements, and a projected budget for the coming year. (Code 1959, §19-29; Ord. No. 025-79, 11-13-79; Ord. No. 029-81, 11-10-81)

CHAPTER 13

MASSAGE SALONS, HEALTH CLUBS, ETC.

SECTION 13-1. DEFINITIONS.

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

Erogenous area: The pubic area, penis, scrotum, vulva, perineum or anus.

Health club: Any establishment which offers service in the form of massage, baths, exercises or similar services, in combination, to club members, or to the public for a charge. The terms "health club" and "massage establishment" do not include:

(1) Hospitals, nursing homes, medical clinics, or other offices or quarters of a physician, a surgeon, a chiropractor or an osteopath or a physical therapist duly licensed by the Commonwealth of Virginia;

(2) Exercise clubs exclusively for the purpose of maintaining physical fitness and health where the services are performed, without massage in any form for pay and without any physical touching with any part of one person's body with an erogenous area of any other person;

(3) Barbershops and beauty parlors in which massages are administered only to the scalp, the face, the neck or the shoulder; or

(4) Any establishment:

(a) offering or providing facilities for, or instruction in, controlled exercise, weight lifting, calisthenics, or general physical fitness;

(b) which is actually occupying the premises of not less than five thousand (5,000) square feet, of which not more than five percent (5%) is used for massages; and

(c) whose gross income from massages is less than fifteen percent (15%) of the total gross business income derived from physical fitness sales contracts at each business location.

Massage establishment: An establishment having a fixed place of business where massages are administered for pay including, but not limited to, massage parlors or salons, health clubs, sauna baths and steam baths.

Massage technician, masseur and masseuse: A person who practices any one or more of the arts of body massage, either by hand or mechanical apparatus, oil rubs, corrective gymnastics, mechanotherapy, including color therapy, dietetics, hot packs, cabinet, tub, shower, sitz, vapor, steam or any other special type of bath. This definition shall not be construed to include a physician, surgeon, chiropractor, osteopath, physical therapist, or nurse duly licensed by the Commonwealth of Virginia, nor to include any person certified as a "certified massage therapist" by the State Board of Nursing, or any student while engaged in a course of study leading to such a certification given by a school licensed by the State Board of Education for such purposes.(Ord. No. 007-99, 3-30-99)

SECTION 13-2. COMPLIANCE WITH CHAPTER.

It shall be unlawful for any person to engage in the business of a massage salon or health club or as a massage technician without a permit, or to be in violation of any requirements or prohibitions set forth in this chapter or any regulation issued pursuant thereto. Any fees or deposits required by this chapter shall not relieve the applicant from compliance with any applicable business license required.

SECTION 13-3. PERMIT REQUIRED FOR OPERATION OF MASSAGE ESTABLISHMENT.

(a). *Required.* No health club or massage establishment shall operate without first obtaining a permit.

(b). *Qualifications.* No permit shall be issued for any health club or massage establishment except to an owner or manager who is either:

(1) A physician or chiropractor;

(2) A registered nurse with at least two (2) years' nursing experience;

(3) A licensed practical nurse with at least four (4) years' nursing experience; or

(4) A registered physical therapist.

(c). *Forms.* Permit forms are obtainable and are processed in the offices of the chief of police. (See §13-3.3)

(d). *Inspections required.* Upon receipt of said application, the chief of police shall refer the application to the building official, the fire department, and the zoning administrator, each of which shall, within a period of twenty-one (21) days from the date of application, review records and make an inspection of the premises proposed to be used as a massage establishment and make a written recommendation to the chief of police concerning compliance with the law.

(e). *Relocation procedure.* A change of location of a licensed massage establishment may be approved by the chief of police provided all applicable provisions of the Code, including this chapter, are complied with and a change of location fee of fifty dollars ($50.00) has been paid to the city treasurer.

SECTION 13-3.1. ADDITIONAL PERMITS REQUIRED.

(a) It shall be unlawful for any person as defined in paragraph (c) of subsection 13-3.5 hereof to own or manage a massage parlor or health club as defined herein, or to give a massage within the City, or to offer to give a massage elsewhere if such offer is made within the City, or for any masseur or masseuse to give or offer a massage without a valid, non-suspended permit issued pursuant to this chapter. Said permit must be conspicuously posted in the massage parlor or health club; so that the permit may be readily seen by persons entering the premises in the public room thereof or, if said massage is given in other than a health club or massage establishment, said permit must be available on request.

(b) It shall be unlawful for any person as defined in subsection (1) herein to establish, maintain or operate a health club or massage establishment in which he or a masseur or masseuse who does not have a valid non-suspended permit pursuant to this chapter performs, or offers to perform, or where it is offered to perform massages, or to offer a massage in the City or elsewhere except as provided in this chapter.

SECTION 13-3.2. PERMIT REQUIRED FOR MASSAGE TECHNICIAN.

No massage technician, masseur or masseuse shall administer a massage in a massage establishment without a valid, non-suspended permit issued pursuant to this chapter.

SECTION 13-3.3. MASSAGE TECHNICIAN PERMIT FEE; TERM; HEALTH CERTIFICATE REQUIRED.

(a) Every person conducting or engaging in the administration of massages in a massage establishment shall pay an annual permit fee of twenty-five dollars ($25.00), which permit shall be renewed one year from date of issue.

(b) No person shall practice any of the services of a massage technician without a certificate of good health issued by a duly licensed physician, which certificate shall be renewed every six (6) months.

SECTION 13-3-4. MASSAGE TECHNICIAN PERMIT APPLICATION.

(a) Each application for a massage technician permit shall be upon a form provided by the chief of police. Each form shall contain the following information:

(1) The applicant's full name, residential address, and residential telephone number.

(2) The name and address of the massage establishment where the applicant is to be employed and the name of the owner of same

(3) The names and addresses of any and all previous massage establishments where applicant has been employed as a massage technician.

(4) The criminal record, if any, other than misdemeanor traffic violations, of the applicant.

(5) Whether any permit to perform as a massage technician has previously been denied the applicant or revoked and, if so, the circumstances of such denial or revocation.

(6) A complete set of the applicant's fingerprints, which shall be taken by the chief of police or his agent.

(7) Written proof that the applicant is eighteen (18) years of age or older.

(8) Proof of training required by subsection 13-4 of this chapter.

(b) Each holder of a massage establishment permit shall report to the chief of police any change in any of the information required in paragraph (a) of this section, such report to be made within fourteen (14) days of learning of the change. Failure to report a change after learning of it shall be grounds for revocation of the permit.

SECTION 13-3.5. INVESTIGATION OF APPLICANT FOR MASSAGE ESTABLISHMENT PERMIT OR MASSAGE TECHNICIAN PERMIT; GROUNDS FOR DENIAL OF APPLICATION.

(a) *Application; renewals. Any* person desiring a permit hereunder shall make application to the chief of police an forms provided by him. Each permit application shall be accompanied by an application fee of fifty dollars ($50.00) for a massage establishment permit and/or twenty-five dollars ($25.00) for a massage technician permit, payable to the city treasurer. Each application shall contain the name, address, social security number, telephone number, last previous address, date of birth, height, weight, current and last previous employment of the applicant.

In addition, such application shall include a sworn statement as to whether or not the applicant has been convicted, pleaded nolo contendere, or suffered a forfeiture of any felony charge or on a charge of violating any provisions included in Chapter 8, Article 3, Title 18.2, Sections 18.2-344 *et seq.* and Article 5, Section 18.2-372 *et seq.* of the Code of Virginia, which laws relate to sexual offenses, or on a charge of violating a similar law of any other jurisdiction or on a charge of violating any provision of this chapter or similar ordinance in any other jurisdiction. The application shall state thereon that "it is unlawful for any person to make a false statement on this application, and discovery of a false statement shall constitute grounds for denial of an application or renovation of a permit".

Each applicant shall be photographed and have his or her fingerprints taken, which fingerprints and photograph shall constitute part of the application. The permit shall be valid for a period of one year, and it may be renewed for additional one-year periods upon the filing of a new application and payment of the application fees. All provisions of this chapter shall apply to renewals in the same manner as they apply to application for a granting of initial permits.

(b) *Investigation.* Upon receipt of the application fee as provided by the preceding sections, the chief of police shall make or cause to be made a thorough investigation relative to the application. The chief shall deny any application for a massage establishment permit or a massage technician permit under this chapter after notice and hearing if the chief finds that the applicant has been convicted, pleaded nolo contendere, or suffered a forfeiture on any felony charge or on a charge of violating any provision included in Chapter 8, Article 3, Title 18.2, Section 18.2-344 *et seq.* and Article 5, Section 18.2372 *et seq.* of the Code of Virginia, which laws relate to sexual offenses, or on a charge of violating any similar law of any other jurisdiction.

The making of a false statement on the application as provided for in this chapter shall also be grounds for denial of this permit. Notice of the hearing before the chief of police for denial of this application shall be given in writing, setting forth the grounds of the proposed denial of permit and the time and place of the hearing. Such notice shall be mailed by certified mail to the applicant's last known address at least five (5) days prior to the date set for the hearing. The chief of police shall submit his decision to the applicant within five (5) days of his decision or within thirty (30) days of his receipt of the application, whichever is the sooner.

(c) *Revocation.* The chief of police shall revoke the permit of any person after notice and hearing if the chief finds that such person has been convicted, pleaded nolo contendere, or suffered a forfeiture of any felony charge or on a charge of violating any provision included in Chapter 8, Article 3, Title 18.2, Section 18.2-344 *et seq.* and Article 5, Section 18.2-372 *et seq.* of the Code of Virginia, which laws relate to sexual offenses, or on a charge of violating a similar law of

any jurisdiction or on a charge of violating any provision of this chapter or similar ordinance in any other jurisdiction.

The permit shall also be revoked by the chief if he finds after notice and hearing that any permit holder has made a false statement on the application provided for herein. Notice of the hearing before the chief for revocation of the permit shall be given in writing, setting forth the grounds of the proposed revocation and the time and place of the hearing. Such notice shall be mailed by certified mail to the permit holder's last known address at least five (5) days prior to the date set for the hearing.

(d) *Failure to display.* It shall also be unlawful for any person to purport to hold a valid permit when they do not, or to fail to display upon request to any police officer corroborating identifying evidence that he or she is, in fact, the person displaying the permit; or fail to display the permit upon request by a police officer. It shall likewise be an automatic cause for revocation of the permit of any owner or manager of a massage establishment or health club should they have two (2) or more violations of these provisions in their establishment within a twelve-month period.

(e) *Person defined.* A "person" applying for a permit hereunder shall include a partnership or association and any partner or member thereof, or if the applicant is a corporation it shall include any officer, director or manager thereof or shareholder owning ten (10) percent or more of its stock, and shall likewise include members of both sexes.

(f) *Appeal.* In the event the chief of police should deny or revoke any permit hereunder the applicant shall have an automatic right to appeal such denial or revocation to the city manager. The city manager shall hold a hearing with the same procedural guidelines as set forth above regarding hearings before the chief of police within thirty (30) days of the date of denial or revocation by the chief of police. The city manager shall render his decision after a review of the findings of the chief of police and any other evidence submitted to him. The city manager shall submit his decision to the applicant or permit holder within five (5) days of his decision or within thirty (30) days of the hearings, whichever is sooner.

(g) *Non-transferability.* No permit issued under this chapter shall be transferable from one person to another.

(h) *Right of entry.* The director of health, the city building official, the fire department, the chief of police, and the zoning administrator are hereby authorized to enter, examine, and survey during business hours any premises in the City for which a massage establishment permit has been issued pursuant to this chapter for the purpose of enforcing the provisions of this chapter, and for other official purposes. This section shall not restrict or limit the right of entry vested in any law enforcement agency.

SECTION 13-4. TRAINING OF MASSEUR OR MASSEUSE OR MASSAGE TECHNICIAN.

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

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

(2) A course in study in body massage shall constitute one thousand (1,000) hours of study in connection with an approved school, five hundred (500) hours of which shall be accredited instructional hours pertaining to:

(a) Classroom or clinical training in therapeutic massage and reflexology techniques;

(b) Classroom or clinical instruction on contra-indications for massage;

(c) Classroom or clinical or laboratory instruction to develop a knowledge of the anatomy and physiology of the systems of the body, with emphasis on the muscular and skeletal system.

(3) The additional five hundred (500) hours may be accomplished simultaneously with the academic, clinical, classroom or laboratory training by virtue of what is commonly known as "on the job training", or can be verified to by an employer of a masseur or masseuse by sworn affidavit as having accomplished during or before the effective date of this chapter.

(a) Such training shall pertain to understanding the benefits of massage; and

(b) Assisting the students in developing an awareness of massage as a therapeutic process.

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

(5) Compliance with this section shall first be determined by the chief of police with the same rights of appeal and hearing to the city manager as elsewhere granted in this chapter.

SECTION 13-5. EQUIPMENT STANDARDS.

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

(b) Closed containers shall be provided for wet towels and waste materials.

SECTION 13-6. BUILDING STRUCTURE AND LAYOUT.

(a) No health club or massage establishment shall begin operations until the building occupied or to be occupied shall have been approved by the city building official as to the requirements of the building, plumbing, electric and fire prevention codes, and any other requirements of this chapter.

(b) Any applicant for a permit to operate a health club or massage establishment shall submit to the city planner plans and specifications of the quarters proposed to be occupied. Such plans shall show details of entrances, partitions, windows, openings, ventilation, plumbing or fixtures, water supply and waste and vent connections.

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

(d) Either the health club or massage establishment quarters or the floor of the building on which same are located shall be equipped with a service sink for custodial services.

(e) No exterior or interior doors in any health club or massage establishment shall be equipped with any remotely controlled locking device.

SECTION 13-7. SANITATION AND HYGIENE.

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

(b) Health, plumbing, electric and other inspectors shall be given access to any part of the quarters of a health club or massage establishment for purposes of inspections at all reasonable times.

(c) No person shall practice any of the services of a health club or massage establishment without a certificate of good health issued by a duly licensed physician, commensurate with the nature of the services rendered. Such certificate shall be renewed every six (6) months.

(d) No health club or massage establishment shall knowingly serve any patron infected with any fungus or other skin infections; nor shall service be performed on any patron exhibiting skin inflammation or eruptions; provided, that a duly licensed physician may certify that a person may be safely served, prescribing the conditions thereunder.

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

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

(g) Non-disposable tools of the trade shall be disinfected after use upon one patron.

SECTION 13-8. SLEEPING QUARTERS.

No part of any quarters of any health club or massage establishment shall be used for, or connected with, any bedroom or sleeping quarters; nor shall any person sleep in such club or establishment except it be for limited periods incidental to and directly related to a massage or bath. This provision shall not preclude the location of a health club or massage establishment in separate quarters of a building housing a hotel or other separate businesses or clubs.

SECTION 13-9. MASSAGES OR BATHS ADMINISTERED BY PERSON OF OPPOSITE SEX.

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

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

SECTION 13-10. PROHIBITED ACTS IN VIOLATION OF STATE LAW, THIS CODE, ETC.

(a) No owner or manager of a health club or massage establishment shall tolerate in his or her club or establishment any activity or behavior prohibited by the laws of this commonwealth, particularly, but not exclusive of, Chapter 8, Article 3, Title 18.2, Sections 18.2-344 *et seq*., proscribing prostitution, sodomy, a bawdy place, adultery, fornication and any lewd and lascivious cohabitation, etc.; and Article 5 thereof, Section 18.2-372 *et seq*., being the state statute on obscenity, dealing with shameful or morbid interest in nudity or sex, which appeals to prudent interest, and which covers obscene items, exhibitions, performances, indecent exposure, illicit photographs or photographic activity, and illicit modeling.

(b) No owner or manager of a health club or massage establishment shall tolerate in his or her club or establishment any activity or behavior which violates this Code, particularly, but not exclusive of, those sections which parallel the state statutes on immorality and obscenity detailed above.

(c) Any conviction of any employee of a health club or massage establishment of a violation of the foregoing mentioned statutes and codes shall devolve upon the owner or manager of such club or establishment, it being specifically declared hereby that following such conviction of an employee the owner or manager of the health club or massage establishment shall be prosecuted as an accessory to such violation.

(d) No provision of this chapter shall apply to police officers while in performance of official duties relating to any violation of this chapter or of any law of the United States, the Commonwealth of Virginia, or the City of Winchester.

SECTION 13-11. SEVERABILITY.

If any of the sections, paragraphs, sentences, clauses or phrases of this chapter shall be declared unconstitutional or invalid by the valid judgment of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect the validity of the chapter in its entirety or any of the remaining sections, paragraphs, sentences, clauses, and phrases.

SECTION 13-12. PENALTIES.

(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 or she shall be guilty of a Class 1 misdemeanor.

(b) Upon the first conviction by any court for violation of any provision of this chapter, the chief of police may revoke his or her license to engage in business under this chapter for a period of one full year from the date of conviction. Such revocation shall be mandatory upon a second conviction. (Ord. No. 005-82, 3-09-82; Ord. No. 010-85, 7-09-85)

CHAPTER 14

MOTOR VEHICLES AND TRAFFIC

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ARTICLE I. IN GENERAL

SECTION 14-1. COMPLIANCE WITH CHAPTER; GENERAL PENALTY FOR VIOLATIONS.

It shall be unlawful for any person to violate any of the provisions of this chapter. Unless otherwise stated, a violation of this chapter shall constitute a traffic infraction punishable by a fine of not more than two hundred and fifty dollars ($250.00). (Code 1959, §15-24; Ord. of 6-28-77; Ord. No. 019-2002, 8-13-02; Ord. No. 008-2004, 3-9-04)

Charter reference--Regulation of traffic, §16.

Cross references--Permit for commercial haulers of garbage and refuse, §11-2; injuring, tampering with, etc., vehicles, §14-11.1; posting advertising matter on or in vehicles, §14-15; use of loudspeakers on vehicles, §14-17; open storage of inoperative vehicles in certain zoning districts, §14-25; planning, Ch. 19; railroads, Ch. 22; streets and sidewalks, Ch. 26; vehicles for hire, Ch. 31.

State Law References--General authority of city to regulate traffic, Code of Virginia, §§46.2-1300--46.2-1313; Similar provisions applicable to violation of state traffic laws, Code of Virginia, §46.2-113; city prohibited from imposing penalty for traffic violation which is greater than penalty imposed by state for similar offense, Code of Virginia, §46.2-1300.

SECTION 14-2. ARREST PROCEDURE FOR VIOLATIONS OF CHAPTER --GENERALLY.

(a) Whenever any person is arrested for a violation of any provision of this chapter, except §14-28, the arresting officer shall, except as otherwise provided in §14-3, take the name and address of such person and the license number of his motor vehicle and issue a summons or otherwise notify him in writing, to appear at a time and place to be specified in such summons or notice, such time to be at least five (5) days after such arrest, unless the person arrested shall demand an earlier hearing, and such person shall, if he so desires, have a right to an immediate hearing or a hearing within twenty-four (24) hours, at a convenient hour and before a court having jurisdiction. Such officer shall thereupon and upon the giving by such person of his written promise to appear at such time and place, forthwith release him from custody. This section shall not apply to any violation for which a citation is issued pursuant to the authority of §14-54 and following.

(b) Any person refusing to give such written promise to appear shall be taken immediately by the arresting or other police officer before the nearest or most accessible judicial officer or other person qualified to admit to bail having jurisdiction under this chapter.

(c) Any person who willfully violates his written promise to appear given in accordance with this section shall be guilty of a misdemeanor, regardless of the disposition of, and in addition to, the charge upon which he was originally arrested.

(d) Any officer violating any of the provisions of this section shall be guilty of misconduct in office and subject to removal therefrom upon complaint filed by any person in a court of competent jurisdiction. This section shall not be construed to limit the removal of a police officer for other misconduct in office. (Code 1959, §12-27; Ord. No. 002-91, 1-15-91).

Cross reference--Use of above section for arrests for littering, §11-3.

State Law Reference--Similar provisions, Code of Virginia, §46.2-936.

SECTION 14-3. SAME--WHEN ARRESTED PERSON TO BE TAKEN BEFORE JUDICIAL OFFICER.

If any person arrested for a violation of any provision of this chapter is believed by the arresting officer to be likely to disregard a summons issued under §14-2, the arresting officer shall take such person forthwith before the nearest or most accessible judicial officer or other person qualified to admit to bail, in lieu of issuing the summons required by §14-2, and such judicial officer or other person shall determine whether or not

probable cause exists that such person is likely to disregard a summons, and may issue either a summons or warrant as he shall determine proper. (Code 1959, §15-28).

State Law Reference--Similar provisions, Code of Virginia, §46.2-940.

SECTION 14-4. SAME--TRAFFIC INFRACTIONS TREATED AS MISDEMEANORS FOR ARREST PURPOSES.

For purposes of arrest, traffic infractions shall be treated as misdemeanors. Except as otherwise provided by this chapter or state law, the authority and duties of arresting officers shall be the same for traffic infractions as for misdemeanors.

State Law Reference--Similar provisions, Code of Virginia, §46.2-937.

SECTION 14-5. ADOPTION OF STATE LAW.

(a) Pursuant to the authority of § 46.2-1313 of the Code of Virginia, all of the provisions and requirements of the laws of the state contained in Title 46.2 of the Code of Virginia, except those provisions and requirements the violation of which constitutes a felony, and except those provisions and requirements which, by their very nature, can have no application to or within the City, are hereby adopted and incorporated in this chapter by reference and made applicable within the City.

References to "highways of the state" contained in such provisions and requirements hereby adopted shall be deemed to refer to the streets, highways and other public ways within the City. Such provisions and requirements are hereby adopted and made a part of this chapter as fully as though set forth at length herein, and it shall be unlawful for any person within the City to violate or fail, neglect or refuse to comply with any provision of Title 46.2 of the Code of Virginia, which is adopted by this section; provided, that in no event shall the penalty imposed for the violation of any provision or requirement hereby adopted exceed the penalty imposed for a similar offense under Title 46.2 of the Code of Virginia.

(b) All definitions of words and phrases contained in the state law hereby adopted shall apply to such words and phrases, when used in this chapter, unless clearly indicated to the contrary. (Ord. No. 007-90, 2-13-90)

SECTION 14-6. APPLICABILITY OF CHAPTER TO VEHICLES REGARDLESS OF OWNERSHIP.

The provisions of this chapter applicable to the drivers of vehicles upon the highways shall apply to the drivers of all vehicles regardless of ownership, subject to such specific exceptions as are set forth in this chapter. (Code 1959, §15-2).

State Law Reference--Similar provisions, Code of Virginia, §46.2-801.

SECTION 14-7. APPLICATION OF CHAPTER TO PERSONS RIDING BICYCLES OR ANIMALS OR DRIVING ANIMALS.

Every person riding a bicycle or an animal upon a roadway and every person driving any animal thereon shall be subject to the provisions of this chapter applicable to the driver of a vehicle, except those provisions which, by their very nature, can have no application. (Code 1959, §15-3)

Cross reference--Animals, Ch. 5.

State Law Reference--Similar provisions, Code of Virginia, §46.2-800.

SECTION 14-8. ENFORCEMENT BY POLICE; OFFICERS TO BE PAID FIXED AND DETERMINED SALARIES.

Every policeman shall enforce the provisions of this chapter; provided, that such officer shall be uniformed at the time of such enforcement or shall display his badge or other sign of authority; and, provided further, that all officers making arrests incident to the enforcement of this chapter shall be paid fixed and determined salaries for their services and shall have no interest in, nor be permitted by law to accept the benefit of, any fine or fee resulting from the arrest or conviction of an offender against any provision of this chapter. (Code 1959, §15-5).

State Law Reference--Similar provisions, Code of Virginia, §46.2-102.

SECTION 14-9. AUTHORITY OF FIRE DEPARTMENT OFFICIALS TO DIRECT TRAFFIC.

Officers of the fire department may direct or assist the police in directing traffic at or in the immediate vicinity of a fire, and while so acting, shall have all the authority of peace officers. (Code 1959, §15-12).

SECTION 14-10. REPEALED. (Ord. No. 19-2006, 5-3-06)

Editor's Note – Provisions of previous Section 14-10 have been re-enacted as Article IX, Sections 14-146 through 14-157.

SECTION 14-11. IDENTIFICATION OF VEHICLES IN FUNERAL PROCESSIONS; RIGHT-OF-WAY.

(a) All motor vehicles participating in a funeral procession, when proceeding to any place of burial, shall display illuminated headlamps thereon and such other identification as the city manager may prescribe.

(b) All motor vehicles so designated shall have the right-of-way over all other vehicles, except fire apparatus, ambulances and police vehicles, at any street or highway intersection within the City, and may proceed through a stop street or signalized intersection with proper caution and safety. (Code 1959, §15-14).

State Law Reference--Similar provisions and authority of city to provide for police escort for funeral processions, Code of Virginia, §46.2-828.

SECTION 14-12. BOARDING OR ALIGHTING FROM MOVING VEHICLES.

No person shall board or alight from any vehicle while such vehicle is in motion. (Code 1959, §15-15).

SECTION 14-13. RIDING UPON PORTION OF VEHICLE NOT INTENDED FOR USE OF PASSENGERS.

No person shall ride on any vehicle upon any portion thereof not designed or intended for the use of passengers. This provision shall not apply to an employee engaged in the necessary discharge of a duty, or to persons riding within truck bodies in space intended for merchandise. (Code 1959, §15-16).

SECTION 14-14. DISPLAY OF VALID STATE LICENSE PLATES AND VALID STATE INSPECTION CERTIFICATE.

It shall be unlawful for any person to operate or park any motor vehicle, trailer or semitrailer on any public street or public property unless the same shall display thereon valid state license plates and a valid state inspection certificate.

Violations of this section shall be punishable by a fine of twenty-five dollars ($25.00). (Ord. No. 016-94, 04-12-94)

State Law Reference--Code of Virginia, §§46.2-613, 46.2-1157, 46.2-1220.

SECTIONS 14-15 - 14-16. RESERVED.

ARTICLE II. MOTOR VEHICLE LICENSE

SECTION 14-17. MOTOR VEHICLE LICENSES.

(a) Definitions.

For the purposes of this section, the following terms shall have the following meanings:

Situs a vehicle, as described herein, shall have situs in the City of Winchester if it is normally garaged, stored or parked within the City. If it cannot be determined where the vehicle is normally garaged, stored or parked, the situs shall be the domicile of its owner. In the event the owner of the vehicle is a full-time student attending an institution of higher education, the situs shall be the domicile of such student, provided the student has presented sufficient evidence that he or she has paid a personal property tax on the vehicle in his domicile.

Vehicle any motor vehicle, as defined by Virginia Code §46.2-100, as such section may be amended from time to time.

(b) The application for the license and for each annual renewal shall be made to the Commissioner by mail or in person, on forms provided by the Commissioner, and shall contain the same information as that appearing on the state automobile registration card.

(c) The license fee on vehicles shall be as follows:

1. Motor vehicles, including automobiles, less than 10,000 pounds: $24.00
2. Motor vehicles 10,000 pounds or more: $36.00
3. Two or three wheel motor vehicles: $12.00
4. Motor homes. Greater than 10,000 pounds; and buses used exclusively for transportation to and from religious school or church or other place of worship, for the purpose of divine worship, greater than 10,000 pounds: $30.00
5. Antique motor vehicles registered, licensed, and used as such pursuant to Section 46.2-730 of the Code of Virginia, 1950, as amended: $10.00

(d) Any license not purchased by the dates specified herein shall be increased by $5.00.

(e) Every vehicle displaying valid dealers number plates shall be exempt from this license fee.

(f) Any person who fails to comply with this section shall be guilty of a Class 4 misdemeanor and each day's failure to do so shall be a separate offense.

(g) Violation of this ordinance may, at the discretion of the officer, be processed in the same manner as provided in Sections 14-54, 14-55, and 14-56 of this Code, but such violation may not be, regardless of how they are initiated or processed, discharged by payment of a fine, alone, except upon presentation of satisfactory evidence that the required license has been obtained. When processed as provided in said Section 14-54, 14-55, and 14-56, the prepayment amount for such violations shall be Twenty-Five Dollars ($25.00).

(Ord. No. 044-88, 11-15-88; Ord. No. 022-92, 11-10-92; Ord. No. 041-93, 11-09-93; Ord. No. 003-96, 04-09-96; Ord. No. 024-2000, 11-16-00; Ord. No. 013-2001, 04-10-2001; Ord. No. 2007-24, 07-10-07)

State Law References--Code of Virginia, §§46.2-694, 46.2-752, 46.2-755.

SECTION 14-18. PRORATION OF VEHICLE LICENSE.

If the owner of a motor vehicle subject to licensure under section 14-17 disposes of the vehicle during the twelve month period of a city license or tag issued for the vehicle, he or she may present proof of such disposition of such vehicle to the Commissioner. Upon the request of the owner, and upon presentation of such proof, the Commissioner shall credit to the person the remaining time of the life of the license on a monthly prorated basis against the license fee for any new city license or tag applied for by such owner at the time he or she presents proof of disposition of a prior licensed vehicle. (Ord. No. 044-88, 11-15-88; Ord. No. 022-92, 11-10-92; Ord. No. 003-96, 04-09-96; Ord. No. 2007-24, 07-10-07)

SECTION 14-19. REPEALED.
(Ord. No. 2007-24, 07-10-07)

SECTION 14-20. REPEALED.
(Ord. No. 2007-24, 07-10-07)

SECTION 14-21. MOTOR VEHICLE LICENSES (ISSUED WITHOUT FEE).

No City license fee shall be imposed for any one vehicle owned and used personally by any veteran who holds a current State Motor Vehicle Registration Card establishing that he had received a disabled veteran's exemption form from the Division of Motor Vehicles, and has been issued a disabled veteran's motor vehicle license plate. (Ord. No. 044-88, 11-15-88; Ord. No. 022-92, 11-10-92)

State Law Reference--Code of Virginia, §46.2-755.

SECTION 14-22. EXEMPTIONS.

No motor vehicle license fee shall be imposed on any motor vehicle, trailer, or semitrailer when:

(a) A similar fee is imposed by the county, city or town wherein the vehicle is normally garaged, stored or parked;

(b) The vehicle is owned by a nonresident of the City and is used exclusively for pleasure or personal transportation and not for hire or for the conduct of any business or occupation other than that set forth in subdivision (c) of this section;

(c) The vehicle is (i) owned by a nonresident of the City and (ii) used for transporting into and within the City, for sale in person or by his employees, wood, meats, poultry, fruits, flowers, vegetables, milk, butter, cream, or eggs produced or grown by him, and not purchased by him for sale;

(d) The motor vehicle, trailer, or semitrailer is owned by an officer or employee of the Commonwealth who is a nonresident of the City and who uses the vehicle in the performance of his duties for the Commonwealth under an agreement for such use;

(e) The motor vehicle, trailer, or semitrailer is kept by a dealer or manufacturer for sale or for sales demonstration;

(f) The motor vehicle, trailer, or semitrailer is operated by a common carrier of persons or property operating between cities and towns in the Commonwealth and not in intracity transportation or between cities and towns on the one hand and points and places outside cities and towns on the other and not in intracity transportation. (Ord. No. 022-92, 11-10-92)

State Law Reference--Code of Virginia, §46.2-755.

SECTION 14-23. REPEALED.

(Ord. No. 2007-24, 07-10-07)

SECTION 14-24. RESERVED.

ARTICLE III. OPERATION OF VEHICLES GENERALLY

SECTION 14-25. STOP AND YIELD INTERSECTIONS.

The chief of police shall designate intersections at which vehicles shall come to a full stop or yield the right-of-way and cause such intersections to be marked by appropriate signs or signals. The duty of drivers approaching such signs or signals shall be as prescribed by the State law adopted by Section 14-5. (Code 1959, §§l5-94, 15-95; Ord. of 7-13-76).

State Law Reference--Authority for above section, Code of Virginia, §46.2-1301.

SECTION 14-26. ONE-WAY STREETS.

(a) The following streets are hereby established and designated as one way streets and, except as otherwise herein provided, it shall be unlawful for any vehicles to be driven or moved on such streets in a direction other than as herein set forth:

1. *Baker Street,* from West Lane to Kent Street, westbound.
2. *Boscawen Street,* between Indian Alley and Cameron Street, eastbound.
3. *Braddock Street,* from Wyck Street to West Gerrard Street, southbound.
4. *Cameron Street,* from Gerrard Street to North Loudoun Street, northbound.

4-a. *Charles Street,* from Smithfield Avenue to Fairview Avenue, eastbound.
4-b. *Church Alley,* between Braddock Street and Indian Alley, westbound.
4-c. *Gerrard Street,* between Kent Street and Millwood Avenue, westbound.

5. *Gibbens Street,* from Loudoun Street to Cameron Street, eastbound.
6. *Handley Avenue,* from Handley Boulevard to Briarmont Street, northbound.

6-a. *Highland Avenue,* from Liberty Street to National Avenue, southbound.
6-b. *Fairfax Lane,* from Fairmont Avenue to North Braddock Street; eastbound; and from North Cameron Street to East Lane, eastbound.
6-c. *Fairfax Alley,* between North Cameron and North Kent Streets, westbound
6-d. *Fairview Avenue,* from National Avenue to Virginia Avenue, northbound.
6-e. *Franklin Street,* from Pine Street to Elm Street, eastbound.

7. *Indian Alley,* from Clifford Street to Fairfax Lane, northbound.

7-a. *Joist Hite Place,* from Academy Street to Lee Street, eastbound.

8. *Latane Street,* from Cork Street to Joist Hite Place, northbound.

8-a. *Lee Street,* from Joist Hite Place to Cork Street, southbound.

9. *Morgan Street,* from Amherst Street to Piccadilly Street, northbound.

9-a. *Opequon Avenue,* between Cork and Leicester Street, southbound.

10. *Piccadilly Street,* from Morgan Street to Fairmont Avenue, eastbound.
11. *Shawnee Avenue,* from Cork Street to Leicester Street, southbound.
12. *Shenandoah Avenue,* between Pall Mall Street and Cork Street, northbound.

13. *Shirley Street*, from Joist Hite Place to Cork Street, southbound.
1. *Southwerk Street*, from Valley Avenue to South Loudoun Street, eastbound.
2. *Valley Avenue*, from Braddock Street to Gerrard Street, eastbound.

(Ord. No. 003-83, 2-08-83; Ord. No. 017-84, 9-11-84; Ord. No. 027-2002, 10-8-02; Ord. No. 006-2003, 01-14-03; Ord. No. 017-2003, 05-13-03)

(n) The public works director is authorized and directed to provide such signs on the one-way streets designated in this section as will apprise an ordinarily observant person of such one-way streets. This section shall become effective as to any such one-way street when signs have been provided therefor as set out herein. (Ord. No. 041-93, 11-09-93)

(c) When it can be demonstrated to the satisfaction of the chief of police or his duly authorized representative that the strict enforcement of this section will cause an unreasonable hardship on some particular person relative to the loading or unloading of trucks or other vehicles on one-way streets, then in such event the chief of police, or his duly authorized representative, is authorized to issue a special permit to such person permitting a variance from the provisions of this section. Any such special permit shall be in writing and shall specify the nature of such variance and the place and period of time when such variance shall be permitted. Such permit shall only be issued when it can be demonstrated to the chief of police, or his duly authorized representative, that the granting of such permit will alleviate a clearly demonstrable hardship, as distinguished from a special privilege or convenience to the person who seeks such permit. (Code 1959, §§15-92, 15-93; Ord. of 7-13-76; Ord. of 10-11-77).

Cross reference--One-way traffic on Loudoun Street Mall, §26-33.

****(Editor's Note – The following portion of Section 14-26 was adopted on December 9, 2008, Ordinance #2008-49, and will be effective January 1, 2010.)**

SECTION 14-26. ONE-WAY STREETS.

(a) The following streets are hereby established and designated as one way streets and, except as otherwise herein provided, it shall be unlawful for any vehicles to be driven or moved on such streets in a direction other than as herein set forth:

1. *Baker Street*, from West Lane to Kent Street, westbound.
2. *Boscawen Street*, between Indian Alley and Cameron Street, eastbound.
~~3. *Braddock Street*, from Wyck Street to West Gerrard Street, southbound.~~
~~4. *Cameron Street*, from Gerrard Street to North Loudoun Street, northbound.~~
4-a. *Charles Street*, from Smithfield Avenue to Fairview Avenue, eastbound.
4-b. *Church Alley*, between Braddock Street and Indian Alley, westbound.
4-c. *Gerrard Street*, between Kent Street and Millwood Avenue, westbound.

5. *Gibbens Street,* from Loudoun Street to Cameron Street, eastbound.
6. *Handley Avenue,* from Handley Boulevard to Briarmont Street, northbound.
6-a. *Highland Avenue,* from Liberty Street to National Avenue, southbound.
6-b. *Fairfax Lane,* from Fairmont Avenue to North Braddock Street; eastbound; and from North Cameron Street to East Lane, eastbound.
6-c. *Fairfax Alley,* between North Cameron and North Kent Streets, westbound
6-d. *Fairview Avenue,* from National Avenue to Virginia Avenue, northbound.
6-e. *Franklin Street,* from Pine Street to Elm Street, eastbound.
7. *Indian Alley,* from Clifford Street to Fairfax Lane, northbound.
7-a. *Joist Hite Place,* from Academy Street to Lee Street, eastbound.
8. *Latane Street,* from Cork Street to Joist Hite Place, northbound.
8-a. *Lee Street,* from Joist Hite Place to Cork Street, southbound.
9. *Morgan Street,* from Amherst Street to Piccadilly Street, northbound.
9-a. *Opequon Avenue,* between Cork and Leicester Street, southbound.
10. *Piccadilly Street,* from Morgan Street to Fairmont Avenue, eastbound.
11. *Shawnee Avenue,* from Cork Street to Leicester Street, southbound.
12. *Shenandoah Avenue,* between Pall Mall Street and Cork Street, northbound.
13. *Shirley Street,* from Joist Hite Place to Cork Street, southbound.
14. *Southwerk Street,* from Valley Avenue to South Loudoun Street, eastbound.
15. *Valley Avenue,* from Braddock Street to Gerrard Street, eastbound.

(Ord. No. 003-83, 2-08-83; Ord. No. 017-84, 9-11-84; Ord. No. 027-2002, 10-8-02; Ord. No. 006-2003, 01-14-03; Ord. No. 017-2003, 05-13-03; Ord. No. 2008-49, 12-9-08)

SECTION 14-27. SPECIAL SPEED LIMITS ON CERTAIN STREETS.

(a) Upon the following streets and highways within the City, between the points hereinafter indicated, the indicated maximum speed limit is hereby established, and no person shall drive a vehicle between such points in excess of such maximum speed limit:

1. Fifteen (15) miles per hour on the following streets and highways:
   a. All streets and highways within the Jim Barnett Recreation Park Area.
   b. *Jolley Lane,* from East Lane to Lincoln Street.

2. Twenty-five (25) miles per hour on the following streets and highways:
   a. *Amherst Street,* from Wood Avenue to Boscawen Street.
   b. *Berryville Avenue,* from Dunlap Street to National Avenue.
   c. *Braddock Street,* from Piccadilly to Gerrard Street.

d. *Cameron Street,* from Millwood Avenue to the north corporate limits of the City.
e. *Cork Street,* from the east corporate limits of the City to East Lane.
f. *Fox Drive,* from the corporate limits of the City to its intersection with Amherst Street.
g. *Fairmont Avenue,* from the north corporate limits of the City to Piccadilly Street.
h. *Featherbed Lane,* from Pleasant Valley Road to its intersection with Loudoun Street.
i. *Jubal Early Drive,* the portion west of Valley Avenue to its intersection with Meadow Branch Avenue.
j. *Loudoun Street,* from its intersection with North Cameron Street to Montague Avenue.
k. *Merriman's Lane,* from Amherst Street to the City limits.
l. *Millwood Avenue,* from the B & O Railroad crossing to Cameron Street.
m. *Papermill Road,* from Pleasant Valley Road to the east corporate limits of the City.
n. *Valley Avenue,* from Gerrard Street to Jubal Early Drive.

3. Thirty-five (35) miles per hour on the following streets and highways:

a. *Amherst Street,* from Wood Avenue to the west corporate limits of the City.
b. *Apple Blossom Drive,* from Millwood Avenue to the entrance of Apple Blossom Mall.
c. *Battaile Drive,* from the western intersection with Shawnee Drive to the eastern intersection with Shawnee Drive.
d. *Berryville Avenue,* from Dunlap Street to the east corporate limits of the City.
e. *Cedar Creek Grade,* from Valley Avenue to the west corporate limits of the City.
f. *Jubal Early Drive,* from Millwood Avenue to Pleasant Valley Road.
g. *Jubal Early Drive,* from South Loudoun Street to Valley Avenue.
h. *Millwood Avenue,* from the B & O Railroad tracks to the east corporate limits of the City.
i. *Middle Road,* from Valley Avenue to the west corporate limits of the City.
j. *Papermill Road,* from its intersection with Weems Lane to Pleasant Valley Road.
k. *Pleasant Valley Road,* from Millwood Avenue to Papermill Road.
l. *Shawnee Drive,* from Papermill Road to the south corporate limits of the City.
m. *Valley Avenue,* from Jubal Early Drive to the south corporate limits of the City.
n. *Weems Lane,* from Papermill Road to Valley Avenue.

4. Forty (40) miles per hour on the following streets and highways:

   a. *Jubal Early Drive*, from Pleasant Valley Road to South Loudoun Street.
   b. *Pleasant Valley Road*, from Berryville Ave. to Millwood Avenue.

(b) The foregoing special speed limitations for the areas hereinbefore set out have been fixed by the council by reason of congestion, curves, right angle turns, or other dangerous points on the streets and highways within such areas, or by reason of the lack of such conditions on the streets and highways within such areas, as the case may be, and the council hereby declares that the foregoing special speed limits for such areas are based upon engineering and traffic investigation of such areas.

(c) The public works director is hereby authorized and directed to cause such signs to be erected on streets and highways otherwise marked so as to clearly indicate the speed limits fixed in subsection (a) of this section. After such signs have been erected, or the streets otherwise marked, it shall be unlawful for any person to exceed the limits set out herein.

(d) In every charge of violation of any provision of this section, the complaint, and also the summons or notice to appear, shall specify the speed at which the defendant is alleged to have driven and the speed limits applicable within the district or at the location. (Code 1959, §§15-30, 15-63; Ords. of 3-09-71; 4-11-72; 9-01-72; 2-11-75; 3-09-76; Ord. No. 010-84, 5-15-84; Ord. No. 008-86, 6-10-86; Ord. No. 009-90, 3-13-90; Ord. No. 051-91, 12-10-91; Ord. No. 009-92, 6-09-92; Ord. No. 006-93, 2-09-93; Ord. No. 041-93, 11-09-93; Ord. No. 034-96, 12-10-96; Ord. No. 002-97, 01-14-97; Ord. No. 018-2003, 5-13-03; Ord. No. 036-2003, 11-11-03; Ord. No. 001-2004, 1-13-04; Ord. No. 041-2004, 9-14-04; Ord. No. 003-2006, 1-10-06; Ord. No. 14-2006, 4-11-06)

State Law Reference--Authority of city to alter speed limits established by state law, Code of Virginia, §46.2-1300.

SECTION 14-28. DRIVING WHILE UNDER INFLUENCE OF ALCOHOL OR DRUGS; ADOPTION OF STATE LAW.

Article 2 (Section 18.2-266, *et seq.*) of Chapter 7 of Title 18.2, Code of Virginia, is hereby adopted and made a part of this chapter as fully as though set out at length herein. It shall be unlawful for any person within the City to violate or fail, neglect, or refuse to comply with any section of the Code of Virginia, as adopted by this section.

State Law References--General authority of city to prohibit operation of vehicles while under the influence of alcohol or drugs, Code of Virginia, §15.1-132; authority to adopt state law on the subject, Code of Virginia, §46.2-1313.

SECTION 14-28.1. REIMBURSEMENT OF EXPENSES INCURRED IN RESPONDING TO DUI INCIDENTS AND OTHER TRAFFIC INCIDENTS

(A) Pursuant to Section 15.2-1716 of the Code of Virginia, 1950, as amended, a person convicted of violating any of the following provisions shall be liable for restitution at the time of sentencing or in a separate civil action to the City of Winchester or to any responding volunteer fire and rescue squad, or both, for reasonable expenses incurred by the City of Winchester for responding law enforcement, firefighting, rescue, and emergency services, including by the Winchester Sheriff's Office, or by any volunteer fire or rescue squad, or by any combination of the foregoing, when providing an appropriate emergency response to any accident or incident related to such violation:

(1) The provisions of Virginia §§18.2-51.4, 18.2-266, 18.2-266.1, 29.1-738, 29.1-738.02, or a similar ordinance, when such operation of a motor vehicle, engine, train, or watercraft while so impaired is the proximate cause of the accident or incident;
(2) The provisions of Article 7 (Virginia Code §46.2-852, et seq.) of Chapter 8 of Title 46.2 relating to reckless driving, when such reckless driving is the proximate cause of the accident or incident;
(3) The provisions of Article 1 (Virginia Code §46.2-300, et seq.) of Chapter 3 of Title 46.2 relating to driving without a license or driving with a suspended or revoked license; and
(4) The provisions of Virginia Code §46.2-894 relating to improperly leaving the scene of an accident.

(B) Personal liability under this section for reasonable expenses of an appropriate emergency response shall not exceed $1,000 in the aggregate for a particular accident or incident occurring in the City of Winchester. In determining the "reasonable expenses", the City of Winchester may bill a flat fee of $250 or a minute-by-minute accounting of the actual costs incurred. As used in this section, "appropriate emergency response" includes all the costs of providing law-enforcement, fire-fighting, rescue, and emergency medical services. The court may order as restitution the reasonable expenses incurred by the City of Winchester for responding law enforcement, fire-fighting, rescue, and emergency medical services.

(C) The provisions of this section shall not preempt or limit any remedy available to the Commonwealth, to the City of Winchester, or to any volunteer rescue squad to recover the reasonable expenses of an emergency response to an accident not involving impaired driving, operation of a vehicle, or other conduct as set forth herein.

(Ord. No. 012-2002, 05-14-02; Ord. No. 031-2006, 10-10-06)

State Law Reference – Authority for above section, Code of Virginia, §15.2-1716

SECTION 14-29. LIMITATION ON BACKING.

The operator of a vehicle in the City shall not back such vehicle unless such movement can be made with safety and without interfering with other traffic. (Code 1959, §15-40).

SECTION 14-30. BLOCKING INTERSECTIONS.

No operator of a vehicle shall enter an intersection or a marked crosswalk unless there is sufficient space beyond such intersection or crosswalk in the direction in which such vehicle is proceeding to accommodate the vehicle without obstructing any traffic control signal indication to proceed. (Code 1959, §15-41).

SECTION 14-31. TRUCK ROUTES.

All motor trucks passing through the City shall proceed on the following streets:

1. *Amherst Street,* from Pennsylvania Railroad to the corporate limits of the City.
2. *Apple Blossom Drive,* from Millwood Avenue to Jubal Early Drive.
3. *Berryville Avenue,* from National Avenue to the corporate limits of the City.
4. *Boscawen Street,* from Amherst Street to Cameron Street.
5. *Braddock Street,* from Wyck Street to Valley Avenue.
6. *Cameron Street,* from Gerrard Street to North Loudoun Street.
7. *Cedar Creek Grade,* from Valley Avenue to the corporate limits of the City.
8. *Commercial Street,* from Cameron Street to Fairmont Avenue.
9. *East Lane,* from Piccadilly Street to National Avenue.
10. *Fairmont Avenue,* from the corporate limits of the City to Wyck Street.
11. *Fort Collier Road.*
12. *Gerrard Street,* from Braddock Street to Cameron Street.
13. *Jubal Early Drive,* from Millwood Avenue to Valley Avenue.
14. *Middle Road,* from Valley Avenue to the west corporate limits of the City.
15. *Millwood Avenue,* from Cameron Street to the corporate limits of the City.
16. *National Avenue,* from East Lane to Berryville Avenue.
17. *North Loudoun Street,* from the corporate limits of the City to Wyck Street.
18. *Papermill Road,* from Pleasant Valley Road to the south corporate limits of the City.
19. *Piccadilly Street,* from Braddock Street to East Lane.
20. *Pleasant Valley Road,* from Berryville Avenue to Papermill Road.
21. *Valley Avenue,* from Braddock Street to the corporate limits of the City.
22. *Wyck Street,* from Cameron Street to Fairmont Avenue.

(Code 1959, §15-96; Ord. No. 003-79, 1-9-79; Ord. No. 013-82, 8-10-82; Ord. No. 009-90, 3-13-90; Ord. No. 041-93, 11-09-93)

State Law Reference--Authority to designate truck routes, Code of Virginia, §46.2-1304.

SECTION 14-31.1. TRUCKS PROHIBITED ON DESIGNATED STREETS; EXCEPTIONS.

Trucks are prohibited from using all streets or portions of streets not identified in §14-31 except for the purpose of receiving loads or making deliveries on such street. (Ord. No. 041-93, 11-09-93)

SECTION 14-32. SNOW EMERGENCY ROUTES DESIGNATED.

The following streets within the City are to be designated as snow emergency routes and posted according to state standards at intervals of not less than one thousand, five hundred (1,500) feet as specified in the Virginia Manual on Uniform Traffic Control Devices for Streets and Highways:

1. *Amherst Street,* from Boscawen Street to Route 37 (U. S. Route 50).
2. *Boscawen Street,* from Braddock to Amherst Street (U. S. Route 50).
3. *Braddock Street,* from Boscawen Street to Valley Avenue (U.S. Routes 50 and 11).
4. *Valley Avenue,* from Loudoun Street to corporate limits (U.S. Route 11).
5. *Gerrard Street,* from Braddock Street to Cameron Street (U.S. Routes 50 and 11).
6. *Millwood Avenue,* from Cameron Street to Frontage Road (U.S. Routes 17 and 50).
7. *Cameron Street,* from Gerrard Street to Loudoun Street (U.S. Route 11).
8. *Loudoun Street,* from Cameron Street to corporate limits (U.S. Route 11).
9. *Fairmont Avenue,* from Piccadilly Street to corporate limits (U.S. Route 522).
10. *Piccadilly Street,* from Fairmont Avenue to East Lane (U.S. Routes 50, 7, and 522).
11. *East Lane,* from Piccadilly Street to National Avenue (U.S. Route 7).
12. *National Avenue,* from East Lane to Berryville Avenue (U.S. Route 7).
13. *Berryville Avenue,* from National Avenue to Ross Street (U.S. Route 7).
14. *Stewart Street,* from Gerrard Street to Boscawen Street.
15. *Washington Street,* from Gerrard Street to Fairfax Lane.
16. *Cork Street,* from Washington Street to Academy Lane.
17. *Clifford Street,* from Washington Street to Handley Avenue. (Ord. of 6-14-78)

SECTION 14-33. OPERATION OF MOTOR VEHICLES DURING SNOW EMERGENCY; CLEARING OF STREETS; DURATION OF EMERGENCY.

(a) Whenever the city manager declares snow plan B or C effective, it shall be unlawful for any person to operate a motor vehicle, which is not equipped with

effective tire chains or effective snow treads, on any of the streets or alleys within the City.

(b) When snow plan B is declared, the public works department shall use the best possible equipment and methods to clear the streets and highways in the City, beginning with the snow emergency routes in the order listed in snow plan B.

(c) Snow emergency procedures shall remain in effect until all snow emergency routes have been declared clear by the city manager, not to exceed twenty-four (24) hours from the last snow.

(d) During the period from the time snow plan B is declared until the time snow emergency routes are declared clear, it shall be unlawful for any person to park or abandon a vehicle on any snow emergency route designated by this article, or to obstruct or impede traffic on any snow emergency route designated by this article, when such vehicle is not equipped with effective snow tires or chains.

(e) Notwithstanding any other provision of this Code, upon information that a vehicle is parked, stalled, stuck or abandoned on any snow emergency route designated by this article, during the time snow plan B or C is in effect, the chief of police shall authorize immediate removal and storage of the vehicle.

(f) The cost of removing and storing any vehicles towed or otherwise removed under subsection (e) of this section shall be charged to the owner and shall be due and payable prior to the release of any such vehicle to the owner.

(g) Any person convicted of violating any provision of this section shall be fined not more than twenty-five dollars ($25.00) for each offense. (Code 1959, §22-21.2; Ord. of 6-14-78)

State Law Reference--Regulation of operation of vehicles in snow, sleet, etc.; Code of Virginia, §46.2-1302.

SECTION 14-34. REPEALED.
(Ord. No. 036-99, 12-14-99)

Editor's Note--Provisions of previous Section 14-34 has been re-enacted as Section 26-33.

SECTIONS 14-35 - 14-44. RESERVED.

ARTICLE IV. STOPPING, STANDING AND PARKING

DIVISION 1. GENERALLY

SECTION 14-45. GENERAL AUTHORITY OF CHIEF OF POLICE RELATIVE TO PARKING.

The chief of police is hereby authorized and directed to determine and define street areas within which the volume of vehicular traffic is such as to require restrictions upon the parking of vehicles; to classify vehicles with reference to parking; to designate the time, place and manner in which such vehicles may be allowed to park upon the streets; and to make such rules and regulations, not inconsistent with any provision of this article or other ordinance, as traffic conditions may require in various areas and under the varying conditions which may prevail at different times. It shall be the duty of the public works director, upon the promulgation of such regulations and before the same shall become effective, to give such public notice thereof, by establishing and posting signs or otherwise, as may be reasonably adequate to make clear to the operators of vehicles in "no parking" or "restricted parking" areas the existence, nature and requirements of such regulations. From and after the effective date of such regulations, it shall be unlawful for any person to stop or park any vehicle in any restricted or prohibited area otherwise than in accordance with such regulations and the signs or other markings so posted. (Code 1959, §15-97; Ord. of 7-13-76; Ord. No. 041-93, 11-09-93)

State Law Reference--Authority for above section, Code of Virginia, §46.2-1220.

SECTION 14-46. PARKING PROHIBITED IN SPECIFIED PLACES.

(a) No person shall park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control device, in any of the following places:

1. On a sidewalk.

2. In front of a public or private driveway.

3. Within an intersection.

4. Within fifteen (15) feet of a fire hydrant.

5. On a crosswalk.

6. Within twenty (20) feet of a crosswalk at an intersection.

7. Within thirty (30) feet upon the approach to any flashing beacon, stop sign or traffic-control signal located at the side of a roadway.

8. Between a safety zone and the adjacent curb or within thirty (30) feet of points on the curb immediately opposite the ends of a safety zone, unless a different length is indicated by official signs or markings.

9. Within fifty (50) feet of the nearest rail of a railroad grade crossing.

10. Within twenty (20) feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within seventy-five (75) feet of the entrance, when properly sign posted.

11. Alongside or opposite any street excavation or obstruction, when such parking would obstruct traffic.

12. On the roadway side of any vehicle parked at the edge or curb of a street.

13. Upon any bridge or other elevated structure upon a street or highway or within a tunnel.

14. At any place where official signs prohibit parking, or at any place where the side of the street or adjacent curb is painted solid yellow.

15. In any fire lane or traffic lane, where indicated by markers or signs.

(b) No person other than a police officer shall move a vehicle into any such prohibited area or away from a curb such distance as is unlawful.

(c) Any vehicle parking within fifteen (15) feet of a fire hydrant or in a fire lane, in violation of subsection (a)(4) or (a)(15) of this section, may be removed by or under the direction of the police department, where such removal is indicated by "tow-away zone" signs. (Code 1959, §§15-32, 15-99; Ord. of 4-12-77; Ord. No. 023-91, 5-14-91)

Cross references--Stopping or parking conveyance carrying live animals prohibited during certain hours, §5-5; open storage of inoperative vehicles in certain zoning districts, §14-25; parking of house trailers and mobile homes, §14-26; standing of vehicles on railroad tracks, §22-3.

State Law References--General authority of city to regulate parking, Code of Virginia, §46.2-1220; Parking in prohibited places, Code of Virginia, §46.2-1239.

SECTION 14-47. PARKING OF TRUCKS IN RESIDENTIAL SECTIONS OR IN FRONT OF CHURCHES.

(a) It shall be unlawful for any person to park any truck or trailer, defined below on any street in a residential district or on any street in front of any church or place of worship. (Ord. No. 041-93, 11-09-93)

For the purposes of this section.

1. The term truck shall mean any truck as defined in Virginia Code §46.2-100;

2. The term trailer shall mean any trailer or semitrailer as defined in Virginia Code §46.2-100, having a total length of twelve (12) feet or more, including tongue and hitch. (Ord. No. 001-97, 1-14-97)

(b) The provisions of this section shall not apply to trucks while making deliveries or pickups of materials and commodities. (Code 1959, §15-103)

Cross reference--Standing of vehicles on railroad tracks, §22-3.

State Law Reference--Authority to regulate parking, Code of Virginia, §46.2-1220.

SECTION 14-48. PARKING FOR SALE OF AGRICULTURAL PRODUCTS.

The chief of police shall have the power to designate streets, parts of streets or other areas where vehicles may be parked for the sale of agricultural products. It shall be unlawful for any person to park any vehicle for the sale of agricultural products except in those areas or those streets or parts of streets so designated by the chief of police. (Code 1959, §15-101)

SECTION 14-49. LIGHTS ON PARKED VEHICLES.

No lights need be displayed on any vehicle parked in accordance with the provisions of this article. (Code 1959, §15-110).

State Law Reference--Authority for above section, Code of Virginia, §46.2-1037.

SECTION 14-50. PARKING, STOPPING, OR STANDING ON PRIVATE PROPERTY; PARKING IN "HANDICAPPED ONLY" SPACE

(a) No person shall stand or park a vehicle on any private lot or lot area without the express or implied consent of the owner thereof. Whenever signs or markings have been erected on any lot or lot area contiguous or adjacent to a street, thoroughfare, or alley indicating that no vehicles are permitted to stand thereon, it shall be unlawful for any person to drive a vehicle across any curb or lot line or over any driveway from a street or alley into such lot or lot area for the purpose of standing or parking such vehicle, or for any person to stop, stand, or park any vehicle in such lot or lot area.

(b) No person shall stand or park a vehicle in any parking space posted for "Handicapped Parking Only" or like designation unless such vehicle bears (i) State license plates with "handicapped" designation; or (ii) State decal or placard designating handicapped use. Police officers may issue a summons for vehicles parked in spaces reserved for use by the handicapped and not identified as prescribed herein without the necessity of a warrant being obtained by the owner of any private parking lot or lot area. When any such summons is paid pursuant to §14-55 of this Code, the fine shall be as indicated in §14-55(b)(3); otherwise, any person convicted of violating this subsection shall be punished by a fine of not less than One Hundred Dollars ($100.00), nor more than Five Hundred Dollars ($500.00). (Code 1959, §15-102; Ord. No. 005-84, 3-13-84; Ord. No. 019-2002, 8-13-02).

Cross Reference - - Volunteer Disabled Parking Units – §20-4
State Law References--Authority for above subsection (b) - Code of Virginia, §46.2-1237, § 46.2-1239.

SECTION 14-51. BACKING TO CURB.

No vehicle shall be backed up to a curb, except during the time actually engaged in loading or unloading merchandise therefrom; provided, however, that on Loudoun Street, between Piccadilly and Cork Street, no vehicle shall be backed up to a curb for any purpose, without a special permit from the police department. (Code 1959, §15-102).

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SECTION 14-52. LOADING ZONES, BUS STOPS AND TAXICAB STANDS - DESIGNATION.

(a) The chief of police is hereby authorized, when in his judgment it is in the public interest to do so, to set apart on any of the streets of the City spaces for loading and unloading merchandise, bus stops, taxicab stands, and other like places in which no general parking shall be permitted or in which parking time is limited.

(b) It shall be the duty of the public works director, upon the promulgation of regulations under this section, and before the same shall become effective, to give such public notice thereof by establishing and posting or erecting signs or otherwise as may be reasonably adequate to make clear to the operators of vehicles the nature and requirements of such regulations, and to maintain such signs. (Ord. No. 041-93, 11-09-93)

(c) The designation of taxicab stands under this section shall be subject to the provisions of Section 31-25 of this Code. (Code 1959, §15-98; Ord. of 7-13-76).

SECTION 14-53. SAME - MANNER OF USE.

(a) Where a loading and unloading zone has been set apart and properly designated and identified pursuant to Section 14-52, the following regulations shall apply with respect to use of such areas:

1. No person shall stop, stand or park a vehicle for any purpose or length of time, other than for the expeditious unloading and the delivery or pickup and loading materials, in any place marked as a curb loading zone during hours when the provisions applicable to such zones are in effect. All delivery vehicles, other than regular delivery trucks using such loading zones, shall be identified by the owner's or company's name in letters three (3) inches high on both sides of the vehicle.

2. The driver of a passenger vehicle may stop temporarily in a space marked as a curb loading zone for the purpose of, and while actually engaged in, loading or unloading passengers or bundles when such stopping does not interfere with any vehicle used for transportation of materials which is waiting to enter or is about to enter such loading space.

(b) Where a bus stop or taxicab stand has been set apart and is properly designated and identified pursuant to Section 14-52, the following regulations shall apply to the use thereof: No person shall stop, stand or park a vehicle, other than a bus, in a bus stop or other than a taxicab in a taxicab stand, except that the driver of a passenger vehicle may temporarily stop therein for the purpose of and while actually engaged in the expeditious loading or unloading of passengers when such

stopping does not interfere with any bus or taxicab waiting to enter or about to enter such zone. (Code 1959, §§15-106, 15-107).

SECTION 14-54. PARKING TICKETS.

Whenever any vehicle without a driver is found parked in violation of any provision of this article, or in violation of §14-11 Article II, 14-17, *et seq.*, 14-59, or 14-60 of this chapter, the police officer finding such vehicle shall take the number of the parking meter, if any, at which the vehicle is parked and the license number of such vehicle, and may take any other information displayed on the vehicle which may identify its operator, and shall conspicuously affix to such vehicle a traffic citation or notice, in writing, on a form provided for that purpose. Such notice shall specify the violation and shall inform the operator when and where he may report with reference to such violation. Such officer shall give a proper accounting of each and every traffic citation or notice, report the violation to the police department, and make proper complaint. (Code 1959, §§15-29, 15-126; Ord. No. 021-88, 4-12-88; Ord. No. 002-91, 1-15-91).

SECTION 14-55. VOLUNTARY PAYMENT OF PARKING FINE.

(a) The operator of any vehicle to which a citation or notice is attached pursuant to §14-54 may waive his right to appear and to be formally tried for the offense as set forth in the citation or notice, and upon voluntary payment of the fine prescribed by subsection (b) below within forty-eight (48) hours at the office of the chief of police, shall not be required to appear for trial upon the charge for which the notice or citation was issued. The failure of such operator to make such payment within forty-eight (48) hours shall render such operator subject to the penalty prescribed in §14-1. (Ord. No. 019-2002, 8-13-02)

(b) The fine to be paid pursuant to subsection (a) above as follows:

1. Violating or parking in violation of §14-69 or 14-70, six dollars ($6.00) for the first issuance of a citation, and eight dollars ($8.00) for the second issuance of a citation within an eight (8) hour period. If the fine for such violation is not paid within forty-eight (48) hours, the violator shall pay a fine of twelve dollars ($12.00) per violation, in satisfaction of each such violation. (Effective January 1, 1991, Ord. No. 037-90, 11-13-90; Ord. No. 019-2002, 8-13-02)

2. Violation of §14-46(a)(4), parking within fifteen (15) feet of a fire hydrant, or (a)(15), parking in a fire lane or traffic lane, fifty dollars ($50.00). (Ord. No. 019-2002, 8-13-02)

3. Parking in a space posted for "Handicapped Parking Only" or like designation in violation of subsections 14-46(a)(14) or 14-50(b) of this Code when the vehicle so parked displays neither State decal designating handicapped use or City "Parking Permit - Handicapped Individual";one hundred dollars ($100.00).(Ord. No. 019-99, 7-13-99)

4. All other parking violations subject to this section, eight dollars ($8.00). (Ord. No. 019-2002, 8-13-02)

5. Fifteen days after the issuance of a citation, if the charge has not been contested in the manner provided by this chapter or paid, there shall be added a late penalty equal to twice the original penalty, or ten dollars ($10.00) if the original penalty is ten dollars ($10.00) or greater.

   Thirty days after the issuance of a citation, if the charge has not been contested in the manner provided by this chapter or paid, the late penalty shall be equal to four (4) times the original penalty, or twenty dollars ($20.00) if the original penalty is ten dollars ($10.00) or greater. (Code 1959, §§15-31, 15-32, 15-127; Ord. of 4-12-77; Ord. No. 006-82, 3-09-82; Ord. No. 005-84, 3-13-84; Ord. No. 020-88, 4-12-88; Ord. No. 002-91, 1-15-91).

(c) The operator of any vehicle to which a citation or notice is attached pursuant to §14-54 may contest the offense set forth in the citation or notice within thirty (30) days of the issuance of the citation or notice by executing a form for that purpose at the police department.

By executing the form, the person shall waive any further notice of the hearing on the charge before the court; and shall authorize the court to try the charge in the person's absence.

The chief-of-police shall develop a form for such purpose. The chief shall see that each such citation or notice issued after 1 June, 1994 shall inform the person charged of his or her rights and obligations under this subsection.

The form shall set out the following: (1) specific charge; (2) the date and time of the hearing on the charge; (3) a notice that by signing the form, the person waives any further notice of the hearing on the charge; (4) a notice that the charge may be tried in the person's absence.

The police department shall forward all such executed forms to the court for hearing within twenty (20) days of execution by the person charged.

This subsection shall be effective 1 June, 1994. (Ord. No. 016-94, 04-12-94)

State Law Reference--Code of Virginia, §46.2-1220.

SECTION 14-56. NOTICE PREREQUISITE TO ISSUANCE OF SUMMONS FOR PARKING VIOLATION.

Before any summons shall be issued for the prosecution of a violation of any provision of this article regulating parking, the violator shall have been first notified, by mail at his last known address or at the address shown for such violator on the records of the State division of motor vehicles, that he may pay the fine as provided for such violation within five (5) days of receipt of such notice, and the officer issuing such summons shall be notified that the violator has failed to pay such fine within such time. The notice to the violator required by this section shall be contained in an envelope bearing the words "Law Enforcement Notice" stamped or printed on the face thereof in type at least one-half inch in height. (Code 1959, §15-29.1; Ord. of 2-14-71) .

State Law Reference--Similar provisions, Code of Virginia, §46.2-941.

SECTION 14-57. PRESUMPTIONS IN PROSECUTIONS FOR PARKING.

In any prosecution charging that a vehicle has been parked in violation of any provision of this article or any other ordinance of the City, proof that the vehicle described in the complaint, summons, or warrant was parked in violation of such provision, together with proof that the defendant was, at the time of such parking, the registered owner of the vehicle as required by Code of Virginia, Title 46.2, Chapter 3 (Section 46.2-600, *et seq*.) shall constitute in evidence a prima facie presumption that such registered owner of the vehicle was the person who parked the vehicle at the place where, and for the time during which, such violation occurred. (Code 1959, §§15-97, 15-103, 15-128; Ord. of 7-13-76).

State Law Reference--Similar provisions, Code of Virginia, §46.2-1220.

SECTION 14-58. ILLEGAL PARKING ON RENTED SPACES.

It shall be unlawful for any person to park any vehicle in any parking space owned by the City or the Winchester Parking Authority which is rented on a regular basis, unless such person shall be the lessee of that space. (Ord. No. 010-87, 4-14-87) .

SECTION 14-59. PARKING WITH RIGHT WHEEL TO CURB.

It shall be unlawful for any person to stop or park any vehicle, trailer or semitrailer except close to and parallel to the right edge of the curb or roadway, except that a vehicle may be stopped close to and parallel to the left curb or edge of the roadway on one-way streets, or except as provided in lawful angle parking area. (Ord. No. 002-91, 1-15-91).

State Law Reference--Code of Virginia, §46.2-889.

SECTION 14-60. NON-EMERGENCY REPAIRS TO VEHICLES ON STREET.

It shall be unlawful for any person to carry out any non-emergency repairs to any vehicle which is located on a street between the edges of the curb or the outer edges of the paved roadway surface.

For the purposes of this section, a non-emergency repair shall be any repair to a vehicle other than a minor repair necessitated by the breakdown of the vehicle while traveling on the street such as a flat tire, but shall not include any normal maintenance or major repair of damage, malfunction, or wear and tear to a vehicle. (Ord. No. 002-91, 1-15-91).

SECTION 14-61. TOWING VEHICLES FOR NON-PAYMENT OF PARKING CITATIONS.

Whenever there is found any motor vehicle parked on the public streets or public grounds within the City against which there are three or more outstanding unpaid or otherwise unsettled parking violation citations issued pursuant to §14-54 of this chapter, such vehicle may, by towing or otherwise, be removed or conveyed to a place designated by the chief of police for the temporary storage for such vehicles. Any removal or conveyance of the vehicle pursuant to this section shall be by, or under the direction of, an officer of the police department.

It shall be the duty of the officer removing such motor vehicle, or under whose direction such vehicle is removed, or other employee of the police department, to inform as soon as practicable the owner of or person responsible for the removed vehicle of the fact of the towing with a description of the dates and charges of the prior unsettled parking violations.

The owner or other person responsible for the vehicle shall be permitted to repossess or to secure the release of the vehicle by payment of all outstanding parking violation citations for which the vehicle was removed and, where applicable, by obtaining a current City sticker, and by payment of all reasonable costs incidental to the removal and storage of the vehicle and efforts to locate the owner of or person responsible for the vehicle. Should such owner or person responsible for the vehicle fail or refuse to pay such fines and costs, or should the identity or whereabouts of such person be unknown or unascertainable, such vehicle may be sold in accordance with the procedures set forth in the Code of Virginia, §46.2-203, as amended. (Ord. No. 002-91, 1-15-91).

State Law Reference-- Code of Virginia, §46.2-1216.

SECTION 14-62. RESERVED.

DIVISION 2. PARKING METERS

SECTION 14-63. DEFINITIONS.

The following words and phrases, when used in this division, shall, for the purposes of this division, have the meanings respectively ascribed to them in this section:

Operator; driver. The word "operator" or "driver" shall mean and include every individual who shall operate a vehicle as the owner thereof, or as the agent, employee or permittee of the owner, or who is in actual physical control of a vehicle.

Parking meter. The words "parking meter" shall mean and include any mechanical device or meter, not inconsistent with this division, placed or erected for the regulation of parking by authority of this division.

Parking meter space. The words "parking meter space" shall mean any space within a parking meter zone, adjacent to a parking meter and duly designated for the parking of a single vehicle by lines painted or otherwise durably marked on the curb or on the surface of the street adjacent to or adjoining the parking meter.

Parking meter zone. The words "parking meter zone" shall mean and include any restricted street upon which parking meters are installed and in operation.

Park; parking. The words "park" and "parking" shall mean the standing of a vehicle, whether occupied or not, upon a street otherwise than temporarily for the purpose of, and while actually engaged in, receiving or discharging passengers or loading or unloading merchandise or in obedience to traffic regulations, signs or signals or an involuntary stopping of the vehicle by reason of causes beyond the control of the operator of the vehicle.

Vehicle. The word "vehicle" shall mean any device in, upon or by which any person or property is or may be transported upon a highway, except a device which is operated upon rails or tracks. (Code 1959, §15-111)

SECTION 14-64. METER ZONES ESTABLISHED.

The following named and described areas, streets or portions of streets, and such other areas, streets or portions of streets as may hereafter be included in this section by amendment thereto, including, except as otherwise provided, all frontage on such areas, streets or portions of streets, lying within the corporate limits of the City, shall each constitute a parking meter zone:

1. *Amherst Street,* both sides, from Braddock Street to Washington Street.

2. *Boscawen Street,* north side, from Stewart Street to Indian Alley and from Cameron Street to Kent Street; and south side, from Stewart Street to Indian Alley and from Kent Street to East Lane.

3. *Braddock Street,* both sides, from Fairfax Lane to Cork Street.

4. *Cameron Street,* both sides, from Baker Street to Cork Street.

5. *Clifford Street,* both sides, from Loudoun Street to Cameron Street.

6. *Cork Street,* both sides, from Braddock Street to Cameron Street.

7. *Fairfax Lane,* south side, from Cameron Street to Library Lane.

8. *Loudoun Street,* west side, from Peyton Street to Fairfax Lane and from Cork Street to Clifford Street; and east side, from Cork Street to Clifford Street.

9. *Piccadilly Street,* north side, from Washington Street to Kent Street; and south side, from Washington Street to East Lane.

10. Reserved.

11. *Washington Street,* both sides, from Wolfe Street to Fairfax Lane.

12. *Wolfe Street,* both sides, from Indian Alley to Braddock Street.

13. *Kent Street,* west side, from Fairfax Lane to Billings Alley (a.k.a. Fairfax Alley); and east side, from Piccadilly Street to Town Run.

14. All parking lots operated by the Winchester Parking Authority, as described below:

    a. East side of unit block of North Cameron Street.
    b. West side of 100 block of North Cameron Street.
    c. Northeast corner of Loudoun Street and Fairfax Lane.
    d. West side of unit block of South Loudoun Street.
    e. West side of 100 block of South Loudoun Street.
    f. Southwest corner of Cork Street and South Loudoun Street.
    g. West side of unit block of North Kent Street.
    h. East side of unit block of North Braddock Street.

i. West side of unit block of North Braddock Street.
j. Northwest corner of Cork Street and Stewart Street.

(Code 1959, §15-112; Ord. No. 008-79, 2-13-79; Ord. No. 019-84, 10-09-84; Ord. No. 041-93, 11-09-93; Ord. No. 015-98, 5-12-98).

Cross reference--Fraudulent use of parking meters, §14-4.

State Law Reference--Authority of city with respect to parking meters, Code of Virginia, §42.1-1220.

SECTION 14-65. RESPONSIBILITIES OF FINANCE AND ADMINISTRATION COMMITTEE AND WINCHESTER PARKING AUTHORITY.

The Finance and Administration Committee of the City Council shall be responsible for the regulation, control, rates up to the maximums set forth in §14-66 below, and use of parking meters installed as provided in this division. The Public Safety Committee shall be responsible for the location of meters within the meter zones. The Winchester Parking Authority shall be responsible for the operation and maintenance of such parking meters. (Code 1959, §15-115; Ord. No. 036-90, 11-13-90; Ord. No. 041-93, 11-09-93).

SECTION 14-66. INSTALLATION; REQUIRED LEGEND AND SIGNALS.

(a) In the parking meter zones established by this division, at the locations designated by the Public Safety Committee, the Winchester Parking Authority shall cause parking meters to be installed upon the curb or sidewalk immediately adjacent to the parking meter spaces provided for in §14-67. Such meter shall be placed not more than two (2) feet from the curb and within the designated lines of the parking meter space to which the parking meter is adjacent. (Ord. No. 041-93, 11-09-93)

(b) Each parking meter installed as provided in this section shall indicate, by proper legend, the legal parking time established by the City for the particular parking meter. Each such meter shall be set so as to display a signal showing legal parking upon the deposit of the appropriate coin or coins, lawful money of the United States, for the period of time prescribed, which parking meters shall require the deposit of coin(s) of the denominations of nickels, dimes, or quarters permitting parking at a charge not to exceed twenty-five cents ($0.25) per one-half hour. Each such meter shall be so arranged that, upon the expiration of the lawful time limit, it will indicate by a proper visible signal that the lawful parking period has expired. (Code 1959, §§15-113, 15-118, 15-119; Ord. No. 036-90, 11-13-90; Ord. No. 23-2006, 6-13-06).

SECTION 14-67. MARKING AND MANNER OF PARKING IN METERED SPACES.

(a) The public works director shall mark off individual parking meter spaces in the parking meter zones established by this division. Such meter spaces shall be designated by lines painted or durably marked on the curbing or surface of the street. (Ord. No. 041-93, 11-09-93)

(b) It shall be unlawful for any person to park any vehicle across any line or marking of a parking meter space designated as provided in this section or in such position that the vehicle shall not be entirely within the area designated by such lines or markings. (Code 1959, §§15-114, 15-123; Ord. of 7-16-76).

SECTION 14-68. WHEN METERS SHALL BE OPERATED.

Parking meters installed pursuant to this division shall be operated between the hours of 9:00 A.M. and 4:00 P.M. every day from Monday through Friday, except for the following designated holidays: January first; the two (2) days of the annual Shenandoah Valley Apple Blossom Festival; May thirtieth; July fourth; Labor Day; November eleventh; Thanksgiving Day and Christmas Day. When any of the aforesaid holidays fall on a Sunday, parking meters need not be operated on the following Monday. (Code 1959, §15-117; Ord. No. 019-84, 10-09-84; Ord. No. 041-91, 10-08-91; Ord. No. 003-97, 1-14-97).

SECTION 14-69. DEPOSIT OF COIN REQUIRED; OVERTIME PARKING.

(a) Except for vehicles having license plates issued by the Commonwealth of Virginia bearing Purple Heart or Former POW designations, or in a period of emergency determined by an officer of the fire department or police department, or in compliance with the directions of a police officer or traffic control sign or signal, and subject to the provisions of §14-68, when any vehicle is parked in any parking meter space alongside or next to which a parking meter installed as provided in this division is located, the operator of such vehicle shall, upon entering such parking meter space, immediately deposit or cause to be deposited in such meter proper coin of the United States as is required for such parking meter and is designated by proper directions on the meter and, when required by the directions on the meter, the operator of such vehicle after the deposit of the proper coin or coins shall also set in operation the timing mechanism on such meter in accordance with directions properly appearing thereon. It shall be unlawful for any person to fail to deposit such proper coin and to set the timing mechanism in operation when so required.

(b) Upon the deposit of such coin and the setting of the timing mechanism in operation, when so required, the parking meter space may be lawfully occupied by such vehicle during the per iod of time which has been prescribed for the part of the street in which such parking meter space is located.

(c) Any person placing a vehicle in a parking meter space adjacent to a parking meter which indicates that unused time has been left in the meter by the previous occupant of the space shall not be required to deposit a coin, so long as his occupancy of such space does not exceed the indicated unused parking time.

(d) If any vehicle, except a vehicle having license plates issued by the Commonwealth of Virginia bearing Purple Heart or Former POW designations, shall remain parked in any parking meter space beyond the parking time limit set for such space, and if the meter indicates such illegal parking then, and in that event, such vehicle shall be considered as parking overtime and beyond the period of legal parking time.

(e) It shall be unlawful for any person to cause, allow, permit or suffer any vehicle registered in the name of, or operated by, such person, except a vehicle having license plates issued by the Commonwealth of Virginia bearing Purple Heart or Former POW designations, to be parked overtime or beyond the period of legal parking time established for any parking meter zone established by this division. It shall likewise be unlawful for any person to permit any vehicle, except a vehicle having license plates issued by the Commonwealth of Virginia bearing Purple Heart for Former POW designations, to remain in any parking meter space adjacent to any parking meter installed under this division while such meter is displaying a signal indicating that the vehicle occupying such parking space has already been parked beyond the period prescribed for such parking meter space. (Code 1959, §§15-116, 15-120 - 15-122, Ord. No. 012-99, 06-08-99).

SECTION 14-70. DEPOSIT OF COIN FOR PURPOSE OF EXTENDING PERIOD FOR LEGAL PARKING.

It shall be unlawful for any person to deposit in any parking meter installed under this division any coin for the purpose of extending the parking time beyond the maximum legal parking time for the particular parking meter zone. (Code 1959, §15-151).

SECTION 14-71. PURPOSE AND USE OF DEPOSITS.

The coins deposited in parking meters under this article are required and shall be used to defray the expense of proper regulation of traffic upon the public streets of the City; to provide for the cost of supervision, regulation and control of the parking of vehicles in parking meter zones; and to cover the cost of purchase, supervision, protection, inspection, installation, operation, maintenance, control and use of parking meters. (Code 1959, §15-132)

SECTION 14-72. COLLECTION OF DEPOSITS.

The city treasurer shall appoint some person to make regular collections of the money deposited in parking meters under this division. Such person so appointed shall remove

from the parking meters the containers therein containing the coins so deposited in such meters and deliver such coins to the city treasurer. (Code 1959, §15-131)

SECTION 14-73. DAMAGING, TAMPERING WITH, ETC., METERS.

It shall be unlawful for any person to deface, injure, tamper with, open or willfully break, destroy or impair the usefulness of any parking meter installed under this division. Any person violating this section shall be guilty of a Class 1 misdemeanor. (Code 1959, §15-125)

Cross reference--Use of slugs in parking meters, §14-4.

SECTION 14-74. BUS STOPS, TAXICAB STANDS, ETC., IN METER ZONES.

Nothing in this division shall be construed as prohibiting the City from providing for bus stops, taxicab stands, loading zones and other similar areas or places within the parking meter zones established by this division. (Code 1959, §15-129)

Cross reference--Taxicab stands generally, §31-25.

DIVISION 3. PERMIT PARKING

SECTION 14-75. PURPOSE.

In order to reduce hazardous traffic conditions resulting from the use of streets within areas zoned for residential uses for the parking of vehicles by persons not residing therein; to protect those areas from polluted air and from excessive noise, trash, and refuse caused by the entry of such vehicles; to protect the residents of those areas from unreasonable burdens in gaining access to their residences; to preserve the residential character of those areas; to promote efficiency in the maintenance of those streets in a clean and safe condition; to preserve the value of the property in those areas; to preserve the safety of children and other pedestrians; and to promote and preserve the peace, good order, comfort, convenience, and welfare of the inhabitants of the city, it is necessary to establish a system of permit parking. (Ord. No. 017-98, 6-9-98)

SECTION 14-76. DEFINITION.

For the purposes of this division, the term “resident” shall be deemed to mean a person who customarily resides and maintains a place of abode within the permit parking district,

or who owns realty abutting a street or public way within such a district upon which a dwelling intended for human habitation is located. (Ord. No. 017-98, 6-9-98)

SECTION 14-77. VIOLATIONS.

(a) Any person violating the provisions of this division shall, upon conviction thereof, be punished by a fine of not less than ten dollars ($10.00), nor more than fifty dollars ($50.00) for each offense.

(b) In any prosecution charging a violation of this division, proof that the vehicle described in the complaint, summons, or warrant was parked in violation of this ordinance, together with proof that the defendant was at the time of such parking the registered owner of the vehicle, as required by the Code of Virginia, Chapter 3 (Section 46.1-41, et seq.), shall constitute a presumption that such registered owner of the vehicle was the person who parked the vehicle at the place where, and for the time during which, such violation occurred.

(c) If any person transfers, or allows others to use or possess any parking permit issued to them, or gives false answers upon an application therefor, or uses or continues to use such parking permit after termination or expiration thereof by expiration of time or operation of law or cessation of residence, or violates any of the terms, conditions, rules, or regulations applicable to same, such person shall be guilty of a class 4 misdemeanor. (Ord. No. 017-98, 6-9-98)

SECTION 14-78. DESIGNATION OF AREA.

Should the Chief of Police, based upon studies conducted by the Police Department and in consultation with the Public Safety Committee of Council, ascertain that parking spaces on the streets within a particular residential area or distinct portion of such residential area, not less than the lesser of three hundred and sixty (360) feet or one city block, unless the street in such district is abutted by unimproved land, in which case said minimum lengths shall not apply, are used for the parking of vehicles not belonging to the residents of the particular area to such an extent as to create congestion, excessive noise, air pollution, and/or cause the residents of such areas unreasonable burdens in gaining access to their residences, and that the majority of the contiguous property owners to the streets of such area, or portion thereof, desire the establishment of such area as a permit parking area, then the Chief of Police shall establish such area as a permit parking district.
(Ord. No. 017-98, 6-9-98)

SECTION 14-78.1. APPEAL FROM DESIGNATION.

Any resident of a permit parking district area may appeal the decision of the Chief of Police to the Public Safety Committee of Council. Notice of appeal shall be in writing and filed with the City Manager within thirty (30) days after the decision is rendered by the Chief of Police. (Ord. No. 017-98, 6-9-98)

SECTION 14-78.2. HOURS OF ENFORCEMENT.

The parking prohibitions in each district area will be enforced between the hours of 7 a.m. and 7 p.m., Monday through Friday. There will be no enforcement of permits from 7 p.m. Friday through 7 a.m. Monday. (Ord. No. 017-98, 6-9-98)

SECTION 14-79. EXCEPTIONS.

The parking prohibitions of this division shall not apply to service or delivery vehicles which are being used to provide services to or make deliveries to residents of the permit parking district. (Ord. No. 017-98, 6-9-98)

SECTION 14-80. PERMIT REQUIRED.

Unless a parking permit, validly issued pursuant to regulations contained in or adopted pursuant to this division, be properly displayed, no vehicle shall be parked upon any street or public way within a permit parking district. (Ord. No. 017-98, 6-9-98)

SECTION 14-81. APPLICATION FOR PERMIT.

Permanent residents within a permit parking district may apply to the Police Department for a permit to park their vehicle(s) upon the streets or public ways of the permit parking district in which such applicant resides. (Ord. No. 017-98, 6-9-98)

SECTION 14-81.1. PERMIT FEES.

A fee of five dollars ($5.00) shall be charged each resident for the issuance of one (1) parking permit, and a fee of five dollars ($5.00) shall be charged each resident for each additional or replacement permit, such fee to be used by the city to defray the cost of enforcement of the provisions of this division. (Ord. No. 017-98, 6-9-98)

SECTION 14-81.2. ISSUANCE.

Upon proof that the applicant for a permit required by the provisions of this division is a resident of the permit parking district, and upon payment by the applicant of the applicable fee, a parking permit shall be issued to the applicant for each vehicle owned by the applicant. (Ord. No. 017-98, 6-9-98)

SECTION 14-81.3. DURATION.

Permits issued under the provisions of this division shall be valid for a period of one year.
(Ord. No. 017-98, 6-9-98)

SECTION 14-81.4. NONTRANSFERABLE.

A permit issued under the provisions of this division shall be personal, nonassignable and nontransferable. Each such permit shall be valid only for a specific vehicle. (Ord. No. 017-98, 6-9-98)

SECTION 14-81.5. VISITOR PASSES.

Each household resident shall receive three (3) visitor passes at no additional charge. Whenever a visitor is parked in the permit parking district, the visitor pass must be displayed on the vehicle's dash and in plain view. No resident may use a visitor pass for parking in lieu of obtaining a parking permit. (Ord. No. 017-98, 6-9-98)

SECTION 14-82. SIGNS.

The Chief of Police or his duly designated representative shall cause appropriate signs to be placed upon all streets of the permit parking district, such signs to be of such character as to readily inform an ordinarily observant person of the existence of the parking prohibition within said district. (Ord. No. 017-98, 6-9-98)

DIVISION 4. HANDICAPPED PARKING

SECTION 14-83. ESTABLISHMENT OF PARKING SPACES FOR PERSONS WITH A DISABILITY.

(a) **Preemption of the law.** Notwithstanding any contrary provision in this code, reserved parking spaces in the public right-of-way in single-family, two-family, townhouse residential and business areas for use by persons with disabilities shall be established and removed as provided in this section.

(b) **Application requirements.** An application for a reserved parking space for persons with disabilities in the public right-of-way in residential and business areas must comply with the following criteria in order to be considered:

(1) There must be no off-street parking at the applicant's residence or business, or the applicant must demonstrate, as provided in paragraph (6), that existing off-street parking is not feasible for use by the applicant;

(2) The applicant must have a valid Virginia DMV disabled parking license plate or placard;

(3) The applicant must reside at the address in front of which the space is requested;

(4) The applicant must demonstrate that a vehicle is registered in the City of Winchester to a person who resides at the address requested; and

(5) Legal parking must be available in front of the applicant's address.

(6) Where existing off-street parking exists, must supply additional evidence to demonstrate that such parking is not feasible for use by the applicant.

(7) A business may be issued restricted use spaces for Monday through Friday or Sunday only.

(c) **Approval Requirements.** If an application fails to meet any of the criteria listed in subsection (b), it will not be approved, unless a waiver is sought and approved under subsection (e). If the application is denied, the applicant shall be notified in writing as to the specific reasons for the denial, and shall also be notified of any right to appeal provided under this section.

(d) **Block limits**. No more than one reserved parking space for persons with disabilities will be authorized for one side of any street, between intersecting streets (block face). An exception would be granted for restricted use spaces. The exceptions would take into consideration any unduly burdens placed on residents living within the area.

(e) **Waivers**. The City Manager is authorized to waive:

(1) The block limits standard under the following conditions:

(a) (i) The applicant demonstrates to the satisfaction of the City Manager that the applicant has a severe mobility impairment, and that (1) the applicant or a resident of the applicant's household owns a motor vehicle especially equipped to permit operation by, or transport of, the applicant, or (2) the applicant has a life threatening condition; or

(ii) The applicant demonstrates to the satisfaction of the City Manager that the block on which the applicant resides is of unusual or exceptional length, and that permitting an additional space would be the functional equivalent of the application of the usual block limit standard; and

(b) The applicant demonstrates to the satisfaction of the City Manager that the applicant otherwise meets the criteria in subsection (b) of this section; and

(c) If granted, a waiver shall be valid for a period of one year only, but the applicant may reapply for additional one year periods.

(2) The requirement that legal parking must be available in front of the applicant's address, under the following conditions:

(a) There is a fire hydrant, city no-parking regulation, or other similar impediment to parking in front of the applicant's address, or the applicant's property is of insufficient width to accommodate the reserved space.

(b) The applicant demonstrates to the satisfaction of the City Manager that the applicant otherwise meets the criteria in subsection (b) of this section; and

(3) The City Manager may impose such conditions on any waiver as the manager deems reasonable.

(f) **Use of reserved spaces**. A parking space for persons with disabilities will be available for use by any eligible person with a DMV disabled license plate or placard on a first come, first served basis, and is not reserved for the exclusive use of the applicant. Only those vehicles used by, or to transport, persons with disabilities may park in the reserved space, and the applicant's vehicle is expected to use the reserved space when parked in the neighborhood. Reserved spaces are not intended for use by companions except when transporting persons with disabilities, and displaying a DMV plate or placard. Use of the parking space by other persons when not transporting a person with a disability, and/or not displaying a valid placard or DMV issued disabled license plate, is a parking

violation that carries a $100 to $500 fine, as provided in Section 14-50(b) of the Winchester City Code and Section 46.2-1242 of the Virginia Code.

(g) **Administrative procedures**. The Chief of police (hereinafter "the Chief") shall be responsible for administering this section.

(1) All applications must be submitted to the Chief for consideration and review. The Chief will (a) evaluate satisfaction of eligibility criteria; (b) verify the validity of the disabled parking license plate or placard; (c) verify vehicle registration; (d) confirm residency; (e) determine availability of off-street and on-street parking; and (f) ensure conformance to the terms of this section in making a decision.

(2) Applications for a determination that an existing off-street parking space is not feasible for use by the applicant, and for a block limit or availability of parking waiver, shall be submitted to the Chief, for review and recommendation, and shall be decided by the City Manager.

(3) Any person aggrieved may appeal the Chief's decision to the City Manager, by filing an appeal, in writing, with the Chief, within 15 days of the Chief's decision. The appeal shall be limited to the record upon which the Chief based his decision, and such additional written submissions as the parties may provide. The City Manager's decision on appeal, or on an application for a waiver, shall state the findings of fact and reasons for the decision, and shall be final and not appealable to city council.

(4) Any disabled parking requests that have been received and processed prior to the adoption of this ordinance shall remain in effect until which time that the original requestor no longer has a need to utilize the service of the sign or the requestor can no longer meets the eligibility criteria for such space. Any disabled parking requests that have been received after the adoption of this ordinance shall be subjected to all of the terms and conditions established by this ordinance.

(h) **Annual recertification**. Each year the Chief will mail a recertification form to each applicant who received approval for the installation of a reserved parking space. In order to retain the reserved space, the resident must complete and execute the form affirming continued satisfaction of all of the eligibility criteria in subsection (b) of this section, except such criteria as may have been waived by the City Manager pursuant to subsection (e) of this section. If the Chief determines that the eligibility criteria are no longer satisfied, the applicant will be notified in writing and must provide a response to the Chief with proper evidence of compliance within 45 days of notification. Failure to provide the information in accordance with the requested deadline will result in a second letter and failure to respond to the second letter within 30 days shall result in the removal of the

reserved space. If the requestor no longer resides at the residence or the requestor is now deceased, the disabled parking space permission shall be revoked and the disabled parking space shall be removed.

(i) **Revocation**. A reserved space is subject to revocation as follows:

(1) In the event that a complaint is made to the Chief that the applicant no longer satisfies the eligibility criteria of subsection (b) of this section, or that the space is being repeatedly used in a manner contrary to subsection (f), by persons residing in or visiting the applicant's household, the Chief will conduct a preliminary inquiry to determine if the complaint is supported by substantial and credible evidence. If the Chief determines that the complaint is so supported, the applicant will be notified in writing of the nature and specifics of the complaint, and must provide a response within 45 days to the Chief. The applicant and complainant(s) shall have the right to appear before the Chief, upon 15 days written notice of the time and place of the hearing, and be heard in person or by counsel, but such hearing shall be conducted in an informal manner. The Chief shall revoke a reserved parking space designation only if (i) the Chief finds by a preponderance of the evidence that the applicant did not, or does not continue to, meet the criteria in subsection (b), or if (ii) the Chief finds by clear and convincing evidence that the space is being repeatedly used in a manner contrary to subsection (f), by persons residing in or visiting the applicant's household. The Chief shall notify all parties of the decision in writing, within 15 days of the close of the hearing. The decision shall state the findings of fact and the reasons for the decision. The notice shall inform the parties of their right to appeal the decision to the City Manager, and of the procedure for making such an appeal.

(2) Any person aggrieved may appeal the Chief's decision to the City Manager, by filing an appeal, in writing, with the Chief, within 15 days of issuance of the decision. The City Manager shall schedule a hearing on the matter within 30 days of the filing of the appeal, and shall give the parties 15 days notice of the time and place of the hearing. The City Manager shall notify all parties of the City Manager's decision in writing, within 15 days of the close of the hearing. The City Manager's decision shall state the findings of fact and the reasons for the decision, and the decision shall be final and not appealable to city council.
(Ord. No. 2007-44, 11-13-07)

SECTIONS 14-84. RESERVED.

ARTICLE V. BICYCLES AND MOPEDS

SECTION 14-85. REGISTRATION OF BICYCLES

Any resident of the City may register his or her bicycle with the Police Department. The Police Department shall keep a record of all bicycles registered. The record shall contain, at a minimum, the name and address of the owner; the brand, model and description of the bicycle; and the registration number issued for the bicycle.

The Department shall keep on hand stickers or emblems to affix to the frame of a bicycle to carry out the purposes of this section.

The Department shall charge $1.00 for each registration. The chief shall set the fee so as to cover the expenses of the Department. (Ord. No. 041-93, 11-09-93)

SECTION 14-86. RIDER'S HANDS TO BE ON HANDLEBARS.

It shall be unlawful for any person to ride a bicycle upon any street without having his, her or their hands upon the handlebars. (Code 1959, §15-178; Ord. No. 041-93, 11-09-93)

Cross reference--Disposal of unclaimed bicycles in possession of police department, §20-25.

State Law Reference--Rider not to carry package or bundle which prevents keeping at least one hand on handlebar, Code of Virginia, §46.2-906.

SECTIONS 14-87. OPERATION OF MOPEDS ON PUBLIC STREETS; SAFETY EQUIPMENT REQUIRED

(a) It shall be unlawful for any person to operate or ride upon a moped, as defined in Section 46.2-100, of the Code of Virginia, 1950, as amended, upon a public street or highway without wearing protective helmets of a type approved by the Superintendent of State Police.

(b) Violation of this section shall be a traffic infraction, punishable by a fine of not more than fifty dollars ($50.00).
(Ordinance No. 034-2003, 11-11-03)

State Law Reference—Authority of city to adopt ordinance providing for certain safety equipment for mopeds and penalty for violation, Code of Virginia, §46.2-915.2. See also, Code of Virginia, §46.2-100.

SECTIONS 14-88-- 14-111. RESERVED.

ARTICLE VI. PEDESTRIANS

SECTION 14-112. RIGHT TO CROSS INTERSECTIONS DIAGONALLY.

Pedestrians may cross an intersection diagonally, when all traffic entering the intersection has been halted by lights, semaphores or signals by a peace or police officer. (Code 1959, §15-135)

State Law Reference--Authority for above section, Code of Virginia, §46.2-923.

SECTION 14-113. UNLAWFUL CARRYING OF CERTAIN CANES OR WALKING STICKS.

It shall be unlawful 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. A violation of this section shall constitute a Class 4 misdemeanor. (Code 1959, §15-143)

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

SECTION 14-114. DUTY TO OBEY TRAFFIC CONTROL SIGNS AND SIGNALS AND ORDERS OF TRAFFIC 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 police 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. (Code 1959, §15-146; Ord. No. 041-93, 11-09-93)

State Law Reference--Authority for above section, Code of Virginia, §46.2-935.

SECTIONS 14-115 - 14-124. RESERVED.

ARTICLE VII. ACCIDENTS

SECTION 14-125. REPORTS BY DRIVERS.

The driver of a vehicle involved in an accident resulting in injury to or death of any person or total property damage to an apparent extent of one thousand dollars ($1,000.00) or more shall, within five (5) days after the accident, file, with the police department, a copy of the report required by the Code of Virginia, §46.2-372. Such driver shall also file, with the police department, a copy of any supplemental report filed pursuant to such section. A willful failure to file a report required herein shall constitute a violation of this section. (Code 1959, §15-151; Ord. No. 041-93, 11-09-93)

Cross reference--Reports of accidents in which taxicabs are involved, §31-31.

State Law References--Authority for above section, Code of Virginia, §46.2-381, § 46.2-894.

SECTION 14-126. REPORTS BY PASSENGERS.

Whenever the driver of a vehicle is physically incapable of making an immediate or a written report of an accident, as required by this chapter or the state law adopted by this chapter, each other occupant of the vehicle at the time of the accident, if any, who is capable of so doing must make the report required to be made by the driver. A willful failure to make such report shall constitute a violation of this section. (Code 1959, §15-153)

State Law Reference--Similar provisions, Code of Virginia, § 46.2-895.

SECTION 14-127. REPORTS BY INVESTIGATING OFFICER.

Every law-enforcement officer who, in the course of duty, investigates a motor vehicle accident of which report must be made, either at the time of and at the scene of the accident or thereafter and elsewhere, by interviewing participants or witnesses shall, within twenty-four (24) hours after completing the investigation, forward to the police department a copy of the report required by the Code of Virginia, (Code 1959, §15-152).

SECTION 14-128. AUTHORITY OF POLICE TO MOVE VEHICLE INVOLVED IN ACCIDENT.

Whenever a motor vehicle, trailer or semitrailer involved in an accident is found upon the highways or streets within the City and is so located as to impede the orderly flow of traffic, the police may, at no cost to the owner or operator, remove such motor vehicle, trailer or semitrailer from the highway or street to some point in the vicinity of such accident where such motor vehicle, trailer or semitrailer will not impede the flow of traffic.

State Law Reference--Authority for above section, Code of Virginia, §46.2-1212.

SECTIONS 14-129 - 14-138. RESERVED.

ARTICLE VIII. ABANDONED VEHICLES

SECTION 14-139. DEFINITIONS.

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

Abandoned motor vehicle means a motor vehicle, trailer, or semitrailer or part thereof that:

1. Is inoperable and is left unattended on public property for more than forty-eight (48) hours; or

2. Has remained illegally on public property for a period of more than forty-eight (48) hours; or

3. Has remained without consent on private property, including but not limited to any commercial parking place, motor vehicle storage facility or establishment for the service, repair, maintenance or sale of motor vehicles, whether or not such vehicle was brought onto or left at such property with or without the consent of the owner or person in control of the property, for more than forty-eight (48) hours.

Demolisher means any person whose business is to convert a motor vehicle, trailer or semitrailer into processed scrap or scrap metal or otherwise to wreck or dismantle such vehicles. (Ord. of 2-14-78)

Cross reference--Open storage of inoperative vehicles in certain zoning districts, §16-25.

State Law References--Authority of city to adopt ordinance similar to this article, Code of Virginia, §46.2-1201. See also, §46.2-1213, 46.2-1217; Similar provisions, Code of Virginia, §46.2-1200.

SECTION 14-140. AUTHORITY TO IMPOUND.

The City may take into custody any abandoned motor vehicle. In such connection, the City may employ its own personnel, equipment and facilities or hire persons, equipment and facilities or firms or corporations who may be independent contractors for the purpose of removing, preserving and storing abandoned motor vehicles. (Ord. of 2-14-78)

State Law Reference--Similar provisions, Code of Virginia, §46.2-1201.

SECTION 14-141. NOTICE OF IMPOUNDMENT.

(a) When an abandoned motor vehicle is taken into custody pursuant to this article, the chief of police shall notify, within fifteen (15) days thereof, by registered or certified mail, return receipt requested, the owner of record of the vehicle and all persons having security interests therein of record, that the vehicle has been taken into custody. The notice shall describe the year, make, model and serial number of the vehicle, set forth the location of the facility where the vehicle is being held, inform the owner and any persons having security interests of their right to reclaim the vehicle within three (3) weeks after the date of the notice, upon payment of all towing, preservation and storage charges resulting from placing the vehicle in custody, and state that the failure of the owner or persons having security interests to exercise their right to reclaim the vehicle within the time provided shall be deemed a waiver by the owner and all persons having any security interests of all right, title and interest in the vehicle and consent to the sale of the vehicle at public auction.

(b) If records of the state division of motor vehicles contain no address for the owner or no address of any person shown by such records to have a security interest, or if the identity and address of the owner and all persons having security interests cannot be determined with reasonable certainty, notice by publication once in a newspaper of general circulation in the area where the motor vehicle was

abandoned shall be sufficient to meet all requirements of notice pursuant to this section as to any person who cannot be notified pursuant to the provisions of this section. Any such notice shall be within the requirements prescribed for notice by mail, and shall have the same contents required for a notice by mail.

(c) The consequences and the fact of failure to reclaim an abandoned motor vehicle shall be as set forth in a notice given in accordance with and pursuant to this section. (Ord. of 2-14-78)

State Law Reference--Similar provisions, Code of Virginia, §46.2-1202.

SECTION 14-142. SALE.

(a) If an abandoned motor vehicle has not been reclaimed as provided for in §14-141, the City or its authorized agent shall, notwithstanding the provisions of §46.2-617 of the Code of Virginia, sell the vehicle at public auction. The purchaser of the vehicle shall take title thereto free and clear of all liens and claims of ownership of others, shall receive a sales receipt at the auction, and shall be entitled to, upon application therefor pursuant to §46.2-603 of the Code of Virginia, a certificate of title and registration card therefor. The sales receipt at such a sale shall be sufficient title only for purposes of transferring the vehicle to a demolisher for demolition, wrecking or dismantling, and in such case, no further titling of the vehicle is necessary.

(b) From the proceeds of the sale of an abandoned motor vehicle, the City or its authorized agent shall reimburse itself for the expenses of the auction, the cost of towing, preserving and storing the vehicle which resulted from placing it in custody, and all notice and publication costs incurred pursuant to §14-141. Any remainder from the proceeds of such sale shall be held for the owner of the vehicle or any persons having security interests therein, as their interests may appear, for ninety (90) days, and then shall be deposited into the city treasury. (Ord. of 2-14-78)

State Law Reference--Similar provisions, Code of Virginia, §46.2-1203.

SECTION 14-143. VEHICLES ABANDONED IN GARAGES.

(a) Any motor vehicle, trailer, semitrailer or part thereof left for more than ten (10) days in a garage operated for commercial purposes, after notice by registered or certified mail, return receipt requested, to the owner to pick up the vehicle, or for more than ten (10) days after the period when, pursuant to contract, the vehicle was to remain on the premises, shall be deemed an abandoned motor vehicle, and may be reported by the garage keeper to the chief of police. All abandoned motor

vehicles left in the garages may be taken into custody by the City in accordance with §14-140, and shall be subject to the notice and sale provisions contained in §§14-141 and 14-142; provided that, if such vehicle is reclaimed in accordance with §14-141, the person reclaiming such vehicle shall, in addition to the other charges required to be paid, pay the charges of the garage keeper, if any; and provided further that, if such vehicle is sold pursuant to §14-142, the garage keeper's shall be entitled to none of the excess of the proceeds of sale.

(b) Except as otherwise provided in this article, nothing herein shall be construed to limit or restrict any rights conferred upon any person under §§43-32 through 43-36 of the Code of Virginia.

(c) For the purposes of this section, "garage keeper" means any operator of a parking place, motor vehicle storage facility or establishment for the servicing, repair or maintenance of motor vehicles. (Ord. of 2-14-78)(Ord. No. 044-95, 9-12-95)

State Law Reference--Similar provisions, Code of Virginia, §46.2-1204.

SECTION 14-144. DISPOSITION OF INOPERABLE ABANDONED VEHICLES.

Notwithstanding any other provisions of this article, or the provisions of §46.2-617 of the Code of Virginia, any abandoned motor vehicle which is inoperable and which, in the opinion of the chief of police or the city sheriff cannot be feasibly restored to operable condition, may be disposed of to a demolisher without the title and without the notification procedures prescribed by this article. The demolisher, upon taking custody of such vehicle, shall adhere to the provisions of §§46.2-1206 and 46.2-1207 of the Code of Virginia, and shall notify the state division of motor vehicles, on forms and in the manner prescribed by the state commissioner of motor vehicles and, notwithstanding any other provisions of law, no other report or notice shall be required in such instance. (Ord. of 2-14-78; Ord. No. 036-87, 10-13-87).

State Law Reference--Similar Provisions, Code of Virginia, §46.2-1205.

SECTION 14-145. REPEALED. (Ord. No. 044-95, 9-12-95)

ARTICLE IX. ASSEMBLIES, DEMONSTRATIONS AND PARADES

SECTION 14-146. PURPOSE.

Pursuant to the authority granted to the city by the Code of Virginia and its general police powers, the city does hereby adopt the following sections in order to provide for the public health, safety and general welfare in the city, to ensure the free and safe passage of pedestrians and vehicles on the public rights-of-way, and to ensure the safe and unimpaired use and enjoyment of public property in places open to the general public and otherwise to regulate and control the time, place and manner of activities that would otherwise threaten or impair the public health, safety, and welfare in the city while also encouraging the exercise of the rights to free speech and assembly in the city. (Ord. No.19-2006, 5-3-2006)

SECTION 14-147. DEFINITIONS.

The following terms shall have the meanings set out herein:

(j) Parade means any march, demonstration, procession or motorcade consisting of people, animals, or vehicles, or a combination thereof upon the streets, sidewalks or other public areas within the city with an intent or likely effect of attracting public attention that interferes with or has a tendency to interfere with the normal flow or regulation of pedestrian or vehicular traffic upon the streets, sidewalks, or other public property.

(k) Public assembly means any meeting, demonstration, picket line, rally or gathering of more than ten (10) people for a common purpose as a result of prior planning that interferes with or has a tendency to interfere with the normal flow or regulation of pedestrian or vehicular traffic upon the streets, sidewalks, or other public property within the city or that interferes with or has a tendency to interfere with the normal use of any public property in a place open to the general public.

(l) Spontaneous event" shall mean an unplanned or unannounced coming together of people, animals or vehicles in a parade or public assembly which was not contemplated beforehand by any participant therein and which is caused by or in response to unforeseen circumstances or events occasioned by news or affairs first coming into public knowledge within five (5) days of such parade or public assembly.

SECTION 14-148. PERMIT REQUIRED.

(n) It shall be unlawful for any person to conduct or participate in a public assembly, demonstration or parade on the public streets, sidewalks, or other public property of the city in a place open to the general public for which a written permit has not been issued in accordance with the provisions of this article.

(b) The provisions of this permit shall not apply to:

(1) Spontaneous events;

(2) Recreational activities, including jogging or walking, that do not require closing public streets or other public streets or other public rights-of-way and that do not interfere with or have a tendency to interfere with the normal use of any public property in a place open to the general public;

(3) Door-to-door advocacy, including canvassing, pamphleteering, religious or political proselytizing and the distribution of written materials, and similar activities that do not interfere with or have a tendency to interfere with the free passage of pedestrians and vehicles on the public rights-of-way or the normal use of any public property in a place open to the general public;

(4) Door-to-door sales of goods or services, and similar activities that do not interfere with or have a tendency to interfere with the free passage of pedestrians and vehicles on the public rights-of-way or the normal use of any public property in a place open to the general public; provided, however, that any persons or organizations engaging in such activities shall comply with any other applicable requirements of the code of the City of Winchester;

(5) Funeral processions;

(6) Students going to and from school classes or participating in educational activities, provided that such conduct is under the immediate direction and supervision of the proper school authorities;

(7) The United States army, navy, air force and coast guard, the military forces of the state and the police and fire divisions of the city;

(8) A governmental agency/agencies acting within the scope of its functions; or

(9) Park and recreation areas that are regulated by the city's Parks and Recreation Department.

(c) Permits may be granted if they are requested by individuals or organizations who desire to have a permit, even though the permit is not required under this section.

SECTION 14-149. APPLICATION.

(a) Any person desiring to conduct a parade or public assembly shall make written application to the chief of police, or his designee, at least five (5) days prior to such parade or public assembly. Such application shall set forth the following information:

(1) The name, address and telephone number of the person requesting the permit;

(2) The name and address of any organization or group the applicant is representing;

(3) The name, address and telephone number of the person who will act as the parade or public assembly leader or chairman and who will be responsible for the conduct of the parade or public assembly;

(4) The type of public assembly, including a description of the activities planned during the event;

5) The date and time (start and ending) of the parade or public assembly;

(6) If an assembly, the specific location or locations of the assembly;

(7) If a parade, the specific assembly and dispersal locations, the specific route, and the plans, if any, for assembly and dispersal;

(8) The approximate number of people who, and animals and vehicles which will constitute such parade or public assembly and the type of animals and a description of the vehicles;

(9) A statement as to whether the parade or public assembly will occupy all or only a portion of the width of the streets or sidewalks or other public rights-of-way proposed to be traversed or used;

(10) A description of any recording equipment, sound amplification equipment, banners, signs, or other attention-getting devices to be used in connection with the parade or public assembly; and

(11) Such other information as the chief of police, or his designee, may deem reasonably necessary in order to properly provide for traffic control, street and property maintenance, administrative arrangements, police and fire protection, and for the protection of public health, safety and welfare.

(b) The chief of police, or his designee, shall not issue the permit if any information supplied by the applicant is false or intentionally misleading.

(c) The chief of police, or his designee, shall have the authority to and shall make reasonable efforts to consider an application hereunder which is filed less than five (5) days before the date the parade or assembly is proposed to be conducted if, after due consideration of the date, time, place and nature of the parade or public assembly, the anticipated number of participants and the city services required in connection with the event, and where good cause is otherwise shown, the chief of police, or his designee determines that the waiver of the permit application deadline will not present an undue hazard to public safety.

SECTION 14-150. ISSUANCE OR DENIAL OF PERMIT.

(a) The chief of police, or his designee, shall issue the permit within three (3) days of receipt of the completed application, and in any event prior to the scheduled parade or public assembly if the proposed parade or public assembly will not endanger the public health, welfare or safety, applying the following criteria and finding that:

(1) The time, duration, route and size of parade or assembly will not unreasonably interrupt the safe and orderly movement of vehicular or pedestrian traffic or the normal use of public property in a place open to the general public;

(2) The parade or assembly is not of such a nature that it will require diversion of so great a number of police and fire personnel to properly police the line of movement in the areas contiguous thereto so as to impair the normal protection of the remainder of the city;

(3) The applicant has, where appropriate, designated monitors sufficient to control the orderly conduct of the parade or assembly in conformity with such permit;

(4) The conduct of the parade or assembly will not unduly interfere with the proper fire and police protection of, or ambulance service to, the remainder of the city, or unreasonably disrupt other public services and protection normally provided to the city;

(5) The parade or assembly will not interfere with another parade or assembly for which a permit has been granted;

(6) The parade or assembly proposed will not violate, and will conform with all applicable state regulations and laws governing the proposed event; and

(7) If alcoholic beverages are to be served at the parade or assembly, the applicant must comply with all applicable provisions of the State Code and local ordinances pertaining to serving and consumption of alcoholic beverages. Additionally:

. The applicant may be required to demonstrate that adequate measures have or otherwise will be taken to ensure the safety of persons who may become impaired or intoxicated at the event.

. The applicant may be required to demonstrate that adequate measures have or otherwise will be taken to ensure that underage persons are not served or permitted to consume alcoholic beverages at the event.

. The possession of open containers and consumption of alcoholic beverages is strictly prohibited upon any public school grounds or public park within the City. No permit shall be issued to any applicant where alcohol is to be served upon public school grounds or in a public park.

. The Chief of Police shall call upon the members of a special advisory committee appointed by the City Manager to assist in determining whether adequate measures to ensure public safety are available for a proposed parade or public assembly where alcoholic beverages are to be served.

(b) For parades or public assemblies held on a regular or recurring basis at the same location, an application for an annual permit covering all such parades or assemblies during the calendar year may be filed with the chief of police, or his designee, at least five (5) and not more than sixty (60) days before the date and time at which the first such parade or public assembly is proposed to commence. The chief of police, or his designee, may and shall make reasonable efforts to waive the minimum five (5) day period after due consideration of the factors specified in subsection (c) in the previous section.

(c) If the chief of police, or his designee, denies an application, he shall promptly mail to the applicant a notice of his action, stating the reasons for his denial of the permit, and notifying the applicant of his right to appeal the denial pursuant to Section 14-155 of this article.

(d) If two or more applications are submitted requesting a permit under this article for a parade or assembly to be used at the same time and place, the application first filed shall be granted if it meets the requirements of this article;

(e) Nothing in this article shall permit the chief of police, or his designee, to deny a permit based upon political, social or religious grounds or reasons or based upon the content of the views expressed. Denial of a permit on such grounds is prohibited.
(Ord. No. 2007-12, 5-8-2007)

SECTION 14-151. ALTERNATIVE PERMIT.

The chief of police, or his designee, in denying a permit for a parade or public assembly shall be empowered to authorize the conduct of the parade or assembly on a date, at a time, at a place, or over a route different from that proposed by the applicant. An

applicant desiring to accept an alternate permit shall file a written notice of acceptance with the chief of police, or his designee. An alternate permit shall conform to the requirements of and shall have the effect of a permit under this article.

SECTION 14-152. NOTICE TO CITY AND OTHER OFFICIALS.

Immediately upon the issuance of a permit, the chief of police, or his designee, shall send a copy thereof to the following:

(a) The city manager;
(b) The city attorney;
(c) The fire chief; and
(d) The director of the department of public services.

SECTION 14-153. COMPLIANCE WITH DIRECTIONS AND CONDITIONS.

Every person to whom a permit is issued under this article shall substantially comply with all permit terms and conditions and with all applicable laws and ordinances. The parade or assembly chairman or other person heading or leading the parade or assembly shall carry the permit upon his person during the conduct of the parade or assembly, and show the permit when requested to do so. Any violation of this ordinance shall be punishable by a fine of up to $500.00. Any willful and intentional disregard for the procedures established in this ordinance may be punishable as a Class 2 Misdemeanor. (Ord. No. 2007-13, 5-8-07)

SECTION 14-154. REVOCATION OF PERMIT.

The chief of police, or his designee, shall have the authority to revoke any permit issued pursuant to this article if any information supplied by the applicant is discovered to be false or intentionally misleading or if any term, condition, restriction or limitation of the permit has been substantially violated or if there is any continued violation of the terms, conditions, restrictions or limitations of the permit after the applicant or anyone acting in concert with him is notified of a violation of the permit by an appropriate law enforcement official.

SECTION 14-155. APPEAL.

(a) Any person aggrieved by the refusal of the chief of police, or his designee, to grant a permit, or by the revocation of a permit after one has been issued, may appeal the denial to the city manager, or his designee, by filing with the city manager's office, within five (5) working days after the date of denial or revocation, a written notice of the appeal setting forth the grounds therefore. The city manager, or his designee, shall act upon the appeal within five (5) working days after its receipt.

(b) The decision of the city manager, or his designee, may be appealed to the circuit court of the City of Winchester, in accordance with the laws of the state.

(c) In any appeal under this section, the city shall have the burden of demonstrating that the denial of the permit was justified under Section 14-150 of this article.

SECTION 14-156. PUBLIC CONDUCT DURING PARADES, DEMONSTRATIONS AND ASSEMBLIES.

(a) Interference. No person shall unreasonably hamper, obstruct, impede or interfere with any parade, demonstration or assembly or with any person, vehicle or animal participating or used in a parade, demonstration or assembly for which a written permit has been issued in accordance with the provisions of this article.

(b) Driving through parades. No driver of a vehicle shall drive between the vehicles, persons or animals comprising a parade, demonstration or assembly or funeral procession except when otherwise directed by a police officer. This shall not apply to authorized emergency vehicles.

(c) Parking on parade, demonstration or assembly route. The chief of police, or his designee, shall have the authority, when reasonably necessary, to prohibit or restrict the parking of vehicles along the public streets or public rights-of-way constituting a part of the route of a parade, demonstration or assembly. The chief of police, or his designee, shall post signs to such effect, and it shall be unlawful for any person to park or leave unattended any vehicle in violation thereof. No person shall be liable for parking on a street unposted in violation of this article.

SECTION 14-157. SEVERABILITY.

If any portion of this article is for any reason held to be invalid by a court of competent jurisdiction, such decision shall not affect the remaining portions of this article and such invalid provisions or portions thereof shall be severable.

CHAPTER 15

OBSCENITY

Art. I. In General, §§15-1--15-22
Art. II. Offenses Relating to Juveniles, §§15-23--15-28

ARTICLE I. IN GENERAL

SECTION 15-1. "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.

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

SECTION 15-2. 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, bumper sticker, drawing, photograph, film, negative, slide, motion picture or videotape recording; or

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

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

SECTION 15-3. 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 purposes of sale or distribution; or

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

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

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

(b) For the purposes of this section, "distribute" shall mean delivery in person, by mail, messenger or by any other means by which obscene items may pass from one person to another.(Ord. No. 049-95, 10-17-95)

State Law Reference--Similar provisions, Code of Virginia, §18.2-374; Authority of council to adopt ordinances, Code of Virginia, §18.2-389.

SECTION 15-4. OBSCENE EXHIBITIONS AND PERFORMANCES GENERALLY.

It shall be unlawful for any person knowingly to:

1. Produce, promote, prepare, present, manage, direct, carry on or participate in any obscene exhibitions or performances, 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 theatre, 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 theatre or an officer of such entity, and has no financial interest in such theatre other than receiving salary and wages; or

2. Own, lease or manage any theatre, garden, building, structure, room or place and lease, let, lend or permit such theatre, 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

locality who is the manager of such theatre, garden, building, structure, room or place.

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

SECTION 15-5. 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 §15-2 or of any obscene performance or exhibition referred to in §15-4, stating or indicating where such obscene item, exhibition or performance may be purchased, obtained, seen or heard.

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

SECTION 15-6. OBSCENE PLACARDS, POSTERS, BILLS, ETC.

Every person who knowingly exposes, places, displays, posts, exhibits, paints, prints or marks, or causes 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 who advertises or promotes any obscene item referred to in §15-2 or any obscene exhibition or performance referred to in §15-4, or who knowingly permits the same to be displayed on property belonging to or controlled by him, shall be guilty of a Class 1 misdemeanor.

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

SECTION 15-7. 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.

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

SECTION 15-8. 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.

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

SECTION 15-9. INDECENT EXPOSURE.

Every person who intentionally makes an obscene display or exposure of his person, or the private parts thereof, in any public place, or in any place where others are present, or procures another to so expose himself, shall be guilty of a Class 1 misdemeanor. (Code 1959, §16-12)

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

SECTION 15-10. EMPLOYING OR PERMITTING MINOR TO ASSIST IN OFFENSE UNDER ARTICLE.

Every person who knowingly, hires, employs, uses or permits any minor to do or assist in doing any act or thing constituting an offense under this article shall be guilty of a Class 1 misdemeanor.

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

SECTION 15-11. 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 theatre, museum of fine arts, school or institution of higher learning, supported by public appropriation.

State Law Reference--Similar provisions, Code of Virginia, §18.2-383.

SECTION 15-12. VIOLATIONS.

Violation of any provision of this article shall constitute a Class 1 misdemeanor, unless otherwise stated. (Ord. No. 049-95, 10-17-95)

SECTIONS 15-13 - 15-22. RESERVED.

ARTICLE II. OFFENSES RELATING TO JUVENILES

SECTION 15-23. 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; and

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

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

Juvenile: A 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:

1. The character and content of any material described herein which is reasonably susceptible of examination by the defendant; and

2. 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 discernably 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 a female, breast.

Sexual excitement: The condition of human male or female genitals when in a state of sexual stimulation or arousal. (Code 1959, §16-12.1)

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

SECTION 15-24. UNLAWFUL SALES OR LOANS TO JUVENILES GENERALLY.

It shall be unlawful for any person to knowingly sell, rent 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 (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 1959, §16-12.2)(Ord. No. 049-95, 10-17-95)

State Law Reference--Similar provisions, Code of Virginia, §18.2-391(a).

SECTION 15-25. ADMITTING JUVENILES TO PREMISES EXHIBITING OBSCENE FILMS OR OTHER PRESENTATIONS.

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 any such premises. (Code 1959, §16-12.2)

State Law Reference--Similar provisions, Code of Virginia, §18.2-391(b).

SECTION 15-26. MISREPRESENTATIONS AS TO JUVENILE'S AGE, ETC.

(a) It shall be unlawful for any juvenile to falsely represent to any person mentioned in §15-24 or §15-25, 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 §15-24, or with the intent to procure such juvenile's admission to any motion picture, show or other presentation set forth in §15-25.

(b) It shall be unlawful for any person to knowingly make a false representation to any person mentioned in §15-24 or §15-25, or to his agent, that he is the parent or guardian of any juvenile, or that any juvenile is eighteen (18) years of age or older, with the intent to procure any material set forth in §15-24, or with the intent to procure such juvenile's admission to any motion picture, show or other presentation set forth in §15-25. (Ord. No. 049-95, 10-17-95)

State Law Reference--Similar provisions, Code of Virginia, §18.2-391(c) and (d).

SECTION 15-27. 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, museums, 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.

SECTION 15-28. VIOLATIONS.

Violation of any provision of this section shall constitute a Class 1 misdemeanor. (Ord. No. 049-95, 10-17-95)

CHAPTER 16

OFFENSES--MISCELLANEOUS

SECTION 16-1. OBSTRUCTING JUSTICE.

(a) If any person without just cause knowingly obstructs a judge, magistrate, justice, juror, witness or any law enforcement officer in the performance of his duties as such or fails or refuses without just cause to cease such obstruction when requested t do so by such person, he shall be guilty of a Class 4 misdemeanor.

(b) If any person, by threats or force, knowingly attempts to intimidate or impede a judge, magistrate, justice, juror, witness or an officer of a court, or any law-enforcement officer, in the discharge of his duty, or to obstruct or impede the administration of justice in any court he shall be deemed guilty of a Class 1 misdemeanor. (Code 1959, §16-21)(Ord. No. 045-95, 9-12-95)

State Law Reference--Similar provisions, Code of Virginia, §18.2-460.

SECTION 16-2. AUTOMATIC TELEPHONE CALLS OR ALARMS TO FIRE OR POLICE DEPARTMENT OR EMERGENCY SERVICE COMMUNICATIONS CENTER.

(a) It shall be unlawful for any person to install or operate any device which will automatically, by electrical, chemical, mechanical or other means, cause an automatic telephone call to be placed and programmed to dial or otherwise automatically send an alarm message by voice telephone circuits or other means to the police or fire department, or to the emergency service communications center located in the public safety building in the City.

(b) Any person who violates the provisions of this section shall be guilty of a Class 3 misdemeanor.

(c) Nothing in this section shall be construed to prohibit automatic alarms operating over special signal circuits terminating in the public safety building and connected thereto in compliance with the rules and regulations promulgated by the chief of police. (Ord. of 6-14-78)

SECTION 16-3. CALLING OR SUMMONING AMBULANCE OR FIRE-FIGHTING APPARATUS WITHOUT JUST CAUSE; MALICIOUSLY ACTIVATING FIRE ALARMS IN PUBLIC BUILDINGS.

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 used for public assembly or for other public use, including, but not limited to, schools, theaters, stores, office buildings, shopping centers and malls, coliseums and arenas, regardless of whether fire apparatus responds or not, shall be deemed guilty of a Class 1 misdemeanor. (Code 1959, §16-5)

State Law References--Similar provisions, Code of Virginia, §18.2-212; Crimes and offenses generally, Code of Virginia, Title 18.2.

SECTION 16-4. FRAUDULENT USE OF PAY PHONES, PARKING METERS AND OTHER COIN-OPERATED MACHINES.

(a) No person shall operate, cause to be operated or attempt to operate or cause to be operated any coin-box telephone, parking meter, vending machine or other machine that operates on the coin-in-the-slot principle, whether of like kind or not, designed only to receive lawful coin of the United States of America, in connection with the use or enjoyment of telephone or telegraph service, parking privileges or any other service, or the sale of merchandise or other property, by means of a slug or any false, counterfeit, mutilated, sweated or foreign coin, or by any means, methods, trick or device whatsoever, not authorized by the owner, lessee or licensee of such coin-box telephone, parking meter, vending machine or other machine.

(b) No person shall obtain or receive telephone or telegraph service, parking privileges, merchandise or any other service or property from any such coin-box telephone, parking meter, vending machine or other machine, designed only to receive lawful coin of the United States of America, without depositing in or surrendering to such coin-box telephone, parking meter, vending machine or other machine, lawful coin of the United States of America to the amount required therefor by the owner, lessee or licensee of such coin-box telephone, parking meter, vending machine or other machine.

(c) Any person violating this section shall be deemed guilty of a Class 3 misdemeanor. (Code 1959, §15-124)

Cross reference--Parking meters, §14-63, *et seq.*

State Law References--Similar provisions, Code of Virginia, §18.2-170; manufacture of slugs for unlawful use, §18.2-180.

SECTION 16-5. CURFEW FOR MINORS.

Purpose: The goal of this section is to inhibit juvenile crime, to prevent the victimization of children, to promote the health and safety of children, and to increase parental responsibility for their children.

(a) It shall be unlawful for any minor under the age of fifteen (15) years to be in or upon any street, park or other public place in the city, on Sunday through Thursday between the hours of 11:00 P.M. and 5:00 A.M. of the following day, or Friday or Saturday from the hours of 12:00 P.M. and 5:00 A.M. of the following day unless, in either case, one of the following exceptions apply:

1. the minor is accompanied by his parent, guardian or other adult person having the legal care, custody, or control of such minor,

2. the minor is engaged in, traveling in direct route to, or returning home from legal employment,

3. the minor is attending, traveling in direct route to, or returning directly home from a school, religious or adult supervised activity sponsored by the City or a school, religious or civic group that takes responsibility for the minor,

4. the minor is involved in an emergency,

5. the minor is in a motor vehicle engaged in interstate travel, or

6. the minor is or has been married or the minor has been lawfully emancipated.

(b) It shall be unlawful for the proprietor, manager or other person having charge or control of any public place to permit or encourage any minor under the age of fifteen (15) to violate this section.

(c) It shall be unlawful for a parent, guardian, or other adult person having the care, custody or control of a minor under the age of fifteen (15) years to permit or encourage such to violate this section.

(d) A first violation of any provision of this section shall constitute a Class 4 misdemeanor. A second violation of any provision of this section within 90 days of a first violation by any person shall constitute a Class 2 misdemeanor. (Code 1959, §16.7)(Ord. No. 045-95, 9-12-95; Ord. No. 007-96, 04-09-96)

State Law References - Authority of city to enact a curfew ordinance, Code of Virginia §15.1-33.4; to regulate presence of minors in places of amusement, §18.2-432

SECTION 16-6. OBSTRUCTING FREE PASSAGE OF OTHERS.

Any person or persons who, in any public place or on any private property open to the public, unreasonably or unnecessarily obstructs the free passage of other persons to and from or within such public place or private property and who shall fail or refuse to cease such obstruction or move on when requested to do so by the owner or lessee, or agent or employee of such owner or lessee, or by a duly authorized law-enforcement officer shall be guilty of a Class 1 misdemeanor. Nothing in this section shall be construed to prohibit lawful picketing. (Code 1959, §16-15; Ord. of 7-13-71)

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

SECTION 16-6.1. DISORDERLY CONDUCT IN PUBLIC PLACES.

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

1. In any street, highway, public building, or while in or on a public conveyance or public place engages in conduct having a direct tendency to cause acts of violence by the person or persons at whom, individually, such conduct is directed; provided, however, such conduct shall not be deemed to include the utterance or display of any words or to include conduct otherwise made punishable under this chapter; or

2. Willfully, or being intoxicated, whether willfully or not, disrupts any meeting of the city council or a division or agency thereof, or of any school, literary society or at any place of religious worship, if such disruption prevents or interferes with the orderly conduct of such meeting or has a direct tendency to cause acts of violence by the person or persons at whom, individually, such disruption is directed; provided, however, such conduct shall not be deemed to include the utterance or display of any words or to include conduct otherwise made punishable under this chapter.

The person in charge of any such building, place, conveyance or meeting may eject therefrom any person who violates any provision of this section, with the aid, if necessary, of any persons who may be called upon for such purpose. A person violating any provision of this section shall be guilty of a Class 1 misdemeanor. (Code 1959, §§16-8, 16-9, 16-22)(Ord. No. 045-95, 9-12-95)

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

SECTION 16-7. DISCHARGE OF FIREARMS.

It shall be unlawful and a Class 1 misdemeanor for any person to fire or discharge any gun, pistol or other firearm within the limits of the City. This section shall not apply to any law-enforcement officer in the discharge of his official duties nor to any other person whose discharge of a firearm is justifiable or excusable at law in the protection of his life or property or is otherwise specifically authorized by law. (Code 1959, §16-11)

Cross reference--Shooting birds, §5-8.

State Law References--Authority of city to regulate or prohibit discharge of firearms, Code of Virginia, §15.1-865; discharging firearms in streets or public places, Code of Virginia, §§18.2-280, 18.2-286.

SECTION 16-8. DISCHARGE OF AIR GUN, GRAVEL SHOOTER OR SIMILAR INSTRUMENT.

It shall be unlawful and a Class 3 misdemeanor for any person anywhere within the City to discharge any shot, bullet, gravel or any similar thing from an air gun, gravel shooter or other similar instrument. (Code 1959, §16-4)

SECTION 16-9. USE OF BOW AND ARROW RESTRICTED; PERMIT REQUIRED FOR ARCHERY RANGE; URBAN ARCHERY HUNTING

(a) The use of bow and arrows and establishment of an Archery Range within the City limits shall be subject to the following restrictions:

1. No person shall shoot or discharge an arrow from a bow within the City, except upon an archery range which has been approved as to safety of location and construction by the chief of police.

2. No minor shall shoot or discharge an arrow from a bow within the City, except upon an archery range approved as to safety of location and construction by the chief of police and then only when under the immediate supervision of an adult.
3. Nothing in this section shall apply to the discharge of an arrow, equipped with a blunt rubber tip or rubber suction cup from a bow with a "pull" or "draw weight" of less than ten (10) pounds.
4. No person shall set up or operate an archery range in the City without first obtaining a permit from the chief of police. The chief of police shall issue a permit for the construction and operation of an archery range only after the location and construction of the same have been proven to his satisfaction to be consistent with the public safety.

(b) URBAN ARCHERY HUNTING. Section 16-9(a) shall not apply when discharging an arrow from a bow for the purposes of deer hunting within the City of Winchester limits during the Urban Archery Season, the Early Archery Season, the General Firearms Deer season, as designated in regulations set forth by the Virginia Department of Game and Inland Fisheries, under the following conditions:

1. On land that is five (5) acres or more of continuous area, approved by the City Manager and the Chief of Police;

2. The landowner or landowners have applied for an annual permit from the City Manager to use their property for the purpose of discharging archery equipment and have identified their properties as such by signage approved by the Chief of Police;

3. Any person discharging a bow shall, at all times, while engaged in such activity, have in his possession written permission from the landowner(s) to discharge such a weapon on his premises;

4. Agreement shall be made between the participant and landowner(s) in reference to field dress;

5. All participants must abide by all applicable sections of the Virginia State Code and Virginia Hunting Regulations. Further, the following restrictions apply:

    a. Discharge of a bow must be done from an elevated stand with a minimum height of ten (10) feet.
    b. No person shall discharge a bow within one hundred (100) yards of any dwelling, building, street, sidewalk, alley, roadway, public land or public place within City limits. Further, all hunting shall be done internally to the property approved for hunting.

c. A person shall neither discharge a bow from, over or across any street, sidewalk, alley, roadway, or public land or public place within City limits or toward any building or dwelling in such a manner that an arrow may strike it nor shall a person discharge a bow over or across the private property of another without permission.
d. No person shall hunt deer within the City limits by use of dog or dogs.
e. Urban Archery Season is restricted to hunting anterless deer only.
f. Any person engaging in deer hunting must dispose of deer carcasses appropriately.

(c) Any person violating any provision of this section shall be guilty of a Class 3 misdemeanor. (Code 1959, §16-5.1) (Ord. No. 006-2005, 3-8-05)

SECTION 16-10. PUBLIC PROFANITY AND DRUNKENNESS.

(a) If any person profanely curses or swears or is drunk in public he shall be deemed guilty of a Class 4 misdemeanor.

(b) If any person shall be convicted for being drunk in public three (3) times within one year in this City, upon the third or any subsequent conviction for such offense within the period of one year, such person shall be guilty of a Class 3 misdemeanor. (Code 1959, 16-18)

State Law References--Similar provisions, Code of Virginia, §18.2-388; authority of city to adopt above section, §18.2-389.

SECTION 16-11. DAMAGING PROPERTY.

(a) *In general.* It shall be unlawful for any person to destroy, deface, damage, remove or injure any property, real or personal, private or public, not his own.

(b) *Municipal property.* No person, within the City, unless authorized by city officials, shall remove, interfere with, injure, deface, damage or destroy any city property. The acts hereby prohibited include, but are not limited to, the application by any method of any type of paint to any street or sidewalk surface, or to any street or traffic sign. (Code 1959, §16-13; (Ord. No. 010-79, 4-11-79)

(c) Violation of any provision under this section shall constitute a Class 1 misdemeanor. (Ord. No. 045-95, 9-12-95)

Cross references--Damaging library property, §12-1; damaging parking meters, §14-73; damaging waterworks property, §29-23.

State Law References--Damaging property, Code of Virginia, §18.2-137, *et seq.*

SECTION 16-11.1. INJURING, TAMPERING WITH, ETC., VEHICLES, AIRCRAFT, ETC.

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

(b) Any person who shall, without the consent of the owner or person in charge of a vehicle, aircraft, boat, vessel, locomotive or other rolling stock of a railroad, climb into or upon such vehicle, aircraft, boat, vessel, locomotive or other rolling stock of a railroad with intent to commit any crime, malicious mischief or injury thereto, or who, while a vehicle, aircraft, boat, vessel, locomotive or other rolling stock of a railroad is at rest and unattended, shall attempt to manipulate any of the levers and starting crank or other device, brakes or mechanism thereof or to set such vehicle, aircraft, boat, vessel, 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 2 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 thereon or by the agents or employees of such lien holder.(Ord. No. 045-95, 9-12-95)

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

SECTION 16-12. ENTERING OR REMAINING ON PROPERTY OF ANOTHER AFTER HAVING BEEN FORBIDDEN TO DO SO.

If any person shall, without authority of law, go upon or remain upon the lands, buildings or premises of another, or any part, portion or area thereof, after having been forbidden to do so, either orally or in writing, by the owner, lessee, custodian or other person lawfully in charge thereof, or after having been forbidden to do so by a sign or signs posted on such lands, buildings, premises or part, portion or area thereof at a place where it may be reasonably seen, he shall be deemed guilty of a misdemeanor. (Ord. No. 045-95, 9-12-95)

State Law Reference--Similar provisions, Code of Virginia, §18.2-119.

SECTION 16-13. INSTIGATING, ETC., TRESPASS BY OTHERS; PREVENTING SERVICE TO PERSONS NOT FORBIDDEN ON PREMISES.

If any person shall solicit, urge, encourage, exhort, instigate or procure another or others to go upon or remain upon the lands, buildings or premises of another, or any part, portion or area thereof, knowing such other person or persons to have been forbidden, either orally or in writing, to do so by the owner, lessee, custodian or other person lawfully in charge thereof, or knowing such other person or persons to have been forbidden to do so by a sign 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 forbidden, he shall be deemed guilty of a Class 2 misdemeanor. (Ord. No. 045-95,
9-12-95)

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

SECTION 16-14. PEEPING TOMS.

If any person shall enter upon the property of another, in the nighttime, and secretly or furtively peep through or attempt to so peep, into, through, or spy through, a window, door or other aperture of any building, structure, or other enclosure of any nature occupied or intended for occupancy as a dwelling, whether or not such building, structure or enclosure be permanently situated or transportable and whether or not such occupancy be permanent or temporary, such person shall be guilty of a Class 1 misdemeanor. (Code 1959, §16-17)(Ord. No. 045-95, 9-12-95)

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

SECTION 16-15. POSTING ADVERTISING MATTER ON STRUCTURES OR VEHICLES OF ANOTHER WITHOUT CONSENT.

It shall be unlawful and a Class 3 misdemeanor for any person to place or attach or to have placed or attached any bill, poster, circular, notice, advertisement or plaque upon any building, post, wall, fence or other structure or vehicle in the City, on or adjacent to and within four (4) feet of any street, sidewalk or publicly owned property, without first obtaining the consent of the owner of such property. (Code 1959, §16-1)

SECTION 16-16. DEFACING UTILITY POLES WITH SIGNS, NAILS, WIRE, ETC.

It shall be unlawful and a Class 3 misdemeanor for any person to deface any telegraph, telephone or electric light pole by posting bills thereon, putting up signs thereon, driving nails therein or by wrapping around it wire or other material. (Code 1959, §16-2)

SECTIONS 16-17. - 16.17.11. REPEALED AND REENACTED.
(Ord. No. 045-95, 9-12-95)

SECTION 16-18. SUNDAY CLOSING LAW NOT APPLICABLE IN CITY.

(a) In accordance with Section 15.1-29.5 of the Code of Virginia, the qualified voters of the City held a referendum on Tuesday, November 2, 1976 on the question: "Shall the various work, sales, and business activities presently prohibited on Sunday by Section 18. 2-341 of the Code of Virginia (commonly known as the Sunday closing law) be allowed in the City of Winchester, Virginia?". The results of this referendum, as certified by the electoral board of the City, indicate that such a law is not necessary in the City.

(b) As a result of the duly held referendum on the subject of the Sunday closing law, the city council deems that the provisions of Section 18.2-341, Code of Virginia, shall have no force or effect within the City. (Ord. of 11-9-76, §§1,2)

State Law Reference--Code of Virginia, §18.2-342.

SECTION 16-19. NUISANCES GENERALLY - DEFINITION.

Any condition existing or maintained anywhere in the City and any act of a person which creates or is likely to create an offensive odor or any unhealthy or unsanitary condition dangerous, inconvenient or damaging to the inhabitants of the City shall be termed a nuisance. (Code 1959, §11-8)(Ord. No. 045-95, 9-12-95)

SECTION 16-20. SAME - INSPECTION; NOTICE TO ABATE.

Whenever it shall come to the attention of the city engineer or upon complaint of any person to the city engineer that a nuisance is being created or maintained, the city engineer or his designee shall cause an inspection to be made of the premises and, if a nuisance exists as provided in Section 16-18, he shall cause to be served upon the occupant of the premises and, if the premises are not occupied, upon the owner, a notice to correct the unsanitary, unsafe, or unhealthy condition or to appear before the general district court and show cause why such notice should not be complied with.

In case of a known non-resident owner having no agent in the City, such notice shall be mailed to the last known address of the owner and fifteen (15) days allowed for a reply. If the owner of the premises or his agent is not known, then such notice shall be given by publication at least once a week for four (4) successive weeks in a newspaper having general circulation in the City. (Code 1959, §11-9, Ord. No. 049-88, 11-15-88)

State Law References--Power of city to cause abatement of nuisances, Code of Virginia, §§15.1-14, 15.1-867.

SECTION 16-21. SAME - FAILURE TO COMPLY WITH NOTICE TO ABATE.

(a) If any person, after having been given notice as provided in Section 16-19, fails or refuses to comply with such notice or fails or refuses to show cause before the general district court why such compliance should not be made, such person shall be deemed guilty of a misdemeanor. The judge of the general district court shall then order that the nuisance be abated, or the unsanitary, unsafe, unsightly or offensive condition be corrected; provided, however, that the judge may, in his discretion, grant a reasonable and specified time to the defendant in which to have the nuisance abated or the condition corrected.

(b) Any costs incurred by the City in the abatement of a nuisance or the correction of an unsanitary, unsafe, unsightly or offensive condition shall be assessed against the person responsible and collected in the manner in which other assessments are collected by the City. (Code 1959, §11-10)

SECTION 16-22. SAME - ABATEMENT BY CITY WITHOUT NOTICE.

The provisions concerning notice as provided in Section 16-19 shall not apply if the nuisance or condition complained of is such that immediate action is necessary for the protection of public health. The City shall cause the same to be abated at once, without notice, and all costs incident thereto shall be assessed against the owner of the premises and collected in the manner in which other assessments are collected by the City. (Code 1959, §11-11)

SECTION 16-23. CONDITIONS CONDUCIVE TO BREEDING OF MOSQUITOES.

It shall be unlawful for the owner or occupant of any property located within the City to allow or maintain a condition which promotes or encourages the breeding of mosquitoes. All premises shall be graded and maintained so as to prevent the accumulation of stagnant water thereon, or within any building or structure located thereon, which might endanger the health of the residents of the City. If the city engineer or his designee determines that a violation of this section exists, the owner or occupant shall be so-notified to abate same, as provided in Section 16-20 of this Code. (Code 1959, §§11-5, 11-7; Ord. of 1-11-78; Ord. of 7-11-78; Ord. No. 049-88, 11-15-88)

SECTION 16-24. PRIVIES, SINKS OR CESSPOOLS; UNLAWFUL DISPOSAL OF LIQUID WASTE OR HUMAN EXCRETA.

(a) It shall be unlawful for any person to construct or maintain a privy vault, sink or cesspool.

(b) No liquid waste from any premises or the discharge from any kitchen sink, water closet, bathtub or other like receptacle shall be permitted by the owner or any occupant of the premises to flow upon the premises of any adjacent lot owner.

(c) It shall be unlawful for any person to deposit any human excreta upon the ground or in any place accessible to animals or flies, or where it may be washed into any stream, spring or well used for drinking purposes. (Code 1959, §§11-2 - 11-4; Ord No. 023-88, 5-10-88)

Cross reference--Sewer connection or septic tank required, §29-59.

SECTION 16-25. OPEN STORAGE OF INOPERATIVE VEHICLES IN CERTAIN ZONING DISTRICTS.

(a) DEFINITIONS. For the purpose of this section, the following terms shall have the meanings set forth below:

Inoperable motor vehicle means any motor vehicle, trailer, or semi-trailer as defined in §46.2-100 of the Code of Virginia which meets any of the following criteria:

1. is not in operating condition;
2. does not have displayed on the vehicle a valid license plate and does not have displayed on the vehicle a valid inspection decal if one is required by State law; or

3. for a period of sixty (60) days or longer has been partially or totally disassembled by the removal of tires and wheels, the engine, or essential parts required for operation of the vehicle.

Shielded or screened from view means that the motor vehicle, trailer, or semi-trailer, whether covered or uncovered, is not visible by someone standing at ground level from outside of the property on which the subject motor vehicle, trailer, or semi-trailer is located.

(b) OPEN STORAGE OF INOPERABLE MOTOR VEHICLES. It shall be unlawful for any person to keep, except within a fully enclosed building or structure or otherwise shielded or screened from view, on any property zoned for residential or commercial purposes, any motor vehicle, trailer, or semi-trailer, as defined in §46.2-100 of the Code of Virginia, which is inoperative. Covering an inoperable motor vehicle, trailer, or semi-trailer with a tarpaulin or other similar vehicle cover shall not be considered as being screened from view.

However, the provisions of this section shall not apply to a licensed business which on November 10, 1970 was regularly engaged in business as an automobile dealer, salvage dealer, or a scrap processor. The exception for such licensed business shall apply only to such property on which the said business was operated on November 10, 1970, and on which said business has continued to operate without interruption.

(c) REMOVAL OF INOPERABLE MOTOR VEHICLES; NOTICE. The owners of property zoned for residential or commercial purposes not otherwise exempt in subsection (b) shall remove therefrom any such inoperative motor vehicles, trailers, or semi-trailers that are not kept within a fully enclosed building or structure within fifteen (15) days of notice of violation. Notice given pursuant to this section shall be sent by the building official, or his or her designee, using registered or certified mail, return receipt requested, to the owner of the premises on which such inoperable motor vehicle, trailer, or semi-trailer is located. The notice shall explain the violation, state the year, make and model of the inoperable motor vehicle, trailer, or semi-trailer, and shall set forth the consequences of failing to comply.

(d) REMOVAL AND DISPOSAL OF INOPERABLE MOTOR VEHICLE BY CITY; NOTICE. The city council, through its employees, may remove any such inoperative motor vehicle, trailer, or semi-trailer whenever the owner of the premises, after having been given notice pursuant to this section, has failed to do so.

In the event the City so removes any such inoperable motor vehicle after having given notice, the City may dispose of such vehicle after giving thirty (30) days additional notice to the owner of the vehicle. The cost of such removal and

disposal shall be chargeable to the owner of the vehicle or premises, and may be collected by the City as taxes and levies are collected.

(e) COSTS. Every cost authorized by this section with which the owner of the premises shall have been assessed shall constitute a lien against the property from which the vehicle was removed, the lien to continue until actual payment of such costs shall have been made to the City. Notwithstanding the other provisions of this section, if the owner of such vehicle can demonstrate that he is actively restoring or repairing the vehicle, and if it is shielded or screened from view, the vehicle and one additional inoperative motor vehicle that is shielded or screened from view and being used for the restoration or repair may remain on the property.

(f) PENALTIES. Violations of this section shall be subject to a civil penalty, not to exceed One Hundred Dollars ($100.00) for the first violation or violations arising from the same set of operative facts. The civil penalty for subsequent violations not arising from the same set of operative facts within twelve (12) months of the first violation shall not exceed Two Hundred Fifty Dollars ($250.00). Each day during which the same violation is found to have existed shall constitute a separate offense. However, violations arising from the same set of operative facts shall not be charged more frequently than once in any ten (10) day period and a series of specified violations arising from the same set of operative facts shall not result in civil penalties that exceed a total of Five Thousand Dollars ($5,000.00) in a twelve (12) month period.

If three (3) civil penalties are imposed within a twenty-four (24) month period on the same person for the same or similar violation of this section, not arising out of the same set of operative facts, such person shall be guilty of a Class 3 Misdemeanor for each subsequent violation.
(Ordinance of 11-10-70, amended; Ord No. 023-88, 5-10-88; Ord. No. 020-97, 8-12-97; Ord. No. 12-2006, 4-11-06)

State Law Reference--Authority for above section, Code of Virginia, §15.2-904.

SECTION 16-26. PARKING OF HOUSE TRAILERS AND MOBILE HOMES.

It shall be unlawful for any person to park any house trailer or mobile home on a public street or on any property not zoned for such purposes, except for limited parking of a trailer or mobile home upon permission granted by the police department.
(Code 1959, §16-25; Ord. of 6-14-78)

Cross reference--General parking regulations, §14-45, *et seq.*

SECTION 16-27. PAWNBROKERS' DAILY REPORTS TO POLICE.

This section may be cited as the "Pawnbroker and Secondhand Dealer Regulatory Ordinance of the City of Winchester". (Ord. 025-94, 09-13-94)

SECTION 16-27.1. DEFINITION OF SECONDHAND DEALER AND PAWNBROKER.

A) 1) For purposes of this section a secondhand dealer is defined as any person, partnership, corporation, or other entity who sells any one of the following: used electronic items less than fifty (50) years old, or used hand or power tools less than fifty (50) years old. Electronic items include the following, whether designed for home, personal, or vehicular use, but are not limited to televisions, stereos, stereo components, radios, telephones, compact disc players, digital audio tape (DAT) players, audio speakers, video cassette recorders (VCR's), microwave ovens, cameras, video cameras, computers and computer equipment.

2) Exceptions - The definition of secondhand dealer shall not include those persons, partnerships, corporations, or other entities selling property that was bought new from a licensed manufacturer, wholesaler, or retailer by such person, partnership corporation, or other entity. The term secondhand dealer also shall not include charitable organizations.

B) For purposes of this section pawnbroker means any person, partnership, corporation, or other entity who lends or advances 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.

C) For the purposes of this section "used" shall mean items purchased from anyone other than a licensed manufacturer or licensed wholesaler. (Ord. 025-94, 09-13-94).

State Law References--Code of Virginia, §15.1-866 and §54.1-400.

SECTION 16-27.2 RECORDKEEPING REQUIREMENTS SECONDHAND DEALERS AND PAWNBROKERS.

A) Every secondhand dealer and pawnbroker, as defined in Section 16-27.1, shall keep at his place of business a legible record of each purchase, loan, or transaction made by him or any of his employees or agents in the course of business.

Each record shall include:

1) a description, serial number, and a statement of ownership by the person selling, pawning, pledging, or consigning the goods received by the secondhand dealer or pawnbroker;
2) the time, date, and place of the transaction;
3) the price paid or the item exchanged for the property, or the amount loaned to the person pledging the goods and the rate of interest on such loan;
4) the full name, social security number, home and work addresses and telephone numbers of the person selling, pawning, pledging, or consigning the goods, together with a description of such person including height, weight, date of birth, race, gender, hair and eye color, and any identifying marks;
5) verification of the identification by the exhibition of a government issued photo-identification card. The record shall indicate the type of identification, the issuing agency, and the identification number thereon. If the seller, pawnor, pledgor, or consignor does not have a government issued photo identification card, the record shall contain verification of two other forms of identification including type and issuer; and
6) all other facts and circumstances involved in the transaction.

B) Every secondhand dealer and pawnbroker shall admit to his premises, during business hours, the chief of police for the City of Winchester or his sworn designee to examine the transaction record of the dealer and search for any article listed in the transaction record that the chief of police or his sworn designee knows or believes to be stolen, without the formality of a warrant. (Ord. 025-94, 09-13-94)

State Law References--Code of Virginia, §15.1-866, §54.1-4009, and §54.1-4011**.**

SECTION 16-27.3. REPORTING REQUIREMENT.

A) Every secondhand dealer and pawnbroker, as defined in Section 16-27.1, shall prepare a written report at the end of each day of all personal property purchased or received as collateral from individuals and file such report with the chief of

police not later than noon the next day. Such report shall contain all of the information required in Section 16-27.2(A) (1-6). and shall be in clear legible writing.

B) Every secondhand dealer and pawnbroker, as defined in Section 16-27.1, shall file a report with the chief of police for the City of Winchester listing the full name, date of birth, social security number, sex, home address, and home telephone number of each person employed by the secondhand dealer or pawnbroker. Such report shall also include a photograph of each employee. Such report shall be filed within thirty (30) days from the date this ordinance takes effect, after which an addendum to such report shall be filed by the pawnbroker or secondhand dealer with the chief of police within five (5) days after hiring a new employee. Such addendum shall include the same information and photograph required in the original report. (Ord. 025-94, 09-13-94).

State Law References--Code of Virginia, §15.1-866 and §54.1-4010**.**

SECTION 16-27.4. LIMITATIONS ON THE NUMBER OF PAWNBROKERS.

Not more than three (3) places within the City of Winchester shall be licensed where the business of a pawnbroker, including a pawnbroker's sales, may be conducted. Licenses shall not be transferable. (Ord. 025-94, 09-13-94).

State Law References--Code of Virginia, **§**15.1-866 and §54.1-4002.

SECTION 16-27.5. LICENSING PROCEDURE.

A) Upon authorization of the chief of police, the Police Department of the City of Winchester shall issue a secondhand dealer license upon payment of a fifty dollar ($50.00) licensing fee, payment of a fee to cover the expense of a background check, such fee to be determined by the chief of police for the City of Winchester, and satisfaction of the requirements herein. The applicant shall be given a license if he has satisfied the chief of police of his good character and he has not been convicted within the last seven (7) years of a felony or a crime of moral turpitude, including, but not limited to, larceny, receiving stolen property, and fraud. Information required on the application shall include the applicant's full name, aliases, or trading names, address, age, social security number, sex, fingerprints, and photograph. The application shall also include the name, address and telephone number of all of the applicant's employers within the previous seven (7) years, if any, and the location of the site at which the application wishes to operate as a secondhand dealer. Licenses shall be valid for one (1) year from the date of issuance and may be renewed in the same manner as the initial license was obtained. The fee set out in this section shall be required for an initial license

only. Within the City of Winchester, a secondhand dealer may only sell personal property obtained in the operation of his business from the location specified in his application. The license shall not be transferable.

B) Upon authorization of the Circuit Court, the Police Department of the City of Winchester shall issue a pawnbroker license upon payment of a one hundred dollar ($100.00) licensing fee, payment of a fee to cover the expense of a background check, such fee to be determined by the chief of police for the City of Winchester, and satisfaction of the requirements herein. The applicant shall be given a license if he has satisfied the chief of police of his good character and he has not been convicted within the last seven (7) years of a felony or a crime of moral turpitude, including, but not limited to, larceny, receiving stolen property, and fraud. Information required on the application shall include the applicant's full name, aliases, or trading names, address, age, social security number, sex, fingerprints, and photograph. The application shall also include the name, address and telephone number of all of the applicant's employers within the previous seven (7) years, if any, and the location of the site at which the application wishes to operate as a secondhand dealer. Licenses shall be valid for one (1) year from the date of issuance and may be renewed in the same manner as the initial license was obtained. The fee set out in this section shall be required for an initial license only. Within the City of Winchester, a pawnbroker may only operate his business from the location specified in his application. The license shall not be transferable. (Ord. 025-94, 09-13-94)

State Law References--Code of Virginia, §15.1-866 and §54.1-4001**.**

SECTION 16-27.6. PENALTY FOR VIOLATION OF ORDINANCE.

Any person who violates any provision of this section shall be guilty of a Class 4 misdemeanor. Each days violation shall constitute a separate violation. If the holder of a secondhand dealer license is found guilty of three (3) violations of this section within any one year period, the chief of police may revoke or suspend the violator's license to operate as a secondhand dealer. (Ord. 025-94, 09-13-94)

State Law Reference--Code of Virginia, §15.1-866**.**

SECTION 16-28. PROTECTION OF FOOD DURING TRANSPORTATION.

All meat, dressed poultry, fish, bread, pastry, confectionery or other provisions which may be used as human food while being transported through the streets of the City shall be so covered or screened as to be protected from dirt and flies. (Code 1959, §11-6).

SECTION 16-29. REPEALED.
(Ord. No. 018-84, 10-09-84)

SECTION 16-30. LOITERING PROHIBITED; PENALTY FOR VIOLATION.

It shall be unlawful for any person or persons to loiter in or around any public transportation depot, station or grounds, public place, building, financial institution, office, motel, hotel, store, shop, public way, public toilets, dwelling or other public place without lawful authority for being there.

1. Definition. As used in this section, "loiter" or "loitering" shall mean remaining idle in essentially one location and shall include, but not be limited to, the concepts of spending time idly, loafing, or walking about aimlessly, and shall also include conduct embraced in the colloquial expression "hanging around".

2. The following acts and conduct by any person or persons shall be included in the term "loiter" or loitering", and are hereby prohibited:

    a. Creating or causing to be created any disturbance or annoyance to the comfort and repose of any person; or

    b. While in a public toilet solicit any lewd, lascivious or unlawful act; or.

    c. Obstructing, molesting, or interfering with any person lawfully in any public place, including the making of unsolicited remarks or gestures of an offensive, disgusting, and/or insulting nature which are calculated to annoy, disturb, or impede the person to whom or in whose hearing and presence such remarks or gestures are made.

3. Whenever any person or persons so situate in a public place as above set forth is causing any of the circumstances enumerated in subsection (2) above, any police officer may order that person or those persons to leave that place. Any person or persons who shall refuse to leave after having been so ordered to leave by a police officer shall be guilty of a violation of this section.

4. Any person or persons, individually or in concert, violating any provisions of this section shall be guilty of a Class 3 misdemeanor. (Ord. No. 016-84, 9-11-84)

SECTION 16-31. LOITERING IN A PUBLIC PLACE WITH INTENT TO ENGAGE IN UNLAWFUL DRUG TRANSACTION.

(a) It shall be unlawful for any person to loiter in a public place with the intent to sell, give, distribute, possess or purchase a controlled substance, as defined in Section 54.1-3401 of the Code of Virginia, (1950), as amended, as of July 1, 1992. For purposes of this section, the term "controlled substance" shall also include marijuana.

(b) No person shall be arrested for a violation of this section unless a law enforcement officer or officers shall have observed the following, and no person shall be convicted of a violation of this section except upon testimony of a law enforcement officer or officers of the following:

1. the person remains in one or more public places in the same general location for a period of at least 15 minutes;

2. during this period and while in a public place in the same general location, the person has two or more face-to-face contacts with other individuals;

3. each of such contacts (i) is with one or more different individuals, (ii) lasts no more than two minutes, (iii) involves actions or movements by the person consistent with an exchange of money or other small objects, (iv) involves actions or movements by the person consistent with an effort to conceal an object appearing to be or to have been exchanged, and (v) terminates shortly after the completion of the apparent exchange; and

4. the person engages in some additional overt act, or there is additional circumstantial evidence, that manifests an intent on the person's part to sell, give, distribute, possess or purchase a controlled substance, as defined in subsection (a).

For purposes of this subsection (b), "same general location" shall mean an area defined as a circle with a radius of 750 feet and a center being the place where a person is first observed by a law enforcement officer.

(c) For purposes of this section, the term "public place" means any street, sidewalk, alley, park, bridge, driveway, parking lot or other public property within the City that is open to the general public.

(d) Any person convicted of violating this section shall be guilty of a Class 1 misdemeanor. (Ord. No. 021-92, 11-10-92)

SECTION 16-32. CONSUMPTION OF ALCOHOLIC BEVERAGES AND POSSESSION OF OPEN CONTAINERS OF ALCOHOLIC BEVERAGES IN PUBLIC PLACES.

(a) Except as provided in subsection (b), it shall be unlawful for any person to take a drink of an alcoholic beverage, or to possess any uncapped or open container of any kind which contains an alcoholic beverage, on or in any public street, public sidewalk, public park, public playground, public school ground, or within any vehicle located on or in any public street, public sidewalk, public park, public playground, or public school ground.

(b) This section shall not prevent any person from possession of an open alcoholic beverage container or from drinking alcoholic beverages or offering a drink thereof to another at an event held within an approved area in any public place, excluding school property and public parks for which a proper city permit and state alcoholic beverage control board license have been obtained.

(Ord. No. 005-98, 2-10-98; Ord. No. 009-2005, 4-12-05; Ord. No. 07-2007, 4-10-2007)

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CHAPTER 17

NOISE CONTROL

Art. I. Noise Control - In General, §§17-1--17-12

ARTICLE I. NOISE CONTROL - IN GENERAL

SECTION 17-1. NOISE CONTROL

This chapter may be cited as the "Noise Control Ordinance of the City of Winchester", and shall be applicable to the control of noises originating within the corporate limits. (Ord. No. 005-86, 5-13-86; Ord. No. 046-95, 9-12-95)

SECTION 17-2. DECLARATION OF FINDINGS AND POLICY.

The city council hereby finds and declares that excessive sound is a serious hazard to the public health, welfare, peace, 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 of Winchester to prevent such excessive sound. (Ord. No. 005-86, 5-13-86)

SECTION 17-3. DEFINITIONS

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

(a) A-weighted sound level. 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.

(b) Commercial purpose. The use, operation or maintenance of any sound amplifying equipment for the purpose of advertising any business or any services, or for the purpose of attracting the attention of the public to, or advertising for, or soliciting

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Editor's notes--Ord. No. 046-95 adopted September 12, 1995 enacted this chapter which was previously Chapter 14, §§14-17 - 14-17.11

patronage or customers to or for any performance, show, entertainment, exhibition or event, or for the purpose of demonstrating any such sound equipment.

(c) Daytime. The local time of day between the hours of 6:00 A.M. and 10:00 P.M.

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

(e) Emergency. Any occurrence or set of circumstances involving actual or imminent physical trauma or property damage which demands immediate action.

(f) Emergency work. Any work performed for the purpose of preventing or alleviating the physical trauma or property damage threatened or caused by an emergency.

(g) Gross vehicle weight rating (GVWR). 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.

(h) Motor carrier vehicle engaged in interstate commerce. 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.

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

(j) Motor vehicle. 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.

(k) Nighttime. The local time between the hours of 10:00 P.M. and 6:00 A.M.

(l) Noise. Any sound which annoys or disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on humans.

(m) Property. The smallest area owned or leased by the same person or persons.

(n) Property line. An imaginary line along the ground surface, and its vertical extension, which separates the real property, including the dwelling units within a structure owned by one person, from that owned or leased by another person.

(o) Residential zone. Any location within an RS-1., RS-2, RS-3, RM-l, RM-2, or RD-l district as shown on the city zoning map.

(p) Sound. 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.

(q) Sound level. 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.

(r) Sound level meter. 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. 005-86, 5-13-86)

SECTION 17-4. ADMINISTRATION AND ENFORCEMENT.

The noise control program established by this section shall be enforced and administered by the chief of police with the assistance of other city departments as required. (Ord. No. 005-86, 5-13-86)

SECTION 17-5. TESTING OF METERING DEVICES.

In order to implement and enforce this section effectively, the chief of police shall, within a reasonable time after the effective date of same, develop and promulgate standards and procedures for testing and validating sound level meters used in enforcement of this section. (Ord. No. 005--86, 5-13-86)

SECTION 17-6. NOISES PROHIBITED - ENUMERATION.

(a) It shall be unlawful for any person to make, continue, or cause to be made or continued any excessive, unnecessary, or unusually loud noise, or any noise which unreasonably annoys, disturbs, injures or endangers the comfort, health, safety, welfare, or environment of others within the corporate limits of the City.

(b) Acts declared unlawful by this section shall include, but not be exclusively limited to, the following:

1. The sounding of any vehicular horn or other sound signaling device on any motor vehicle on any street or public place except as an emergency warning signal so as to create any unreasonably loud or harsh sound for any unnecessary and unreasonable period of time. Sounding of such horn or other device more than once every two minutes in any one city block and with a duration of more than five (5) seconds for any single emission shall be prima face evidence of violation of this section.

2. To play, operate, or permit the operation or playing of any radio, television, phonograph, tape player, drum, musical instrument, sound amplifier or similar device which produces, reproduces, or amplifies sound in such a manner as to create a noise disturbance within any nearby dwelling unit or across a real property boundary.

3. The making by any person of unreasonably loud or unnecessary noise including, but not limited to, that made by the human voice in public places so as to annoy or disturb unreasonably the comfort, health, welfare, environment, peace or safety of persons in any office, dwelling, hotel or other type residence, or of any person in the vicinity.

4. The creation of any excessive noise on any street adjacent to any school/institution of learning, church, public library, or court while the same is in use, or adjacent to any hospital or nursing home which unreasonably interferes with the working of such institution or which disturbs or unduly annoys patients in the hospital or nursing home, provided conspicuous signs are displayed in such streets indicating that the same is a school, court, church, hospital, nursing home or public library. (Ord. No. 005-86, 5-13-86)

SECTION 17-7. MAXIMUM NIGHTTIME SOUND LEVELS IN RESIDENTIAL ZONES.

No person shall operate or cause any source of sound in such a manner as to create a sound level in a residential zone during the hours between 10:00 P.M. and 6:00 A.M. in excess of 60 dBA when measured at the property boundary of the receiving land. The foregoing shall not be deemed to include sound generation from any bona fide agricultural activity, including noise caused by livestock. (Ord. No. 005-86, 5-13-86)

SECTION 17-8. MOTOR VEHICLE MAXIMUM SOUND LEVELS.

(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 motor vehicle or motorcycle when measured at a distance of fifty feet or more exceeds the level set forth in the following table:

	Sound level in dBA	
	Speed Limit 35 M.P.H. or less	Speed Limit Over 35 M.P.H.
All motor vehicles of GVWR or GCWR of 6,000 lbs. or more	86	90
Any motorcycle	82	76
Any other motor vehicle or any combination of vehicles towed by any motor vehicle	76	82

(b) The foregoing provision shall not apply to any motor carrier vehicle engaged in interstate commerce, as defined in subsection 14-17.2(h). (Ord. No. 005-86, 5-13-86)

SECTION 17-8.1 PROHIBITED NOISE FROM MOTOR VEHICLE SOUND SYSTEM.

No person within the city limits shall operate or permit the use or operation of any radio, tape player, compact disc player, or any other device which produces, reproduces, or amplifies sound in a motor vehicle, in such a manner that the sound can be heard more than fifty (50) feet from the motor vehicle. (Ord. No. 004-98, 2-10-98)

SECTION 17-9. USE OF LOUDSPEAKERS FOR ADVERTISING PURPOSES.

(a) It shall be unlawful for any person to operate for commercial advertising purposes any loudspeaker or other like device or mechanism used to emit sound of any kind, which loudspeaker or other like device or mechanism is attached to or installed in any vehicle, when the vehicle is being driven, drawn, or parked along or upon the streets of the City.

(b) It shall be unlawful for any person to use any machine or device for the production or reproduction of sound which is cast upon public streets or lands for the purpose of commercial advertising or of attracting attention of the public to any building, structure, or activity during the nighttime. (Code 1959, 16-3; Ord. No. 005-86, 5-13-86)

SECTION 17-10. EXCEPTIONS.

The provisions of this chapter shall not apply to:

(a) The emission of sound for the purpose of alerting persons to the existence of an emergency;

(b) The emission of sound in the performance of emergency work;

(c) Parades, fireworks displays, and other organized public activities authorized by permit issued by an official of the City.

(d) The emission of sound in the performance of construction or demolition work authorized by permit issued by the city building official, or performed by City forces or forces under contract to the City, so long as such work is not performed during the nighttime. (Ord. No. 005-86, 5-13-86; Ord. No. 046-95, 9-12-95)

SECTION 17-11. PENALTIES.

(a) Any person who violates any provision of this chapter shall be deemed to be guilty of a Class III misdemeanor.

(b) Each violation of any provision of this section shall constitute a separate offense.

(c) The imposition of one (1) penalty for any violation shall not excuse the violation or permit it to continue. (Ord. No. 005-86, 5-13-86; Ord. No. 046-95, 9-12-95)

SECTION 17-12. SEVERABILITY.

Should any subsection, sentence, clause or phrase of this chapter be declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of the chapter in its entirety or of any part thereof other than that portion declared to be invalid. (Ord. No. 005-86, 5-13-86; Ord. No. 046-95, 9-12-95)

CHAPTER 18

PARKS AND RECREATION

SECTION 18-1. RECREATION BOARD.

There is hereby created a recreation board for the City. This board shall be composed of eleven (11) members as follows:

1. Nine (9) members of the board shall be appointed by the Common Council for terms of three (3) years each. The members of the board appointed under the prior City Code chapter shall complete their terms as initial terms. Thereafter, all appointments shall be for terms of three years.

2. Two (2) members shall be students at John Handley High School. Each member shall be appointed to a one-year term, the term to commence June 1st of each year. The appointments shall be made by the Common Council. The principal, the director of student activities or successor position and the senior class member shall make recommendations to Council prior to April 1 of each year. At the time of the appointments, one of the members shall be a sophomore and the other shall be a junior. (Ord. No. 029-95, 07-11-95)

SECTION 18-2. ELECTION OF OFFICERS.

The recreation board shall elect annually from its members a president and a vice-president. (Code 1959, §19-19; Ord. No. 029-95, 07-11-95)

SECTION 18-3. GENERAL POWERS AND DUTIES.

The recreation board shall advise Council concerning the organization and promotion of programs of recreational and cultural activities for the improvement of leisure time of the citizens of Winchester in a constructive and wholesome manner. The board shall also make recommendations to Council regarding capital improvement programs and maintenance programs related to the recreational programs.

At least semi-annually, the board shall confer with civic, business, fraternal, educational, social, recreational and religious organizations based in the City to discuss parks and

recreation activities and to receive input and advice on such topics which are within the board's jurisdiction. (Code 1959, §19-18; Ord. No. 029-95, 07-11-95)

Charter reference--Borrowing by city for construction of parks, §18.

Cross reference--Trees growing in parks, §30-16, *et seq.*

State Law References--Authority of council to establish and maintain parks and playgrounds, Code of Virginia, §15.1-15; authority to establish and conduct system of public recreation and playgrounds, §15.1-271 *et seq.*; liability of city in operation of swimming pool, park, playground or other recreational facility, §15.1-291; regulation by city of use of parks, playgrounds, playfields and recreation facilities, §15.1-871; operation of sports facilities by city, §15.1-886.

SECTION 18-4. FINANCES; REPORTS.

The recreational board shall devise and recommend ways and means to procure funds necessary for the maintenance of programs of the City. The board may solicit or receive any gifts or bequests of money or other personal or real property or any donations for the operation of the parks facilities and parks programs. Any such gifts or bequests of land shall be titled in the name of the City of Winchester. The board shall recommend to Council procedures to supervise all such grants and gifts and shall make a full report of at least annually to Council on the matters under its jurisdiction. The board shall not contract for nor incur any obligations or liabilities in the name of the City. (Code 1959, §19-20; Ord. 029-95, 07-11-95)

SECTION 18-5. APPOINTMENT OF PARKS AND RECREATION DIRECTOR AND OTHER PERSONNEL.

The city manager shall appoint and supervise the director of parks and recreation. Other personnel of the department shall be appointed by the city personnel director upon recommendation of the parks and recreation director, with concurrence of the city manager in accordance with the City's Personnel Management System. (Ord. No. 029-95, 07-11-95)

SECTIONS 18-6 - 18-19. RESERVED.

CHAPTER 19

PLANNING

Art. I. In General, §§19-1--19-15
Art. II. Planning Commission Generally, §§19-16--19-40
Art. III. Comprehensive Plan, §§19-41--19-43

ARTICLE I. IN GENERAL

SECTION 19-1. ZONING AND SUBDIVISION ORDINANCES CONTINUED IN EFFECT.

Nothing in this Code or the ordinance adopting this Code shall affect any ordinance relating to zoning, particularly the zoning ordinance adopted April 13,1976, or any amendment thereto, including ordinances amending the zoning map or zoning or rezoning specific property, or the land subdivision ordinance adopted June 14,1977, or any amendment thereto, and all such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this Code.

Charter references--Planning and zoning ordinances authorized, §12; approval of plan or plat required before the laying out of property with streets or alleys thereon, §17.

Cross reference--Open storage of inoperative vehicles in certain zoning districts, §14-25.

State Law References--Land subdivision and development, Code of Virginia, §15.1-465,
et seq.; requirement that municipalities adopt ordinances to assure the orderly subdivision of land and its development, §15.1-465; provisions to be included in subdivision ordinance, §15.1-466; zoning, §15.1-486, *et seq*.

SECTION 19-2. HISTORIC LANDMARKS DESIGNATED.

Pursuant to the provisions of §15.1-503.2 of the Code of Virginia, the following buildings in the City are hereby designated as historic landmarks:

1. Glen Burnie, 801 Amherst Street.

2. The Steele House, 338 Amherst Street.

3. The Daniel Morgan Home, 226 Amherst Street.

4. The Susan Beemer House, 110 West Boscawen Street.

5. Stonewall Jackson's Headquarters, 415 North Braddock Street.

6. The Stackhouse Home, 316 West Boscawen Street.sidewalks, Ch. 20.

7. George Washington's Headquarters, Northeast Corner of Braddock and Cork Streets.

8. The Jacob Sperry Tanyard House, 204 South Kent Street.

9. Fair Mount, 311 Fairmont Avenue.

10. The Red Lion Tavern, 204 and 208 South Loudoun Street.

11. The Darlington House, 419 North Loudoun Street.

12. The Ginn and Glaize Houses, 112 and 108 East Piccadilly Street.

13. The Handley Library, northwest corner of Braddock and Piccadilly Streets.

14. Thorn Hill Manor, 407 South Washington Street.

15. Abram's Delight, Rouss Spring. (Ord. of 1-13-76)

Cross references--Air pollution control, Ch. 3; building regulations, Ch. 6; erosion and sedimentation control, Ch. 9; traffic, Ch. 14; parks and recreation, Ch. 18;

State Law Reference--Preservation of historical sites and areas, Code of Virginia, §15.1-503.2.

SECTIONS 19-3 - 19-15. RESERVED.

ARTICLE II. PLANNING COMMISSION GENERALLY

SECTION 19-16. CREATED.

Pursuant to the provisions of Title 15.1, Chapter 11, Article 1, of the Code of Virginia, there is hereby created a local planning commission to be known as the "city planning commission." (Ord. of 12-9-75, §17-1)

State Law Reference--Duty of council to create planning commission, Code of Virginia, §15.1-427.1.

SECTION 19-17. COMPOSITION; APPOINTMENT, QUALIFICATIONS, TERMS AND REMOVAL OF MEMBERS.

(a) The planning commission shall consist of seven (7) members appointed by the city council, all of whom shall be residents of the City, qualified by knowledge and experience to make decisions on questions of community growth and development. At least one-half of the members so appointed shall be freeholders.

(b) Of the members of the planning commission first appointed, one shall serve a term of one year, two (2) shall serve terms of two (2) years, two (2) shall serve terms of three (3) years, and two (2) shall serve terms of four (4) years. Subsequent appointments shall be for terms of four (4) years each.

(c) The council shall also appoint one member of the council and one member of the administrative branch of the city government, to serve as advisory members of the planning commission with no vote, whose terms shall be coextensive with the term of office to which the persons have been elected.

(d) Vacancies on the planning commission shall be filled by appointment for the unexpired terms only. Members of the commission may be removed for malfeasance in office. (Ord. of 12-9-75, §17-2)

State Law References--Local planning commissions, Code of Virginia, §15.1-427.1, *et seq.*; Similar provisions, Code of Virginia, §15.1-437.

SECTION 19-18. COMPENSATION OF MEMBERS.

All members of the planning commission shall serve as such without compensation. (Ord. of 12-9-75, §17-3)

State Law Reference--Compensation and expenses of members of planning commission, Code of Virginia, §15.1-437.

SECTION 19-19. ELECTION AND TERMS OF CHAIRMAN AND VICE-CHAIRMAN.

The planning commission shall elect from the appointed members a chairman and a vice-chairman, whose terms shall be for one year. (Ord. of 12-9-75, §17-7)

State Law Reference--Similar provisions, Code of Virginia, §15.1-442.

SECTION 19-20. GENERAL DUTIES.

To effectuate this article, the planning commission shall:

1. Exercise general supervision of, and make regulations for, the administration of its affairs.

2. Prescribe rules pertaining to its investigations and hearings.

3. Supervise its fiscal affairs and responsibilities under rules and regulations as prescribed by the city council.

4. Keep a complete record of its proceedings and be responsible for the custody and preservation of its papers and documents.

5. Make recommendations and an annual report to the council concerning the operation of the commission and the status of planning within its jurisdiction.

6. Prepare, publish and distribute reports, ordinances and other material relating to its activities.

7. Prepare and submit an annual budget in the manner prescribed by the council.

8. If deemed advisable, establish an advisory committee or committees. (Ord. of 12-9-75, §17-11)

State Law Reference--Similar provisions, Code of Virginia, §15.1-444.

SECTION 19-21. MEETINGS GENERALLY.

(a) The planning commission shall fix the time for holding regular meetings, but it shall meet at least every two (2) months.

(b) Special meetings of the planning commission may be called by the chairman or by two (2) members upon written request to the secretary. The secretary shall mail to all members, at least five (5) days in advance of a special meeting, a written notice fixing the time and place of the meeting and the purpose thereof.

(c) Written notice of a special meeting is not required if the time of the special meeting has been fixed at a regular meeting, or if all members are present at the special meeting or file a waiver of notice. (Ord. of 12-9-75, §17-4)

State Law Reference--Similar provisions, Code of Virginia, §15.1-439.

SECTION 19-22. QUORUM; MAJORITY VOTE.

A majority of the members shall constitute a quorum, and no action of the planning commission shall be valid unless authorized by a majority vote of those present and voting. (Ord. of 12-9-75, §17-5)

State Law Reference--Similar provisions, Code of Virginia, §15.1-440.

SECTION 19-23. RULES AND RECORDS.

The planning commission shall adopt rules for the transaction of business and shall keep a record of its transactions, which shall be a public record. (Ord. of 12-9-75, §17-8)

State Law Reference--Similar provisions, Code of Virginia, §15.1-442.

SECTION 19-24. PHYSICAL FACILITIES; APPROPRIATION OF FUNDS FOR EXPENSES.

The council may provide the planning commission with facilities for the holding of meetings and the preservation of plans, maps, documents and accounts, and may appropriate funds needed to defray the expenses of the commission. (Ord. of 12-9-75, §17-6)

State Law Reference--Similar provisions, Code of Virginia, §15.1-441.

SECTION 19-25. AUTHORITY TO CREATE AND FILL OFFICES, APPOINT STAFF AND CONTRACT WITH CONSULTANTS.

If authorized by the city council, the planning commission may create and fill such offices as it deems necessary, appoint such employees and staff as it deems necessary for its work and contract with consultants for such services as it requires. (Ord. of 12-9-75, §17-9)

State Law Reference--Similar provisions, Code of Virginia, §15.1-442.

SECTION 19-26. RECOMMENDATIONS OF PROGRAMS FOR PUBLIC STRUCTURES AND IMPROVEMENTS.

The planning commission may recommend, from time to time, to the appropriate public officials, programs for public structures and improvements and for the financing thereof. (Ord. of 12-9-75, §17-12)

SECTION 19-27. ASSISTANCE FROM OTHER CITY AGENCIES.

Upon request of the planning commission, the city council or other public officials may, from time to time, for the purpose of special surveys under the direction of the commission, assign or detail to it any members of the staffs of the city administrative departments, or the council or other public officials may direct any such department employee to make for the planning commission special surveys or studies requested by the commission. (Ord. of 12-9-75, §17-13)

State Law Reference--Similar provisions, Code of Virginia, §15.1-442.

SECTION 19-28. LIMITATION ON EXPENDITURES.

Notwithstanding §19-25, the expenditures of the planning commission, exclusive of gifts or grants, shall be within the amounts appropriated for such purposes by the city council. (Ord. of 12-9-75, §17-10; Ord. No. 040-95, 9-12-95)

State Law Reference--Similar provisions, Code of Virginia, §15.1-442.

SECTIONS 19-29 - 19-40. RESERVED.

ARTICLE III. COMPREHENSIVE PLAN

SECTION 19-41. PREPARATION AND RECOMMENDATION TO COUNCIL.

The planning commission shall prepare and recommend to the city council a comprehensive plan for the physical development of the City, in accordance with Title 15.1, Chapter 11, Article 4, Code of Virginia. (Ord. of 12-9-75, §17-15)

State Law Reference--Similar provisions, Code of Virginia, §15.1-446.1.

SECTION 19-42. ADOPTING ORDINANCE NOT AFFECTED BY CODE.

Nothing in this Code or the ordinance adopting this Code shall affect any ordinance approving or adopting a comprehensive or master plan and all such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this Code.

SECTION 19-43. LEGAL STATUS AFTER APPROVAL AND ADOPTION.

(a) Whenever the planning commission shall have recommended a comprehensive plan or part thereof for the City, and such plan shall have been approved and adopted by the city council, it shall control the general or approximate location, character and extent of each feature shown on the plan. Thereafter, unless such feature is already shown on the adopted plan or part thereof, or is deemed so under subsection (d) of this section, no street or connection to an existing street, park or other public area, public building or public structure, public utility facility or public service corporation facility other than a railroad facility, whether publicly or privately owned, shall be constructed, established or authorized, unless and until the general location or approximate location, character and extent thereof has been submitted to and approved by the planning commission as being substantially in accord with the adopted comprehensive plan or part thereof. In connection with any such determination, the commission may, and at the direction of the city council shall, hold a public hearing after notice as required by Section 15.1-431 of the Code of Virginia.

(b) The planning commission shall communicate its finding to the city council, indicating its approval or disapproval with written reasons therefor. The city council may overrule the action of the commission by a vote of a majority of the membership thereof. Failure of the commission to act within sixty (60) days of such submission, unless such time shall be extended by the city council, shall be deemed approval. The owner or owners or their agents may appeal the decision of the commission to the city council within ten (10) days after the decision of the commission. The appeal shall be by written petition to the city council setting forth the reasons for the appeal. An appeal shall be heard and determined within sixty (60) days from its filing. A majority vote of the city council shall overrule the commission.

(c) Widening, narrowing, extension, enlargement, vacation or change of use of streets or public areas shall likewise be submitted for approval, but paving, repair, reconstruction, improvement, drainage or similar work and normal service extensions of public utilities or public service corporations shall not require approval, unless involving a change in location or extent of a street or public area.

(d) Any public area, facility or use as set forth in subsection (a) above, which is identified within, but not the entire subject of, a submission under either §15.1-475 of the Code of Virginia, for subdivision or §15.1-491(h) of the Code of Virginia, for development, or both, may be deemed a feature already shown on the adopted comprehensive plan, and, therefore, excepted from the requirement for submittal to and approval by the planning commission or the city council; provided, that the council has, by ordinance or resolution, defined standards governing the construction, establishment or authorization of such public area, facility or use or has approved it through acceptance of a proffer made pursuant to §15.1-491(a) of the Code of Virginia. (Ord. of 12-9-75, §17-16)(Ord. No. 040-95, 9-12-95)

State Law References--Comprehensive plans, Code of Virginia, §15.1-446.1, *et seq*.; Similar provisions, Code of Virginia, §15.1-456.

CHAPTER 20

POLICE

Art. I. In General, §§20-1--20-15
Art. II. Police Department, §§20-16--20-29
Art. III. Concealed Handgun Permits, §§20-30--20-31

ARTICLE I. IN GENERAL

SECTION 20-1. POLICE POWERS OF HEALTH DIRECTOR; OBSTRUCTING.

The health director is hereby vested with police authority in the performance of his duties. It shall be unlawful for any person to obstruct or attempt to obstruct the health director in the discharge of his official duties. (Code 1959, §11-1)

State Law References--Local health departments and directors, Code of Virginia, §§32.1-30 to 32.1-34.

SECTION 20-2. DEFINITIONS.

(a) "Officers", when used in this chapter, shall mean duly authorized officers and deputies of the City of Winchester police force.

(b) "Members", when used in this chapter, shall mean employees of the City of Winchester police force who are not officers. Members shall include secretaries, administrative staff and other non-officers. (Ord. No. 049-95, 10-17-95)

SECTION 20-3. OFF-DUTY ASSIGNMENT OF LAW ENFORCEMENT OFFICERS.

Law enforcement officers of the city and deputy sheriffs, with the permission of the chief of police or the city sheriff, may be assigned to off-duty employment which may require the use of police powers in the performance of such employment. The chief of police and the city sheriff are authorized to promulgate reasonable rules and regulations applicable to such off-duty employment. (Ord. No. 046-2006, 12-12-06)

State Law Reference –Employment of off-duty officers, Code of Virginia, §15.2-1712.

SECTION 20-4. VOLUNTEER DISABLED PARKING UNITS.

(a) The Police Department shall establish and supervise volunteer disabled parking enforcement units.

(b) Such volunteer disabled parking enforcement units shall have the power to enforce violations of Section 46.2-1242 of the Code of Virginia, 1950, as amended.

(c) Excluding Section 46.2-1242 of the Code of Virginia, 1950, as amended, volunteers acting pursuant to this section shall not have the power or duty to enforce any other traffic or criminal laws of the state or the City of Winchester, Virginia.

(d) No volunteer acting pursuant to this section shall carry a firearm or other weapon during the course of his or her volunteer enforcement duties.

(Ord. No. 045-2006, 12-12-06)

State Law Reference – Virginia Code §§46.2-1242, 46.2-1244

SECTIONS 20-5 - 20-15. RESERVED.

ARTICLE II. POLICE DEPARTMENT

SECTION 20-16. GENERAL POWERS AND DUTIES OF CITY MANAGER RELATIVE TO DEPARTMENT; LIMITATION ON COUNCIL ACTION ON DEPARTMENT MATTERS.

(a) The city manager shall have supervision, general charge and management of the police department.

(b) The city manager shall be solely responsible to the city council for the proper training, discipline and administration of the police department and for the enforcement of the ordinances of the City. The council shall deal with police department matters solely through the city manager and then only when acting as a body in a regular or special meeting. (Ord. of 3-9-76, §§18-1, 18-2)

Cross references-- Members of police department recognized as part of official safety program, §2-7; Police powers of fire marshal, §10-33; intimidating or impeding

law-enforcement officer in discharge of his duty, §16-1; automatic telephone calls or alarms to police department, §16-2; police radio receivers prohibited in taxicabs, §31-23.

State Law References--Police and public order in cities, Code of Virginia, §15.1-137 *et seq.*

SECTION 20-17. APPOINTMENT AND REMOVAL OF CHIEF.

(a) The city manager shall appoint a chief of police. Such appointment to be for an indefinite period, subject to removal at any time by the city manager upon written notice, by the manager, of charges of misconduct, inefficiency or failure to carry out printed regulations of the department or the written orders of the city manager.

(b) Before the appointment of a chief of police shall become effective, the city manager shall announce to the city council his appointee, and the appointment shall be confirmed by a majority vote of the council in an open vote. In case of disapproval of such an appointee, the city manager shall propose further appointees until a chief of police is confirmed by a majority of the council.

(c) Upon removal of the chief of police for the reasons stated in subsection (a) above, the city manager shall report such removal, in writing, at the next meeting of the council, stating the charges on which the chief was dismissed. The chief of police may appeal the removal to the council, in writing, within fifteen (15) days of removal. The council shall appoint a special committee of three (3) members, who may or may not be councilmen, for investigation of the charges and report to the council. If the committee, by a majority report, finds upon investigation that the charges for dismissal are proved, the action of the city manager shall be final and so reported to the council. If the committee cannot find substantiation for the charges, it will so report to the council, and the council may, by a majority vote, direct the city manager to reinstate the chief. Failing such a majority vote, the dismissal by the city manager shall be final. (Ord. of 3-9-76, §18-3)(Ord. No.049-95, 10-17-95)

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SECTION 20-18. GENERAL POWERS AND DUTIES OF CHIEF.

The chief of police shall be responsible to the city manager for carrying out the printed regulations of the police department and the written orders of the city manager and for the enforcement of the ordinances of the City. (Ord. of 3-9-76, §18-4)

State Law Reference--General powers and duties of local police force, Code of Virginia, §15.1-138.

SECTION 20-19 APPOINTMENT, SUSPENSION, AND DISMISSAL OF OFFICERS AND MEMBERS.

(a) The city manager, on the recommendation of the chief of police and the personnel director, shall appoint for an indefinite period such number of officers and members of the police department as the city council may prescribe. Such officers and members shall be selected and promoted, however, on a merit basis of qualifications to be prescribed in the regulations referred to in §20-22.

(b) The chief of police shall have the power to suspend or dismiss any officer of the department on written notice of charges of misconduct or inefficiency or for the failure or refusal to obey the printed regulations or written orders of the chief, or where, the member, by his conduct, in the opinion of the chief of police, interferes with the proper operation of the police department. Members shall be included in the City's Personnel Management System and subject to the grievance procedures contained therein.

(c) Before any dismissal, demotion, suspension without pay or transfer for punitive reasons may be imposed on any officer, the following must be complied with:

1. The officer shall be notified in writing of all charges, the basis therefor, and the action which may be taken;

2. The officer may, within five (5) calendar days after the date of the written notice provided for above, to respond orally and in writing to the charges.

3. In making his response, the officer may be assisted by counsel at his own expense; and

4. The law enforcement officer shall be given written notification of his right to initiate a grievance under the grievance procedure established by the City of Winchester. A copy of the City of Winchester's grievance procedure shall be provided to the law enforcement officer upon his request. An officer may proceed under either the City of Winchester's grievance procedure or under this chapter, but not both.

(d) 1. Whenever an officer is dismissed, demoted, suspended or transferred for punitive reasons, he may, within five (5) calendar days following such action request a hearing. If such request is timely made, a hearing shall be held within a reasonable amount of time set by the City; provided, however, that the hearing shall be set no later than fourteen (14) calendar days following the date of request unless a later date is agreed to by the officer or member. A record shall be made of the hearing.

2. The hearing shall be conducted by a panel, such panel to consist of one employee from within the City selected by the grievant, one employee from within the City of equal rank of the grievant but no more than two ranks above appointed by the city manager, and a third employee from within the City to be selected by the other two employees. In the event that such two employees cannot agree upon their selection, the chief judge of the judicial circuit wherein the duty station of the grievant lies shall choose such third member. (Ord. No. 049-95, 10-17-95)

SECTION 20-19.1. IMMEDIATE SUSPENSION.

Nothing in this chapter shall prevent the immediate suspension without pay of any officer or whose continued presence on the job is deemed to be a substantial and immediate threat to the welfare of the City or the public, nor shall anything in this chapter prevent the suspension of any officer for refusing to obey a direct order issued in conformance with the City's written and disseminated rules and regulations. In such a case, the officer shall, upon request, be afforded the rights provided for under this chapter within a reasonable amount of time set by the City. (Ord. No.049-95, 10-17-95)

SECTION 20-19.2. OUTCOME OF HEARING.

The recommendations of the panel, and the reasons therefor, shall be in writing, shall be transmitted promptly to the officer or his attorney, and to the chief of police. Such recommendations shall be advisory only, but shall be accorded significant weight. (Ord. No. 049-95, 10-17-95)

SECTION 20-19.3. INFORMAL COUNSELING NOT PROHIBITED.

Nothing in this chapter shall be construed to prohibit the informal counseling of an officer or member by a supervisor in reference to a minor infraction of policy or procedure which does not result in disciplinary action being taken against the officer. (Ord. No. 049-95, 10-17-95)

SECTION 20-20. AUXILIARY POLICE OFFICERS.

The chief of police is hereby authorized to appoint auxiliary police officers as he deems necessary, not to exceed the number of regularly sworn officers of the force. The chief of police, with the approval of the city manager, shall establish rules and regulations concerning the operation of the auxiliary police officers; their uniforms, arms, other equipment and training. (Ord. of 3-9-76, §18-5; Ord. No. 026-81, 10-13-81)

SECTION 20-21. PERSONNEL RECORDS.

All records of applications, examinations and qualifications of the officers and members of the police department, their appointments, ratings, suspensions, dismissals and the approvals or disapprovals thereof, shall be in writing and filed under the name of the officer or member with the records of the police department. (Ord. of 3-9-76, §18-7)

SECTION 20-22. DEPARTMENTAL ORDERS OF CITY MANAGER THROUGH CHIEF.

All orders and instructions issued by the city manager concerning the police department shall be issued through the chief of police. (Ord. of 3-9-76, §18-6)

SECTION 20-23. DEPARTMENTAL RULES AND REGULATIONS.

Proper rules and regulations for the police department and amendments thereto, outlining the rights and duties of the city manager, chief of police and the members of the department, a system of election and training and a rating system, shall be drafted by the chief of police under the direction of the city manager and approved by the council committee on public safety. The assistance of an outside agency may be obtained to assist the chief of police to establish and put such rules and regulations into operation. (Ord. of 3-9-76, §18-8)

SECTION 20-24. BUDGET ESTIMATES.

The city manager shall prepare an annual budget estimate for the police department, which shall be submitted to the council committee on public safety, which committee shall review it with the city manager and recommend it as prepared or amended to the city council. (Ord. of 3-9-76, §18-9)

SECTION 20-25. REMOVAL AND DISPOSITION OF PERSONAL PROPERTY ABANDONED ON PUBLIC PROPERTY, CONFISCATED, LOST, UNCLAIMED OR OTHERWISE RECEIVED BY THE POLICE DEPARTMENT.

(a) The chief of police is authorized to provide for the removal of any tangible personal property abandoned on the streets or other public places of the City, which constitutes or is liable to constitute a menace to the safety of persons or vehicles, and shall receive and hold all unclaimed or unidentified property turned over to the police department or confiscated by the department in the course of investigations or arrests.

(b) Whenever such property has no inherent value, is or appears to be inherently dangerous, or may not lawfully be sold or used, the chief of police shall provide for it to be destroyed or to be disposed of as any other waste products of similar kind are now disposed of by the street cleaning forces of the City, or as otherwise prescribed in law.

(c) Should the property be of value and the owner can be ascertained, it shall be turned over to such owner upon the payment of all costs incurred by the chief of police incident to the removal and preservation of such property.

1. The chief of police or his designee shall make reasonable attempts to notify the rightful owner of the property and such property shall be held by the police department, awaiting a claim by the rightful owner, for at least sixty (60) days. Whenever such other property turned over to the police department remains unclaimed by the rightful owner thereof for at least sixty (60) days, the police chief or his designee shall give notice of such fact to the finder of such property at the finder's last known address. The finder shall be allowed thirty (30) days from the date of such notice from the police chief or his designee to claim such property.

2. When the chief of police or his designee has determined that the owner of such property cannot be ascertained and that the finder has not claimed, or has not indicated any intention of claiming, such property within thirty (30) days from the date of such notice, he shall dispose of such property as hereinafter provided.

(d) If such property consists of currency, coin or negotiable securities, it shall be turned over by the chief of police or his designee to the city treasurer, who shall credit the same to the general fund of the City.

(e) All firearms and weapons ordered confiscated by a court or remaining unclaimed may be used by and as property of the department of police, or may be exchanged for more suitable police weapons or supplies for use by the department of police, or sold at public auction, or may be destroyed, whichever the chief of police may

deem proper. Prior to the destruction of such firearms and other weapons, the chief shall comply with the notice provisions contained herein in subsection (i).

(f) All other weapons which cannot be legally returned to the owner or finder may be confiscated for use by the department of police in training or public education as property of the department of police.

(g) The chief of police may, as he deems proper, confiscate for city use any such unclaimed property which is utilizable for the department of police or other city department or agency for public use.

(h) Bicycles may not be claimed by the finder, but may be donated by the chief of police to a charitable organization, or disposed of as otherwise provided in this section.

(i) Other such property which remains unclaimed or not disposed of by one of the above subsections shall be sold by receiving sealed bids therefor, or by public auction, or shall be turned over to the city purchasing agent for sale by sealed bids or public auction, whichever the chief of police may deem proper. Requests for sealed bids for such property or the sale thereof at public auction shall be only after the chief shall cause to be inserted in a newspaper having a general circulation in the City of Winchester, once a week for two successive weeks, an advertisement which shall describe the property with reasonable certainty; shall specify a date, time and place of the sale; and shall notify all persons interested that, unless such property is claimed by the owner, with satisfactory proof of ownership and payment of costs incurred in its removal and preservation, before a specified day, the property will be sold.

(j) All proceeds derived from the sale of such property, after deduction of any cost of advertisement, auction fees or other costs of sale, shall be delivered to the city treasurer to be credited to the general fund of the City, if no claim for the proceeds has been made within sixty (60) days of the date of sale. Any such owner shall be entitled to apply to the City of Winchester within three (3) years from the date of the sale and, if timely application is made therefore and satisfactory proof of ownership of the property is established to the satisfaction of the chief, the net proceeds of the sale shall be paid to the owner without interest or other charge. No claim shall be made nor any suit, action or proceeding be instituted for the recovery of such proceeds after three (3) years from the date of the sale.

(k) This section shall apply to any personal property belonging to another which has been acquired by a law enforcement officer, pursuant to official 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, Code of Virginia, 1950, as amended, Section 55-210.1 *et seq*.

(Ord. of 10-14-75; Ord. No. 006-81, 3-10-81; Ord. No. 008-82, 4-13-82; Ord. No. 004-2005, 2-8-05)

SECTIONS 20-26 - 20-29. RESERVED.

ARTICLE III. CONCEALED HANDGUN PERMITS

SECTION 20-30. CONCEALED HANDGUN PERMITS.

The police department shall process applications for concealed handgun permits made by citizens of the city pursuant to Va. Code §18.2-308, and shall fully cooperate with the courts in processing and evaluating such applications. (Ord. No. 018-97, 7-8-97)

SECTION 20-31. FINGERPRINTS REQUIRED.

In order to determine the applicant's suitability for a concealed handgun permit, the applicant shall be fingerprinted. The fingerprints and descriptive information shall be forwarded through the Virginia State Police to the Federal Bureau of Investigation for a national criminal history record check. (Ord. No. 018-97, 7-8-97)

CHAPTER 21

PURCHASES

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ARTICLE I. GENERAL PROVISIONS

DIVISION 1. PURPOSE AND APPLICATION

SECTION 21-1. PURPOSE.

The purpose of this chapter is to supplement the provisions of the Virginia Public Procurement Act by enunciating the City's policies pertaining to governmental procurement from nongovernmental sources, to encourage competition among vendors and contractors, to provide for the fair and equitable treatment of all persons involved in public purchasing by the city, to maximize the purchasing value of public funds in procurement so that high quality goods and services may be obtained at the best value and to increase public confidence in procurement practices by providing safeguards for maintaining a procurement system of quality and integrity.

This chapter should be read in conjunction with the Virginia Public Procurement Act regarding contracts for the procurement of goods, services, insurance and construction entered into by the city, involving every expenditure for public purchasing, regardless of its source. In the event of conflict between the provisions of this Chapter and the Virginia Public Procurement Act, the Act shall supersede except where modified by alternative policies and procedures enumerated in this chapter as authorized by law.

(Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88; Ord. No. 2007-32, 9-11-07)

SECTION 21-2. APPLICATION.

This chapter applies to contracts for the procurement of goods, services, insurance and construction entered into by the City and every expenditure for public purchasing from non-governmental contractors irrespective of its source.

When the procurement involves the expenditure of federal assistance or contract-funds, the procurement shall be conducted in accordance with any applicable mandatory federal law and regulation which are not reflected in this chapter. Nothing in this chapter shall prevent any public agency from complying with the terms and conditions of any grant, gift, or bequest which are otherwise consistent with law. (Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88)

SECTION 21-3. EFFECTIVE DATE OF CHAPTER.

This chapter shall become effective upon adoption. The provisions of this chapter shall not apply to those contracts entered into prior to adoption hereof, which shall continue to be governed by the procurement policies and regulations of the City in effect at the time those contracts were executed, to the extent of any inconsistencies between such regulations and policies and this chapter. (Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88)

SECTION 21-4. SEVERABILITY.

If any provision of this chapter or any application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions of this chapter which can be given effect without the invalid provision, and to this end the provisions of this chapter are declared to be severable. (Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88)

SECTIONS 21-5 - 21-10. RESERVED.

DIVISION 2. DEFINITIONS

SECTION 21-11. DEFINITIONS.

(a) Construction. Building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property.

(b) Purchasing Agent. For the purposes of this chapter only, the term "purchasing agent" shall mean the person designated by the city manager to carry out the duties set out in this chapter.

(c) Cost analysis. The evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.

(d) Cost data. Factual information concerning the cash outlays for labor, material, overhead, and other cash outlays which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

(e) Employee. Any individual receiving salary or wages from the City, whether elected or not; any non-compensated individual performing-personal services for the city or any department, agency, commission, council, board or any other entity established by the executive or legislative branch of the City; and any non-compensated individual serving as an elected official of the city.

(f) Goods. All material, equipment, supplies, printing and automated data processing hardware and software.

(g) Invitation to bid. All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids. No confidential or proprietary data shall be solicited in any invitation for bids.

(h) Local bidder or offeror. A bidder or offeror having its headquarters, primary place of business, or place of operations within the City of Winchester, Virginia.

(i) Professional services. Work performed by an independent contractor within the scope of the practice of accounting, architecture, land surveying, landscape architecture, law, medicine, optometry, or professional engineering.

(j) Public body. Any legislative, executive, or judicial body, agency, office, department, authority, post, commission, committee, institution, board, or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in this chapter.

(k) Request for proposals. All documents, whether attached or incorporated by reference, utilized for soliciting proposals.

(l) Responsible bidder or offeror. A person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance, and who has been prequalified, if required.

(m) Services. Any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

(n) Sheltered workshop. A work-oriented rehabilitative facility with a controlled working environment and individual goals which utilizes work experience and related services for assisting the handicapped person to progress toward normal living and a productive vocational status.

(o) Small businesses. A United States business which is independently owned and which is not an affiliate or subsidiary of a business dominant in its field of operation.

(p) Specification. Any description of the physical or functional characteristics or of the nature of a good, service or construction item. It may include a description of any requirement for inspecting, testing, or preparing a good, service or construction item for delivery. (Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88; Ord. No. 004-92, 4-14-92; Ord. No. 049-95, 10-17-95)

State Law Reference--Code of Virginia, §11-37.

ARTICLE II. ORGANIZATION.

SECTION 21-12. ESTABLISHMENT, BOND, APPOINTMENT.

1. The purchasing agent shall be responsible for the management of procurement.

2. The purchasing agent may delegate authority to procure goods or services under this chapter to other city officials, as such delegation is deemed necessary for the effective procurement of those items. However, such designated officials shall have no authority to take any actions set forth in §§21-29, 36, 37, 48 through 51, or 55 through 62. (Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88; Ord. No. 049-95, 10-17-95)

SECTION 21-13. AUTHORITY AND DUTIES.

1. Principal Public Purchasing Official. The purchasing agent shall be responsible for the procurement of goods, services, insurance and construction in accordance with this chapter, as well as the management and disposal of goods and supplies.

2. Duties, Powers. In accordance with this chapter, and subject to the supervision of the city manager, the purchasing agent shall:

a. purchase or supervise the purchasing of all goods, services, insurance and construction needed by this accordance with this chapter;

b. exercise direct supervision over the city's central stores and general supervision over all other inventories of goods belonging to the city;

c. sell, trade or otherwise dispose of surplus goods belonging to the city;

d. establish and maintain programs for specifications development, contract administration and inspection and acceptance, in cooperation with the public agencies using the goods, services, and construction; and

e. have the authority to issue regulations and procedures consistent with this chapter, and forms for the carrying out of this chapter. (Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88; Ord. No. 049-95, 10-17-95)

SECTION 21-14. UNAUTHORIZED PURCHASES.

Except as herein provided no official, elected or appointed, or any employee shall purchase or contract for any goods, services, insurance, or construction within the purview of this chapter other than by and through the purchasing department or, as provided herein and in the regulations adopted pursuant to this chapter, the appropriate department or agency head. Any purchase order or contract made contrary to the provisions hereof shall not be approved and the city shall not be bound thereby. (Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88)

SECTIONS 21-15 - 21-20. RESERVED.

ARTICLE III. COOPERATIVE PROCUREMENT

SECTION 21-21. CONDITIONS FOR USE.

The city may participate in, sponsor, conduct or administer a cooperative procurement agreement with one or more other public bodies for the purpose of combining requirements to increase efficiency or reduce administrative expenses. Any public body which enters into a cooperative procurement agreement with the City shall comply with the policies and procedures adopted by this chapter except as otherwise provided by law. (Ord. No. 002-83, 1-11-83, Ord. No. 013-88, 3-08-88)

State Law Reference--Code of Virginia, §11-40.

SECTIONS 21-22 - 21-24. RESERVED.

ARTICLE IV. METHODS OF PROCUREMENT - BONDS

DIVISION 1. METHODS OF PROCUREMENT

SECTION 21-25. METHODS OF PROCUREMENT.

(a) All public contracts with non-governmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction shall be performed within the following guidelines:

Type	Amount	Action	Responsibility
Field Purchase Order	$1 - $4,999	No quotes needed	Department
Purchase Order	$5,000 - $14,999	3 verbal quotes	Department
Purchase Order Professional Services	$15,000 - $29,999	3 written quotes	Department
Purchase Order Goods & Non-Profess. Srvs.	$15,000 - $49,999	4 written quotes	Department
Sealed Bid Process-Goods & Non-Profess. Srvs.	$50,000	Competitive Sealed Bid or Competitive Negotiation	Submit Specs to Purchasing
Sealed Bid Process - Professional Services	$30,000	Competitive Negotiation	Submit Specs to Purchasing

(Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88; Ord. No. 049-95, 10-17-95; Ord. No. 2007-32, 9-11-07)

SECTION 21-26. COMPETITIVE SEALED BIDDING.

Procurement of contracts by means of competitive sealed bidding shall be carried out as follows:

(a) The purchasing agent shall issue a written Invitation to Bid to all potential contractors whose names are on the portion of the bidders' list maintained in the purchasing office for the type of goods or services similar in character to the goods or services being procured.

The purchasing agent shall also post the Invitation to Bid on the public bulletin board in the city hall at least 10 days prior to the last date set for the receipt of bids. The purchasing agent is further authorized to advertise the Invitation to Bid in one or more newspapers or trade or business periodicals, and to solicit bids from any other persons not on the bidders' list.

(b) The Invitation to Bid shall contain or incorporate by reference the specifications and contractual terms and conditions applicable to the procurement. Unless prequalification is utilized in the procurement, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors.

(c) Multi-Step Sealed Bidding. When it is considered impractical to initially prepare a purchase description to support an award based on price, an Invitation to Bid may be issued requesting the submission of unpriced offers to be followed by an invitation to bid limited to those bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.

(d) Bid Opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation to Bid. The amount of each bid, and such other relevant information as the purchasing agent deems appropriate, together with the name of each bidder shall be recorded; the record and each bid shall be open to public inspection except as otherwise provided by law.

(e) 1. Bid Evaluation. In determining the lowest responsible bidder the purchasing agent or designated official shall consider:

a. The ability, capacity and skill of the bidder to perform the contract or provide the service required;

b. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;

c. The character, integrity, reputation, judgment, experience, and efficiency of the bidder;

d. The quality of performance of previous contracts or services;

e. The previous and existing compliance by the bidder with laws and chapters relating to the contract or service;

f. The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;

g. The quality, availability and adaptability of the goods, or services to the particular use required;

h. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;

i. The number and scope of conditions attached to the bid.

2. The purchasing agent shall further evaluate the compliance and responsiveness of the bids to the terms of the Invitation to Bid.

(f) Bid Award. The contract shall be awarded to the lowest responsive and responsible bidder as determined under §21-26.E. When the terms and conditions of multiple bids are so provided in the invitation to bid, awards may be made to more than one bidder.

Unless canceled or rejected, a responsible bid from the lowest responsive and responsible bidder shall be accepted as submitted except that if the bid from such bidder exceeds available funds, the City may negotiate with such bidder to obtain a contract price with available funds.

If, as authorized by law, the award is not given to the lowest bidder, a full and complete statement of the reasons for awarding a contract to another bidder shall be prepared by the purchasing agent or designated official and filed with the other papers relating to the transaction and shall be reported to the city manager. (Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-11-88; Ord. No. 049-95, 10-17-95)

State Law Reference--Code of Virginia, §11-37.

SECTION 21-27. COMPETITIVE NEGOTIATION.

Procurement of contracts by competitive negotiation shall be carried out as follows:

(a) The purchasing agent shall issue a written Request for Proposal to all potential contractors whose names are on the portion of the bidders' list maintained in the

purchasing office for the type of goods or services similar in character to the goods or services being procured.

The purchasing agent shall also post the Request For Proposals on the public bulletin board in the city hall at least 10 days prior to the last date set for the receipt of bids, is further directed to publish the request for proposal in one or more of general circulation in the City of Winchester area and is authorized to solicit proposals from any other persons, not on the bidders' list.

(b) The Request For Proposal shall indicate in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the contractor.

(c) Procurement of professional services. The purchasing agent and other, appropriate officials designated by the purchasing agent shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. At the discussion stage, the purchasing agent may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of such discussions on the basis of evaluation factors published in the request for proposal and all information developed in the selection process to this point, the purchasing agent and designated officials shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the city can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should the purchasing agent and such designated officials determine in writing that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

(d) Procurement of other than professional services. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the request for proposals, including price if so stated in the request for proposal. Negotiations

shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, purchasing agent and such designated officials shall select the offeror which, in their opinion, has made the best proposal, and shall recommend to the city manager the award of the contract to that offeror. The city manager may award the contract to that offeror or may refer the matter back to the purchasing agent for another recommendation. Should the purchasing agent and such designated officials determine in writing that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror. (Ord. No. 002-83, 1-11-83; Ord. No. 049-95, 10-17-95)

State Law Reference--Code of Virginia, §11-37.

SECTION 21-28. SOLE SOURCE PROCUREMENT.

Upon a determination in writing by the purchasing agent that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The purchasing agent shall issue a written notice stating that only one price was determined to be practically available, and identifying that which is being procured, the contractor being selected, and the date on which the contract was or will be awarded. This notice shall be posted on the public bulletin board in the city hall on the day the purchasing agent awards or decides to award the contract, whichever occurs first. (Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88; Ord. No. 049-95, 10-17-95)

State Law Reference--Code of Virginia, §11-41.D.

SECTION 21-29. EMERGENCY PROCUREMENT.

If any emergency occurs during regular city business hours, the using department shall immediately notify the purchasing agent who shall either purchase the required supplies or contractual services or authorize the department to do so.

If an emergency occurs at times other than regular business hours, the using department may purchase directly the required goods or contractual services. The department, shall, however, whenever practicable, secure competitive telephone bids and order delivery to be made by the lowest responsible bidder. The department shall also, not later than the next regular city business day thereafter, submit to the purchasing agent a requisition, a tabulation of bids received, if any, a copy of the delivery record and a brief written explanation of the circumstances of the emergency.

In either case, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The purchasing agent shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. The notice shall be posted on the public bulletin board in the city hall on the day the purchasing agent awards or announces his decision to award the contract, whichever comes first, or as soon thereafter as is practicable. (Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88; Ord. No. 049-95, 10-17-95)

State Law Reference--Code of Virginia, §11-41.E.

SECTION 21-30. REPEALED.
(Ord. No. 2007-32, 9-11-07)

SECTION 21-31. PROCUREMENT OF USED GOODS.

Notwithstanding any other provision of this chapter to the contrary, a contract for the purchase of any used goods, the price of which is less than One Hundred Thousand ($100,000.00) Dollars, may be entered into without competitive sealed bidding or competitive negotiation. However, as much competition as is practicable under the circumstances shall be employed. For each such contract the purchasing agent shall determine in writing that as much competition as is practicable has been carried out. Such writing, a copy of which shall be kept in the contract file, and in the procurement file, shall contain the following information:

1. A statement listing the goods, including any specifications, being procured.

2. The need or use for such goods.

3. (a) A list of possible suppliers, if any, based on prior contracts, prior procurement of such goods, or informal contacts concerning such goods or similar goods, or a statement that other suppliers are not reasonably available.

   (b) Which, if any of such suppliers were contacted concerning the goods sought to be procured, documenting when each was contacted.

4. A statement of whether or not alternate goods were available. If such goods were available, a description of the reason the goods procured were selected.

5. The name and address of the supplier chosen.

6. The date of the contract award.

(Ord. No. 013-88, 3-08-88; Ord. No. 049-95, 10-17-95)

SECTION 21-32. EXCEPTIONS.

The following goods and services may be procured without competition:

(a) Sheltered workshops, State Penitentiary, State Contracts.

1. Purchases from persons, schools or workshops under the supervision of the Virginia Department for the Visually Handicapped or non-profit sheltered workshops or other non-profit organizations which offer transitional or supported employment services serving the handicapped.

2. Purchases from the State Penitentiary.

3. Purchases from state contracts from the state purchasing department warehouse.

(b) Attorneys, Expert Witnesses. Legal services associated with actual or potential litigation, and expert witnesses or other services associated with litigation or regulatory proceedings.

(c) Contract extension. Extension of the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.

(d) Insurance pools. Contracts for insurance if purchased through an association of which the City is a member if the association was formed and is maintained for the purpose for promoting the interest and welfare of developing close relationships with similar public bodies, provided such association has procured the insurance by use of competitive principles and provided that the purchasing agent has made a determination in advance after reasonable notice to the public in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination. Posting the writing at least ten (10) days prior to final determination on public bulletin board in city hall shall constitute reasonable notice to the public. (Ord. No. 013-88, 3-08-88; Ord. No. 049-95, 10-17-95)

State Law Reference--Code of Virginia, §11-45.

SECTION 21-33. COMPETITIVE BIDDING ON STATE AID PROJECTS.

No contract for the construction of any building or improvement of or addition to an existing building by the City or subdivision of the City for which state funds of thirty thousand dollars ($30,000) or more, either by appropriation, grant-in-aid or loan are used or are to be used for all or part of the cost of construction shall be let except after competitive sealed bidding or after competitive negotiation. The procedure for the advertising for bids or for proposals and for letting of the contract shall conform, *mutatis mutandis*, to this chapter. No person or firm shall be eligible to bid on or submit a proposal for any such contract under competitive sealed bidding or competitive negotiation procedures nor to have the same awarded to him or it who has been engaged as architect or engineer in the same project under a separate contract. (Ord. No. 036-83, 12-13-83; Ord. No. 013-88, 3-08-88; Ord. No. 049-95, 10-17-95; Ord. No. 2007-32, 9-11-07)

SECTION 21-34. CANCELLATION OR REJECTION OF BIDS. WAIVER OF INFORMALITIES.

(a) An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or proposals, may be canceled or rejected in whole or in part when the purchasing agent determines that it is in the best interest of the city to do so. The reasons therefor shall be made a part of the contract file and shall be reported to the city manager.

(b) The purchasing agent or designated official may waive informalities in bids or proposals. (1982, c. 647.) (Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88; Ord. No. 049-95, 10-17-95)

State Law Reference--Code of Virginia, §11-42.

SECTION 21-35. CONTRACT PRICING ARRANGEMENTS - MULTI-TERM CONTRACTS.

(a) Except as prohibited under the Virginia Public Procurement Act, public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other basis that is not prohibited.

(b) Except in case of emergency affecting the public health, safety or welfare, no public contract shall be awarded on the basis of cost-plus a percentage of cost. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or part as a percentage of such claims, shall not be prohibited by this section. (Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88; Ord. No. 049-95, 10-17-95)

(c) Multi-term Contracts.

1. Specified Period. Unless otherwise provided by law, a contract for goods, services or insurance may be entered into for any period of time deemed to be in the best interests of the city provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.

2. Cancellation Due to Unavailability Of Funds in Succeeding Fiscal Periods. When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled. (Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88)

State Law Reference--Code of Virginia, §11-43.

SECTION 21-36. PREQUALIFICATION.

The purchasing agent is authorized to prequalify bidders prior to the issuance of any invitation for bids, whether for goods, services, insurance or construction, by requiring prospective bidders to submit such information as he shall deem appropriate, including samples, financial reports, and references; provided, however, that opportunity to prequalify shall be given to any prospective bidder who has not been suspended or debarred under this chapter.

The purchasing agent may refuse to prequalify any prospective contractor, provided that written reasons for refusing to prequalify are made a part of the record in each case. The decision of the purchasing agent shall be final.

In considering any request for prequalification, the purchasing agent shall determine whether there is reason to believe that the bidder possesses the management, financial soundness, and history of performance which indicate apparent ability to successfully complete the plans and specifications of the invitations for bid. The purchasing agent may employ standard forms designed to elicit necessary information, or may design other forms for that purpose.

Prequalification of a bidder shall not constitute a conclusive determination that the bidder is responsible, and such bidder may be rejected as nonresponsible on the basis of subsequently discovered information.

Failure of a bidder to prequalify with respect to a given procurement shall not bar the bidder from seeking prequalification as to future procurements, or from bidding on procurements which do not require prequalification. (Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88; Ord. No. 049-95, 10-17-95)

State Law Reference--Code of Virginia, §11-46.

SECTION 21-37. DEBARMENT.

(a) After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the purchasing agent, after consulting with the city attorney, is authorized to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three years. After consultation with the city attorney the purchasing agent, if appropriate, shall suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall not be for a period exceeding one year. The causes for debarment include:

1. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

2. Conviction under state and federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a city contractor;

3. Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

4. A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered as a basis for debarment;

5. Any other cause the purchasing agent determines to be so serious and compelling as to affect responsibility as a city contractor including debarment by another governmental entity for any cause in this chapter;

6. For violation of the ethical standards set forth in this chapter.

(b) The purchasing agent shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken and inform the-debarred or suspended person involved of his rights concerning judicial or administrative review. A copy of the decision shall be mailed or otherwise furnished immediately to the debarred or suspended person.

(c) A decision to debar or suspend shall be final and conclusive, unless the debarred or suspended person within 10 days after receipt of the decision files an appeal to the city manager. (Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88; Ord. No. 049-95, 10-17-95)

State Law Reference--Code of Virginia, §11-46.1.

SECTION 21-38. TIE BIDS - PREFERENCE FOR VIRGINIA AND LOCAL PRODUCTS AND FIRMS.

Except as set forth below, in the case of a tie bid, preference shall be given to goods, services and construction produced in Virginia or provided by Virginia persons, firms or corporations, if such a choice is available; otherwise the tie shall be decided by lot.

If all bids received are for the same total amount or unit price, quality and service being equal, the contract shall be awarded to a local bidder.

In the event that there is a tie bid, the tie bidders shall be invited to resubmit written bids below the original bid, and award shall be made to the bidder with the lowest bid price. Any price quote made verbally shall be confirmed in writing in order to be eligible for consideration.

In the event that none of the foregoing provisions of this section resolve the tie, the purchasing agent may cancel the solicitation and rebid. Records shall be kept of any proceeding connected with tie bids. (Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88; Ord. No. 049-95, 10-17-95)

State Law Reference--Code of Virginia, §11-47.

SECTION 21-39. USE OF BRAND NAMES.

Unless otherwise provided in the invitation to bid, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named; it conveys the general style, type, character, and quality of the article desired, and any article which the public body in its sole discretion determines to be the equal of that

specified, considering quality, workmanship, economy of operation, suitability for the purpose intended, shall be accepted. (Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88)
State Law Reference--Code of Virginia, §11-49.

SECTION 21-40. COMMENTS CONCERNING SPECIFICATIONS.

For complex construction, goods, equipment, supplies or repair, pre-bid conferences with prospective bidders are desirable after draft specifications have been prepared. Conferences on purchasing bids may be called by the purchasing agent and attended by a department representative and, if necessary, the city attorney.

Otherwise, prospective bidders may submit comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal for consideration by the purchasing agent at least ten (10) days prior to deadline for receipt of bids, for his consideration. (Ord. No. 013-88, 3-08-88; Ord. No. 049-95, 10-17-95)

State Law Reference--Code of Virginia, §11-50.

SECTION 21-41. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED.

The City shall include in every contract of over ten thousand dollars ($10,000) the provisions of 1 and 2 herein:

1. During the performance of this contract, the contractor agrees as follows:

    a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin except where sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

    b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.

    c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

2. The contractor will include the provisions of the foregoing paragraphs a, b, and c in every subcontract or purchase order of over ten thousand dollars ($10,000), so

that the provisions will be binding upon each subcontractor or vendor. (Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88; Ord. No. 049-95, 10-17-95)

SECTION 21-41.1. PAYMENT CLAUSES TO BE INCLUDED IN CONTRACTS.

Any contract awarded by the City shall include:

1. A payment clause which obligates the contractor to take one of the two following actions within seven (7) days after receipt of amounts paid to the contractor by the state agency or local government for work performed by the subcontractor under that contract:

    a. Pay the subcontractor for the proportionate share of the total payment received from the agency attributable to the work performed by the subcontractor under that contract; or

    b. Notify the agency and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

2. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts owed by the contractor that remain unpaid after seven (7) days following receipt by the contractor of payment from the state agency or agency of local government for work performed by the subcontractor under that contract, except for amounts withheld as allowed in subdivision 1 b of this section.

3. An interest rate clause stating, "Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent (1%) per month."

    Any such contract awarded shall further require the contractor to include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

    A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section may not be construed to be an obligation of the City. A contract modification may not be made for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge. (Ord. No. 049-95, 10-17-95)

SECTION 21-41.2. PUBLIC CONSTRUCTION CONTRACT PROVISIONS BARRING DAMAGES FOR UNREASONABLE DELAYS DECLARED VOID.

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

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

1. Allows a public body to recover that portion of delay costs caused by the acts or omissions of the contractor, or its subcontractors, agents or employees;

2. Requires notice of any delay by the party claiming the delay;

3. Provides for liquidated damages for delay; or

4. Provides for arbitration or any other procedure designed to settle contract disputes.

(c) A contractor making a claim against a public body for costs or damages due to the alleged delaying of the contractor in the performance of its work under any public construction contract shall be liable to the public body and shall pay it for a percentage of all costs incurred by the public body in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage shall be equal to the percentage of the contractor's total delay claim which is determined through litigation or arbitration to be false or to have no basis in law or in fact. (Ord. No. 049-95, 10-17-95)

SECTION 21-42. PUBLIC ACCESS TO PROCUREMENT INFORMATION.

(a) Except as provided in the Virginia Public Procurement Act, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act.

(b) Cost estimates relating to a proposed procurement transaction prepared by or for the city shall not be open to public inspection.

(c) Any bidder or offeror, upon request, shall be afforded the opportunity to inspect bid and proposal records within a reasonable time after the opening of all bids but prior to award, except in the event that the City decides not to accept any of the

bids or proposals and to reopen the contract. Otherwise, bid and proposal records shall be open to public inspection only after award of the contract.

(d) Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

(e) Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act. However, the bidder, offeror or contractor must invoke the protections of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary. (Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88; Ord. No. 049-95, 10-17-95)

State Law Reference--Code of Virginia, §11-52.

SECTION 21-43. WITHDRAWAL OF BID DUE TO ERROR.

(a) A bidder for a public construction contract may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

The procedure for withdrawal of bids shall be as follows, and shall be stated in the bid advertisement:

The bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure.

(b) Procedures for the withdrawal of bids for other than construction contracts may be established by the assistant city manager.

(c) No bid may be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.

(d) If a bid is withdrawn under the authority of this section, the lowest remaining bid shall be deemed to be the low bid.

(e) No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

(f) If the purchasing agent denies the withdrawal of a bid under the provisions of this section, he shall notify the bidder in writing stating the reasons for his decision and award the contract to such bidder at the bid price, if the bidder is a responsible and responsive bidder. (Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88; Ord. No. 049-95, 10-17-95)

State Law Reference--Code of Virginia, §11-54.

SECTION 21-44. CONTRACT MODIFICATION.

A public contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than twenty-five percent of the amount of the contract or ten thousand dollars ($10,000), whichever is greater, without the advance written approval of the City Council. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer. (Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88; Ord. No. 049-95, 10-17-95)

State Law Reference--Code of Virginia, §11-55.

SECTION 21-45. RETAINAGE ON CONSTRUCTION CONTRACTS.

(a) In any public contract for construction which provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least ninety-five percent of the earned sum when payment is due, with not more than five percent being retained to assure faithful performance of the contract. All amounts withheld may be included in the final payment.

(b) Any subcontract for a public project which provides for similar progress payments shall be subject to the same limitations. (Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88)

State Law Reference--Code of Virginia, §11-56.

DIVISION 2. BONDS

SECTION 21-46. BID BONDS ON CONSTRUCTION CONTRACTS.

(a) Except in cases of emergency, all bids or proposals for construction contracts in excess of twenty-five thousand dollars ($25,000) shall be accompanied by a bid bond from a surety company selected by the bidder which is legally authorized to do business in Virginia, as a guarantee that if the contract is awarded to such bidder, the bidder will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent of the amount bid.

(b) No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for which the bond was written and the next low bid, or (ii) the face amount of the bid bond. (Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88)

SECTION 21-47. PERFORMANCE AND PAYMENT BONDS ON CONSTRUCTION CONTRACTS.

(a) Upon the award of any public construction contract exceeding twenty-five thousand dollars ($25,000) awarded to any prime contractor, such contractor shall furnish to the city the following bonds:

1. A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract.

2. A payment bond in the sum of the contract amount. Such bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in the prosecution of the work provided for in such contract, and shall be conditioned upon the prompt payment for all such material furnished or labor supplied or performed in the prosecution of the work. "Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

(b) Each of such bonds shall be executed by one or more surety companies selected by the contractor which are legally authorized to do business in Virginia.

(c) Bonds shall be made payable to the City of Winchester.

(d) Each of the bonds shall be filed with the purchasing agent.

(e) Nothing in this section shall preclude such contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts which are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract. (Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88; Ord. No. 049-95, 10-17-95)

SECTION 21-48. BONDS FOR OTHER THAN CONSTRUCTION CONTRACTS.

At the discretion of the purchasing agent, bidders may be required to submit with their bid a bid bond in an amount to be determined by the purchasing agent and specified in the Invitation to Bid or Request for Proposals, which shall be forfeited to the City as liquidated damages upon the bidder's failure to execute a contract awarded to him or upon the bidder's failure to furnish any required performance or payment bonds in connection with a contract awarded to him.

The purchasing agent may require successful bidders to furnish a performance bond and/or a payment bond at the expense of the successful bidder, the amounts to be determined and specified in the Invitation to Bid or Request for Proposal, to ensure the satisfactory completion of the work for which a contract is awarded. (Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88; Ord. No. 049-95, 10-17-95)

State Law Reference--Code of Virginia, §11-62.

SECTION 21-49. ACTIONS ON PERFORMANCE BOND.

No action against the surety on a performance bond shall be brought unless within one year after (i) completion of the contract, including the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty, if the action be for such. (Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88)

State Law Reference--Code of Virginia, §11-59.

SECTION 21-50. ACTIONS ON PAYMENT BONDS.

(a) Subject to the provisions of subsection (b) hereof, any claimant who has performed labor or furnished materials in accordance with the contract for which a payment bond has been given, and who has not been paid in full therefor before the expiration of ninety days after the day on which such claimant performed the last of such labor or furnished the last of such materials for which he claims payment, may bring an action on such payment bond to recover any amount due him for such labor or material, and may prosecute such action to final judgment

and have execution on the judgment. The obligee named in the bond need not be named a party to such action.

(b) Any claimant who has a direct contractual relationship with any subcontractor from whom the contractor has not required a subcontractor payment bond but who has no contractual relationship, express or implied, with such contractor, may bring an action on the contractor's payment bond only if he has given written notice to such contractor within 180 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Any claimant who has a direct contractual relationship with a subcontractor from whom the contractor has required a subcontractor payment bond but who has no contractual relationship, express or implied, with such contractor, may bring an action on the subcontractor's payment bond. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performance or materials furnished, shall not be subject to the time limitations stated in this subsection.

(c) Any action on a payment bond must be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials. (Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88)

State Law Reference--Code of Virginia, §11-60.

SECTION 21-51. ALTERNATIVE FORMS OF SECURITY.

(a) In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash escrow in the face amount required for the bond.

(b) If approved by the city attorney, a bidder may furnish a personal bond, property bond, or bank or savings and loan association's letter of credit on certain designated funds in the face amount required for the bid payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security preferred affords protection to the City equivalent to a corporate surety's bond. (Ord. No. 003-83, 1-11-83; Ord. No. 013-88, 3-08-88; Ord. No. 049-95, 10-17-95)

State Law Reference--Code of Virginia, §11-61.

SECTIONS 21-52 - 21-54. RESERVED.

ARTICLE V. APPEALS AND REMEDIES FOR BID PROTESTS

SECTION 21-55. INELIGIBILITY OF BIDDER, OFFEROR OR CONTRACTOR.

(a) Any bidder, offeror, or contractor refused permission to, or disqualified from, participating in public contracts shall be notified in writing. Such notice shall state the reasons for the action taken. This decision shall be final unless the bidder, offeror, or contractor appeals within thirty days of receipt of such notice by instituting legal action as provided in the Virginia Public Procurement Act.

(b) If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, statutes or regulations, the sole relief shall be restoration of eligibility. (Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88; Ord. No. 049-95, 10-17-95)

State Law Reference--Code of Virginia, §11-63.

SECTION 21-56. APPEAL OF DENIAL OF WITHDRAWAL OF BID.

(a) A decision denying withdrawal of bid under the provisions of Sec. 21-43 shall be final and conclusive unless the bidder appeals the decision within ten days after receipt of the decision by instituting legal action as provided in the Virginia Public Procurement Act.

(b) If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of Sec. 21-43, prior to appealing, shall deliver to the purchasing agent a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.

(c) If, upon appeal, it is determined that the decision refusing withdrawal of the bid was arbitrary or capricious, the sole relief shall be withdrawal of the bid. (Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88; Ord. No. 049-95, 10-17-95)

State Law Reference--Code of Virginia, §11-64.

SECTION 21-57. DETERMINATION OF NONRESPONSIBILITY.

(a) Any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder for a particular contract shall be notified in writing. Such notice shall state the basis for the determination, which shall be final unless the

bidder appeals the decision within ten days by instituting legal action as provided in the Virginia Public Procurement Act.

(b) If, upon appeal, it is determined that the decision of the purchasing agent was arbitrary or capricious, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question. If, after an award, it is determined that the decision of the purchasing agent was arbitrary or capricious, the relief shall be as set forth in Sec. 21-58(B).

(c) A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under Sec. 21-58 of this chapter.

(d) Nothing contained in this section shall be construed to require the city when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous . (Ord. No. 002-83, 1-11-83; Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88; Ord. No. 049-95, 10-17-95)

State Law Reference--Code of Virginia, §11-65.

SECTION 21-58. PROTEST OF AWARD OR DECISION TO AWARD.

(a) Any bidder or offeror may protest the award or decision to award a contract by submitting such protest in writing to the city manager no later than ten days after the award or the announcement of the decision to award, whichever occurs first. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The city manager shall issue a decision in writing within ten days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten days of the written decision by instituting legal action as provided in the Virginia Public Procurement Act.

(b) If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The purchasing agent shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the city manager may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

(c) Where the city manager determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation, Article 4, Chapter 7, Title 11 of the Code of Virginia (Ethics in Public Contractor), the city manager may enjoin the award of the contract to a particular bidder. (Ord. No. 002-83, 1-11-83; Ord. No. 013-88 , 3-08-88; Ord. No. 049-95, 10-17-95)

State Law Reference--Code of Virginia, §11-66.

SECTION 21-59. EFFECT OF APPEAL UPON CONTRACT.

Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this chapter shall not be affected by the fact that a protest or appeal has been filed. (Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88)

State Law Reference--Code of Virginia, §11-67.

SECTION 21-60. STAY OF AWARD DURING PROTEST.

An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest, no further action to award the contract will be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire. (Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88)

State Law Reference--Code of Virginia, §11-68.

SECTION 21-61. CONTRACTUAL DISPUTES.

(a) Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty days after final payment. However, written notice of the contractor's intention to file such claim must be at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

(b) A procedure for consideration of contractual claims shall be included in each contract. Such procedure, which may be incorporated into the contract by

reference, shall establish a time limit for a final decision in writing by the city manager.

(c) A contractor may not institute legal action as provided in the Virginia Public Procurement Act prior to receipt of the decision on the claim, unless the purchasing agent fails to render such decision within the time specified in the contract.

(d) The decision of the city manager shall be final and conclusive unless the contractor appeals within six months of the date of the final decision on the claim by the City mayor by instituting legal action as provided in the Virginia Public Procurement Act. (Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88; Ord. No. 049-95, 10-17-95)

State Law Reference--Code of Virginia, §11-69.

SECTION 21-62. REPEALED.
(Ord. No. 049-95, 10-17-95)

SECTIONS 21-63 - 21-64. RESERVED.

ARTICLE VI. ASSISTANCE TO SMALL AND DISADVANTAGED BUSINESSES

SECTION 21-65. ESTABLISHMENT OF PROGRAMS TO EXPAND PARTICIPATION.

It is the policy of the City to encourage the participation of small businesses and businesses owned by women and minorities to participate in city procurement transactions. The purchasing agent shall establish programs consistent with all provisions of this chapter to facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions. Such programs shall be in writing, and shall include cooperation with the State Office of Minority Business Enterprise, the United States Small Business Administration and other public or private agencies. (Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-13-88; Ord. No. 049-95, 10-17-95)

State Law Reference--Code of Virginia, §11-48.

SECTION 21-66. DISCRIMINATION PROHIBITED.

In the solicitation or awarding of contracts, the city shall not discriminate because of race, religion, color, sex, or national origin of the bidder or offeror. (Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88)

SECTIONS 21-67 - 21-69. RESERVED.

ARTICLE VII. ETHICS IN PUBLIC CONTRACTING

SECTION 21-70. PURPOSE.

The provisions of this article supplement, but do not supersede, other provisions of law, including, but not limited to, the Virginia Conflict of Interests Act Code of Virginia §2.1-639.1 *et seq*, the Virginia Governmental Frauds Act Code of Virginia §18.2-498.1 *et seq*. and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia. The provisions of this article apply notwithstanding the fact that the conduct described may not constitute a violation of the Virginia Conflict of Interests Act. (Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88)

State Law Reference--Code of Virginia, §11-72, 1987 Supp.

SECTION 21-71. DEFINITIONS.

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

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

"Official responsibility" shall mean administrative or operating authority, whether immediate or final, to initiate, approve, disapprove or otherwise affect a procurement transaction, or any claim resulting therefrom.

"Pecuniary interest arising from the procurement" shall mean a personal interest in a contract as-defined in the State and Local Government Conflict of Interests Act (§2.1-639.1 *et seq*.).

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

"Public employee" shall mean any person employed by a governing body, including elected officials or appointed members of governing bodies. (Ord. No. 002-83. 1-11-83; Ord. No. 013-88, 3-08-88)

State Law Reference--Code of Virginia, §11-73.

SECTION 21-72. PROSCRIBED PARTICIPATION BY PUBLIC EMPLOYEES IN PROCUREMENT TRANSACTIONS.

Except as may be specifically allowed by provisions of the Comprehensive Conflict of Interests Act (§2.1-599 *et seq*.), no public employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the governing body when the employee knows that:

1. The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction; or

2. The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent; or

3. The employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or

4. The employee, the employee's partner, or any member of the employee's immediate family is negotiating, or has an arrangement concerning, prospective employment with a bidder, offeror or contractor. (Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88)

State Law Reference--Code of Virginia, §11-74.

SECTION 21-73. SOLICITATION OR ACCEPTANCE OF GIFTS.

No public employee having official responsibility for a procurement transaction shall solicit, demand, accept, or agree to accept from a bidder, offeror, contractor or sub-contractor any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged. The city may recover the value of anything conveyed in violation of this section. (Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88)

State Law Reference--Code of Virginia, §11-75.

SECTION 21-74. DISCLOSURE OF SUBSEQUENT EMPLOYMENT.

No public employee or former public employee having official responsibility for procurement transactions shall accept employment with any bidder, offeror or contractor with whom the employee or former employee, employee dealt in an official capacity concerning procurement transactions for a period of one year from the cessation of employment by the city unless the employee, or former employee, provides written notification to the city manager prior to commencement of employment by that bidder, offeror or contractor. (Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88)

State Law Reference--Code of Virginia, §11-76.

SECTION 21-75. GIFTS BY BIDDERS, OFFERORS, CONTRACTORS OR SUBCONTRACTORS.

No bidder, offeror, contractor or subcontractor shall confer upon any public employee having official responsibility for a procurement transaction any payment, loan subscription, advance, deposit of money, services or anything of more than nominal value, present or

promised, unless consideration of substantially equal or greater value is exchanged. (Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88)

State Law Reference--Code of Virginia, §11-77.

SECTION 21-76. KICKBACKS.

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

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

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

(d) If a subcontractor or supplier makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by the city and will be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties. (Ord. No. 002-83 1-11-83; Ord. No. 013-88, 3-08-88)

State Law Reference--Code of Virginia, §11-78.

SECTION 21-77. PURCHASE OF BUILDING MATERIALS, ETC. FROM ARCHITECT OR ENGINEER PROHIBITED.

Except in cases of emergency, no building materials, supplies or equipment for any building or structure constructed by or for the city shall be sold by or purchased from any person employed as an independent contractor by the city to furnish architectural or engineering services, but not construction, for such building or structure, or from any partnership, association, or corporation in which such architect or engineer has a pecuniary interest (Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88)

State Law Reference--Code of Virginia, §11-79.

SECTION 21-78. PENALTY FOR VIOLATION.

Willful violation of any provision of this article shall constitute a Class 1 misdemeanor. Upon conviction, any public employee, in addition to any other fine or penalty provided by law; shall forfeit his employment. (Ord. No. 002-83, 1-11-83; Ord. No. 013-88, 3-08-88)

State Law Reference--Code of Virginia, §11-80

CHAPTER 22

RAILROADS

SECTION 22-1. SPEED LIMIT FOR TRAINS.

No locomotive engine, with or without cars, and no railroad train, truck or car shall be run or propelled on any railway within the City at a greater speed than twelve (12) miles per hour. (Code 1959, §16-19)

SECTION 22-2. TRAINS OBSTRUCTING STREETS.

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

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

(c) This section shall not apply when a train is stopped due to breakdown, mechanical failure or emergency. (Code 1959, §15-17)

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

SECTION 22-3. STANDING OF VEHICLES ON TRACKS.

It shall be unlawful for any person to stand any wagon or other vehicle on the track of any railroad, so as to hinder or endanger a moving train. (Code 1959, §15-17)

Cross references--Motor vehicles and traffic, Ch. 14; unlawful entry in or tampering with railroad rolling stock, §16-11.1; streets and sidewalks, Ch. 26.

State Law Reference--Railroad corporations, Code of Virginia, §56-345 *et seq.*; Similar provisions, Code of Virginia, §56-412.1

CHAPTER 23

SMOKING PROHIBITED IN CERTAIN PUBLIC AREAS

SECTION 23-1. STATEMENT OF INTENT.

Because smoking of tobacco, or any other weed or plant, is a positive danger to the health of the inhabitants of the City of Winchester, and is further a material annoyance, inconvenience, discomfort, and a health hazard to those who are present in confined spaces in which smoking occurs, and in order to serve the public health, safety, and welfare, the declared purpose of this chapter is to prohibit the smoking of tobacco, or any weed or plant, in certain public places as defined herein, except in designated smoking areas. (Ord. No. 008-87, 3-10-87)

SECTION 23-2. DEFINITIONS.

For the purpose of this chapter, these words and phrases shall have the following meanings:

(a) Municipal Building - any portion of a building owned or leased by and exclusively managed and controlled by the government of the City of Winchester, or any of its component departments, offices, and agencies which is open to the public, or in which the public is invited or permitted;

(b) Smoke or Smoking - the act of smoking or carrying a lighted or smoldering cigar, cigarette, or pipe of any kind, or the lighting of a cigar, cigarette, or pipe of any kind. (Ord. No. 008-87, 3-10-87)

SECTION 23-3. PROHIBITION OF SMOKING.

It shall be unlawful for any person to smoke in any of the following facilities:

(a) Municipal Buildings.
(Ord. No. 008-87, 3-10-87)

SECTION 23-4. EXCEPTIONS.

The prohibition of this chapter shall not apply to the following:

(a) Lawfully designated smoking areas;

(b) Private offices.

(Ord. No. 008-87, 3-10-87)

State Law References--Code of Virginia, §15.1-839 (1981) granting municipal corporations power to take steps necessary or desirable to secure and promote health and safety of inhabitants and Code of Virginia, §15.1-291.4.A.

SECTION 23-5. DESIGNATED SMOKING AREA.

The person or entity in charge of any building in which smoking is prohibited may designate separate rooms or areas in which smoking is permitted, provided that:

(a) Designated smoking rooms or areas shall be reasonably separate from the rooms or areas entered by the public in the normal course of business or use of the facilities, and shall be indicated by signs(s) in the area:

(b) In designated smoking areas, existing physical barriers and/or ventilation systems shall be used when possible to minimize the toxic effect of smoke in adjacent non-smoking areas. In any event, it shall be the responsibility of the person or entity in charge of such to provide smoke-free areas for non-smokers within the building. (Ord. No. 008-87, 3-10-87)

SECTION 23-6. POSTING OF SIGNS.

(a) The person or entity in charge of any building in which smoking is prohibited shall post conspicuous signs(s) at least five inches in height which shall read as follows:

NO SMOKING
CITY ORDINANCE
PROHIBITS THE CARRYING
OF LIGHTED TOBACCO
PRODUCTS OF ANY KIND
$25.00 FINE

(b) The letters in the words "No Smoking" on the sign required by this section shall be at least one and one-half (1-1/2) inches in height. (Ord. No. 008-87, 3-10-87)

SECTION 23-7. PENALTY.

Any person violating any of this provisions of this chapter shall be subject to a fine of up to $25.00. Each day a violation of this chapter continues shall constitute a separate violation. (Ord. No. 008-87, 3-10-87)

SECTION 23-8. EFFECTIVE DATE.

The provisions of this chapter shall become effective thirty days after adoption by the Common Council. (Ord. No. 008-87, 3-10-87)

CHAPTER 24

SOLICITORS

Art. I. In General, §§24-1--24-15
Art. II. Door-to-Door Solicitors, §§24-16--24-42
Div. 1. Generally, §§24-16--24-24
Div. 2. Permit, §§24-25--24-42
Art. III. Commercial Solicitations for Charitable Organization, §§24-43--24-45

ARTICLE I. IN GENERAL

SECTION 24-1. SOLICITATION OF ALMS.

It shall be unlawful for any person to beg or solicit alms on any of the streets, sidewalks or public places in the City. This section shall not be construed to prohibit solicitations by a corporation, trust, church, association, community chest, fund or foundations organized and operated exclusively for religious, charitable, scientific, literary, community or educational purposes. Any person convicted of a violation of this section shall be guilty of a Class 3 misdemeanor. (Ord. of 10-8-74)

SECTIONS 24-2 - 24-15. RESERVED.

ARTICLE II. DOOR-TO-DOOR SOLICITORS

DIVISION 1. GENERALLY

SECTION 24-16. DEFINITION.

For the purpose of this article, a solicitor is any person who goes from house to house or from place to place in the City, selling or taking orders for, or offering to sell or take orders for, goods, wares or merchandise, or any article for future delivery, or for services to be performed presently in the future or for the making, manufacturing or repairing of any article or thing for present or future delivery and who demands, accepts or receives payment or a deposit of money in advance of final delivery. A solicitor does not include, however, solicitors or hucksters of fresh farm products produced by such solicitors or

hucksters, solicitors of newspapers or persons licensed by the Commonwealth of Virginia under Title 38.2 of the Code of Virginia, pertaining to the sale of insurance. (Code 1959, §21-4)(Ord. No. 047-95, 9-12-95)

Cross reference--License tax, §28-78.

State Law References--Authority of city to regulate or prohibit peddling, Code of Virginia, §15.1-866; Authority of city to regulate door-to-door solicitors, Code of Virginia, §15.1-37.3:1.

SECTION 24-17. FORM AND CONTENTS OF ORDERS; COPY TO BE GIVEN TO PURCHASER.

All orders taken by solicitors shall be in writing, in duplicate, stating the terms thereof and the amount paid in advance, and one copy shall be given to the purchaser. (Code 1959, §21-5)

SECTIONS 24-18 - 24-24. RESERVED.

DIVISION 2. PERMIT

SECTION 24-25. REQUIRED.

It shall be unlawful for any person to act as a solicitor within the City without first having secured a permit from the police department to do so. (Code 1959, §21-6)

SECTION 24-26. APPLICATION.

Any person desiring a permit required by this division, shall make application therefor to the police department on a form to be provided by that department, stating the name and address of the applicant, the name and address of the person, firm or corporation that he represents, and the kind of goods offered for sale, or the kind of services to be performed. (Code 1959, §21-9)

SECTION 24-27. APPLICANT'S BOND.

Each application for a solicitor's permit shall be accompanied by a bond in the penal sum of one thousand dollars ($1,000), payable to the City, with a surety company licensed in this state, or with two (2) responsible freeholders residing in the City, as security, or in lieu thereof, by a cash bond of equal amount, conditioned upon the making of the final

delivery of the goods ordered, or the performance of the services to be rendered, in accordance with the terms of such order, or failing therein, that the advance payment on such order shall be refunded. Any person aggrieved by the action of any such solicitor shall have a right of action on the bond for the recovery of money or damages, or both. In case of a cash deposit, the deposit shall be retained by the City for a period of ninety (90) days after the expiration of any such permit, unless sooner released by the city council. The bond herein required shall be filed with and kept by the city treasurer. (Code 1959, §21-10)(Ord. No. 047-95, 9-12-95)

State law reference--Code of Virginia, §15.1-906.

SECTION 24-28. FEE.

The person securing a solicitor's permit shall pay a fee of twenty dollars ($20.00) therefor to the city treasurer. (Code 1959, §21-8)(Ord. No. 047-95, 9-12-95)

Cross reference--Code of Virginia, §15.1-37.3:2, §15.1-907.

SECTION 24-29. ISSUANCE.

Upon the filing of an application and a bond and the payment of the fee, all as provided for in this division, the police department shall issue to the applicant a permit. (Code 1959, §21-11)

SECTION 24-30. TERM.

A permit issued under this division, shall be in effect for a period of one year. (Code 1959, §21-7)(Ord. No. 047-95, 9-12-95)

SECTION 24-31. TO BE CARRIED AND PRODUCED FOR INSPECTION.

Every permit issued under this division, shall be carried at all times by the holder of the permit and shall be produced for inspection upon demand of any police officer of the City or person being solicited. (Code 1959, §21-12)

SECTIONS 24-32 - 24-42. RESERVED.

ARTICLE III. COMMERCIAL SOLICITATIONS FOR CHARITABLE ORGANIZATIONS

SECTION 24-43. EXEMPTIONS FROM ARTICLE.

This article shall not apply to the public solicitation of funds by the sale of tickets, tags, contributions, advertising or otherwise, for events, activities and enterprises described in Section 24-44, by the regularly constituted and duly authorized members of bona fide nonprofit organizations, religious, charitable, fraternal, patriotic, political, civic, or philanthropic, where the entire funds or proceeds derived from such enterprise revert to and belong to such organization. (Code 1959, §21-2)(Ord. No. 047-95, 9-12-95)

SECTION 24-44. LICENSE REQUIRED.

It shall be unlawful for any person representing or pretending to represent, directly or indirectly, or using the name of, any nonprofit, charitable, philanthropic, educational, patriotic, political or labor organization, lodge or club or any other like association or society, to solicit funds for a public dance, entertainment, charity advertising scheme or similar purposes, through the sale of tickets, tags, contributions, advertising or any other method, where such person shares or receives, directly or indirectly, any part of such fund
for such solicitation and promotion, without having first procured a license to do so pursuant to the provisions of §24-25, *et seq*. (Code 1959, §21-1)

State law reference--Solicitation of charitable contributions, Code of Virginia, §57-48, *et seq*.

SECTION 24-45. MISREPRESENTATIONS IN APPLICATION FOR LICENSE.

Any misrepresentation or misstatement of a required fact in an application for a license required by Section 24-44 shall be sufficient ground for the withholding or revocation of the license and shall constitute a Class 3 misdemeanor. (Code 1959, §21-3)(Ord. No. 047-95, 9-12-95)

CHAPTER 25

SPECIAL ASSESSMENTS

Art. I. In General §§25-01--25-09
Art. II. Downtown Districts, §§25-1--25-15
Div. 1. Generally, §§25-1--25-15
Div. 2. Old Town Development Board, §§25-16--25-22
Art. III. Law Library Assessment §25-30
Art. IV. Assessment for Courthouse Construction §25-31

ARTICLE I. IN GENERAL

SECTIONS 25-01 - 25-09. RESERVED.

ARTICLE II. DOWNTOWN DISTRICTS

DIVISION 1. GENERALLY

SECTION 25-1. ASSESSMENTS FOR DOWNTOWN IMPROVEMENTS AND PROMOTION.

For the year beginning January 1, 1982 and each year thereafter while this division is in force, there are hereby levied the following special assessments on properties located within the City:

1. Primary downtown assessment district. Upon the abutting property owners on Loudoun Street between Piccadilly and Cork Streets, a tax of twenty-three cents ($0.23) for every one hundred dollars ($100.00) of assessed value thereof; and

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Editor's note--With the city's permission, provisions designated by Ord. No. 012-82, adopted July 13, 1982 as Ch. 19.3, §§19.3-1 - 19.3-3 have been redesignated as Ch. 19.5, §§19.5-1 - 19.5-3 in order to maintain Code format. In addition, at the editor's discretion, Art. I, §§19.5-01 - 19.5-09, has been added and reserved for general provisions relative to special assessments and 19.5-1 - 19.5-3 have been designated Art. II, Div. 1 in order to facilitate the inclusion of related material as Art. II, Div. 2. This chapter was renumbered to Chapter 25 as a part of 1995 City Code Recodification.

2. Secondary downtown assessment district. Upon the abutting property owners on Piccadilly Street between Cameron and Braddock Streets; on Braddock Street between Piccadilly and Cork Streets; on Cork Street between Braddock and Cameron Streets; on Cameron Street between Cork and Piccadilly Streets; on Boscawen Street between Braddock and Cameron Streets; on Rouss Avenue between Loudoun and Cameron Streets; on Wolfe Street between Braddock Street and Indian Alley; and on Indian Alley between Cork and Piccadilly Streets, a tax of thirteen cents ($0.13) for every one hundred dollars ($100.00) of assessed value thereof; provided, however, no such assessment shall be made on any property whose use is exclusively residential. (Ord. No. 0-16-81 , 8-11-81; Ord. No. 012-82, 7-13-82; Ord. No. 017-91, 4-23-91).

SECTION 25-2. PURPOSE.

The above assessments shall be for the following purposes in the said assessment districts:

1. Making, improving, replacing, or enlarging the walkways;

2. Construction or the use of sanitary or storm sewers, including curbs and gutters;

3. Construction or installation of canopies or other weather protective devices;

4. Installation of lighting.

5. Construction or installation of permanent amenities including, but not limited to, benches or waste receptacles;

6. Promotion.

(Ord. No. 016-81, 8-11-81; Ord. No. 012-82, 7-13-82)

SEC. 25-3. COLLECTION OF TAXES.

The tax imposed by this chapter shall be administered, enforced and collected in conformity to the provisions of the following City Code sections:

1. The tax shall be due and payable pursuant to the provisions of §27-10.

2. Penalties for failure to file any required document or to pay the tax shall be imposed by §§27-2 and 27-6.

3. Interest shall be assessed on any unpaid amounts as per §§27-3 and 27-6.

4. The provisions of §27-4 shall apply to any criminal charges or penalties.

5. Payments made by a taxpayer shall be credited in accordance with §27-5. The taxpayer making a payment towards the tax imposed by this chapter may direct that the payment be credited solely to the tax imposed by this chapter.

6. All enforcement and administrative powers of the commissioner of the revenue or the treasurer contained in this Code or the Code of Virginia shall apply to the administration, enforcement and collection of the tax imposed by this chapter. (Ord. No. 030-95, 08-08-95).

SECTIONS 25-4 - 25-15. RESERVED.

DIVISION 2. OLD TOWN DEVELOPMENT BOARD

SECTION 25-16. CREATION.

There is hereby created the Old Town Development Board. (Ord. No. 050-95, 10-17-95).

SECTION 25-17. COMPOSITION; APPOINTMENT; TERM.

The Old Town Development Board shall consist of eleven (11) members as follows: Four (4) members who own property or operate a business within the area subject to local assessment of local improvement under this chapter (3 year term). Three (3) members shall be at-large (3 year term) and shall be residents of the city. One (1) member who shall be a representative of the Business Development Committee of the Old Town Development Board and who shall own property or operate a business within the area subject to local assessment of local improvement under this chapter (3 year term). One (1) member who shall be a representative of an agency or organization affiliated with Old Town Winchester, to include merchants operating a business in Old Town Winchester (3 year term). There shall be the following members on the Old Town Development Board by reason of their status, who shall serve in such capacities during the term of their holding such office, without re-appointment, except that the County Supervisor and Councilor positions shall be appointed annually by a majority of the respective governing body:

1. One Frederick County Supervisor
2. One City Council member
3. City Manager

(Ord. No. 017-81, §2; Ord. No. 032-81, 12-8-81; Ord. No. 030-83, 9-13-83; Ord. No. 050-95, 10-17-95; Ord. No. 011-98, 5-12-98; Ord No. 004-2000, 3/14/00; Ord. No. 009-2004, 3-30-04).
Cross references--Administration, Ch. 2; Planning, Ch. 19.

Editor's Note--At the editor's discretion and pursuant to advice of the city, §19.5-17 of Ord. No. 011-98, enacted 5-12-98 has been included as §25-17.

SECTION 25-18. VACANCIES.

Vacancies on the Old Town Development Board occurring otherwise than through the expiration of a term shall be filled for the unexpired term by election by the common council. (Ord. No. 017-81, §3, 8-11-81)

SECTION 25-19. COMPENSATION.

All members of the Old Town Development Board shall serve without compensation. (Ord. No. 017-81, §4, 8-11-81)

SECTION 25-20. ORGANIZATION; OFFICERS; QUORUM.

The members of the Old Town Development Board shall, immediately after their election and qualification, meet and organize. The board shall elect a chairman, vice-chairman, and such other officers as it may deem necessary. A majority of the members of the board shall constitute a quorum. (Ord. No. 017-81, §5, 8-11-81)

SECTION 25-21. PURPOSES; POWERS AND DUTIES.

The Old Town Development Board shall be responsible to the common council for the improvement, maintenance, development, planning, and promotion of downtown Winchester, and shall control and manage such funds as are allocated to it, by the common council or any other source, for the foregoing purpose. The board may employ, on such terms and conditions as it shall determine, such persons as may be necessary to accomplish the purposes for which the board is created. (Ord. No. 017-81, §6, 8-11-81)

SECTION 25-22. REPORTS AND BUDGETS.

At least once each year at such time as may be requested by the common council, the board shall make a full report to council showing the activities of the board for the preceding year, and the state of the downtown area, and the plans of the board for the future. Each year, the board shall also submit to council a properly audited financial report showing receipts from all sources and all disbursements, and shall also submit a proposed budget for the coming year. (Ord. No. 017-81, §7, 8-11-81)

Editor's Note--At the editor's discretion and pursuant to advice of the city, §1-7 of Ord. No. 017-81, enacted Aug. 11, 1981 have been included as herein set out in §§25-16 - 25-22. Said provisions did not expressly amend the Code.

SECTIONS 25-23 - 25-29. RESERVED.

ARTICLE III. LAW LIBRARY ASSESSMENT

SECTION 25-30. LAW LIBRARY ASSESSMENT.

The law library assessment for the filing of each civil suit by any person in any of the several courts for the City shall be Three Dollars ($3.00), pursuant to the authority provided in §42.1-70 of the Code of Virginia (Supplement 1988).

In no such suit to which the City is a party shall the City be subject to the assessment herein provided, either in the filing of any suit or as costs assessed in such suit. (Ord. No. 015-81, 7-14-81; Ord. No. 032-88, 9-13-88; Ord. No. 031-93, 10-12-93)

ARTICLE IV. ASSESSMENT FOR COURTHOUSE CONSTRUCTION

SECTION 25-31. ASSESSMENT FOR COURTHOUSE CONSTRUCTION, RENOVATION OR MAINTENANCE - CRIMINAL AND TRAFFIC CASES.

There is hereby assessed, as a part of the fees taxed as costs in (i) each civil action filed in the district or circuit courts for the City of Winchester and (ii) each criminal or traffic case in the district or circuit courts for the City a sum in the amount of Three Dollars ($3.00).

The assessment shall be collected by the clerk of the court in which the action is filed, and remitted to the city treasurer. Such assessments shall be held by the treasurer for disbursements at the direction of Council solely for the purposes of the construction, renovation or maintenance of the courthouse or jail and court-related facilities, and to defray increases in the cost of heating, cooling, electricity, and ordinary maintenance of same. The total assessments in any case pursuant to this section and Section 25-30 shall not exceed Six Dollars ($6.00).

Except as limited herein, this assessment shall be in addition to any other fees prescribed by law. (Ord. No. 030-90, 8-14-90; Ord. No. 011-92, 8-11-92; Ord. No. 032-93, 10-12-93)

State Law Reference--Code of Virginia, §§14.1-133.2, effective July 1, 1990.

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CHAPTER 26

STREETS AND SIDEWALKS

Art. I. In General, §§26-1 - 26-27
Art. II. Street Excavations, §§26-28 - 26-32
Art. III. Loudoun Street Mall, §§26-33 - 26-37
Division1. Generally, §26-33
Division 2. Sidewalk Cafes, §26-34 - 26-37

ARTICLE I. IN GENERAL

SECTION 26-1. CERTAIN ORDINANCES RELATING TO STREETS NOT AFFECTED BY CODE.

Nothing in this Code or the ordinance adopting this Code shall affect any ordinance opening, relocating, closing, altering, or naming any streets or alleys, and all such ordinances are recognized as continuing in full force and effect to the same extent as if set out at length in this Code.

SECTION 26-2. VIOLATIONS OF CHAPTER.

Unless otherwise specifically provided, a violation of any provision of this chapter shall constitute a Class 4 misdemeanor.

SECTION 26-3. STREET NUMBERS FOR BUILDINGS.

(a) All principal structures upon the streets within the City shall be numbered by the Planning Director, or his or her designee, upon the centenary plan. Beginning at the axis of reference and moving therefrom, the buildings and lots upon any particular street shall be numbered beginning with the number "1" in the first block and the number "100" in the second block extending away from the point of origin, generally allowing one number for every twenty-five (25) to fifty (50) feet. A new hundred shall generally begin whenever a particular street is crossed by another street. Odd numbers shall be placed upon the west and south sides of the streets, and even numbers upon the east and north sides. Numbers assigned prior to the adoption of this ordinance may remain unchanged.

(b) The axis of reference for streets running north and south shall be Boscawen Street, Grove Street, and projections thereof. The axis of reference for streets running east and west shall be Loudoun Street from the northern Corporate Limits to Papermill Road, Papermill Road from Loudoun Street to the intersection of the B & O Railroad, and the B & O Railroad from Papermill Road to the southern

Corporate Limits. All numbers shall run north and south or east and west of the reference axis. Streets which have a change in direction from their original course shall continue to be consecutively numbered in accordance with the direction of the street at its point of origin. Point of origin shall be defined as the end located nearest the reference axis, without regard to the change of direction.

(c) The owners of all principal buildings within the City shall affix and maintain on such buildings address numbers assigned in accordance with the uniform numbering systems prescribed by this section and reflected on the official numbering system map. All Arabic numbers or alphabet letters shall be placed in a conspicuous place or places on the building, facing the street from which the building is numbered. In instances of buildings with alley access, numbers or letters shall also be placed on the building facing the alley from which access is provided. When building numbers are not readily visible from the street, auxiliary numbers shall be placed on a sign near the street and directional arrows placed at intervals as required to assure rapid approach to each building.

(d) Address numbers shall be Arabic numbers or alphabet letters. Numbers/letters shall be a minimum of four inches (102 mm) high with a minimum stroke width of 0.5 inch (12.7 mm); of a color contrasting to that of the structure on which same are affixed; and placed in a position to be plainly legible and visible from the street or road fronting the property.

(e) Whenever any principal building is erected within the City, it shall be the duty of the owner to obtain the correct number from the Planning Director, or his or her designee, and to subsequently affix the appropriate numerals in the manner provided by this section.

(f) No person shall deface, alter, or remove numbering affixed to a principal structure in accordance with this section.

(g) The owner of each building which contains more than one unit, whether the units are rented or individually owned, including individual apartments, rental rooms, offices, and any other commercial units shall permanently affix and maintain unit numbers on such building at the entrance(s) to the building. The number for each unit shall be placed over or to the side of the principal entrance giving access to the unit so identified. The size of the numbers required by this subsection shall comply with the requirements of subsection (d).

(h) In addition to requirements of subsection (g), the number identifying each unit shall be permanently affixed to the principal door giving access to the rental unit whether the door is in the interior of the building or is an exterior door. The size of the numbers required by this subsection shall be a minimum of two inches in height and shall be of a color contrasting to that of the door on which they are affixed. If the number of a unit with principal access from the exterior of the building is

attached to the exterior door of the unit, the owner need not place additional numbers for that rental unit at other entrances to the building.

(i) Violations of this section shall be subject to civil penalties established in Section 6-8 of this Code. (Code 1978, Ord. No. 006-85; Ord. No. 042-95, 9-12-95; Ord No. 008-96, 04-09-96; Ord. No. 018-98, 7-14-1998; Ord. No. 035-2003, 11-11-03; Ord. No. 022-2005, 6-14-05)

Charter references--Licensing and taxation for privilege of using streets, alleys, and other public places, §1.01; general council powers relative to streets and sidewalks, §17.

Cross references--Abandoning domestic animals on street or road, §5-7; depositing dead animal on street or sidewalk, §5-9; traffic, Ch. 14; disorderly conduct in streets, §16-6.1; planning, Ch. 19; railroads, Ch. 22; begging on city streets, §24-1; construction of water and sewer mains, §29-4; trees growing in or on streets and other public property; §30-16 *et seq*.; vehicles for hire, Ch. 31.

State Law References--General authority of city relative to streets and sidewalks, Code of Virginia, §§15.2-2001, 15.2-2015, 15.2-2024.

Building Code Reference—Virginia Uniform Statewide Building Code, 2000

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SECTION 26-4. ESTABLISHED BUILDING AND CURB LINES AND STREET AND SIDEWALK GRADES.

Upon the application of any owner of a lot fronting upon a public street within the corporate limits of the City, the council committee on streets shall define the building line and curb line and the adopted grade of the street and sidewalk opposite the lot of such applicant. Any party interested may appeal to the council from the ruling of the street committee under this section within thirty (30) days thereafter. The grade and building line and curb line as adopted shall be recorded by the city engineer in his office. (Code 1959, §20-17; Ord. of 6-14-78).

SECTION 26-5. WIDTH AND HEIGHT OF SIDEWALKS.

The council committee on streets may so regulate the width and height of the sidewalk of any public street as shall, in its judgment, be most conducive to the public convenience and interest of the city. (Code 1959, §20-16).

SECTION 26-6. IMPROVEMENTS TO EXISTING STREETS GENERALLY.

(a) The City Council, by action of the Public Works Committee, may agree with the property owners on both sides of any one or more complete blocks of an existing street for the improvement of the street by the City.

The agreement shall provide that all property owners on both sides of the street along each complete block shall pay fifty (50) percent of the cost of the improvements, plus the cost of all sidewalks and other improvements required by the Public Works Committee.

The term "block", for the purposes of this section, shall include not less than the full width of the street, the length to be determined by the city manager and the Public Works Committee.

This section shall apply only to streets used by such property owners at the time of application for ingress and egress to existing residential dwellings, or commercial or other structures located on the properties abutting the portion of the street to be improved.

(b) No street construction shall begin on an existing street unless such street is contiguous to or the extension of a street improved to city standards.

(c) The application referred to in subsection (a) above shall be filed in the office of the city manager and shall be considered by the Public Works Committee and approved or disapproved as the committee may, in its discretion, see fit.

(d) On corner lots of existing streets where the frontage has all improvements completed or contracted for, the city shall pay fifty (50) percent of the cost of street improvements when the abutting property owners have agreed in writing to pay outright to the city fifty (50) percent of the cost of construction, plus the cost of the sidewalks and other improvements, if required. (Code 1959, §§22-3, 22-11, 22-14)(Ord. No. 032-89, 11-14-89; Ord. No. 042-95, 9-12-95)

Cross references--Street and other improvements paid for by local assessment, §2-11; building permit on existing street not to be issued until applicant agrees to pay his share of cost of street improvements, §6-17; construction of water and streets, §29-4.

State Law References--Assessments for local improvements, Code of Virginia, §§15.1-239 - 15.1-249.1.

SECTION 26-7. PAVING, REPAVING, AND REPAIRING SIDEWALKS ON EXISTING STREETS.

(a) Every owner or occupier of lots or parts of lots abutting on existing streets in the city shall cause the existing sidewalks and driveway entrances to be paved, repaved, or repaired at the expense of such owner or occupier.

(b) The public works department shall notify the owners or occupiers of lots or parts of lots abutting on existing streets to pave, repave, or repair the sidewalks when required. Such notice shall be by registered or certified letter sent to such owner or occupier at his last known address or served by a member of the police department. If, after diligent inquiry, no address can be found for such owner, such letter shall be posted in a conspicuous place on the property.

(c) In the event an owner or occupier or either of them shall neglect or refuse to pave, repave, or repair the sidewalk when required pursuant to this section, the council may have such sidewalk paved, repaved, or repaired and recover the expenses therefor before the general district court or the circuit court, and in all cases where a tenant is required to pave in front of the property used in his occupation, the expenses of the paving so done shall be a good offset against so much of the rent as he shall have paid toward such paving, but no tenant shall be required to pay more for or on account of such paving than such tenant may owe at the time of the commencement of such work or as may become due to the end of his tenancy.

(d) No owner or occupier of a lot or lots in front of which paving has been laid shall be required to repave or repair such sidewalk, in whole or in part, at his own expense more often than once in five (5) years; provided, further, that the expense for such paving, repaving, and repairing shall not be in excess of the peculiar benefits resulting therefrom to such abutting land. (Code 1959, §22-21.3; Ord. of 6-14-78) .

(e) Curb ramps shall be constructed at intersections for use of handicapped persons. No ramps shall be required for curbs in place on January 1, 1975; however, ramps shall be required on all replacement of such curbs adjoining sidewalks at intersections leading to crosswalks. Such ramps shall comply with the Virginia Department of Transportation's Road and Bridge Standards. This section shall not apply where finalized plans for replacement of curbs had been advertised for bid, contracts awarded, and work commenced prior to June 30, 1975. (Ord. No. 042-95, 9-12-95)

Charter reference--Assessments for paving of sidewalks §17.

State Law Reference--Code of Virginia, §15.1-381.

SECTION 26-8. PAVING OF DRIVEWAY ENTRANCES.

(a) Whenever, in order to enter a garage, driveway, private alley or parking lot, it is necessary to cross a sidewalk curb or the shoulder on unimproved portions of a city street, such crossing shall be constructed, after first obtaining an approved driveway entrance permit, with a pavement suitable for the purpose, in accordance with the rules and regulations of the city.

(b) It shall be unlawful for any person to fail, neglect or refuse to provide such pavement after an approved permit or notice is received from the public works department. (Code 1959, §22-20; Ord. of 6-14-78)

SECTION 26-9. ALLOWING FLUID TO DRAIN ONTO STREET.

It shall be unlawful for any person to permit waste water or any fluid to drain or run into any public street of the city. (Code 1959, §22-25) .

SECTION 26-10. DEPOSIT OF INJURIOUS OR HAZARDOUS MATERIALS ON STREETS AND REMOVAL OF SAME.

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

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

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

(d) Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor (Code 1959, §15-21)(Ord. No. 042-95, 9-12-95)

Cross reference--Littering streets, §11-3.

State Law Reference--Similar Provisions, Code of Virginia, §18.2-324.

SECTION 26-11. SPILLING VEHICLE LOAD ON STREETS.

(a) All vehicles hauling ashes, coal, dirt, rock, rubbish, refuse or any other material along or over any street of the city shall be so constructed, loaded, covered, and kept in such tight and secure condition as to prevent the spilling or throwing from the wheels or any part of such vehicles any unclean or unsightly matter upon the streets.

(b) Any such matter spilled or thrown from the wheels or any part of such vehicle shall be immediately removed or cleaned from the street by the operator of the vehicle or other person responsible for such cluttering of the streets.

(c) It shall be unlawful for any person to operate or cause or permit to be operated any vehicle as is herein mentioned in any manner other than as is herein stipulated. Any person violating any provision of this section shall be guilty of a Class 1 misdemeanor.

(d) The City, in order to expedite removal of any matter spilled or thrown onto the street, may have such matter removed, and the cost of removal shall be billed to the owner of the vehicle. (Code 1959, §10-9; Ord. of 6-14-78).

SECTION 26-12. DEPOSITING MUD, ROCK, ETC. ON SIDEWALKS.

It shall be unlawful for the owner or occupant of any building or lot of land abutting on any paved sidewalk to deposit or permit the accumulation thereon of any mud, earth, rock, stones or other matter that may endanger human life or bodily safety.
(Code 1959, §22-24.1).

SECTION 26-13. OBSTRUCTING GUTTERS GENERALLY.

It shall be unlawful for any person to place a bridge or any other obstruction in or over any gutter upon any street in the city. (Code 1959, §22-23).

SECTION 26-14. DUTY OF PROPERTY OWNERS OR OCCUPANTS TO KEEP GUTTERS, STORM DRAINS, ETC., OPEN AND FREE FROM OBSTRUCTION.

Every owner and occupant of a house or lot shall, as far as such lot extends, cause the paved gutter, storm drain and other portions of the street adjoining thereto to be constantly kept open and clear from obstruction. (Code 1959, §22-22; Ord. of 6-14-78)

SECTION 26-15. DUTY OF PROPERTY OWNERS OR OCCUPANTS TO REMOVE SNOW AND ICE FROM SIDEWALKS.

(a) The tenant or occupant or, in case there shall be no tenant or occupant, the owner or any person having the care of any building or lot of land abutting on any curbed or paved sidewalk within the corporate limits of the city shall, if in the daytime, within two (2) hours after any snow or sleet has ceased to fall and, if in the nighttime, before 9:00 a.m. on the day succeeding, cause the same to be removed from such sidewalk; provided, that sleet or ice, when it cannot be removed without injury to the pavement of the sidewalk, shall be covered within the same period of time with sawdust, ashes or some other material which will render the sidewalk safe for travel.

(b) Where conditions set forth in subsection (a) above are not complied with, and the street on which the property is located has been plowed by the City's forces or agents, the chief of police or his designee shall immediately notify the tenant, owner or occupant, and such notification shall be served by a member of the police department.

(c) If the conditions set forth in subsections (a) and (b) above are not complied with within twenty four (24) hours from the time of the notification, the chief of police may cause the tenant, owner or occupant to be charged with a violation of this section.

(d) If after twenty-four (24) hours from the time of notice provided in subsection (b) the conditions set forth in subsection (a) are not complied with, the City may cause the conditions to be complied with. The cost thereof shall be charged to and collected from the owner, occupant or occupants of the property affected in any manner provided by law for the collection of state and local taxes. (Code 1959, §22-21; Ord. of 6-14-78)(Ord. No. 042-95, 9-12-95)

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

SECTION 26-16. SNOW OR ICE NOT TO BE SHOVELED OR DEPOSITED ON TRAVEL LANES OF STREETS.

It shall be unlawful for the owner, occupant or any person having the care of any building or lot abutting on any street within the city or any other person to shovel or deposit any snow, ice or sleet into the travel lanes of the public streets. (Code 1959, §22-21.1; Ord. of 6-14-78)

SECTIONS 26-17 - 26-27. RESERVED.

ARTICLE II. STREET EXCAVATIONS

SECTION 26-28. PLAN APPROVAL.

Prior to beginning any excavation work in the paved or surfaced streets of the city, every applicant therefor shall submit a plan for each excavation. All such plans must be approved by the department of public works before excavation is begun. (Code 1959, §22-26; Ord.
No. 031-81, 12-8-81)

SECTION 26-29. RESERVED.

SECTION 26-30. PROSECUTION AND SUPERVISION OF WORK; BACKFILLING AND REPLACEMENT OF SURFACE OR PAVEMENT.

(a) Excavations in the paved or surfaced streets of the city shall be made and filled in and the surface or paving replaced by the person filing an approved plan under this article, under the supervision and to the satisfaction of the city engineer; provided, that the city reserves the right, if it so elects, to replace the surface or paving removed, at the expense of the person who performed the excavation.

(b) Excavations in the public streets of the city shall be made, refilled and the surface or paving replaced without unnecessary delay. In the event of such delay, the city may refill the excavations and restore the surface or paving and charge the cost

thereof against the person filing an approved plan under this article. (Code 1959, §§2-27 - 22-29; Ord. of 6-14-78)

SECTION 26-31. BARRIERS.

Any person making an excavation pursuant to an approved plan under this article shall cause the same to be guarded by proper barriers, in compliance with all current city, state and federal safety codes, rules, ordinances and regulations. (Code 1959, §22-29; Ord. of 6-14-78)

Cross reference--Parking alongside or opposite street excavation, §14-46(11).

SECTION 26-32. COVER OR LIGHTS AT NIGHT.

Except in a situation of absolute necessity, no excavation made pursuant to an approved plan under this article shall be allowed to remain uncovered during the night. In cases where such an excavation is, from absolute necessity, left uncovered during the night, the person filing an approved plan shall place a light, by lantern or other sufficient means, over the same. In case the excavation is in the nature of a trench or ditch, lights shall be placed continuously along the line thereof. All warning devices placed in accordance with this section shall comply with all current city, state and federal safety codes, rules, ordinances and regulations. (Code 1959, §22-30; Ord. of 6-14-78)

ARTICLE III. LOUDOUN STREET MALL

DIVISION 1. GENERALLY

SECTION 26-33. SPECIAL PROVISIONS RELATING TO LOUDOUN STREET MALL.

(a) The Loudoun Street Mall shall extend one-way south, between Piccadilly Street and Boscawen Street and Boscawen Street and Cork Street, and it shall be unlawful for any person to operate, drive, ride, push, or park any vehicle thereon. The operation and use of bicycles, skateboards, scooters, and roller skates, to include in-line skates, is prohibited. This subsection shall not apply to:

1. Motor vehicles, other than tractor-trailers, having a gross weight of less than twenty-four thousand (24,000) pounds and using the Mall between the hours of 6:00 A.M. and 11:00 A.M. and 4:00 P.M. and 6:00 P.M. of

any day for commercial pickup, commercial delivery, and utility or maintenance services.

2. Passenger vehicles crossing the mall in a westerly direction between the alley on the north side of the Presbyterian Church and Winchester Parking Authority Lot No. 8 for the purpose of discharging and receiving passengers from the Presbyterian Church pre-school.

(b) The chief of police or his designee may issue a special use permit for vehicles using the Loudoun Street Mall for funerals, Sunday morning church services, weddings, other special events, construction, city maintenance and repair work.

(c) No vehicles permitted to use the Loudoun Street Mall shall be driven or operated at a speed in excess of ten (10) miles per hour, and all such vehicles shall be driven or operated one-way south, except as provided in (a)(2), above.

DIVISION 2. SIDEWALK CAFES

SECTION 26-34. PERMIT REQUIRED.

No person, firm, association, partnership, or corporation shall operate a sidewalk café on Loudoun Street Mall without benefit of a written permit issued by the City, and any such person, firm, association, partnership, or corporation who violates this Section shall be guilty of a violation of Section 15.2-2107 of the Code of Virginia, 1950, as amended, as is in effect on September 14, 1999, and punished as therein provided, said Virginia Code Section being incorporated herein by reference. As used herein, the phrase “sidewalk café” shall mean any group of tables, chairs, benches, and suitable decorative devices maintained upon the surface of Loudoun Street Mall for the purpose of selling food, refreshments, and beverages of all kinds to the general public as an extension of a restaurant licensed under the Regulations of the State Health Department and operating contiguous to the Loudoun Street Mall.

SECTION 26-35. APPLICATION FOR SIDEWALK CAFÉ PERMIT.

Any restaurant licensed under the Regulations of the State Health Department and operating contiguous to the Loudoun Street Mall may apply to the Director, Old Town Development Board, for the permit described in Section 26-34 on forms provided for the purpose. In addition to the completed form, the applicant shall also provide the following items in order to file a complete application:

1. A fee in the amount of Fifty Dollars ($50.00).
2. A Certificate of Appropriateness from the Winchester Board of Architectural Review certifying that the applicant's design for café' structures, furnishings, signage and placement of same meet the requirements enforced by that Board. The applicant must submit to the said Board a site plan indicating the location of the proposed café, a scaled sketch depicting the layout of tables, chairs, signage, etc. The area of the café must be delineated by an approved enclosure, may extend no wider than the applicant's storefront, and may not extend into the Loudoun Street Mall area from the storefront more than fifteen (15) feet, or less if necessary to maintain an emergency lane at least sixteen (16) feet wide down the center of the Mall. In addition, the site plan must show a clear pedestrian path of three (3) feet in width between the delineated enclosure and the front of the applicant's business, unless the business is licensed to serve alcoholic beverages.
3. Evidence showing that the applicant has obtained a license to operate as a restaurant from the State Health Department and the City of Winchester, and that all of the applicant's tax obligations to the City, to expressly include real or personal property tax, business license tax, and meals tax, have been satisfied and are current.
4. A signed agreement, on a form approved by the City Attorney, in which the applicant agrees to hold the City, its officers, agents, and employees, harmless from any claims for damages to person or property growing out of any activity with the applicant's activities conducted in connection with the permit herein described or caused by the operation or location of the café on the City's property. The applicant shall also provide a Certificate of Insurance, which shall be currently maintained throughout the term of the permit, indicating that the City is an additional insured on a policy of liability insurance issued to the applicant by an insurance company licensed to do business in Virginia with a single limit of not less than $500,000.00.
5. If alcoholic beverages are to be sold by the applicant, the applicant must also provide evidence that it has a valid license for same issued by the Virginia Alcoholic Beverage Control Board, and that it specifically meets that Board's requirements for "outside terraces or patio dining area". As a continuing condition of the permit herein described, the applicant must post a sign stating that "the drinking of alcoholic beverages or carrying of an open container that contains alcoholic beverages is unlawful and prohibited outside the delineated area of the Sidewalk Café".

SECTION 26-36. SAME—PERMIT TERM; CONDITIONS.

Any permit issued pursuant to this Division shall be non-transferable and shall be valid from January 1st through December 31st of each year, or for any part thereof. The application fee will remain the same regardless of the date received, and the fee will not

be refunded or pro-rated based on the date of the application. Upon expiration or revocation of any such permit, the restaurant must apply for a new permit to continue operation of a sidewalk café, and must complete all of requirements listed in Section 2-35 of this Code in order to do so.

As a condition of obtaining and keeping such a permit for the full one-year term specified above, the restaurant is deemed to have agreed to the following terms and conditions:

1. All cafes will be of such design so as to be easily removed for special events, snow removal, emergency access, or other circumstances which require that Loudoun Street Mall be cleared of all such cafes, as determined by City Council or by the Chief of Police. A directive from the Chief of Police or the City Council to clear the area of all furniture, fixtures, decorations, etc., connected with the café operation shall be promptly complied with by the restaurant without question and without unnecessary delay, and the area shall remain cleared of such material until directed otherwise by City Council or the Chief of Police.
2. The use of concrete furniture, chairs, benches, planters, or any other such items is expressly prohibited.
3. The entire area delineated for the sidewalk café must be maintained in a neat and orderly fashion, whether or not the area is actually in use. When in use, the area shall be periodically cleaned throughout the business day, and, especially, at the end of each business day. All food shall be provided by waiter or waitress service, unless self-service operations are approved as a part of the permit. Extensions or enlargements of the area delineated for the café beyond those described in the restaurant's application are expressly prohibited.
4. All furniture, fixtures, decorations, etc. connected with the operation of the café shall be periodically maintained so that they retain full function as well as present a neat, attractive appearance to patrons.
5. The café shall operate only when the restaurant to which a permit has been issued is allowed to operate. In addition, the restaurant shall be responsible to see to it that patrons of both the café and the restaurant violate no laws of the State or Ordinances of the City, to expressly include the City's Noise Ordinance, during such hours of operation. A business holding a permit shall have the right to limit access and occupancy to only bona fide paying customers, and shall have the same right to deny access or service in the café area as it enjoys in its own premises; Provided, However, that no person shall be denied access or service in a sidewalk café purely on the basis of race, religion, national origin, sex, age or physical disability.

SECTION 26-37. SAME; REVOCATION AND APPEAL.

The permit issued under this Division shall be revoked by the City Manager, by letter to the restaurant sent ordinary first-class mail or hand delivered to the address shown on the permit, upon receipt of competent evidence of the following:

1. Evidence that any of the requirements for application described in Section 26-35 of this Code are not being maintained during the term of the permit, including , but not limited to, withdrawal of the Certificate of Appropriateness or evidence that the café is being operated outside its terms; revocation or suspension of the restaurant's Health Department license or its ABC Board license (where applicable); lapse or cancellation of the restaurant's liability insurance; and failure to remain current as to all City tax obligations, especially the Meals Tax;

2. Evidence that any of the conditions of the permit as listed in Section 26-36 of this Code are being violated, especially including, but not limited to, evidence that the behavior of café patrons or other aspects of the café operation are generating violations of either State or City Code, particularly the Noise Ordinance.

The restaurant may appeal the decision of the City Manager to the City Council by noting such an appeal to the Mayor, in writing, within ten (10) calendar days, but the permit shall remain revoked while such appeal is pending. Upon receipt of the written notice that such an appeal has been lodged, the Mayor shall cause the matter to appear on the Agenda for the next scheduled meeting of the Common Council, whether regular or special, and the Council shall either affirm the City Manager's decision or restore the permit at that time. If the Council affirms the City Manager's decision, then the Council's decision may be appealed to the Circuit Court of the City of Winchester in the same way as the ordinances of Council may be appealed, but the Council's decision shall be final and irrevocable if a Petition seeking an appeal of that decision is not filed with the Clerk of the said Court within thirty (30) calendar days of the date Council acts. (Ord. No. 036-99, 12-14-99)

(NOTE: THE EFFECTIVE DATE OF THIS ORDINANCE SHALL BE JANUARY 1, 2000.

CHAPTER 27

TAXATION

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Art. XV. Public Rights-of-Way Use Fee §§27-192—27-199

ARTICLE I. GENERAL PROVISIONS

SECTION 27-1. DEFINITIONS.

The following words and phrases, when used in this chapter, shall have the following respective meanings, except where the context clearly indicates a different or contrary meaning or there is an express provision to the contrary:

(a) *COMMISSIONER*. The term Commissioner shall mean the Commissioner of the Revenue of the City of Winchester, Virginia.

(b) *TREASURER*. The term Treasurer shall mean the Treasurer of the City of Winchester, Virginia. (Ord. No. 017-92, 11-10-92)

SECTION 27-2. PENALTIES; FAILURE TO PAY, FAILURE TO FILE.

(a) Unless otherwise stated, the penalty for failure to pay any tax or installment under this chapter shall be ten percent (10%) of the tax past due or the sum of two dollars ($2.00), whichever is greater and shall be assessed on the day after the

first installment is due. Provided, however, that in no case shall the penalty exceed the amount of the tax assessable.

(b) Unless otherwise stated, the penalty for failure to file any application or return required under this chapter shall be ten percent (10%) of the tax assessable on such return or two dollars ($2.00), whichever is greater, and shall be assessed on the day after such return or application is due. Provided, however, that in no case shall the penalty exceed the amount of the tax assessable.

(c) Any penalty, when so assessed, shall become a part of the tax due.

(d) The assessment of any penalty shall not be deemed a defense to any criminal prosecution for failing to make return of taxable property as may be required by law or ordinance.

(e) Penalty for failure to file a return or to pay a tax shall not be imposed if such failure was not of the fault of the taxpayer, or was the fault of the commissioner or the treasurer. Failure to file a return or to pay a tax due to a medically determinable physical or mental impairment on the date the return or tax is due shall be presumptive proof of lack of fault on the taxpayer's part, provided the return is filed or the taxes are paid within thirty days (30) of the due date; however, this provision shall not apply if there is a committee, legal guardian or other fiduciary handling the individual's affairs. (Ord. No. 017-92, 11-10-92; Ord. No. 009-95, 03-14-95)

State Law Reference-- Code of Virginia, §58.1-3916.

SECTION 27-3. INTEREST.

Interest shall commence the first day following the day any taxes under this chapter are due to be filed or paid, at the rate of ten percent (10%) per annum. (Ord. No. 017-92, 11-10-92)

State Law Reference-- Code of Virginia, §58.1-3916.

SECTION 27-4. CRIMINAL PENALTIES.

Failure or refusal to file any return required under this chapter at the time or times required therein or for making false statements with intent to defraud in such returns shall constitute: (a) A Class 3 misdemeanor if the amount of the tax lawfully assessed in connection with the return is one thousand dollars ($1,000.00) or less, or (b) A Class 1 misdemeanor if the amount of the tax lawfully assessed in connection with the return is more than one thousand dollars ($1,000.00). (Ord. No. 017-92, 11-10-92)

State Law Reference-- Code of Virginia, §58.1-3916.1.

SECTION 27-5. MANNER OF CREDITING PAYMENT.

The may credit any payment of local assessment herein prescribed, other than the assessment for real estate taxes, to the tax levy or levies designated by the taxpayer; however, any such payment shall be first credited to penalties, interest and the principal of the longest overdue tax bill within the levy, as provided by Section 58.1-3913 of the Code of Virginia. (Ord. No. 012-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-6. FAILURE TO PAY TAX; PENALTY AND INTEREST.

(a) As to all real estate taxes and tangible personal property taxes assessed for the tax year 1976 and tax years prior thereto, any person who shall have failed to pay to the said tax before December 5th of said year shall be assessed a penalty of five percent (5%) per annum of the amount of such unpaid tax.

(b) As to all real estate taxes assessed for the tax year 1977 and tax years subsequent thereto, any person who shall fail to pay to the on or before June 5th and December 5th of each year the semiannual installment of real estate taxes becoming due on or before such dates respectively, as provided for by Sections 27-10 of this ordinance, and any person who shall fail to pay to the treasurer on or before December 5th of each year the whole of tangible personal property tax imposed by Section 27-40 and/or Section 27-50 of this ordinance for such year shall be assessed by the treasurer and shall pay, along with such tax, a penalty of ten percent (10%) per annum of the amount of such unpaid installment on tax or taxes, as the case may be.

(c) As to all real estate and/or personal property taxes remaining unpaid on April 1st of the year following the year of the levies of 1974, 1975 and 1976, there shall be added thereto interest at the rate of one percent (1%) of the unpaid amount of the tax, and there shall be an additional one percent (1%)of the unpaid amount of the tax added on the first of each succeeding month until paid.

(d) On and after July 1, 1977, real estate tax levies due without penalty on June 5, 1977 and all succeeding years through June 5, 1985, as provided by Section 27-121.1 of this ordinance which remain unpaid at June 30, 1977 and all succeeding years through June 30, 1985 shall have added thereto interest at the rate of eight percent (8%) per annum of the unpaid amount of the tax due until December 31, 1985, and thereafter at the rate of ten percent (10%) per annum of the unpaid amount of the tax until paid.

(e) On and after January 1, 1978, real estate and personal property tax levies due without penalty on December 5, 1977 and all succeeding years through December

5, 1985 which remain unpaid at January 1, 1978 and all succeeding years through December 31, 1985 shall have added thereto interest at the rate of ten percent (10%) per annum of the unpaid amount of the tax until paid.

(f) On and after July 1, 1986, real estate tax levies assessed by Sections 27-10 of this ordinance and due without penalty on June 5, 1986 shall on June 30, 1986 and each year thereafter as long as same remain unpaid have added thereto interest at the rate of ten percent (10%) per annum.

(g) On and after January 1, 1986, real estate tax levies assessed by Sections 27-10 and 27-142 of this ordinance and due without penalty on December 5, 1986 shall have on January 1, 1987 and each year thereafter as long as same remain unpaid have added thereto interest at the rate of ten percent (10%) per annum.

(h) On and after January 1, 1986, personal property and/or machinery and tools taxes respectively imposed by Section 27-40 and Section 27-50 of this ordinance and due without penalty on December 5, 1986 shall on January 1, 1987 and each year thereafter as long as same remain unpaid have added thereto interest at the rate of ten percent (10%) per annum.

(i) On and after July 1, 1987, real estate tax levies assessed and due without penalty on June 5, 1987 shall on June 30, 1987 and each year thereafter as long as the same remain unpaid have added thereto interest at the rate of ten percent (10%) per annum.

(j) On and after January 1, 1987, real estate tax levies assessed and due without penalty on December 5, 1987 shall on January 1, 1987 and each year thereafter as long as the same remain unpaid have added thereto interest at the rate of ten percent (10%) per annum.

(k) On and after January 1, 1987, personal property and/or machinery and tools taxes respectively imposed by Section 27-40 and Section 27-50 of this ordinance and due without penalty on December 5, 1987 shall on January 1, 1988 and each year thereafter as long as same remain unpaid have added thereto interest at the rate of ten percent (10%) per annum.

(l) On and after July l, 1988, real estate tax levies assessed and due without penalty on June 5, 1988 shall on June 30, 1988 and each year thereafter as long as the same remain unpaid have added thereto interest at the rate of ten percent (10%) per annum.

(m) On and after January 1, 1988, real estate tax levies assessed and due without penalty on December 5, 1988 shall on January 1, 1988 and each year thereafter as long as the same remain unpaid have added thereto interest at the rate of ten percent (10%) per annum.

(n) On and after January 1, 1988, personal property and/or machinery and tools taxes respectively imposed by Section 27-40 and Section 27-50 of this ordinance and due without penalty on December 5, 1988 shall on January 1, 1989 and each year thereafter as long as same remain unpaid have added thereto interest at the rate of ten percent (10%) per annum.

(o) On and after July 1, 1989, real estate tax levies assessed and due without penalty on June 5, 1989 shall on June 30, 1989 and each year thereafter as long as the same remain unpaid have added thereto interest at the rate of ten percent (10%) per annum.

(p) On and after January 1, 1989, real estate tax levies assessed and due without penalty on December 5, 1989 shall on January 1, 1990 and each year thereafter as long as the same remain unpaid have added thereto interest at the rate of ten percent (10%) per annum.

(q) On and after January 1, 1989, personal property and/or machinery and tools taxes respectively imposed by Sections 27-40 and 27-50 of this ordinance and due without penalty on December 5, 1989 shall on January 1, 1990 and each year thereafter as long as same remain unpaid have added thereto interest at the rate of ten percent (10%) per annum. (Ord. No. 012-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-7. POWER TO SUMMON TAXPAYERS AND OTHER PERSONS; PENALTIES.

(a) The commissioner may, for the purpose of assessing all taxes assessable by his office, summon the taxpayer or any other person to appear before him at his office, to answer, under oath, questions touching the tax liability of any and all specifically identified taxpayers. The commissioner shall not, however, summon a taxpayer or other person for the tax liability of the taxpayer which is the subject of litigation.

(b) Any person who refuses to (i) furnish to the commissioner access to books of account or other papers and records, (ii) furnish information to the commissioner relating to the assessment of taxes, (iii) answer under oath questions touching any person's tax liability, or (iv) exhibit to the commissioner any subject of taxation liable to assessment by the commissioner, shall be deemed guilty of a Class 3

misdemeanor. Each day's refusal to furnish such access or information shall constitute a separate offense. (Ord. No. 017-92, 11-10-92)

State Law References--Code of Virginia, §§58.1-3110, 58.1-3111.

SECTION 27-8. REFUNDS OF ERRONEOUSLY ASSESSED TAXES. (EFFECTIVE FEBRUARY 10, 1993)

Local taxes, including business license taxes pursuant to Chapter 28, which have been erroneously paid shall be refunded to the taxpayer. In order for a refund to be made, the commissioner must first be satisfied that he has erroneously assessed the taxpayer with a local tax.

If the commissioner is satisfied of such erroneous assessment, he shall certify same to the treasurer. Upon a determination by the treasurer that the tax has been paid, he shall refund to the taxpayer the amount erroneously paid, together with and penalties and interest paid thereon.

No refund shall be made if application therefor is made more than three years after the last day of the tax year for which the taxes were assessed.

SECTION 27-9. PAYMENT OF ADMINISTRATIVE COSTS, ETC.

(a) There is hereby imposed upon each person chargeable with delinquent taxes or other delinquent charges, fees to cover the administrative costs and reasonable attorney's or collection agency's fees actually contracted for. These fees shall be in addition to all other applicable penalties and interest and shall not exceed the maximum amount permitted under Section 58.1-3958 of the Code of Virginia, 1950, as amended.

(b) If the collection activity is to collect on a nuisance abatement lien, the fee for administrative costs shall be one hundred fifty dollars ($150.00) or twenty-five percent (25%) of the cost, whichever is less; however, in no event shall the fee be less than twenty-five dollars ($25.00).

(c) No tax assessment or tax bill shall be deemed delinquent and subject to the collection procedures prescribed herein during the pendency of any administrative appeal under Section 58.1-3980, so long as the appeal is filed within ninety (90) days of the date of the assessment, and for thirty (30) days after the date of the final determination of the appeal, provided that nothing in this paragraph shall be construed to preclude the assessment or refund, following the final determination of such appeal, of such interest as otherwise may be provided by general law as to

that portion of a tax bill that has remained unpaid or was overpaid during the pendency of such appeal and is determined in such appeal to be property due and owing.

(Ord. No. 030-2004, 8-10-04)

ARTICLE II. REAL PROPERTY TAX.

DIVISION 1. IMPOSITION OF TAX

SECTION 27-10. LAND, LOTS, AND BUILDINGS.

On all tracts of land, lots, and improvements thereon not exempt from taxation there shall be a tax of seventy-seven cents ($0.77) for every one hundred dollars ($100.00) of the assessed value thereof for general city and school purposes. All City taxes on real estate for each year shall be due and payable during the year for which the same are assessed in two approximately equal installments as follows:

- One-half on or before June fifth; and
- One-half on or before December fifth.

All taxes annually imposed on real estate shall be payable by the persons who on the first day of January in each and every year are the respective owners of record thereof. (Ord. No. 044-88, 11-15-88; Ord. No. 011-91, 4-23-91; Ord. No. 017-92, 11-10-92; Ord. No. 015-93, 05-06-93; Ord. No. 017-94, 05-10-94; Ord. No. 010-96, 05-14-96; Ord No. 006-99, 3-30-99; Ord. No. 007-2000, 04-11-00; Ord. No. 011-2001, 04-10-01; Ord. No. 012-2003, 4-22-03; Ord. No. 027-2003, 07-22-03; Ord. No. 013-2004, 4-28-04; Ord. No. 010-2005, 04-12-05; Ord. No. 10-2007, 4-24-2007; Ord. No. 2008-16, 4-8-2008; Ord. No. 2009-13, 4-21-09)

State Law References--Code of Virginia, §§58.1-3200; 58.1-3916; 15.1-160; City Charter §5.01 (1994).

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SECTION 27-11. ASSESSMENT OF NEW BUILDINGS SUBSTANTIALLY COMPLETED, ETC.; EXTENSION OF TIME FOR PAYING ASSESSMENT.

All new buildings substantially completed or fit for use and occupancy prior to November 1 of the year of completion shall be assessed when so completed or fit for use and occupancy. The commissioner shall enter in the books the fair market value of such building. No partial assessment as provided herein shall become effective until information as to the date and amount of such assessment is recorded in the office of the treasurer and made available for public inspection. The total tax on any such new building for that year shall be the sum of (i) the tax upon the assessment of the completed building, computed according to the ratio which the portion of the year such building is substantially completed or fit for use and occupancy bears to the entire year, and (ii) the tax upon the assessment of such new building as it existed on January 1 of that assessment year, computed according to the ratio which the portion of the year such building was not substantially complete or fit for use and occupancy bears to the entire year. With respect to any assessment made under this section after September 1 of any year, the penalty for nonpayment by December 5 shall be extended to February 5 of the succeeding year. (Ord. No. 017-92, 11-10-92)

State Law Reference-- Code of Virginia, §58.1-3292.

DIVISION 2. SPECIAL USE VALUATION.

SECTION 27-12. EXCEPTION: AGRICULTURAL AND HORTICULTURAL LAND.

The City finds that the preservation of real estate devoted to agricultural and horticultural uses within the City is in the public interest and, having heretofore adopted a Land Use Plan, hereby ordains that such real estate shall be taxed in accordance with the provisions of this chapter and Article 4 of Chapter 32 of Title 58.1 of the Code of Virginia. (Ord. No. 012-89, 3-14-89; Ord. No. 017-92, 11-10-92)

SECTION 27-13. APPLICATION FOR SPECIAL USE TAXATION.

(a) The owner of any real estate meeting the criteria set forth in §§58.1-3230 of the Code of Virginia, and 58.1-3233(2)(i) of the Code of Virginia, for agricultural or horticultural use may, on or before November 1 of each year, apply to the commissioner for the classification, assessment and taxation of such property for the next succeeding tax year on the basis of its use under the procedures set forth in s 58.1-3236 of the Code of Virginia. Such application shall be on forms provided by the State Department of Taxation and supplied by the commissioner,

and shall include such additional schedules, photographs and drawings as may be required by the commissioner.

(b) A separate application shall be filed for each use for which qualification is sought. Upon payment of a late filing fee of fifteen dollars ($15.00), such an application may be filed with the commissioner not more than sixty days after November 1. (Ord. No. 012-89, 3-14-89; Ord. No. 017-92, 11-10-92)

SECTION 27-14. DETERMINATION OF PROPERTY VALUE.

Promptly upon receipt of any application, the commissioner, with the assistance of the city assessor, shall determine whether the subject property meets the criteria for taxation hereunder. If the commissioner determines that the subject property does meet such criteria, he shall determine the value of such property for its qualifying use as well as its fair market value.

In determining whether the subject property meets the criteria for taxation hereunder, the commissioner may request an opinion from the Director of the Department of Conservation and Historic Resources or the commissioner of Agriculture and Consumer Services. Upon the refusal of the Director of the Department of Conservation and Historic Resources or the commissioner of Agricultural and Consumer Services to issue an opinion, or in the event of an unfavorable opinion which does not comport with standards set forth by the respective Director or commissioner, the party aggrieved may seek relief from any court of record wherein the real estate in question is located. If the court finds in his favor, it may issue an order which shall serve in lieu of an opinion for the purposes of this chapter. (Ord. No. 012-89, 3-14-89; Ord. No. 017-92, 11-10-92)

State Law Reference-- Code of Virginia, §58.1-3240.

SECTION 27-15. ROLL-BACK TAX.

There is hereby imposed a roll-back tax in such amount as may be determined under §58.1-3237 of the Code of Virginia, including interest at a rate of five-sixths of one percent per month or fraction thereof, upon any property of which the use changes to a non-qualifying use. (Ord. No. 012-89, 3-14-89; Ord. No. 017-92, 11-10-92)

State Law Reference-- Code of Virginia, §58.1-3237.

SECTION 27-16. PAYMENT OF ROLL-BACK TAX; MISSTATEMENTS OF FACT; PENALTY FOR DELINQUENCY.

(a) The owner of any real estate liable for roll-back taxes shall report to the commissioner on forms to be prescribed, any change in the use of such property to a non-qualifying use and shall pay the roll-back tax then due. If such owner fails

to so report and pay within sixty days following such change in use, such owner shall be liable for an additional penalty equal to ten percent of the amount of the roll-back tax, which penalty shall be collected as a part of the tax. In addition to such penalty, there is hereby imposed interest of five-sixths of one percent of the amount of the roll-back tax for each month or fraction thereof during which the failure continues.

(b) Any person making a material misstatement of fact in any application filed pursuant hereto shall be liable for all taxes, in such amounts and at such times as if such property had been assessed on the basis of fair market value as applied to other real estate in the taxing jurisdiction, together with interest and penalties thereon, and he shall be further assessed with an additional penalty of 100 percent of such unpaid taxes. (Ord. No. 012-89, 3-14-89; Ord. No. 017-92, 11-10-92)

SECTION 27-17. APPLICATION OF STATE LAW.

The provisions of Title 58.1 of the Code of Virginia, applicable to local levies and real estate assessment and taxation shall be applicable to assessments and taxation hereunder *mutatis mutandis* including, without limitation, provisions relating to tax liens and the correction of erroneous assessments. For such purposes, the roll-back taxes shall be considered to be deferred real estate taxes. (Ord. No. 012-89, 3-14-89; Ord. No. 017-92, 11-10-92)

SECTION 27-18. APPLICATION FEE; RENEWALS.

All applications under this article shall be accompanied by an application fee payable to the treasurer of thirty dollars ($30.00) or thirty cents ($.30) per acre per parcel or major part thereof for each acre sought to be classified, assessed or taxed under this chapter, whichever is greater. All such applications shall be renewed annually in accordance with the filing deadline stipulated in Section 27-13. Every sixth year from the date of the original application, such annual renewal shall be accompanied by a revalidation fee of thirty dollars or thirty cents ($.30) per acre per parcel. An annual renewal may be filed up to sixty days after the filing deadline stipulated above upon payment of a late filing fee of fifteen dollars ($15.00). (Ord. No. 012-89, 3-14-89; Ord. No. 017-92, 11-10-92)
State Law Reference-- Code of Virginia, §58.1-3234.

DIVISION 3. EXEMPTION FOR ELDERLY AND DISABLED.

SECTION 27-19. GENERAL PROVISIONS.

(a) The commissioner shall, upon application made upon the terms hereinafter provided, order exemption of tax on real property owned and occupied as the sole

dwelling house of a person or persons either (i) at least sixty-five (65) years of age as of December 31st of the year preceding the year applied for; or (ii) permanently and totally disabled as defined in §58.1-3217 of the Code of Virginia, such exemption to be granted only upon the restrictions and conditions hereinafter established.

(b) Any owner receiving a permanent or temporary disability benefit may claim an exclusion for up to five thousand and 00/100 dollars ($5000.00) for any permanent or temporary disability benefit, from whatever source, received by an owner. In addition, any owner who can prove to the satisfaction of the Commissioner by a preponderance of the evidence that they are permanently and totally disabled as defined under §58.1-3217 of the Code of Virginia may claim an exclusion of up to ten thousand and 00/100 dollars ($10,000.00) of said owner's income. (Ord. No. 2007-30, 9-11-07)

Subject to subdivision (c) of this section, the total combined income received from all sources during the preceding calendar year by: (i) owners of the dwelling who use it as their principal residence and (ii) owners' relatives who live in the dwelling, shall not exceed Fifty Thousand Dollars ($50,000.00). Six Thousand Five Hundred Dollars ($6,500.00) of income of each relative who is not the spouse of an owner living in the dwelling and who does not qualify for the exemption provided by subdivision (c) hereof is excluded from the total combined income calculation. (Ord. No. 017-2004, 4-28-04)

(c) Notwithstanding subdivision (b) of this section, if a person qualifies for an exemption or deferral under this article, and if the person can prove by clear and convincing evidence that after so qualifying the person's physical or mental health has deteriorated to the point that the only alternative to permanently residing in a hospital, nursing home, convalescent home or other facility for physical or mental care is to have a relative move in and provide care for the person, and if a relative does then move in for that purpose, then none of the relative's income shall be counted towards the income limit provided that the owner of the residence has not transferred to the relative assets in excess of Five Thousand Dollars ($5,000.00) without adequate consideration within a three-year period prior to or after the relative moves into the residence. (Ord. No. 027-93, 10-12-93)

(d) The net combined financial worth, including the present value of all equitable interests, as of December 31 of the immediately preceding calendar year, of the owners, and of the spouse of any owner, excluding the value of the dwelling, furnishings, and the land, not exceeding one acre, upon which it is situated shall not exceed the following amounts effective on the stated dates:

Effective January 1, 2006	$150,000
Effective January 1, 2007 and thereafter	$200,000

Such furnishings shall include furniture, household appliances and other items typically used in a home.

(Note: The effective date of this Ordinance shall be January 1, 2006)

(Ords. of 1-14-75, 4-13-76, 12-14-76; Ord. Nos. 017-80, 10-14-80; 011-82, 7-13-82; 004-84, 3-14-84; 003-88, 1-12-88; 018-91, 4-23-91; 044-91, 11-12-91; Ord. No. 017-92, 11-10-92; Ord. No. 046-2001, 12-11-01-effective 1-1-02; Ord. No. 017-2004, 4-28-04; Ord. No. 015-2005, 5-10-05; Ord. No. 2007-30, 9-11-07)

State Law References--Code of Virginia, §58.1-3210, §58.1-3211, §58.1-3212.

SECTION 27-20. ANNUAL APPLICATION AND AFFIDAVIT.

(a) The person claiming such exemption shall file annually with the commissioner on forms supplied by the City, an affidavit setting forth (i) the names of the related persons occupying such real estate and (ii) that the total combined net worth, including equitable interests and the combined income from all sources, of the persons specified in Section 27-19 do not exceed the limits prescribed in that section.

(b) If such person is under sixty-five years of age such form shall have attached thereto a certification by the Social Security Administration, the Department of Veterans Affairs or the Railroad Retirement Board, or if such person is not eligible for certification by any of these agencies, a sworn affidavit by two medical doctors who are either licensed to practice medicine in the Commonwealth or are military officers on active duty who practice medicine with the United States Armed Forces, to the effect that the person is permanently and totally disabled, as defined in Virginia Code §58.1-317; however, a certification pursuant to 42 U.S.C. 423 (d) by the Social Security Administration so long as the person remains eligible for such social security benefits shall be deemed to satisfy such definition in Virginia Code Ann. §58.1-3217. The affidavit of at least one of the doctors shall be based upon a physical examination of the person by such doctor. The affidavit of one of the doctors may be based upon medical information contained in the records of the Civil Service Commission which is relevant to the standards for determining permanent and total disability as defined in Code of Virginia, §58.1-3217.

(c) Such application with affidavit shall be filed no later than the first day of April of each year, except that the commissioner shall accept later filings from owners otherwise meeting the provisions of this section who are unable to file by the first day of April due to personal or family illness or other ascertainable hardships, and from owners eligible to file for the first time. Any false statements made in connection with the filing of an application under this section shall constitute a misdemeanor, punishable by a fine not exceeding one hundred dollars ($100.00). (Ord. No. 044-88, 11-15-88; Ord. No. 044-91, 11-12-91; Ord. No. 017-92, 11-10-92)

State Law Reference-- Code of Virginia, §58.1-3213.F.

SECTION 27-21. INQUIRIES BY THE COMMISSIONER.

The commissioner shall make further inquiry of persons seeking such exemption as may be reasonably necessary in determining the qualifications therefor. The commissioner may require production of certified tax returns to establish the financial worth or income of any applicant. Such further inquiries shall be answered under oath. (Ord. No. 044-88, 11-15-88; Ord. No. 044-91, 11-12-91; Ord. No. 017-92, 11-10-92)

State Law Reference--Code of Virginia, §58.1-3213.

SECTION 27-22. NOTICE OF LOCAL REAL ESTATE TAX EXEMPTION OR DEFERRAL PROGRAM FOR THE ELDERLY AND DISABLED.

The treasurer shall enclose written notice, in each real estate tax bill, of the terms and conditions of the real estate tax exemption program established in this article. The treasurer shall also employ any other reasonable means necessary to notify residents of the City about the terms and conditions of the real estate tax exemption program for elderly and disabled residents of the City. (Ord. No. 017-92, 11-10-92)

State Law Reference-- Code of Virginia, §58.1-3213.1.

SECTION 27-23. AMOUNT OF EXEMPTION.

For eligible claimants, the amount of exemption from real estate tax for any taxable year shall be as follows:

$ 0 - $25,000	100%
$25,001 - $30,000	80%
$30,001 - $35,000	60%
$35,001 - $40,000	40%
$40,001 - $50,000	20%

Beginning January 1, 2007, and thereafter, the following shall apply:

Income Level	Exemption
$ 0 - $30,000	100%
$30,001 - $35,000	75%
$35,001 - $40,000	50%
$40,001 - $50,000	25%

Proposed effective January 2008

Income Level	Exemption
$ 0 - $35,000	100%
$35,001 - $40,000	75%
$40,001 - $45,000	50%
$45,001 - $50,000	25%

Proposed effective January 2009

Income Level	Exemption
$ 0 - $40,000	100%
$40,001 - $45,000	75%
$45,001 - $50,000	50%

(Note: The effective date of this Ordinance shall be January 1, 2008)

(Ords. of 1-14-75, 4-13-76, 12-14-76; Ord. No. 018-80, 10-14-80; Ord. No. 011-82, 7-13-82; Ord. No. 004-84, 3-14-84; Ord. No. 003-88, 12-12-88; Ord. No. 018-91, 4-23-91; Ord. No. 044-91, 11-12-91; Ord. No. 017-92, 11-10-92; Ord. No. 046-2001, 12-11-01-effective 1-1-02; Ord. No. 017-2004, 4-28-04; Ord. No. 015-2005, 5-10-05; Ord. No. 2007-20, 6-26-07)

State Law Reference-- Code of Virginia, §58.1-3210.

SECTION 27-24. EXEMPTION CERTIFICATE, WARRANT OR DRAFT.

An exemption certificate, warrant or draft shall be in the amount of the exemption and mailed with the real property tax bill. The tax bill shall be in the full amount of the taxes before any exemption. The certificate, warrant or draft shall expire at 5:00 P.M. on the last day to pay such taxes without penalty. (Ord. No. 044-88, 11-15-88; Ord. No. 044-91, 11-12-91; Ord. No. 017-92, 11-10-92)

SECTION 27-25. PROCEDURES.

The commissioner shall indicate on the land books of the City of Winchester the amount of tax exempted pursuant to the provisions of this article. He shall adopt and promulgate rules and regulations not inconsistent with the provisions of this article, as deemed necessary for the effective administration of this article. (Ord. No. 044-88, 11-15-88; Ord. No. 004-91, 11-12-91; Ord. No. 017-92, 11-10-92)

SECTION 27-26. ABSENCE FROM RESIDENCE.

The fact that persons who are otherwise qualified for tax exemption by this article are residing in hospitals, nursing homes, convalescent homes or other facilities for physical or mental care for extended periods of time shall not be construed to mean that the real estate for which tax exemption is sought does not continue to be the sole dwelling of such persons during such extended periods of other residence so long as such real estate is not used by or leased to others for consideration. (Ord. No. 017-92, 11-10-92)

State Law Reference-- Code of Virginia, §58.1-3214

SECTION 27-27. CHANGE IN CIRCUMSTANCES.

(a) Changes in income, financial worth, ownership of property or other factors occurring during the taxable year for which an affidavit is filed and having the effect of exceeding or violating the limitations and conditions provided herein shall nullify any exemption for the remainder of the current taxable year and the taxable year immediately following.

(b) A change in ownership to a spouse, when such change resulted solely from the death of the qualifying individual, or a sale of such property shall result in a prorated exemption for the then current taxable year. The proceeds of the sale which would result in the prorated exemption shall not be included in the computation of net worth or income as provided in subsection (a). Such prorated portion shall be determined by multiplying the amount of the exemption or deferral by a fraction with the number of complete months of the year such property was properly eligible for such exemption or deferral as the numerator and the number twelve as the denominator. (Ord. No. 017-92, 11-10-92)

State Law Reference-- Code of Virginia, §58.1-3215.

DIVISION 4. SUBSTANTIALLY REHABILITATED PROPERTY

SECTION 27-28. DEFINITIONS.

For the purpose of this division, the following words and phrases shall have the meanings, respectively ascribed to them:

(a) SUBSTANTIALLY REHABILITATED RESIDENTIAL REAL ESTATE, shall mean any residential real estate within the Historic Winchester District (HW), as defined by Article 14 of the Zoning Ordinance of the City of Winchester, 1976, as amended, upon which there is an existing structure which is no less than twenty-five (25) years old, and which has been so improved as to increase the assessed value thereof by no less than forty percent (40%), without increasing the total square footage by more than fifteen percent (15%).

(b) SUBSTANTIALLY REHABILITATED COMMERCIAL OR INDUSTRIAL REAL ESTATE, shall mean any commercial or industrial real estate within the Historic Winchester District (HW), as defined by Article 14 of the Zoning Ordinance of the City of Winchester, 1976, as amended, upon which there is an existing structure which is no less than twenty-five (25) years old, and which has been so improved as to increase the assessed value thereof by no less than sixty percent (60%), without increasing the total square footage by more than fifteen percent (15%).

(c) AMOUNT OF EXEMPTION, shall mean an amount equal to the increase in assessed value resulting from the rehabilitation of the structure as determined by the assessing officer, and this amount only shall be applicable to assessment commencing on the first day of January of the year following the rehabilitation. An increase in assessment occurring after the first year of such rehabilitation exemption shall not result in an increase in such exemption.

(d) TAXABLE YEAR, shall mean the calendar year from January first through December thirty-first for which such real property tax is imposed or exemption claimed. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-29. EXEMPTIONS DECLARED.

The purpose of this division shall be to provide real estate tax exemptions for substantially rehabilitated residential, commercial, or industrial real estate for a period of ten (10) years, commencing on January first of the year following completion of such rehabilitation; provided, however, that no property owner may apply for exemption on the basis of a building permit issued prior to January 1, 1984. Owners of property on which such improvements were completed prior to January 1, 1984 shall not be eligible for the exemption herein prescribed, and further shall not be eligible for refund or adjustment of taxes payable prior to January 1, 1984. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

State Law Reference-- Code of Virginia, §§58.1-3220, *et seq*.

SECTION 27-30. ELIGIBILITY REQUIREMENTS.

Exemptions pursuant to this division shall not become effective unless the persons owning such property have:

(a) Obtained the required building permit and applied for the herein prescribed exemption on a form approved by the city assessor. Application for exemption must be filed before the work designated by the building permit is begun.

(b) Submitted the application for exemption prior to January first of the taxable year for which such exemption is claimed;

(c) Paid to the treasurer an application processing fee in the amount of twenty dollars ($20.00). No application for the exemption approved by this article shall be deemed to have been filed until the fee herein imposed has been paid. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

DIVISION 5. PROPERTY EXEMPT FROM TAXATION BY DESIGNATION AND CLASSIFICATION

SECTION 27-31. AUTHORIZED.

(a) Pursuant to subsection 6(a)(6) of Article X of the Constitution of Virginia and to Section 58.1-3651 of the Code of Virginia, the City by ordinance may by designation or classification exempt from real or personal property taxes, or both, the real or personal property, or both, owned by a non-profit organization that uses such property for religious, charitable, patriotic, historical, benevolent, cultural, or public park and playground purposes. The ordinance shall state the specific use on which the exemption is based, and the continuance of the exemption shall be contingent on the continued use of the property in accordance with the purpose for which the organization is classified or designated.

(b) No exemption shall be provided to any organization that has any rule, regulation, policy, or practice the unlawfully discriminates on the basis of religious conviction, race, color, sex, or national origin.

(c) The City Assessor is delegated the authority to promulgate guidelines to assist staff in the administration of this Division. The guidelines and any amendments

shall be approved by the City Manager and City Attorney and shall be submitted to Council for information. (Ord. No. 2008-36, 9-09-08)

SECTION 27-32. EXEMPTION BY DESIGNATION.

(a) **APPLICATION**.

Any organization seeking an exemption by designation pursuant to the provisions of this Division shall file an application with the City Assessor on such forms as the Assessor shall prescribe. The application shall be reviewed by the City Assessor, the Office of the Commissioner of Revenue, the Office of the Treasurer, the Office of the City Manager and the Office of the City Attorney. Each department shall review all applications and shall make a written comment where appropriate. The City Manager or his designee shall thereafter present a summarized recommendation to Council.

(b) **PUBLIC HEARING REQUIREMENT.**

An ordinance exempting property by designation pursuant to Section 27-31 shall be adopted only after holding a public hearing on the application at which citizens shall have the opportunity to be heard. The City shall publish notice of a hearing once in a newspaper of general circulation in the City of Winchester. The notice shall include the assessed value of all real and tangible personal property for which an exemption is requested, as well as the property taxes assessed against such property. The public hearing shall not be held until at least five (5) days after the notice is published in the newspaper. Prior to processing the application, the City shall collect a deposit of $350.00 to cover a portion of the cost of publication of the notice from the requesting organization. The deposit shall be returned to the requesting organization in full if the organization withdraws its request in writing prior to the submission of the notice to the newspaper for publication. Should the cost of the publication of notice exceed the deposit, the requesting organization shall pay the balance to the City. Should the cost of the notice be less than the deposit, the balance shall be remitted to the organization. The effective date of any ordinance adopted pursuant to this Section shall be governed by Section 27-37.

(c) **CRITERIA FOR EXEMPTION BY DESIGNATION.**

Before adopting any such ordinance exempting property by designation, the City Council shall consider the following questions:

1. Whether the organization is exempt from taxation pursuant to Section 501© of the Internal Revenue Code of 1954.

2. Whether a current alcoholic beverage license for serving of alcoholic beverage has been issued by the Virginia Alcoholic Beverage Control Board to such organization for use on such property;

3. Whether any director, officer, or employee of the organization is paid compensation in excess of a reasonable allowance for salaries or other compensation for personal services which such director, officer, or employee actually renders;

4. Whether any part of the net earnings of such organization inures to the benefit of any individual, and whether any significant portion of the service provided by such organization is generated by funds received from donations, contributions, or local, state or federal grants. As used in this subsection, donations shall include the providing of personal services or the contribution of in-kind or other material services;

5. Whether the organization provides services for the common good of the public;

6. Whether a substantial part of the activities of the organization involves carrying on propaganda or otherwise attempting to influence legislation and whether the organization participates in, or intervenes in, any political campaign on behalf of any candidate for public office;

7. The revenue impact to the locality and its taxpayers of exempting the property; and

8. Any other criteria, facts, and circumstances that the governing body deems pertinent in the adoption of such ordinance. (Ord. No. 2008-36, 9-09-08)

SECTION 27-33. EXEMPTION BY CLASSIFICATION.

(a) Any organization that claims exemption by classification pursuant to Article X, Section 6(a)(1) through (4) of the Virginia Constitution, or pursuant to Section 58.1-3606, or pursuant to Article 3 of chapter 36 of Title 58.1 of the Code of Virginia, or pursuant to any ordinance adopted in accordance with this section, shall submit a letter to the Assessor describing the basis of its claim. The Assessor and Commissioner of the Revenue or their designees shall review the request and jointly determine if the organization qualifies for a classification exemption.

Following a review and recommendation in accordance with Section 27-32(a), Council may by ordinance establish local classifications for common types of organizations that are not exempted directly by the self-executing provisions of Virginia Constitution Article X, Section 6(a)(1) through (4). A new classification

shall only apply to property used by its owner for religious, charitable, patriotic, historical, benevolent, cultural or public park and playground purposes.

(b) Any ordinance exempting property by classification pursuant to Section 27-31 and subsection B of this Section shall be adopted only after holding a public hearing with respect thereto, at which citizens shall have an opportunity to be heard. The City shall publish notice of the hearing once in a newspaper of general circulation in the City of Winchester. The public hearing shall not be held until at least five days after the notice of publication in the newspaper. (Ord. No. 2008-36, 9-09-08)

SECTION 27-34. EXEMPTIONS STRICTLY CONSTRUED.

All exemptions of property from taxation created under this Division shall be strictly construed in accordance with Article X, Section 6(f) of the Constitution of Virginia. (Ord. No. 2008-36, 9-09-08)

SECTION 27-35. VALIDITY OF PREVIOUSLY GRANTED EXEMPTIONS.

Nothing in Section 58.1-3651 of the Code of Virginia, or in this Division, or in any ordinance adopted pursuant to this Division, shall affect the validity of either a classification exemption or a designation exemption granted by the General Assembly, prior to January1, 2003, pursuant to Article 2 (Section 58.1-3606 et seq.), Article 3 (Section 58.1-3609, et seq.), or Article 4 (Section 58.1-3650, et seq.) of Chapter 36 of Title 58.1 of the Code of Virginia. Previously granted discretionary exemptions (Section 58.1-3650, et seq.) may be revoked in accordance with the provisions of the Code of Virginia including but not limited to Section 58.1-3605. (Ord. No. 2008-36, 9-09-08)

SECTION 27-36. TRIENNIAL REVIEW OF EXEMPTIONS.

(a) Every organization except the Commonwealth, any political subdivision of the Commonwealth or the United States which owns real and personal property in the City of Winchester previously exempt pursuant to Chapter 36 of Title 58.1 of the Code of Virginia, shall be required to file triennially an application with the City Assessor on such forms as the Assessor shall prescribe as a requirement of retention of exempt status of the property.

(b) Every organization exempt pursuant to Section 27-31 shall be required to file triennially following approval of its exemption, an application with the City Assessor as a requirement of retention of exempt status of the property.

(c) The City Assessor shall give each organization sixty (60) days notice of the due date of the application. If the organization certifies that the ownership and the use of the property are the same as when the exemption was initially granted, and the financial status of the organization is substantially the same, the City Assessor and the Commissioner of Revenue may accept that certification as the application;

however, the City Assessor and the Commissioner of Revenue may require a more

complete application including one identical to the application required in Section 37-51. The application shall be filed within the next sixty (60) days preceding the tax year for which such exemption retention thereof is sought.

(d) Failure to timely file the required triennial application shall result in termination of the exemption.

(e) The Commissioner of Revenue and the City Assessor or their designees shall review the applications, and provided the ownership and use of the property remains the same as when the exemption was initially approved, the exempt status shall continue. (Ord. No. 2008-36, 9-09-08)

SECTION 27-37. EFFECTIVE DATES.

(a) The effective date of the exemption by designation for all proratable property such as real estate and vehicles shall be the first day of the month following the later of the payment to the City of the full cost of the publication of notice and the adoption by City Council of the ordinance of exemption on second reading. The effective date of the exemption by designation for not-proratable property, such as certain tangible personal property shall be January 1st following the later of the payment to the City of the full cost of the publication of notice or the adoption by City Council of the ordinance of exemption on second reading.

(b) The effective date of the exemption by classification for all proratable property such as real estate and vehicles shall be the first day of the month following the adoption by City Council of the ordinance of exemption on second reading. The effective date of the exemption by classification for non-proratable property, such as tangible personal property, shall be January 1st following the adoption by City Council of the ordinance of exemption on second reading.

(c) For any organization that filed an application for an exemption by designation prior to the adoption of Division 5, Council may provide that the ordinance establishing the exemption by designation takes effective on or after January 1, 2008.

The effective date of an exemption by classification determined pursuant to Section 27-33(a) shall be jointly determined by the City Assessor and the Commissioner of Revenue. (Ord. No. 2008-36, 9-09-08)

SECTIONS 27-38 - 27-39. RESERVED.

ARTICLE III. PERSONAL PROPERTY TAX

SECTION 27-40. TANGIBLE PERSONAL PROPERTY.

(a) Upon all personal property as defined in Section 58.1-3500 of the Code of Virginia, as amended, except those categories of personal property which are listed in Section 58.1-3503.A.1,2,13 and 14, and not exempt from taxation there shall be a tax of four dollars and fifty cents ($4.50) for every one hundred dollars ($100.00) of the assessed value thereof for general city and school purposes.

(i) All City taxes on personal property for each year shall be due and payable during the year for which same are assessed as follows:

(A) -Personal property not listed in subsection (b) - total amount in one installment on or before December fifth.

(B) -Personal property listed in subsection (b) - total amount in one installment on the last day of the twelfth month after such personal property has acquired situs within the City.

This Ordinance shall take effect on 1 January 2005.

All taxes annually imposed on personal property except as set out in subsections b and c, below, shall be payable by the persons who on the first day of January in each and every year are the owners of record thereof. (Ord. No. 047-2004, 12-14-04)

(b) The personal property tax on motor vehicles, and trailers, hereinafter, taxable property or property, shall be assessed against such taxable property which acquires a situs within the City on January first of each year or which acquires a situs within the City on or after January the second of each year. When taxable property acquires a situs within the City on or after January second, the personal property tax for that year shall be assessed to the owner prorated on a monthly basis for the portion of the tax year during which the taxable property has situs within the City. When taxable property with a situs in the City is transferred to a new owner within the City, the personal property tax shall be assessed to the new owner prorated on a monthly basis for the portion of the tax year during which the new owner owns the taxable property. For purposes of proration, a period of more than one-half of a month shall be counted as a full month and a period of less than one-half of a month shall not be counted. All taxable property shall be assessed as of January first of each year or, if it acquires situs or has its title transferred after January first, as of the first day of the month in which the taxable property acquires situs within the City or has its title transferred. The owner of taxable property acquiring situs within the City or to whom taxable property is transferred shall file a declaration of property ownership to the commissioner within forty-five (45) days of the date on which such property acquires a situs

within the City or has its title transferred to such owner. (Ord. No. 042-2004, 10-12-04)

(c) When any taxable property loses its situs within the City or its title is transferred to a new owner, the taxpayer shall from that time be relieved from personal property tax on such taxable property and receive a refund of personal property tax already paid, or a credit toward taxable property newly transferred to the taxpayer, or a credit against personal property taxes outstanding against the taxpayer, at the option of the commissioner , on a monthly prorated basis, upon application to the commissioner , provided that application is made within three (3) years from the last day of the tax year during which the taxable property lost situs or had its title transferred. The commissioner shall make a reasonable effort to ascertain and notify any taxpayer entitled to a prorated refund of personal property taxes pursuant to this subsection.

(Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92; Ord. No. 038-93, 11-09-93; Ord. No. 2007-24, 07-10-07)

(d) (i) Provided a previous personal property return for a motor vehicle or trailer not used or employed in a trade or business has been filed by the owner or owners of such property and there has been no change in name or address of the owner or owners nor has the motor vehicle had a change in status or situs since the previous filing, no tangible personal property tax return need be filed for succeeding years.

(ii) However, the owner of a motor vehicle or trailer not used or employed in a trade or business shall file a new tangible personal property tax return within forty-five (45) days after occurrence of any of the following events:

(A) a change in the name or address of the person or persons owning such motor vehicle or trailer taxable by the City;

(B) a change in the situs of such motor vehicle or trailer;

(C) any other change affecting the assessment or levy of the personal property tax on such motor vehicle or trailer for which a tax return was previously filed; or

(D) any change in which a person acquires one (1) or more such motor vehicles or trailers and for which no personal property tax return has been filed. (Ord. No. 009-97, 4-8-97; Ord. No. 042-2004, 10-12-04)

State Law References--Code of Virginia, §§58.1-3500, *et seq*., 58.1-3516, 58.1-3518.1.
Note: Ordinance No. 009-97 effective June 1, 1997.

SECTION 27-41. APPLICABILITY; DUTY OF COMMISSIONER; APPEAL.

Each person, firm, and corporation engaged in business in the City, having an office in the City, or residing in the City shall file a return of his personal property for taxation to the commissioner in accordance with forms supplied by said commissioner or the Department of Taxation, Commonwealth of Virginia. The return for prorated personal property shall be filed by 31 January of each year, except that in 1993, the return may be filed not later than 1 May. Each return for non-prorated personal property shall be filed by 1 May of each year.

Returns will not be accepted by the commissioner unless same are completed in accordance with the forms provided the taxpayers. It shall be the duty of the commissioner to make such investigation as may be necessary to determine that returns are full and complete and, if necessary, to revise owner's appraisal of the original cost of the property to be assessed. Said original cost shall determine the total assessment.

The property owner, if dissatisfied with the determination of the commissioner , shall pay the assessment made but shall have the right to appeal to the Common Council for a revised assessment. If such assessment is revised by the Common Council to a lower figure, the property owner shall be entitled to a refund of the over assessment so determined. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-42. MANUFACTURED HOMES.

(a) A tax is hereby imposed on manufactured homes, as hereinafter defined as a separate class of tangible personal property, at the same rate as that stated in Section 27-10 of this Code.

(b) “Manufactured homes”, as the term is used herein, are defined as vehicles without motive power, used or designed to be used as manufactured homes, as more specifically defined by Section 36-85.3 of the Code of Virginia, 1950, as amended. (Ord. No. 017-92, 11-10-92; Ord. No. 030-93, 10-12-93; Ord. No. 031-99, 11-9-99; Ord. No. 008-2000, 04-11-00)

Cross reference--§27-141 (mobile homes to be taxed at same rate as real property, Code of Virginia, §58.1-3506.B.(iii)).

State Law References--Code of Virginia, §36-85.3, §58.1-3506.

SECTION 27-43. EXEMPTIONS CERTAIN HOUSEHOLD GOODS AND PERSONAL EFFECTS.

(a) There is hereby exempted from local taxation, pursuant to the Code of Virginia, §58.1-3504, the household goods and personal effects defined as separate items of taxation and classified as follows:

1. Bicycles.

2. Household and kitchen furniture, including gold and silver plates, plated ware, watches and clocks, sewing machines, refrigerators, automatic refrigerating machinery of any type, vacuum cleaners and all other household machinery, books, firearms, and weapons of all kinds.

3. Pianos, organs, and all other musical instruments; phonographs and record players, and records to be used therewith; and radio and television instruments and equipment.

4. Oil paintings, pictures, statuary, curios, articles of virtue and works of art.

5. Diamonds, cameos or other precious stones and all precious metals used as ornaments or jewelry.

6. Sporting and photographic equipment.

7. Clothing and objects of apparel.

8. All other tangible personal property used by individuals or a family or household incident to maintaining an abode.

(b) The classification above set forth shall apply only to such property owned and used by an individual or by a family or household incident to maintaining an abode. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-44. CERTAIN COMPUTER HARDWARE

(a) Computer hardware used by a business primarily engaged in providing data processing services to other non-related or non-affiliated businesses is hereby designated as a separate class of personal property.

(b) Computer hardware as defined in subsection (a) shall be valued on a percentage or percentages of the original cost of the hardware.

(c) A tax is hereby imposed on such computer hardware at the rate of one dollar and nine cents ($1.09) per every one hundred dollars ($100.00) of assessed value. (Ord. No. 035-95, 9-12-95)

(Note: This ordinance effective 1 January 1996.)

State Law References--Code of Virginia §§58.1-3503A.16, 3506A.9, B

SECTIONS 27-45 - 27-49. RESERVED.

ARTICLE IV. MACHINERY AND TOOLS.

SECTION 27-50. MACHINERY AND TOOLS.

Upon all machinery and tools used in a business, as defined in Section 58.1-3507 of the Code of Virginia, there shall be a tax of one dollar and thirty cents ($1.30) for every one hundred dollars ($100.00) of the assessed value thereof for general city and school purposes.

All City taxes on machinery and tools for each year shall be due and payable during the year for which same are assessed as follows:

-Total amount in one installment on or before December Fifth.

All taxes annually imposed on machinery and tools shall be payable by the persons who on the first day of January in each and every year are the respective owners thereof. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92; Ord. No. 016-93, 05-06-93; Ord. 011-96, 05-14-96; Ord. No. 016-2004, 4-28-04)

(Note: The effective date of this Ordinance shall be July 1, 2004.)

State Law References--Code of Virginia, §§58.1-3507, *et seq*.

SECTION 27-51. CERTIFIED POLLUTION EQUIPMENT AND CERTIFIED SOLAR ENERGY EQUIPMENT FACILITIES OR DEVICES AND CERTIFIED RECYCLING EQUIPMENT.

(a) There is hereby exempted from local taxation certified pollution control equipment and facilities, pursuant to Section 58.1-3660 of the Code of Virginia.

(b) There is hereby exempted from local taxation certified solar energy equipment facilities or devices and certified recycling equipment, facilities, or devices as defined in Virginia Code §58.1-3661 as amended from time to time. The procedures for applying for the exemption shall be those set out in the state code section.

(c) It shall be the duty of any person applying for any exemptions provided for in this section to furnish the commissioner with proper state agency certification or other documentation required by law. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92; Ord. No. 034-95, 9-12-95) (This ordinance effective 1 January 1996.)

State Law References--Code of Virginia §§58.1-3660-58.1-3661.

SECTIONS 27-52 - 27-59. RESERVED.

ARTICLE V. UTILITY TAX

SECTION 27-60. DEFINITIONS.

The following words and phrases when used in this article shall for the purposes of this article have the following respective meanings, except where the context clearly indicates a different meaning.

(a) UTILITY SERVICES. The phrase "utility services" shall include local exchange telephone service, local cellular mobile radio telecommunication service, electrical service, gas service and cable television service furnished within the corporate limits of the City of Winchester.

(b) PURCHASER. The word "purchaser" shall include every person who purchases a utility service, and shall be deemed to include any consumer of such services, whether an individual, corporation, or other entity.

(c) SELLER. The word "seller" shall include every person who sells or furnishes a utility service.

(d) RESIDENTIAL USER. The term "residential user" shall mean the owner or tenant of private residential property who pays for utility service in or for said property, including, but not limited to, apartment houses and other multi-family dwellings.

(e) COMMERCIAL OR INDUSTRIAL USER. The term "commercial or industrial user" shall mean the owner or tenant of property used for commercial, industrial, and all other nonresidential purposes, who pays for utility service for said property.

(f) GROSS CHARGES. The term “gross charges” means, subject to the exclusions of this section, the amount charged or paid for the taxable purchase of mobile local
telecommunication services. However, “gross charges” shall not include the

following:

1. Charges or amounts paid that vary based on the distance and/or elapsed transmission time of the communication that are separately stated on the consumer's bill or invoice.

2. Charges or amounts paid for customer equipment, including such equipment that is leased or rented by the customer from any source, if such charges or amounts paid are separately identifiable from other amounts charged or paid for the provision of mobile local telecommunication services on the service provider's books and records.

3. Charges or amounts paid for administrative services, including, without limitation, service connection and reconnection, late payments, and roamer daily surcharges.

4. Charges or amounts paid for special features that are not subject to taxation under § 4251 of the Internal Revenue Code of 1986, as amended.

5. Charges or amounts paid that are (i) the tax imposed by § 4251 of the Internal Revenue Code of 1986, as amended or (ii) any other tax or surcharge imposed by statute, ordinance or regulatory authority.

6. Bad debts.

(g) LOCAL CELLULAR MOBILE RADIO TELECOMMUNICATIONS. The phrase “local cellular mobile radio telecommunications” means any two-way mobile or portable local telecommunication service, including cellular mobile radio telecommunication service and specialized mobile radio.

(h) MOBILE LOCAL TELECOMMUNICATION SERVICE. The phrase "Mobile local telecommunication service" means any two-way mobile or portable local telecommunication service, including cellular mobile radio telecommunication service and specialized mobile radio.

(i) MOBILE SERVICE CONSUMER. The phrase "Mobile service consumer" means a person having a telephone number for mobile local telecommunication service who has made a taxable purchase of such service or on whose behalf another person has made a taxable purchase of such service.

(j) MOBILE SERVICE PROVIDER. The phrase “Mobile service provider" means every person engaged in the business of selling mobile local telecommunication services to consumers.

(k) KILOWATT HOURS (kWh). The phrase “kilowatt hours (kWh)” means a quantity of electricity, measured in units of 1000 watt-hours. A watt-hour is 1 watt of electricity delivered for one hour.

(l) CCF. The abbreviation "CCF" means the volume of natural gas at standard pressure and temperature in units of 100 cubic feet.

(m) MONTHLY. The term "monthly" refers to the amount of gas or electricity actually delivered by a seller to a purchaser, or the amount actually charged by a provider for other covered services, during a calendar month. Bills shall also be considered monthly bills if submitted by a seller to a purchaser twelve (12) times per year covering approximately equal periods of time. To the extent that a seller measures, delivers, or bills for gas, electricity, or other taxable monthly service on a billing cycle other than "monthly", as defined above, then the monthly charge or amount delivered for purposes of calculating the tax due for each month contained in the billing cycle shall be the whole charge or amount for the entire billing cycle, divided by the number of months contained in the billing cycle.

(Ord. of 6-10-69; Ord. No. 009-86, 6-10-86: Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92, Ord. No. 017-93, 05-06-93; Ord. No. 005-96, 04-09-96; Ord No. 020-2000, 10-10-00)

(Note – The effective date of this Ordinance is January 1, 2001.)

SECTION 27-61. LEVY AND RATE.

(a) ELECTRIC UTILITY TAX. There is hereby imposed and levied by the City of Winchester upon each and every purchaser of electric utility service a tax in the amount of $0.012 on each kilowatt hour (kWh) delivered monthly to residential purchasers, not to exceed $3.00 monthly, and $0.011 on each kilowatt hour (kWh) delivered monthly to commercial or industrial purchasers, not to exceed a maximum of 10,700 kilowatt hours. In the case of any apartment house or other multi-family dwelling which is supplied electricity through one or more master meters, each dwelling unit shall be taxed at $3.00 monthly, or at $0.012 multiplied by the total number of kilowatt hours delivered to the master meter and divided by the total number of units served, whichever is less.

(b) NATURAL GAS UTILITY TAX. There is hereby imposed and levied by the City of Winchester upon each and every purchaser of natural gas utility service a tax in the amount of $0.22 on each CCF delivered monthly to residential purchasers, not to exceed $3.00 monthly, and $0.15 on each CCF delivered monthly to commercial or industrial purchasers, not to exceed a maximum of 800 CCF. In the case of any apartment house or other multi-family dwelling which is supplied natural gas

through one or more master meters, each dwelling unit shall be taxed at $3.00 monthly, or at $0.22 multiplied by the total number of CCF delivered to the master meter and divided by the total number of units served, whichever is less.

(c) TELEPHONE AND CABLE TELEVISION UTILITY TAX. There is hereby imposed and levied by the City of Winchester upon each and every purchaser of local exchange telephone and cable television utility services a tax in the amount of fifteen percent (15%) of the monthly charge for each such utility service, exclusive of any Federal tax thereon, the maximum such tax not to exceed fifteen percent (15%) of the first Seven Hundred Fifty Dollars ($750.00) of any such monthly charge, exclusive of any Federal tax thereon. Provided, however, that whenever any monthly bill submitted by any seller for local exchange telephone and cable television utility service shall exceed fifteen dollars ($15.00) for a residential user, there shall be no tax computed on the portion of each such bill in excess of fifteen ($15.00). The charge for cable television service subject to this tax shall exclude any charge made for a remote control tuning devise.

(d) LOCAL CELLULAR MOBILE RADIO TELECOMMUNICATION UTILITY TAX. There is hereby imposed a levy by the City of Winchester upon each and every local consumer of local cellular mobile radio telecommunications services a tax in the amount of ten percent (10%) of the gross charges for such local cellular service. Provided however, that in the case of any monthly bill submitted by a mobile service provider, there shall be no tax computed on the portion of each such bill in excess of thirty dollars ($30.00).

(Ord. of 6-10-69; Ord. No. 009-86,6-10-86; Ord. 044-88, 11-15-88; Ord. No. 012-91, 4-23-91; Ord. No. 017-92, 11-10-92; Ord. No. 017-93, 05-06-93; Ord. No. 005-96, 04-09-96; Ord. No. 020-2000, 10-10-00)

(Note – The effective date of this Ordinance is January 1, 2001)

State Law Reference-- Code of Virginia, §58.1-3812, §58.1-3814.

SECTION 27-62. COLLECTION.

It shall be the duty of every seller in acting as the tax collecting medium or agency for the City of Winchester to collect from the purchaser for the use of the City the tax hereby imposed and levied at the time of collecting the purchase price charged, and the taxes collected during each calendar month shall be reported by each seller to the commissioner and each seller shall remit the amount of tax shown by said report to have been collected to the treasurer on or before the last day of the first calendar month thereafter, together with the name and address of any purchaser who has refused to pay his tax. The required reports shall be in the form prescribed by the commissioner. The tax levied or imposed under this ordinance with respect to the purchase of any utility service shall become

effective on charges first appearing on bills rendered on September 1, 1969, and thereafter. (Ord. of 6-10-69; Ord. No. 009-86, 6-10-86; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-63. RECORDS.

Each and every seller shall keep complete records showing all purchases in the City, which records shall show the price charged against each purchaser with respect to each purchase, the date thereof and the date of payment thereof and the amount of tax imposed hereunder, and such records shall be kept open for inspection by the duly authorized agents of the City at reasonable times, and the duly authorized agents of the City shall have the right, power and authority to make transcripts thereof. (Ord. of 6-10-69; Ord. No. 009-86, 6-10-86; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-64. EXEMPTIONS.

The United States of America, the Commonwealth of Virginia, and the political subdivisions, boards, commissions and authorities thereof, are hereby exempted from the payment of the tax imposed and levied by this ordinance with respect to the purchase of utility services used by such governmental agencies. (Ord. of 6-10-69; Ord. No. 009-86, 6-1-86; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-65. APPLICABILITY TO TELEPHONE CHARGES-EXCEPTIONS.

The tax hereby imposed and levied on purchases with respect to local exchange telephone service shall apply to all charges made for local exchange telephone service, except local messages which are paid for by inserting coins in coin-operated telephones. (Ord. of 6-10-69; Ord. No. 009-86, 6-10-86; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-66. BOTTLED GAS; EXCEPTIONS.

The tax hereby imposed and levied shall not apply to the purchase of bottled gas. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-67. RESERVED.

SECTION 27-68. VIOLATIONS.

Any purchaser failing, refusing, or neglecting to pay the tax hereby imposed or levied and seller violating the provisions hereof, and any officer, agent, or employee of any seller

violating the provisions hereof shall, upon conviction, be subject to a fine of not more than twenty-five dollars ($25.00). Each failure, refusal, neglect or violation and each day's continuance thereof, shall constitute a separate offense. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-69. RESERVED.

ARTICLE VI. MEALS TAX

SECTION 27-70. TAX ON MEALS PURCHASED FROM FOOD ESTABLISHMENTS.

There is hereby imposed and levied by the City of Winchester, Virginia, a tax, as more fully described hereafter in Section 27-72, on the amount paid for meals purchased from any food establishment, whether prepared in such food establishment or not, whether consumed on the premises or not. (Ord. No. 018-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92; Ord. No. 005-2001, 02-13-01)

State Law Reference-- Code of Virginia, §58.1-3840.

SECTION 27-71. DEFINITIONS.

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

(a) *CATERER* shall mean a person who furnishes meals on the premises of another for compensation.

(b) FOOD shall mean all food, beverages, or both, including alcoholic beverages, purchased in or from a food establishment, whether prepared in such food establishment or not, and whether consumed on the premises or not, and without regard to the manner, time, or place of service.

(c) FOOD ESTABLISHMENT shall mean any place in or from which food or food products are prepared, packaged, sold, or distributed in the City of Winchester, including but not limited to, any restaurant, dining room, grill, coffee shop, cafeteria, café, snack bar, lunch counter, convenience store, movie theater, delicatessen, confectionery, bakery, eating house, eatery, drugstore, ice cream/yogurt shop, lunch wagon or truck, pushcart or other mobile facility from which food is sold, public or private club, resort, bar, lounge, or other similar establishment, public or private, and shall include private property outside of and contiguous to a building or structure operated as a food establishment at which food or food products are sole for immediate consumption.

(d) *MEAL* shall mean any prepared food and/or drink, including alcoholic beverages, offered or held out for sale by a food establishment for the purpose of being

consumed by an individual or group of individuals at one time to satisfy the appetite, and which is ready for human consumption. All such food and/or drink shall be included, unless hereinafter specifically exempted, whether intended to be consumed on the seller's premises or elsewhere, whether designated as breakfast, lunch, dinner, supper, or by some other name, and without regard to the manner, time or place of service. By way of illustration, and without limitation, the term "meal" shall include individual donuts or other pastries, individual fountain drinks, individual cold soft drinks, a salad or food bar in a food or other store, individual sandwiches, prepared pizzas or slices of pizza, and individual servings of potato chips or other snack foods.

(e) *PURCHASER* shall mean any person who purchases a meal.

(f) *SALE* shall mean the final sale to the ultimate consumer.

(g) *SELLER* shall mean any restaurant or caterer selling meals, or the person operating such business. (Ord. No. 018-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 024-91, 6-11-91; Ord. No. 017-92, 11-10-92; Ord. No. 005-2001, 02-13-01)

SECTION 27-72. LEVY AND RATE.

In addition to all other taxes and fees of any kind now or hereafter imposed by law, there is hereby levied and imposed on the purchaser of every meal served, sold, or delivered in the City by a food establishment or a caterer a tax equivalent to five percent (5%) of the amount paid for the meal, whether consumed on the premises or not. There shall be no tax if the total amount paid is less than fifty cents ($0.50); on larger amounts, the tax shall be computed at a straight five percent (5%), one-half cent ($0.005) or more being treated as one cent ($0.01).

This situs of taxation shall be the City, county or town in which sales are made, namely the locality in which each place of business is located without regard to the locality of delivery or possible use by the purchaser. (Ord. No. 018-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 013-91, 4-23-91; Ord. No. 017-92, 11-10-92; Ord. No. 005-2001, 02-13-01; Ord. No. 015-2004, 4-28-04)
(Note: The effective date of this Ordinance shall be July 1, 2004)

State Law Reference-- Code of Virginia, §58.1-3841.

SECTION 27-73. PAYMENT AND COLLECTION OF TAX.

In every case the tax shall be collected by the seller and paid by the purchaser at the time the charge for the meal becomes due and payable, whether payment is to be made in cash, check or on credit by means of a credit card or otherwise; provided, however, no blind person operating a vending stand or other business enterprise under the jurisdiction of the

Department for the Visually Handicapped and located on property acquired and used by the United States for any military or naval purpose shall be required to collect or remit such tax. The seller shall add the tax to the amount charged for the meal, and shall pay the taxes collected to the City as provided by Section 27-75. (Ord. No. 018-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92; Ord. No. 005-2001, 02-13-01)

SECTION 27-74. COLLECTION IN TRUST FOR THE CITY.

All amounts collected as taxes under this article shall be deemed to be held in trust by the seller collecting them, until remitted to the City as provided by Section 27-75. (Ord. No. 018-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-75. REPORTS AND REMITTANCES.

The commissioner may require all prospective sellers of meals licensed to do business in the City to register for collection of tax imposed by this article. Every seller shall make a report for each calendar month, showing the amount of charges collected for meals and the amount of tax required to be collected.

The monthly reports shall be made on forms prescribed by the commissioner and shall be signed by the seller. They shall be delivered to the commissioner on or before the twentieth (20th) day of the calendar month following the month being reported. Each report shall be accompanied by a remittance of the amount of tax due, made payable to the treasurer. The commissioner shall promptly transmit all taxes received to the treasurer.
(Ord. No. 018-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-76. PROCEDURE WHEN TAX NOT REPORTED OR COLLECTED.

If any person whose duty it is to do so shall fail or refuse to collect the tax imposed under this article, and make timely report and remittance thereof, or if the commissioner has reasonable cause to believe that an erroneous statement has been filed, the commissioner shall proceed in such manner as is practicable to obtain facts and information on which to base an estimate of the tax due the City, and in connection therewith shall make such investigations and take such testimony and other evidence as may be necessary; provided, however, that notice and opportunity to be heard be given any person who may become liable for the amount owing prior to any determination by the commissioner .

As soon as the commissioner has procured whatever facts and information may be obtainable upon which to base the assessment of any tax payable by any person who has failed to collect, report, or remit such tax, the commissioner shall proceed to determine and assess against such person the tax, penalty and interest provided in this chapter, and shall notify the person by certified or registered mail sent to his or her last known address of the amount of such tax, penalty, and interest. The total amount thereof shall be payable

ten (10) days after the date such notice is sent. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-77. PRESERVATION OF RECORDS.

It shall be the duty of every person liable for the collection and remittance of the taxes imposed by this article to keep and preserve for a period of two years, records showing all purchases taxable under this article, the amount charged the purchaser for each purchase, the date thereof, the taxes collected thereon, and the amount of tax required to be collected by this article. The commissioner shall have the power to examine such records at reasonable times and without reasonable interference with the business of such person, for the purpose of administering and enforcing the provisions of this article and to make transcripts of all or any parts thereof. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-78. DUTY OF PERSON GOING OUT OF BUSINESS.

Whenever any person required to collect and remit to the City any tax imposed by this article, shall cease to operate or otherwise dispose of his or her business, the tax shall immediately become due and payable and the person shall immediately make a report and remittance thereof. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-79. ADVERTISING PAYMENT OR ABSORPTION OF TAX; PROHIBITED.

No seller shall advertise or hold out to the public in any manner, directly or indirectly, that all or any part of a tax imposed under this article, will be paid or absorbed by the seller or by anyone else, or that the seller or anyone else will relieve any purchaser of the payment of all or any part of the tax. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-80. TIPS AND SERVICE CHARGES.

Where a purchaser provides a tip for an employee of a seller, and the amount of the tip is wholly in the discretion of the purchaser, the tip is not subject to the tax imposed by this article, whether paid in cash to the employee or added to the bill and charged to the purchaser's account; provided, in the latter case, the full amount of the tip is turned over to the employee by the seller. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-81. EXEMPTIONS.

The following classes of meals shall not be subject to tax under this article.

(a) Meals furnished by restaurants to employees as part of their compensation when no charge is made to the employee.

(b) Meals sold by day care centers, public or private elementary or secondary schools, or food sold by any college or university to their students or employees.

(c) Meals purchased by agencies of federal, state or local governments or by officers or employees thereof while on official business.

(d) Meals furnished by a hospital, medical clinic, convalescent home, nursing home, home for the aged, infirm or handicapped, or homes for battered women, narcotic addicts or alcoholics, or other extended care facility to patients or residents thereof.

(e) Meals furnished by a non-profit charitable organization to elderly, infirm, blind, handicapped or needy persons in their homes or at central locations.

(f) Meals furnished by a college fraternity or sorority to its members.

(g) Meals sold by a non-profit educational, religious, charitable or benevolent organization on an occasional basis as a fundraising activity.

(h) Meals or food sold from vending machines.

(i) Any other sale of a meal which is exempt from taxation under the Virginia Retail Sales and Use Tax Act, or any administrative rule or regulation issued pursuant thereto.

(j) Non-alcoholic beverages, popcorn, candy, and similar confections sold in theaters.

(k) The following items shall not be subject to the tax created by this ordinance when served exclusively for off-premises consumption:

1) Factory prepackaged candy, gum, nuts, and other items of essentially the same nature.
2) Factory prepackaged donuts, ice cream, crackers, nabs, chips, cookies, and items of essentially the same nature.
3) Food sold in bulk. For purposes of this provision, a bulk sale shall mean the sale of any item that would exceed the normal, customary, and usual portion sold for premises consumption (e.g., a whole cake, a gallon of ice cream); a

bulk sale shall not include any food or beverage that is catered or delivered by a food establishment for off-premises consumption.

4) Alcoholic and non-alcoholic beverages sole in factory-sealed containers.
5) Any food or food product purchased with food coupons issued by the United States Department of Agriculture under the Food Stamp Program or drafts issued through the Virginia Special Supplement Food Program for Women, Infants, and Children.
6) Any food or food product purchased for home consumption as defined in the federal Food Stamp Act of 1977, 7 U.S.C., Section 2012, as amended, EXCEPT hot food or hot food products ready for immediate consumption. For the purposes of administering the tax levied hereunder, the following items, whether or not purchased for immediate consumption, are excluded from the said definition of food in the federal Food Stamp Act: sandwiches, salad bar items sold from a salad bar, prepackaged single-serving salads consisting primarily of an assortment of vegetables, and nonfactory sealed beverages.

(l) A grocery store, supermarket, or convenience store shall not be subject to the tax created by this ordinance EXCEPT for any portion or section therein designated as a delicatessen or designated for the sale of prepared food and beverages. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92; Ord. No. 005-2001, 02/13/2001)

SECTION 27-82. ENFORCEMENT.

(a) It shall be the duty of the commissioner to ascertain the name of every person operating a restaurant in the City liable for the collection of the tax imposed by this article who fails, refuses, or neglects to collect such tax or to make the reports and remittance required by this article. The commissioner may have issued a summons for such person, and the summons may be served upon such person by any city police officer in the manner provided by law. One return of the original summons shall be made returnable to the General District Court for the City of Winchester.

(b) In the event the purchaser of any meal refuses to pay the tax imposed by this article, the seller may call upon the police department for assistance and the investigating officer may, when probable cause exists, issue the purchaser a summons returnable to the General District Court as provided by law. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-83. VIOLATIONS.

Any person violating or failing to comply with any of the provisions of this article, shall, upon conviction thereof, be guilty of a Class 3 misdemeanor punishable as provided in Section 1-11 of this code. Convictions shall not relieve any person from the payment,

collection, or remittance of the tax as provided in Article IX. Each violation or failure shall be a separate offense. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTIONS 27-84 - 27-89. RESERVED.

ARTICLE VII. MOTEL TAX FOR TRANSIENTS

SECTION 27-90. DEFINITIONS

For the purpose of this article, the following words and phrases shall have the meanings respectively ascribed to them.

(a) *MOTEL* shall mean any public or private hotel, inn, apartment hotel, hostelry, tourist home or house, motel, rooming house or other lodging place within the City of Winchester offering lodging for four (4) or more persons at any time, and the owner and operator thereof who, for compensation, furnishes lodging to any transients as hereinafter defined except those persons who are within the purview of the existing "boarding and lodging" house tax.

(b) *ROOM RENTAL* shall mean the total charge made by any such motel for lodging and/or space furnished any such transient. If the charge made by such includes any charge for services or accommodations in addition to that of lodging, and/or use of space, then such portion of the total charge as represents only room and/or space rental shall be distinctly set out and billed to such transient by such motel as a separate item.

(d) *TRANSIENT* shall mean any person who, for any period of not more than thirty consecutive days, either at his own expense or at the expense of another, obtains lodging or the use of any space in any motel as hereinabove defined, for which lodging or use of space, a charge is made. (Ord. No. 017-92, 11-10-92)

SECTION 27-91. LEVY AND RATE.

In addition to all other taxes of every kind now or hereafter imposed by law, there is hereby imposed and levied on each and every transient a tax equivalent to five percent (5%) of the total amount paid for room rental by or for such transient to any motel, with one-half cent ($0.005) or more of tax being treated as one cent ($0.01). (Ord. No. 019-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 014-91, 4-23-91; Ord. No. 017-92, 11-10-92; Ord. No. 014-2004, 4-28-04)
(Note: The effective date of this ordinance shall be July 1, 2004.)

State Law Reference--Code of Virginia, §58.1-3840.

SECTION 27-92. EXEMPTIONS.

No tax shall be payable hereunder on room rental paid to any hospital, medical clinic, convalescent home, or home for the aged. (Ord. No. 019-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-93. COLLECTION.

Every person receiving any payment for room rental with respect to which a tax is levied under this article shall collect the amount of tax hereby imposed from the transient on whom the same is levied or from the person paying for such room rental at the time payment for such room rental is made, whether payment is made in cash, check or on credit by means of a credit card or otherwise. (Ord. No. 019-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-94. COLLECTIONS IN TRUST FOR THE CITY.

All amounts collected as taxes under this article shall be deemed to be held in trust by the seller collecting them until remitted to the City as provided by Section 27-95. (Ord. No. 019-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-95. REPORTS AND REMITTANCES.

Every person receiving payment for a room rental for which a tax is levied under this article shall make a report for each calendar month showing the amount of charges collected for room rental and the amount of tax required to be collected.

The monthly reports shall be made on forms prescribed by the commissioner and shall be signed by the seller. They shall be delivered to the commissioner on or before the twentieth (20th) day of the calendar month following the month being reported. Each report shall be accompanied by a remittance of the amount of tax due, made payable to the treasurer. The commissioner shall promptly transmit all taxes received to the treasurer.
(Ord. No. 019-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-96. COMMISSIONER OF THE REVENUE; OTHER POWERS AND DUTIES.

It shall be the duty of the commissioner to ascertain the name of every person operating a motel in the City liable for the collection of the tax levied in this article.

The commissioner shall have the power to adopt rules and regulations not inconsistent with the provisions of this article for the purpose of carrying out and enforcing the payment, collection and remittance of the tax herein levied, and a copy of such rules and regulations shall be on file and available for public examination in the city manager's office. Failure or refusal to comply with any rules and regulations promulgated under this article shall be deemed a violation of this article. (Ord. No. 019-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-97. PROCEDURE WHEN TAX NOT REPORTED OR COLLECTED.

If any person whose duty it is to do so shall fail or refuse to collect the tax imposed under this article and to make a timely report and remittance thereof, or if the commissioner has reasonable cause to believe that an erroneous statement has been filed, the commissioner shall proceed in such manner as is practicable to obtain facts and information on which to base an estimate of the tax due the City, and in connection therewith shall make such investigations and take such testimony and other evidence as may be necessary; provided, however, that notice and opportunity to be heard be given any person who may become liable for the amount owing prior to any determination by the commissioner .

As soon as the commissioner has procured whatever facts and information may be obtainable upon which to base the assessment of any tax payable by any person who has failed to collect, report, or remit such tax, the commissioner shall proceed to determine and assess against such person the tax, penalty, and interest provided in this chapter, and shall notify the person by certified or registered mail sent to his or her last known address of the amount of such tax, penalty and interest. The total amount thereof shall be payable ten (10) days after the date such notice is sent. (Ord. No. 0-19-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-98. PRESERVATION OF RECORDS.

It shall be the duty of every person liable for collection and remittance of the taxes imposed by this article to keep and preserve, for a period of two (2) years, records showing all room rentals taxable under this article, the amount charged for each room rented, the date thereof, the taxes collected thereon, and the amount of tax required to be collected by this article.

The commissioner shall have the power to examine such records at reasonable times and without unreasonable interference with the business of such person for the purpose of administering and enforcing the provisions of this article and to make transcripts of all or any parts thereof. (Ord. No. 019-83, 6-14-83; Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-99. DUTY OF PERSON GOING OUT OF BUSINESS.

Whenever any person required to collect and remit to the City any tax imposed by this article shall cease to operate or otherwise dispose of his or her business, the tax shall immediately become due and payable and the person shall immediately make report and remittance thereof. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-100. ENFORCEMENT.

(a) It shall be the duty of the commissioner to ascertain the name of every person operating a motel in the City liable for the collection of the tax imposed by this article who fails, refuses, or neglects to collect such tax or to make the reports and remittances required by this article. The commissioner may have issued a summons for such person, and the summons may be served upon such person by any city police officer in the manner provided by law. One return of the original summons shall be made returnable to the General District Court for the City as provided by law.

(b) In the event any person who has rented a room refuses to pay the tax imposed by this article, the motel employee on duty may call upon the police department for assistance and the investigating officer may, when probable cause exists, issue the person who has rented the room a summons returnable to the General District Court of the City as provided by law. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-101. VIOLATIONS.

Any person violating or failing to comply with any of the provisions of this article shall, upon conviction thereof, be guilty of a Class 3 misdemeanor. Conviction shall not relieve any person from the payment, collection, or remittance of the tax, penalties and interest as provided in this chapter. Each violation or failure shall be a separate offense. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTIONS 27-102 - 27-109. RESERVED.

ARTICLE VIII. E-911 TAX

SECTION 27-110. DEFINITIONS.

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

(a) *E-911 SYSTEM*. A telephone service which utilizes a computerized system to automatically route emergency telephone calls placed by dialing the digits 911 to the proper public safety answering point serving the jurisdiction from which emergency telephone call was placed. An E-911 system includes selective routing of telephone calls, automatic telephone number identification, and automatic location identification performed by computers and other ancillary control center communications equipment.

(b) *PUBLIC SAFETY ANSWERING POINT*. A communications facility operated on a twenty-four (24) hour basis which first received E-911 calls from persons in a E-911 service area and which may, as appropriate, directly dispatch safety services or extend, transfer, or relay E-911 calls to appropriate public safety agencies.

(c) *LOCAL EXCHANGE TELEPHONE SYSTEMS*. As applied to an E-911 system**,** switched local exchange access service.

(d) *PURCHASER*. Every person who purchases a local exchange telephone service.

(e) *SELLER*. Every person who sells or furnishes local exchange telephone service.

(f) *UTILITY SERVICES*. Local exchange telephone service or local cellular mobile radio telecommunications furnished within the corporate limits of the City of Winchester.

(g) *LOCAL CELLULAR MOBILE RADIO TELECOMMUNICATIONS.* Any two-way mobile or portable local telecommunication service, including cellular mobile radio telecommunication service and specialized mobile radio.

(h) *MOBILE SERVICE PROVIDER.* Every person engaged in the business of selling mobile local telecommunication services to consumers. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92, Ord. No. 004-96, 04-09-96)

(Note: This ordinance effective 1 June 1996.)

SECTION 27-111. AMOUNT OF TAX ON TELEPHONE SERVICE.

A tax in the amount of two dollars forty-five cents ($2.45) per telephone line per month is hereby imposed and levied by the City of Winchester upon each purchaser of local exchange telephone service. This tax shall be paid by the purchaser to the seller of local exchange telephone service and shall, after collection, be forwarded to the treasurer and used to pay the initial capital, installation and maintenance costs and recurring maintenance costs of the City's E-911 emergency telephone system. The taxes may also be used to offset the recurring maintenance, repair, and system upgrade costs, and salaries,

or a portion of the salaries, of dispatchers paid by the City directly attributable to the E-911 program. (Ord. No. 044-88, 11-15-88; Ord. No. 029-89, 10-10-89; Ord. No. 012-92, 8-11-92; Ord. No. 017-92, 11-10-92; Ord. No. 028-93, 10-12-93; Ord. No. 004-96, 04-09-96; Ord. No. 015-99, 07-13-99; Ord No. 010-2000, 05-09-00)

(Note: This effective date of this ordinance is October 1, 2000.)

State Law Reference--Code of Virginia, §58.1-3813.

SECTION 27-112. EXEMPTIONS.

The following entities and persons shall be exempt from the payment of the tax imposed by this article:

(a) The United States of America, the Commonwealth of Virginia, and all political subdivisions, boards, agencies, commissions, and authorities of the state.

(b) Purchasers or lessees of local exchange telephone service who utilize coin-operated telephones. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

c) Purchasers of local cellular mobile radio telecommunications services and local cellular mobile service providers. (Ord. No. 015-99 of 07-13-99)

SECTION 27-113. COLLECTION AND REMITTANCE BY SELLER.

It shall be the duty of every seller in acting as the tax collection agency for the City to collect from the purchaser for the use of the City, the tax hereby imposed and levied at the time of collecting the purchase price charged, and the tax imposed, levied, and collected during each calendar month shall be reported and paid by each seller to the treasurer on or before the fifteenth (15th) day of the second calendar month thereafter, together with the name and address of any purchaser who has refused to pay this tax. The required report shall be in a form approved by the commissioner . (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-114. RECORDS OF SELLER.

Each seller shall keep complete records showing all purchases in the City and the price charged each purchaser with respect to each purchase, the date of purchase, date of payment, and the amount of tax imposed by this article. Such records shall be available for inspection by duly authorized representatives of the City of Winchester, and the City shall

have the right to make any desired photocopies of the aforesaid records. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-115. EFFECTIVE DATE.

This article shall become effective sixty (60) days following written notice by certified mail to the registered agent of C & P Telephone Company, its successors and/or assigns. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTIONS 27-116 - 27-119. RESERVED.

ARTICLE IX. GENERAL RETAIL SALES TAX.

SECTION 27-120. LEVY.

There is hereby levied and imposed a general retail sales tax and a use tax at the rate of one per cent (1%) to provide revenue for the general fund. The rate of each tax shall be added to the rate of the state retail sales tax or use tax imposed by Title 58.1 of the Code of Virginia, (Virginia Retail Sales and Use Tax) and shall be subject to all the provisions of said chapter and all amendments thereof, and the rules and regulations published with respect thereto except that the applicable bracket of prices shall be as prescribed in Sections 58.1-627 and 58.1-628 of the Code of Virginia, for the combined tax, and except that no discount under Section 58.1-622 of the Code of Virginia, shall be allowed on the tax levied by this ordinance. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

State Law Reference--Code of Virginia, §58.1-605.

SECTIONS 27-121 - 27-129. RESERVED.

ARTICLE X. TAX ON PROBATE OF WILLS AND GRANTS OF ADMINISTRATION

SECTION 27-130. LEVY; RATE OF TAX.

A tax is hereby imposed on the probate of every will or grant of administration in the office of the clerk of circuit court for the City of Winchester not exempt by law. The tax

shall be based on the value of the estate as determined in Section 27-131. The tax shall be Thirty-three cents (33¢) when the value of the estate does not exceed One thousand Dollars ($1,000.00). For every additional One Thousand Dollars ($1,000.00), an additional tax of Thirty-three cents (33¢) is imposed. The tax imposed by this section shall not apply to decedents' estates of Five Thousand Dollars ($5,000.00) or less in value. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92; Ord. No. 028-96, 11-12-96)

State Law Reference--Code of Virginia, §§58.1-3805, 58.1-1712.

SECTION 27-131. VALUE OF THE ESTATE; TIME OF VALUATION.

(a) The tax imposed by this article shall be based upon the value of all property, real and personal, within the jurisdiction of the Commonwealth which shall pass from the decedent to each beneficiary by will or intestacy. The value of all real estate shall be included although the real estate does not come into control or possession of the personal representative for estate administration purposes, and whether or not the personal representative under will is charged with any duty with respect to such real estate . However, in no event shall the value of real estate owned by the decedent and situated outside the Commonwealth be considered in computing the value of the estate.

(b) The value of the estate shall be determined at the time of death of the decedent or, if an alternate time of valuation has been chosen under Section 2032 of the Internal Revenue Code for purposes of federal taxation, at such time. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

State Law Reference--Code of Virginia, §58.1-1713.

SECTION 27-132. FILING OF RETURN.

When the value of an estate exceeds One Thousand Dollars ($1,000.00), a return shall be made and filed with the clerk of court at the time the will is offered for probate or the grant of administration is sought in such court. Such return shall state, to the best knowledge and belief of the persons submitting the will for probate or requesting the grant of administration:

(i) The value of the decedent's real estate as set forth in Section 27-131 based on the actual value, if known, or if actual value is not known, the appraised value of such property for local real estate tax purposes; and

(ii) The estimated value of the decedent's personal property as of the date of the decedent's death.

Such return shall be subject to the provisions and penalties of Subsection 58.1-11 of the Code of Virginia, and the information set forth therein shall be entitled to the privilege and subject to the penalties for violation accorded by Subsection 58.1-3 of the Code of Virginia. For the purposes of Subsection 58.1-3, the information set forth in such return shall not be deemed to be required by law to be entered on any public assessment roll or book. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-133. PAYMENT OF TAX PREREQUISITE TO QUALIFICATION.

No one shall be permitted to qualify and act as executor or administrator until the tax imposed by Section 27-130 has been paid. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

State Law Reference--Code of Virginia, §58.1-1715.

SECTION 27-134. ESTATES COMMITTED TO COURT-APPOINTED ADMINISTRATORS

When an estate is committed by order of the circuit court for the City, or clerk thereof, to any person on the motion of a creditor or other person pursuant to Subsection 64.1-131 of the Code of Virginia, the tax due under this article for such administration shall be paid by the party upon whose motion the estate was committed. The amount of the tax paid by such creditor or other person shall be repaid to him by the administrator so appointed out of the first funds received by him from the sale of such estate. If an estate is committed to a person without motion, the person shall be required to pay such tax as soon as assets of the estate sufficient to cover the tax due have come into his hands. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

SECTION 27-135. UNDEREVALUATION OF ESTATE; COLLECTION OF ADDITIONAL TAX; MINIMUM ADDITIONAL TAX OR REFUND PAYABLE.

The clerk of the circuit court, following payment of the tax on the probate or administration of the estate, shall thereafter compare the total value probate estate as shown on the probate tax return with the total value shown on the inventory of such estate to determine whether the estate has been undervalued for tax purposes. If the clerk finds that such estate has been undervalued, he shall thereupon collect such additional tax as

may be due. In the event of an overpayment of such tax, the personal representative may apply to the treasurer for a refund. No additional tax shall be payable or no refund made if the payment or refund due would be less than five dollars ($5.00). (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

State Law Reference--Code of Virginia, §58.1-1717.

SECTIONS 27-136 - 27-139. RESERVED.

ARTICLE XI. RECORDATION TAX.

SECTION 27-140. RECORDATION TAX - IMPOSITION.

The is hereby imposed a City recordation tax in an amount equal to one-third the amount of the state recordation tax collectible for the state on the first recordation of each taxable instrument as provided for Chapter 8, Title 58.1 of the Code of Virginia; provided however, that no tax shall be imposed under this section upon any instrument for which the state recordation tax is fifty cents (50c) specifically; and provided further, that where a deed or other instrument conveys, covers, or relates to property located partially in the City, the tax imposed under the authority of this section shall be computed only with respect to that portion of the property located in the City. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

State Law References--Code of Virginia, §58.1-3800, §58.1-3801.

SECTION 27-141. DUTY AND COMPENSATION OF CLERK OF CIRCUIT COURT OF THE CITY

The clerk of the circuit court of the City collecting the tax imposed under section 27-140 shall pay the same into the treasury of the City. For his service in collecting the tax imposed by section 27-140, the clerk shall be compensated out of the treasury of the City in the amount of five percent (5%) of the amount so collected and paid over. Such compensation shall be paid out of the city treasury. (Ord. No. 044-88, 11-15-88; Ord. No. 017-92, 11-10-92)

State Law Reference-- Code of Virginia, §58.1-3803.

SECTIONS 27-142 - 27-149. RESERVED.

ARTICLE XII. DAILY RENTAL TAX

SECTION 27-150. DAILY RENTAL TAX - LEVY AND AMOUNT.

Beginning with the effective date of this ordinance, and for every tax year thereafter, there is hereby levied and imposed on the gross proceeds of every person engaged in the short-term rental business a tax of one percent (1%) of such gross proceeds. Such tax shall be in addition to the tax levied pursuant to Section 58.1-605 of the Code of Virginia. (Ord. No. 015-91, 4-23-91; Ord. No. 017-92, 11-10-92)

State Law Reference--Code of Virginia, §58.1-3510.1.A.

SECTION 27-151. DEFINITIONS.

(a) *GROSS PROCEEDS*. For the purposes of this article, "gross proceeds" means the total amount charged to each person for the rental of daily rental property, excluding any state and local sales tax paid pursuant to the Virginia Retail Sales and Use Tax Act.

(b) *DAILY RENTAL PROPERTY*. For purposes of this article, "daily rental property" means all tangible personal property held for rental by a person engaged in the short-term rental business, except trailers as defined in Section 46.2-100 of the Code of Virginia, and other tangible personal property required to be licensed or registered with the Department of Motor Vehicles, Department of Game and Inland Fisheries, or the Department of Aviation.

(c) *SHORT-TERM RENTAL BUSINESS*. A "short-term rental business" is defined as a business in which not less than eighty percent (80%) of the gross rental receipts of such business in any year are from transactions involving rental periods of ninety-two (92) consecutive days or less, including all extensions and renewals to the same person or a person affiliated with the lessor.

"Affiliated" for purposes of this section shall mean any common ownership interest in excess of five percent (5 %) of any officers or partners in common with the lessor and lessee. For purposes of this test, (i) any rental to a person affiliated with the lessor shall be treated as rental receipts but shall not qualify for purposes of the eighty percent (80%) requirement, and (ii) any rental of personal property which also involves the provision of

personal services for the operation of the personal property rented shall not be treated as gross receipts from rental. For purposes of this section, the delivery and installation of tangible personal property shall not mean operation. (Ord. No. 015-91, 4-23-91; Ord. No. 017-92, 11-10-92)

State Law References--Code of Virginia, §58.1-3510.1.A., §58.1-3510.B., §58.1-3510.C.

SECTION 27-152. SHORT-TERM RENTAL BUSINESS APPLICATION.

Each person engaging in the business of short-term rental as defined in Section 27-151(c) of this ordinance shall file annually an application for a Certificate of Registration with the commissioner for each place of business in the City from which short-term rental business will be conducted by the applicant. Such application shall be filed within thirty (30) days of the effective date of this ordinance. Subsequent application shall be filed by December 1 of the year preceding the tax year, or, for a new business, within thirty (30) days of the beginning of the operations of a short-term rental business. The application shall be on a form prescribed by the commissioner and shall set forth the name under which the applicant intends to operate the rental business, the location, and such other information as the commissioner may require.

The owner of the short-term rental business shall sign the application. (Ord. No. 015-91, 4-23-91; Ord. No. 017-92, 11-10-92; Ord. No. 009-2000, 04-11-00)

State Law Reference--Code of Virginia, §58.1-3510.2.

SECTION 27-153. CERTIFICATE OF REGISTRATION.

Upon approval of the application by the commissioner , a Certificate of Registration shall be issued. This Certificate shall be conspicuously displayed at all times at the place of business for which it is issued.

The Certificate is not assignable and shall be valid only for the person in whose name it is issued and the place of business designated. (Ord. No. 015-91, 4-23-91; Ord. No. 017-92, 11-10-92)

State Law Reference-- Code of Virginia, §58.1-3510.2.

SECTION 27-154. COLLECTION, RETURN. AND REMITTANCE OF TAX.

Every person engaged in the short-term rental business as defined in Sec. 27-151 shall collect a daily rental property tax from the lessee of the daily rental property not later than at the end of the term of the rental. The lessor of the daily rental property shall transmit a quarterly return to the commissioner , indicating the gross proceeds derived from the short-term rental business and shall remit therewith the payment of such tax as is due for that quarter. The quarterly returns and payment of tax shall be filed with the commissioner on or before the 20th day of the month following the end of each quarter, representing the gross proceeds and taxes collected during the preceding quarter. The return shall be upon such forms and set forth such information as the commissioner may require, showing the amount of gross proceeds and the tax required to be collected. The taxes required to be collected under this article shall be deemed to be held in trust by the business required to collect such taxes until remitted as required in this article. (Ord. No. 015-91, 4-23-91; Ord. No. 017-92, 11-10-92)

State Law Reference--Code of Virginia, §58.1-3510.2.

SECTION 27-155. RECORDS.

(a) The provisions of Sec. 27-9 of this chapter shall apply herein, *mutatis mutandis*, except that Sec. 27-9(b) shall not apply.

(b) In addition to the information specified in subsection (a) of this section, every person engaged in a short-term rental business shall maintain a complete record of all exemptions from payment of this tax granted to renters of short-term rental property including:

1. A copy of the Virginia Department of Taxation Tax Exemption Certificate; or

2. A copy of the U.S. State Department Tax Exemption Certificate which U.S. State Department card must specify the renter by name as exempt from sales tax; or

3. Other explanation and proof of claimant exemption.

(Ord. No. 015-91, 4-23-91; Ord. No. 017-92, 11-10-92)

SECTION 27-156. PROCEDURE UPON FAILURE TO FILE RETURN.

If any person, whose duty it is so to do, shall fail or refuse to file within the time provided in this article, the returns required in this article, the commissioner shall proceed in such manner as he may deem best to obtain facts and information on which to

base his estimate of the tax due. As soon as the commissioner shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax payable by any person who has failed or refused to make such return he shall proceed to determine and assess against such person the tax, penalty and interest provided for by this chapter and shall notify such person by registered mail, sent to his last known place of business, of the total amount of such tax, penalty and interest and the total amount thereof shall be payable within ten (10) days from the date of such notice. In the event such tax is not paid within ten (10) days from the date of the notice, the commissioner shall proceed to collect same in accordance with Chapter 39 of Title 58.1 of the Code of Virginia. (Ord. No. 015-91, 4-23-91; Ord. No. 017-92, 11-10-92)

SECTION 27-157. EXEMPTIONS; PENALTIES.

Provisions in §58.1-608 of Chapter 6 of the Code of Virginia, relating to exemptions, Code of Virginia, §§58.1-635 and 58.1-636 relating to penalties, and the Code of Virginia, §58.1-625 relating to the manner of collecting the local retail sales and use tax applicable in Chapter 6 (§58.1-600, *et seq*.) of Title 58.1 of the Code of Virginia, shall apply *mutatis mutandis* to the daily rental tax, except that the commissioner shall assess the tax due, and the treasurer shall collect the daily rental tax, instead of the Department of Taxation.
(Ord. No. 017-92, 11-10-92)

State Law Reference--Code of Virginia, §58.1-3510.3.

SECTION 27-158. UNCERTIFIED RENTERS PROHIBITED FROM COLLECTING TAX.

No person renting any property or service to any other person shall collect from the lessee the daily rental property tax authorized by this article unless he has a valid Certificate of Registration issued for the current year by the commissioner . Any payments collected in a manner not authorized by law shall be refunded to such lessees as can be identified with the remainder forfeited to the City. (Ord. No. 015-91, 4-23-91; Ord. No. 017-92, 11-10-92)

SECTION 27-159. FAILURE TO FILE RETURN; FRAUDULENT RETURN; CIVIL PENALTIES.

(a) When any person fails to make any return and pay the full amount of the tax required by this article, there shall be imposed, in addition to other penalties provided herein, a specific penalty to be added to the tax in the amount of six percent (6%) if the failure is for not more than one month, with an additional six percent (6%) for each additional month, or fraction thereof, during which the failure continues, not to exceed thirty percent (30%) in the aggregate. In no case, however, shall the penalty be less than ten dollars ($10.00) and such minimum

penalty shall apply whether or not any tax is due for the period for which such return was required. If such failure is due to providential or other good cause shown to the satisfaction of the commissioner , such return with or without remittance may be accepted exclusive of penalties. In the case of a false or fraudulent return where willful intent exists to defraud the City of any tax due under this article, or in the case of a willful failure to file a return with the intent to defraud the City of any such tax, a specific penalty of fifty percent (50%) of the amount of the proper tax shall be assessed. All penalties and interest imposed by this chapter shall be payable by the person and collectible by the commissioner in the same manner as if they were a part of the tax imposed.

(b) It shall be prima facie evidence of intent to defraud the City of any tax due under this chapter when any person reports his gross proceeds at fifty percent (50%) or less of the actual amount.

(c) Interest at a rate determined in accordance with the Code of Virginia, §58.1-15, shall accrue on the tax until the same is paid, or until an assessment is made, pursuant to the Code of Virginia, §58.1-15, after which interest shall accrue as provided therein. (Ord. No. 017-92, 11-10-92)

State Law Reference-- Code of Virginia, §58.1-635.

SECTION 27-160. PENALTY FOR FAILURE TO FILE RETURN OR MAKING FALSE RETURN.

Any person subject to the provisions of this article failing or refusing to file a return herein required to be made, or failing or refusing to file a supplemental return or other data required by the commissioner , or who makes a false or fraudulent return with intent to evade the tax hereby levied, or who makes a false or fraudulent claim for refund, or who gives or knowingly receives a false or fraudulent exemption certificate, or who violates any other provision of this article, punishment for which is not otherwise herein provided, shall be guilty of a Class 1 misdemeanor. (Ord. No. 017-92, 11-10-92)

This ordinance will be effective as of June 1 , 1991.

SECTIONS 27-161 - 27-169. RESERVED.

ARTICLE XIII. CIGARETTE TAX

SECTION 27-170. DEFINITIONS.

(a) *GENERALLY.* Certain words and phrases, when used in this article, shall, for the purposes of this article, have the meanings ascribed to them by this section, except where the context clearly indicates a different meaning.

(b) *CARTON.* Any container, regardless of material used in its construction, in which ten (10) packages of cigarettes are placed.

(c) *CIGARETTE.* Any roll of any size or shape for smoking, whether filtered or unfiltered, with or without a mouthpiece, made wholly or partly of cut, shredded or crimped tobacco or other plant or substitute for tobacco, whether the same is flavored, adulterated or mixed with another ingredient, if the wrapper or cover is made of any material other than leaf tobacco or homogenized leaf tobacco, regardless of whether the roll is labeled or sold as a cigarette or by any other name.

(d) *CITY.* Winchester, Virginia.

(e) *DEALER.* Every manufacturer, manufacturer's representative, self-wholesaler, wholesaler, retailer, vending machine operator, public warehouseman or other person who shall sell, receive, store, possess, distribute or transport cigarettes within or into the City.

(f) *PACKAGE.* Any container, regardless of the material used in its construction in which separate cigarettes are placed without such cigarettes being placed into any container within the package. Packages are those containers of cigarettes from which individual cigarettes are ordinarily taken when they are consumed by their ultimate user.

(g) *PURCHASER.* Means every person to whom title to any cigarettes is transferred by a seller within the corporate limits of the City.

(h) *SALE.* Means every act or transaction, irrespective of the method or means employed, including the use of vending machines and other mechanical devices, whereby title to any cigarettes shall be transferred from the seller to any other person within the corporate limits of the City.

(i) *SELLER.* Means every person who transfers title to any cigarettes, or in whose place of business title to any cigarettes is transferred, within the corporate limits of the City, for any purpose other than resale. The term shall by synonymous with the term Retail Dealer.

(j) *STAMP*. Means a small heat set of paper or decalcomania to be sold by the treasurer or as authorized by the commissioner and to be affixed to every package of cigarettes sold to retail in the City. (Ord. No. 035-91, 9-10-91; Ord. No. 017-92, 11-10-92)

State Law References--Authority of city to levy cigarette tax and permitted provision of ordinance providing for administration and enforcement of such tax, Code of Virginia, §§ 58.1-3830, 58.1-3832, 58.1-3840; City Charter §1.01.

SECTION 27-171. LEVIED; AMOUNT; TAX ADDITIONAL TO OTHER TAXES.

(a) In addition to all other taxes of every kind now or hereafter imposed by law, there is hereby levied and imposed by the City upon every person who sells or uses cigarettes within the City, from and after the effective date of the ordinance from which this section is derived, an excise tax equivalent to ten cents ($0.10) per each package containing twenty five (25) or fewer cigarettes. The tax shall be paid and collected in the manner and at the time hereinafter prescribed; provided, that the tax payable for each cigarette or cigarette package sold or used within the City shall be paid but once. The tax hereby levied shall not apply to free distribution of sample cigarettes in packages containing five (5) or fewer cigarettes.

(b) The tax levied and imposed by this article shall be in addition to all other taxes of every kind levied and imposed by any other ordinance or law. (Ord. No. 035-91, 9-10-91; Ord. No. 017-92, 11-10-92)

SECTION 27-172. METHODS OF COLLECTION.

(a) The tax imposed by this article shall be evidenced by the use of a stamp and shall be paid by each dealer or other person liable for the tax at the time the stamps are purchased from the treasurer. The stamps shall be affixed in such a manner that their removal will require continued application of water or steam. Each dealer or other person liable for the tax is hereby required, and it shall be his duty, to collect and pay the tax.

(b) It shall be the duty of each dealer or other person liable for the tax to report monthly to the commissioner separately the following information:

1. The quantity of stamped cigarettes sold or delivered during the period requested by the commissioner to:
   (a) each dealer,
   (b) each seller and,
   (c) each separate person or place of business within the City.

2. The quantity of stamps on hand, both affixed and unaffixed on the first day of the period of request and the quantity of stamps or stamped cigarettes received during the period,

3. Such further information as the commissioner may require for the proper administration and enforcement of this article for the determination of the exact number of cigarettes in the possession of each dealer or user.

(c) The commissioner is authorized to enter into an arrangement with the Virginia Department of Taxation to allow a dealer who is a tobacco wholesaler to use a dual die or stamp to evidence the payment of both the City and the state cigarette tax. The commissioner shall have the authority to determine the procedures by which such an arrangement may be agreed upon by the City and the Department of Taxation.

(d) When, upon examination and audit of any invoices, records, books, canceled checks or other memoranda touching on the purchase, sale, receipt, storage or possession of tobacco products taxed herein, any dealer or other person liable for the tax is unable to furnish evidence to the commissioner of sufficient tax payments and stamp purchases to cover cigarettes which were sold, used, stored, received, purchased or possessed by him, the prima facie presumption shall arise that such cigarettes were received, sold, used, stored, purchased or possessed by him without the proper tax having been paid. The commissioner shall, from the results of such examination and audit based upon such direct or indirect information available, assess the tax due and unpaid.

(e) The dealer or other person liable for the tax shall be notified by certified mail or hand delivery of such deficiency and such tax, penalty and interest assessed shall be due and payable within ten days after notice of such deficiency has been issued.

(f) It shall be the duty of every dealer and seller in the City to maintain and keep, for a period of two (2) years, complete records of all cigarettes delivered or sold by such dealer or seller and to make all such records available for examination by the commissioner , upon demand, at any and all reasonable times. (Ord. No. 035-91, 9-10-91; Ord. No. 017-92, 11-10-92)

SECTION 27-173. PREPARATION AND SALE OF STAMPS GENERALLY; DISCOUNTS.

For the purpose of making stamps available for use, the commissioner shall prescribe, prepare, and furnish to the treasurer, and the treasurer shall sell, stamps of such denomination and in such quantities as may be necessary for the payment of the taxes imposed by this article. In the sale of such stamps, the treasurer shall allow a discount of

five percent (5%) of the denominational or face value of the stamps to cover the costs incurred in affixing the stamps to packages of cigarettes. (Ord. No. 035-91, 9-10-91; Ord. No. 017-92, 11-10-92)

SECTION 27-174. NOTICE BY RETAIL DEALERS.

Retail dealers who shall sell, offer for sale, store, possess, distribute, purchase, receive or transport cigarettes in or into the City, shall notify the commissioner , in writing, upon request by the commissioner , of the supplier of such cigarettes and the name and address and the Virginia Retail Sales and Use Certificate of Registration number for each separate place of business. (Ord. No. 035-91, 9-10-91; Ord. No. 017-92, 11-10-92)

SECTION 27-175. DISPLAY OF STAMPS - SEIZURE.

(a) Stamps shall be placed upon each package of cigarettes in such manner as to be readily visible to the purchaser.

(b) Any seller found to possess any cigarettes without the tax paid stamp affixed who is not in the process of affixing such stamps thereto, shall be presumed to be in possession of untaxed cigarettes in violation of this article. If such person has received the cigarettes within the preceding forty-eight (48) hours, and has not offered them for sale, such presumption shall not apply.

(c) Any cigarettes placed in any coin operated vending machine shall be presumed for sale within the City. Any vending machine located within the City containing cigarettes upon which the stamp has not been affixed or containing cigarettes placed so as to not allow visual inspection of the stamp through the viewing area as provided for by the vending machine manufacturer shall be presumed to contain untaxed cigarettes in violation of this article.

(d) Any cigarettes, coin operated vending machines, counterfeit stamps, or other property found in violation of this article shall be declared contraband goods and may be seized by the commissioner . In addition to any tax due, the dealer or other person liable for the tax possessing such untaxed cigarettes shall be subject to civil and criminal penalties herein provided.

(e) In lieu of seizure, the commissioner may seal such vending machines to prevent continued illegal sale or removal of such cigarettes. The removal of such seal from a vending machine by any unauthorized person shall be a violation of this article. Nothing in this article shall prevent the seizure of any vending machine at any time after it is sealed.

(f) All cigarette vending machines shall be plainly marked with the name, address and telephone number of owner of said machine.

(g) Any seized and confiscated cigarettes, vending machines or other property used in the furtherance of any illegal evasion of the tax may be disposed of by sale or other method deemed appropriate by the commissioner after thirty (30) days after notice to the person from whom the items were seized. No credit from any sale of cigarettes, vending machines or other property seized shall be allowed toward any tax, penalties or interest assessed. (Ord. No. 035-91, 9-10-91; Ord. No. 017-92, 11-10-92)

SECTION 27-176. REFUND FOR UNUSED OR DAMAGED STAMPS OR METER IMPRINTS.

(a) Should any person, after acquiring from the treasurer any stamps provided for in this article, cease to be engaged in a business necessitating the use of the stamps, or should the stamps or meter imprints be damaged to the extent that they are unusable, such person shall be entitled to a refund of the denominational or face amount of any such stamps, less any discount, upon presenting the stamps to the commissioner and furnishing the commissioner with an affidavit showing, to his satisfaction, that the stamps were acquired by such person but not used, and the reason for requesting the refund.

(b) Any and all refunds for unused or damaged stamps provided for under this section may be made on vouchers approved by the commissioner . Such refunds shall be charged against the sums collected for the sale of said stamps and for the use of such imprints. Payment to the person requesting the refund shall be made within twenty (20) days of the request. (Ord. No. 017-92, 11-10-92)

SECTION 27-177. RULES AND REGULATIONS.

The commissioner is hereby authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations relating to the methods and means of cancellation of the stamps provided for in this article and to any and all other matters pertaining to the administration and enforcement of the provisions of this article. The commissioner is further authorized and empowered to examine the books, records, invoices, papers and any and all cigarettes in and upon any premises where the same are placed, stored, sold, offered for sale, or displayed for sale by a seller. The commissioner is authorized to delegate any of the powers and duties set out in this article to one or more deputies or assistants, except as may be prohibited by law. (Ord. No. 017-92, 11-10-92)

SECTION 27-178. VIOLATIONS OF ARTICLE - GENERALLY.

(a) Any person violating any of the provisions of this article shall be guilty of a Class 1 misdemeanor. Conviction and punishment for such violation shall not relieve any person from the payment of any tax imposed by this article. In addition, any person who shall perform any fraudulent act or fail to perform any act for the purpose of evading the payment of any tax imposed by this article shall be required to pay a penalty in the amount of fifty (50) percent, and interest at the rate of ten percent (10%) per year upon any tax found to be overdue and unpaid.

(b) Each day's violation of, or noncompliance with, any of the provisions of this article shall be and constitute a separate offense. (Ord. No. 035-91, 9-10-91; Ord. No. 017-92, 11-10-92)

SECTION 27-179. VIOLATIONS OF ARTICLE - PROHIBITED ACTS ENUMERATED.

(a) It shall be unlawful and a violation of this article for any person:

1. To perform any act or fail to perform any act for the purpose of evading he payment of any tax imposed by this article or of any part thereof, or for any dealer or seller, with intent to violate any provision of this article, to fail or refuse to perform any of the duties imposed upon him under the provisions of this article or to fail or refuse to obey any lawful order which the commissioner may issue under this article.

2. To falsely or fraudulently make, forge, alter or counterfeit any stamp, invoice or reports, or the printed markings of any meter machine, to procure or cause to be made, forged, altered or counterfeited any such stamp or printed markings of a meter machine, or knowingly and willfully to alter, publish, pass or tender as true any false, altered, forged or counterfeited stamp or stamps or printed markings or a meter machine.

3. To sell any cigarettes upon which the tax imposed by this article has not been paid and upon which evidence of payment thereof is not shown on each package of cigarettes.

4. To reuse or refill with cigarettes any package from which the cigarettes have been removed, for which the tax has been paid.

5. To remove from any package any stamp or the printed markings of a meter machine with intent to use or cause the same to be used after the same have already been used, or to buy, sell or offer for sale or give away, any used, removed, altered or restored stamps or printed markings of a meter machine, to any person, or to reuse any stamp or printed markings of a meter machine which

has theretofore been used for evidence of the payment of any tax prescribed by this article, or, except as to the treasurer, to sell or offer to sell any stamp or printed markings of a meter machine provided for herein.

6. To possess, store, use, authorize or approve the possession, storage or use for sale or resale of any cigarettes in quantities of more than sixty (60) packages upon which the stamp has not been affixed; or

7. To transport, authorize or approve the transportation of any cigarettes, in quantities of more than sixty packages into or within the City upon which the stamp has not been affixed, if they are:

(a) Not accompanied by a bill of lading or other document indicating the true name and address of the consignor or seller and the consignee or purchaser and the brands and quantity of cigarettes transported; or

(b) Accompanied by a bill of lading or other document which is false or fraudulent in whole or part; or

(c) Accompanied by a bill of lading or other document indicating:

(i) A consignee or purchaser in another state or the District of Columbia who is not authorized by the law of such other jurisdiction to receive or possess such cigarettes on which the taxes imposed by such other jurisdiction have not been paid, unless the tax of the state or District of destination has been paid and the said cigarettes bear the tax stamps of that state or District; or

(ii) A consignee or purchaser in the Commonwealth of Virginia but outside the taxing jurisdiction who does not possess a Virginia Sales and Use Tax Certificate, a Virginia Retail Tobacco License and, where applicable, both a business license and a retail tobacco license issued by the local jurisdiction of destination.

(Ord. No. 035-91, 9-10-91; Ord. No. 017-92, 11-10-92)

ARTICLE XIV. ADMISSIONS TAX

SECTION 27-180. DEFINITIONS.

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

(a) *ADMISSION CHARGE.* "Admission charge" means the charge made for admission to any amusement or entertainment, exclusive of any federal tax thereon, including a charge made for season tickets.

(b) *PLACE OF AMUSEMENT OR ENTERTAINMENT.* "Place of amusement or entertainment" means any place in the City wherein or whereat any of the following, or amusements or entertainment's similar to the following, are located, conducted, performed, exhibited and operated: Circuses, carnivals, menageries, amusement parks, moving picture shows, fairs, shows and exhibitions of all kinds; dances; basketball, football, wrestling, boxing and sports of all kinds; swimming pools, bowling alleys, roller rinks, golf courses, miniature golf, charter boats, drift boats, party boats, party boats solely operated within the corporate limits and within one mile into the adjacent waters, and other such things of a similar nature; concerts, theatrical, vaudeville, dramatic, operatic and musical performances and performances similar thereto; lectures, talks, literary readings, and performances similar thereto; such attractions as merry-go-rounds, Ferris wheels, roller coasters, leap-the-dips and the like, and all other public amusements, performances and exhibitions not specifically named herein; and any roof garden, cabaret or other similar place furnishing a public performance for profit, which shall include any room in any hotel, restaurant, hall or other public place where music and dancing privileges or any other entertainment is offered the patron in connection with serving or selling of food, refreshments or merchandise. A performance shall be regarded as being furnished for profit for purposes of this article even though the charge made for admission, refreshment service or merchandise is not increased by reason of the furnishing of such performance. (Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

State Law References--Admissions tax, Code of Virginia, §§ 58.1-3817, 58.1-3840.

SECTION 27-181. LEVIED; AMOUNT.

There is hereby imposed and levied a tax of five percent (5%) of the amount paid for admission to any place of amusement or entertainment, to be paid by every person who pays an admission charge to such place. Except as otherwise provided in Section 27-322, if any person is admitted free to any place of amusement or entertainment at any time when an admission charge is made to other persons, an equivalent tax is hereby levied

and shall be collected based on the price charged to such other persons of the same class for the same or similar accommodations, such tax to be paid by the person so admitted. (Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

SECTION 27-182. EXCEPTION FOR CERTAIN FREE ADMISSIONS.

No tax shall be payable under this article by the following, if admitted to any place of amusement or entertainment free:

(a) Bona fide officers and employees of such place. The word "officers" shall include any director, if such place is operated by a corporation.

(b) Any federal, state, city, county or city official or employee on official business.

(c) Any person whose admission to such place is required for the performance of some duty to or work for the proprietor thereof.

(d) Any newspaper reporter, photographer, telegrapher, radio announcer or person performing a similar vocation who is admitted for the performance of special duties in connection with any event and whose special duties are the sole reason for his presence.

(e) Children twelve (12) years of age and under.

(Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

SECTION 27-183. EXCEPTION FOR CERTAIN EVENTS.

(a) Notwithstanding any other section of this article, there shall be no tax payable on charges made for participating in participatory sports such as, but not limited to: Golf courses, tennis, bowling, swimming, and roller skating. However, admission charges for observing these sports shall be subject to the tax.

(b) No tax shall be payable on charges for admissions to the following categories of events:

1. Admissions charged for attendance at any event, the gross receipts of which go wholly to charitable purpose or purposes.

2. Admissions charged for attendance at public and private elementary, secondary, and college school-sponsored events, including events sponsored by school-recognized student organizations.

3. Admissions charged for entry into museums, botanical or similar gardens, and zoos.

4. Admissions charged for attendance at events sponsored by any governmental agency.

(Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

State Law Reference-- Code of Virginia, §58.1-3817.

SECTION 27-184. EXCEPTION IF ADMISSION CHARGE IS TEN CENTS OR LESS.

Where the admission charge is ten cents ($0.10) or less, no tax shall be payable under this article. Amounts paid for admission by season tickets or subscription shall be exempt only if the amount to be charged the holder or subscriber for a single admission is ten cents ($0.10) or less. (Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

SECTION 27-185. COLLECTION.

Every person receiving any payment for admission to any place of amusement or entertainment or for refreshments, service or merchandise on which a tax is levied under this article shall collect the amount of tax imposed by this article from the person making the payment, at the time of the payment of such admission or purchase, or from the person admitted free, at the time of such admission. If tickets or cards of admission are issued, the tax shall be collected at the time for the issuance of such tickets or cards. The taxes required to be collected under this section shall be deemed to be held in trust by the person required to collect the same until remitted as provided in this article. (Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

SECTION 27-186. REPORTS AND REMITTANCES GENERALLY.

(a) The person collecting any tax as provided in Section 27-185 shall make out a report, upon such forms and setting forth such information as the commissioner may prescribe or require, showing the amount of admission charges collected, exclusive of the federal tax thereon, and the tax from the admission or purchases for which he is liable, and shall sign and deliver such report to the commissioner with a remittance of such tax. Such reports and remittances shall be made on or before the twentieth day of each month covering the amount of tax collected during the preceding month.

(b) If the remittance under this section is by check or money order, such check or money order shall be payable to the treasurer. (Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

SECTION 27-187. REPORTS, REMITTANCES AND DEPOSITS BY TEMPORARY OR TRANSIENT PLACES OF AMUSEMENT OR ENTERTAINMENT.

(a) Whenever any place of amusement or entertainment of a temporary or transitory nature makes an admission charge which is subject to the tax levied by this article, or does not make such an admission charge but does sell refreshments, services or merchandise which is subject to the tax levied by this article, the commissioner may require the report and remittance of the requisite tax to be made on the day following the conclusion of a series of performances or exhibitions, or at such other reasonable time or times as he shall determine. Failure to comply with any such requirement of the commissioner as to the report and remittance of the tax so required shall be unlawful.

(b) Before any temporary or transient place of amusement or entertainment mentioned in subsection (a) above shall begin operation and before any license shall be issued therefor, if a license is required, the person operating the same shall deposit with the treasurer a sum of money, to be determined by the treasurer, sufficient to cover the tax required to be collected by such person under the provisions of the article, as security for the collection and payment to the City of such tax. At the conclusion of such temporary or transient operation in the City, such person shall file with the commissioner the report required by this article and pay such tax collected to the City. Upon the filing of such report and the making of such payment, the treasurer shall refund such deposit. Should any such person fail to file such report and pay such amount of tax collected within five (5) days from the termination of the operation of such amusement of entertainment, the commissioner may thereupon assess such person with such tax at the amount of such deposit and the treasurer shall retain such deposit in full payment of the tax collected by and due the City by such person. (Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

SECTION 27-188. COLLECTOR'S RECORDS.

It shall be the duty of every person liable for the collection and payment to the City of any tax imposed by this article to keep and to preserve, for a period of two (2) years, such suitable records as may be necessary to determine the amount of such tax he may have been responsible for collecting and paying to the City. The commissioner may inspect such records at all reasonable times. (Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

SECTION 27-189. DUTY OF COLLECTOR GOING OUT OR DISPOSING OF BUSINESS.

Whenever any person required to collect and pay to the City a tax under this article shall quit business or otherwise dispose of his business, any tax payable under this article to the City shall become immediately due and payable and such person shall immediately make a report and pay the tax due. (Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

SECTION 27-190. PROCEDURE UPON FAILURE TO COLLECT, REPORT, ETC., TAXES.

(a) If any person, whose duty it is so to do, shall fail or refuse to collect the tax imposed under the article and to make, within the time provided in this article, any report and remittance required by this article, the commissioner shall proceed in such manner as he may deem best to obtain facts and information on which to base his estimate of the tax due. As soon as the commissioner shall procure such facts and information as he is able to obtain upon which to base the assessment of any tax payable by any person who has failed or refused to collect such tax and to make such report and remittance, he shall proceed to determine and assess against such person the tax and penalties provided for by this article and shall notify such person, by registered mail, of the total amount of such tax and penalties and the total amount thereof shall be payable within ten (10) days from the date of such notice.

(b) It shall be the duty of the commissioner to ascertain the name of every person operating a place of amusement or entertainment in the City, liable for the collection of the tax levied by this article, who fails, refuses or neglects to collect the tax or to make, within the time provided by this article, the reports or remittances required in this article. The commissioner may have a summons issued for such person in the manner provided by law and shall make one return of the original to the general district court of the City.

(Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

SECTION 27-191. VIOLATIONS OF ARTICLE.

Any person violating or failing to comply with any provision of this article shall be guilty of a Class 1 misdemeanor. Each such violation or failure to pay shall constitute a separate offense, but conviction thereof shall not relieve any person from the payment, collection or remittance of the taxes, penalties and interest provided for in this chapter. (Ord. No. 016-91, 4-23-91; Ord. No. 017-92, 11-10-92)

This ordinance will be effective as of June 1, 1991.

ARTICLE XV. PUBLIC RIGHTS-OF-WAY USE FEE

SECTION 27-192. IMPOSITION OF RIGHTS-OF-WAY USE FEE.

There is hereby imposed within the city limits of the City of Winchester, Virginia, a "public rights-of-way use fee", exactly as described in Section 56-468.1 of the Code of Virginia, 1950, as amended, which said Section is incorporated herein by reference.

SECTION 27-193. EFFECTIVE DATE; REPEAL OF PREVIOUS FRANCHISE.

The fee imposed by this Article shall become effective on and after July 1, 2001. On and after July 1, 2001, the provisions of this Article shall supercede and repeal those portions and provisions of all existing Ordinances and franchise agreements which impose franchise fees on any "certificated provider of telecommunications services", as such term is defined by Section 56-468.1(A) of the Code of Virginia, 1950, as amended, but shall not alter, in any way, any and all other terms, requirements, and conditions of any such Ordinances or franchise agreements. (Ord. No. 006-2001, 3-13-01)

SECTIONS 27-194 - 27-199. RESERVED.

CHAPTER 28

LICENSE TAXES

SECTION 28-1. DEFINITIONS.

The following words and phrases, when used in this chapter, shall have the following respective meanings, except where the context clearly indicates a different or contrary meaning or there is an express provision to the contrary:

(a) *AFFILIATED GROUP* means:

1. One or more chains of includable corporations connected through stock ownership with a common parent corporation which is an includable corporation if:

   (i) Stock possessing at least eighty (80) percent of the voting power of all classes of stock and at least eighty (80) percent of each class of the nonvoting stock of each of the includable corporations, except the common parent corporation, is owned directly by one or more of the other includable corporations; and

   (ii) The common parent corporation directly owns stock possessing at least eighty (80) percent of the voting power of all classes of stock and at least eighty (80) percent of each class of the nonvoting stock of at least one of the other includable corporations. As used in this subdivision, the term "stock" does not include nonvoting stock which is limited and preferred as to dividends. The term "includable corporation" means any corporation within the affiliated group irrespective of the state or country of its incorporation; and the term "receipts" includes gross receipts and gross income.

2. Two (2) or more corporations if five (5) or fewer persons who are individuals, estates or trusts own stock possessing:

   (i) At least eighty (80) percent of the total combined voting power of all classes of stock entitled to vote or at least eighty (80) percent of the total value of shares of all classes of the stock of each corporation, and

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Editor's note--Ord. No. 029-96 adopted on November 12, 1996 revised this chapter, effective January 1, 1997.

(ii) More than fifty (50) percent of the total combined voting power of all classes of stock entitled to vote or more than fifty (50) percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.

When one or more of the includable corporations, including the common parent corporation is a nonstock corporation, the term "stock" as used in this subdivision shall refer to the nonstock corporation membership or membership voting rights, as is appropriate to the context.

(b) *AMUSEMENTS*. The term amusements shall include every person providing any type of entertainment or show for which compensation is received and which is not specifically provided for or exempt under another provision of this chapter.

(c) *ASSESSMENT*. The term assessment means a determination as to the proper rate of tax, the measure to which the tax rate is applied, and ultimately the amount of tax, including additional or omitted tax, that is due. An assessment shall include a written assessment made pursuant to notice by the Commissioner or a self-assessment made by a taxpayer upon the filing of a return or otherwise not pursuant to notice. Assessments shall be deemed made by the Commissioner when a written notice of assessment is delivered to the taxpayer by the Commissioner or an employee of the Commissioner, or mailed to the taxpayer at his last known address. Self-assessments shall be deemed made when a return is filed, or if no return is required, when the tax is paid. A return filed or tax paid before the last day prescribed by this chapter for the filing or payment thereof shall be deemed to be filed or paid on the last day specified for the filing of a return or the payment of tax, as the case may be.

(d) *BASE YEAR*. The term base year means the calendar year preceding the license year, except for contractors subject to the provisions of §58.1-3715 of the Code of Virginia.

(e) *BROKER*. The term broker shall mean an agent of a buyer or a seller who buys or sells stocks, bonds, commodities, or services, usually on a commission basis.

(f) *BUSINESS*. The term business means a course of dealing which requires the time, attention and labor of the person so engaged for the purpose of earning a livelihood or profit. It implies a continuous and regular course of dealing, rather than an irregular or isolated transaction. A person may be engaged in more than one business. The following acts shall create a rebuttable presumption that a person is engaged in a business: (i) advertising or otherwise holding oneself out to

the public as being engaged in a particular business; or (ii) filing tax returns, schedules and documents that are required only of persons engaged in a trade or business.

(g) *BUSINESS SERVICE*. The term business service shall mean any service rendered for compensation to any business, trade, occupation or governmental agency unless such service is provided for under provision of this chapter.

(h) *COMMISSIONER*. The term Commissioner shall be the Commissioner of the Revenue for the City of Winchester, Virginia.

(i) *COMMODITY*. The term commodity shall mean staples such as wool, cotton, etc. which are traded on a commodity exchange and on which there is trading in futures.

(j) *CONTRACTOR*. The term contractor shall have the meaning prescribed in §58.1-3714.B of the Code of Virginia, as amended, whether such work is done or offered to be done by day labor, general contract or subcontract.

(k) *DEALER*. The term dealer for the purposes of this chapter shall mean any person engaged in the business of buying and selling securities for his own account, but does not include a bank, or any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as part of a regular business.

(l) *DEFINITE PLACE OF BUSINESS*. The phrase definite place of business means an office or a location at which occurs a regular and continuous course of dealing for thirty consecutive days or more. A definite place of business for a person engaged in business may include a location leased or otherwise obtained from another person on a temporary or seasonal basis; and real property leased to another. A person's residence shall be deemed to be a definite place of business if there is no definite place of business maintained elsewhere and the person is not licensable as a peddler or itinerant merchant.

(m) *DIRECT SELLER*. The term direct seller means any person who:

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

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

(iii) Performs such activities pursuant to a written contract between such person and the person for whom the activities are performed, and such

contract provides that such person will not be treated as an employee with respect to such activities for federal tax purposes.

(n) *FINANCIAL SERVICES.* The term financial services means the buying, selling, handling, managing, investing, and providing of advice regarding money, credit, securities and other investments and shall include the service for compensation by a credit agency, an investment company, a broker or dealer in securities and commodities or a security or commodity exchange, unless such service is otherwise provided for in this chapter.

Those engaged in rendering financial services include, but without limitation, the following:

Buying installment receivables	Installment financing
Chattel mortgage financing	Inventory financing
Consumer financing	Loan or mortgage brokers
Credit card services	Loan or mortgage companies
Credit Unions	Safety deposit box companies
Factors	Security and commodity brokers and services
Financing accounts receivable	Stockbroker
Industrial loan companies	Working capital financing

(o) *GROSS EXPENDITURES*. The term gross expenditures shall mean all expenditures incurred in connection with the acquisition or lease of real property, including cash, credits, fees, commissions, brokerage charges and rentals, and all expenditures incurred in connection with the improvement or development of such property by force account, including all costs of labor involved in such improvement or development, cost of materials and supplies, equipment rental or an equivalent charge. Therefore if equipment is owned by the builder or developer, and any other expenditure of whatever description incurred in connection with the improvements or developments by force account of such property shall be part of gross expenditures. The term gross expenditures shall not include amounts expended for interest on or payment of principal of debt incurred in connection with such improvement or development work.

(p) *GROSS RECEIPTS.* The term gross receipts means the whole, entire, total receipts attributable to the licensed privilege, without deduction, except as may be limited by the provisions of Chapter 37 of Title 58.1 of the Code of Virginia. Further, subject to the conditions, exceptions, deductions and exemptions set out below, the term gross receipts shall mean the compensation from any business, profession, trade, occupation, vocation, calling or activity, including cash, credits, fees, commissions, brokerage charges and rentals, and property of any kind**,** nature or description, from either sales made or services rendered without any deduction therefrom on account of cost of the property sold, the cost of material, labor or services, rentals, royalties, taxes, interest or discounts paid or any expense whatsoever, and shall include in the case of merchants, the amount of the

sale, price of supplies and goods furnished to or used by the licensee or his family or other person for which no charge is made or for which a charge less than the prevailing fair market value is made.

(q) *LICENSE YEAR.* The term license year means the calendar year for which a license is issued for the privilege of engaging in business.

(r) *PERSON*. The word person shall include individuals, firms, partnerships, corporations, companies, associations or joint stock associations and any combination of individuals of whatever form or character. It shall include any trustee, receiver, assignee or personal representative thereof carrying on or continuing a business, profession, trade or occupation, but shall not include a trustee, receiver or other representative appointed by a court to liquidate assets for immediate distribution, or a sergeant or a sheriff, or any deputy, selling under authority of process or writ of a court of justice.

(s) *PERSONAL SERVICES.* The term personal services shall mean rendering for compensation any repair, personal, business or other services not specifically classified as "financial, real estate or professional service" under this chapter, or rendered in any other business or occupation not specifically classified in this chapter unless exempted from local license tax by Title 58.1 of the Code of Virginia.

(t) *PROFESSIONAL SERVICES.* The term professional services means services performed by architects, attorneys-at-law, certified public accountants, dentists, engineers, land surveyors, surgeons, veterinarians, and practitioners of the healing arts (the arts and sciences dealing with the prevention, diagnosis, treatment and cure or alleviation of human physical or mental ailments, conditions, diseases, pain or infirmities) and such occupations, and no others, as the Virginia Department of Taxation may list in the BPOL guidelines promulgated pursuant to 58.1-3701 of the Code of Virginia. The Department shall identify and list each occupation or vocation in which a professed knowledge of some department of science or learning, gained by a prolonged course of specialized instruction and study is used by its practical application to the affairs of others, either advising, guiding, or teaching them, and in serving their interests or welfare in the practice of an art or science founded on it. The word "profession" implies attainments in professional knowledge as distinguished from mere skill, and the application of knowledge to uses for others rather than for personal profit.

(u) *PURCHASES.* The word purchases shall mean all goods, wares and merchandise received for sale at each definite place of business of a wholesale merchant. The term shall also include the cost of manufacture of all goods, wares and merchandise manufactured by any wholesaler or wholesale merchant and sold or offered for sale. Such merchant may elect to report the gross receipts from the sale of manufactured goods, wares and merchandise if it cannot determine or chooses not to disclose the cost of manufacture.

(v) *REAL ESTATE SERVICES.* The term real estate services shall mean rendering a service for compensation as lessor, buyer, seller, agent or broker and providing a real estate service, unless the service is otherwise specifically provided for in this chapter, and such services include, but are not limited to, the following:

Appraisers of real estate
Escrow agents, real estate
Fiduciaries, real estate
Lessors of real property
Real estate agents, brokers and managers
Real estate selling agents
Rental agents for real estate

(w) *RETAILER or RETAIL MERCHANT.* The term retailer or retail merchant shall mean any person or merchant who sells goods, wares and merchandise for use or consumption by the purchaser or for any purpose other than resale by the purchaser, but does not include sales at wholesale to institutional, commercial and industrial users.

(x) *SECURITY.* The term security for purposes of this chapter shall have the same meaning as in the Securities Act (§13.1-501 *et seq.*) of the Code of Virginia, or in similar laws of the United States regulating the sale of securities.

(y) *SERVICES.* The term services shall mean things purchased by a customer which do not have physical characteristics, or which are not goods, wares, or merchandise.

(z) *TREASURER.* The term Treasurer shall be the Treasurer for the City of Winchester, Virginia.

(aa) *WHOLESALER or WHOLESALE MERCHANT.* The term wholesaler or wholesale merchant shall mean any person or merchant who sells wares and merchandise for resale by the purchaser, including sales when the goods, wares and merchandise will be incorporated into goods and services for sale, and also includes sales to institutional, commercial, government and industrial users which because of the quantity, price, or other terms indicate that they are consistent with sales at wholesale. (Ord. No. 044-88, 11-15-88; Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §28-1, Va. Code §58.1-3700.1.

SECTION 28-2. PURPOSE OF ARTICLE.

It is the purpose and policy of the City Council, in enacting this article imposing a license tax for the privilege of conducting business and engaging in certain professions, trades, and occupations in the City, to equalize as far as practicable the burden of such license taxation amount upon those liable thereto, by adopting for general application, but subject to exceptions or restrictions imposed by state or federal law (or to any restrictions or exceptions as may be imposed specifically hereafter), a system of license taxes measured by the gross receipts of the business, profession, trade or occupation on which the tax is levied. (Ord. No. 044-88, 11-15-88; Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §28-2.

SECTION 28-3. LICENSE DEEMED PERSONAL PRIVILEGE.

Every license issued under the provisions of this chapter shall be a personal privilege to transact, carry on or conduct the business, profession, trade or occupation which is the subject of the license and shall not be exercised except by the person licensed. (Ord. No. 044-88, 11-15-88; Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §28-3.

SECTION 28-4. BUSINESSES, ETC., SUBJECT TO TAX.

Each and all of the taxes hereinafter imposed are imposed upon the privilege of doing business or engaging in a profession or occupation in the City, including all phases of the business, profession, trade or occupation conducted in the City. (Ord. No. 044-88, 11-15-88; Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §28-4.

SECTION 28-5. LICENSE REQUIREMENT.

(a) Every person engaging in the City in any business, trade, profession, occupation or calling (collectively hereinafter "a business") as defined in this chapter, unless otherwise exempted by law, shall apply for a license for each such business if

1. such person maintains a definite place of business in the City,

2. such person does not maintain a definite office anywhere but does maintain an abode in the City, which abode for the purposes of this chapter shall be deemed a definite place of business, or

3. there is no definite place of business but such person operates amusement machines, is engaged as a peddler or itinerant merchant, carnival or circus as specified in §§58.1-3717, 3718, or 3728, respectively of the Code of Virginia, or is a contractor subject to §58.1-3715 of the Code of Virginia, or is a public service corporation subject to §58.1-3731 of the Code of Virginia. A separate license shall be required for each definite place of business.

A separate license shall be required for each definite place of business and for each business. One or more licenses may be issued on the same form. The taxpayer may, instead, comply with subsection (b).

(b) A person engaged in two or more businesses or professions carried on at the same place of business may elect to obtain one license for all such businesses and professions if all of the following criteria are satisfied:

1. each business or profession is licensable at the location and has satisfied any requirements imposed by state law or other provisions of the ordinances of this jurisdiction;

2. all of the businesses or professions are subject to the same tax rate, or, if subject to different tax rates, the licensee agrees to be taxed on all businesses and professions at the highest rate; and

3. the taxpayer agrees to supply such information as the Commissioner may require concerning the nature of the several businesses and their gross receipts.

(c) Each person subject to a license tax shall apply for a license prior to beginning business if he was not subject to licensing in this jurisdiction on or before January 1 of the license year, or no later than March 1 of the current license year if he had been issued a license for the preceding license year. The application shall be on forms prescribed by the Commissioner.

(d) The Commissioner may grant an extension of time, not to exceed 90 days, in which to file an application for a license, for reasonable cause. The extension shall be conditioned upon the timely payment of a reasonable estimate of the appropriate tax, subject to adjustment to the correct tax at the end of the extension together with interest from the due date until the date paid and, if the estimate

submitted with the extension is found to be unreasonable under the circumstances, a penalty of ten percent of the portion paid after the due date. (Ord. No. 029-96, 11-12-96)

Source--Va. Code §58.1-3703.1.

SECTION 28-6. PAYMENT OF TAX.

(a) The tax shall be paid with the application in the case of any license not based on gross receipts. If the tax is measured by the gross receipts of the business, the tax shall be paid on or before March 1, PROVIDED, HOWEVER, that, notwithstanding the provisions of Section 28-25 of this Code, any such tax for calendar year 2001, only, which amounts to more than $5,000.00 may, at the taxpayer's election, be paid in two installments, with one-half of the total due on or before March 1, 2001, and the balance due on or before August 1, 2001, but that this provision shall not apply to any year after calendar year 2001.

(b) The tax on a business beginning after January 1, if measured by gross receipts, shall be due thirty days after the business is begun, or March 1, whichever is later.

(c) No business license shall be issued to an applicant until the applicant has produced satisfactory evidence that all delinquent business license, personal property, meals, transient occupancy and admissions taxes owed by the business to the City have been paid. However, if the Treasurer has entered into a payment plan for any such delinquent taxes with the taxpayer, the Commissioner may issue a license on a quarterly basis, upon payment of the quarter's tax. (Ord. No. 029-93, 10-12-93; Ord. No. 029-96, 11-12-96; Ord. No. 019-2000, 09-12-00)

(Note – The effective date of this Ordinance is January 1, 2001.)

Source--Va. Code §58.1-3703.1.A.

SECTION 28-7. BEGINNING LICENSE.

Every person beginning a business, profession, trade or occupation which is subject to a license tax under the provisions of this article based in whole or in part on gross receipts, gross expenditures or gross purchases, shall estimate the amount of gross receipts he will

receive or the gross expenditures on the gross purchases he will incur between the date of beginning business and the end of the then current license year, and his license tax shall be computed on such estimates. (Ord. No. 029-96, 11-12-96)

Source--Former §28-6(a).

SECTION 28-8. APPLICATION OR PROCEDURE FOR OBTAINING A LICENSE.

(a) Every person liable to pay a license tax under the provisions of this chapter shall make application in writing to the Commissioner. The Commissioner shall furnish license application forms, which forms shall be properly and fully executed by the applicant, and shall contain such information as may be required by the Commissioner, in order to properly assess the tax liability.

(b) The application shall contain at least the following information:

1. Name
2. Trade Name
3. Nature of Business
4. Business Address
5. Mailing Address of applicant
6. Phone Number
7. Certification/Registration number, if any
8. Federal Identification Number or Social Security Number, for a sole proprietor
9. Date began
10. Whether Individual, Partnership or Corporation, etc.
11. Gross Receipts or Gross Purchases, as applicable
12. Signature
13. Date

(c) Any such person who willfully subscribes any such return or application which is not true and correct as to every material matter shall be guilty of a Class 2 misdemeanor. (Ord. No. 044-88, 11-15-88; Ord. No. 018-92, 11-10-92; Ord. No. 039-93, 11-09-93; Ord. No. 029-96, 11-12-96)

Source--Former §28-7(a)-(c).
State Law Reference--Code of Virginia §58.1-3700.

SECTION 28-9. SITUS OF GROSS RECEIPTS.

(a) General rule. Whenever the tax imposed by this chapter is measured by gross receipts, the gross receipts included in the taxable measure shall be only those gross receipts attributed to the exercise of a licensable privilege at a definite place of business within this jurisdiction. In the case of activities conducted outside of a definite place of business, such as during a visit to a customer location, the gross receipts shall be attributed to the definite place of business from which such activities are initiated, directed, or controlled. The situs of gross receipts for different classifications of business shall be attributed to one or more definite places of business or offices as follows:

1. The gross receipts of a contractor shall be attributed to the definite place of business at which his services are performed, or if his services are not performed at any definite place of business, then the definite place of business from which his services are directed or controlled, unless the contractor is subject to the provisions of §58.1-3715 of the Code of Virginia.

2. The gross receipts of a retailer or wholesaler shall be attributed to the definite place of business at which sales solicitation activities occur, or if sales solicitation activities do not occur at any definite place of business, then to the definite place of business from which sales solicitation activities are directed or controlled; however, a wholesaler or distribution house subject to a license tax measured by purchases shall determine the situs of its purchases by the definite place of business at which or from which deliveries of the purchased goods, wares and merchandise are made to customers. Any wholesaler who is subject to license tax in two or more localities and who is subject to multiple taxation because the localities use different measures, may apply to the Department of Taxation for a determination as to the proper measure of purchases and gross receipts subject to license tax in each locality.

3. The gross receipts of a business renting tangible personal property shall be attributed to the definite place of business from which the tangible personal property is rented or, if the property is not rented from any definite place of business, then the definite place of business at which the rental of such property is managed.

4. The gross receipts from the performance of services shall be attributed to the definite place of business at which the services are performed or, if not performed at any definite place of business, then the definite place of business from which the services are directed or controlled.

(b) Apportionment. If the licensee has more than one definite place of business and it is impractical or impossible to determine to which definite place of business gross

receipts should be attributed under the general rule and the affected jurisdictions are unable to reach an apportionment agreement, except as to circumstances set forth in §58.1-3709 of the Code of Virginia, the gross receipts of the business shall be apportioned between the definite places of businesses on the basis of payroll. Gross receipts shall not be apportioned to a definite place of business unless some activities under the applicable general rule occurred at, or were controlled from, such definite place of business. Gross receipts attributable to a definite place of business in another jurisdiction shall not be attributed to this jurisdiction solely because the other jurisdiction does not impose a tax on the gross receipts attributable to the definite place of business in such other jurisdiction.

(c) Agreements. The Commissioner may enter into agreements with any other political subdivision of Virginia concerning the manner in which gross receipts shall be apportioned among definite places of business. However, the sum of the gross receipts apportioned by the agreement shall not exceed the total gross receipts attributable to all of the definite places of business affected by the agreement. Upon being notified by a taxpayer that its method of attributing gross receipts is fundamentally inconsistent with the method of one or more political subdivisions in which the taxpayer is licensed to engage in business and that the difference has, or is likely to, result in taxes on more than one hundred percent (100%) of its gross receipts from all locations in the affected jurisdictions, the Commissioner shall make a good faith effort to reach an apportionment agreement with the other political subdivisions involved. (Ord. No. 029-96, 11-12-96)

Source--Va. Code §58.1-3703.1.A.3.

SECTION 28-10. RECORDS, SEPARATE ACCOUNTS TO BE MAINTAINED; REPORT TO THE COMMISSIONER OF THE REVENUE.

(a) Every person who is assessable with a license tax shall keep sufficient records to enable the Commissioner to verify the correctness of the tax paid for the license years assessable and to enable the Commissioner to ascertain what is the correct amount of tax that was assessable for each of those years. All such records, books of accounts and other information shall be open to inspection and examination by the Commissioner in order to allow the Commissioner to establish whether a particular receipt is directly attributable to the taxable privilege exercised within this jurisdiction. The Commissioner shall provide the taxpayer with the option to conduct the audit in the taxpayer's local business office, if the records are maintained there. In the event the records are maintained outside this jurisdiction, copies of the appropriate books and records shall be sent to the Commissioner's office upon demand.

(b) If any licensee shall fail to maintain the records required in this section, regularly supported by customary vouchers, the Commissioner is hereby authorized and directed to estimate the taxpayer's gross receipts or gross purchases or other license basis from the best evidence he can obtain, and the Commissioner shall make an assessment based on such determination. (Ord. No. 044-88, 11-15-88; Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §28-9(d); Va. Code §58.1-3703.1.A.6.

SECTION 28-11. CALCULATION OF GROSS RECEIPTS OR GROSS PURCHASES.

The calculation of gross receipts, gross expenditures or gross purchases for license tax purposes, shall be either a cash or accrual method; provided, that the method used must coincide with the system of accounts used by the taxpayer and the method employed by the taxpayer for federal and state income tax purposes. The preceding year's gross receipts, gross expenditures or gross purchases must coincide with the fiscal year of the business used for federal and state income tax purposes. (Ord. No. 044-88, 11-15-88; Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §28-10.

SECTION 28-12. PRORATING.

In the event a person ceases to engage in a business, trade, profession, or calling within the City during a year for which a license tax has already been paid, the taxpayer shall be entitled upon application to a refund for that portion of a license tax already paid, prorated on a monthly basis so as to ensure that the licensed privilege is taxed only for that fraction of the year during which it is exercised within the City. There shall be, however, no prorating based on beginning business estimates. The City may elect to remit any refunds in the ensuing fiscal year, and may offset against such refund any amount of past due taxes owed by the same taxpayer. In no event shall the City be required to refund any part of a minimum flat tax or the flat portion of the fee which is not based upon the gross receipts of the taxpayer. (Ord. No. 044-88, 11-15-88; Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §28-12.

SECTION 28-13. TRANSFER OF LICENSE.

(a) No City license shall be transferred from any person to another person, except for the continuation of the same business for which the license was originally issued.

(b) No City license shall be transferred from one location or stand to another location or stand except for the continuation of the same business for which the license was originally used.

(c) Upon application, any license that meets the exceptions of (a) or (b) above may be transferred for the unexpired term thereof. Upon presentment to the Commissioner of such license, such official shall transfer the license. The assignee shall have the same privileges and be subject to the same regulations and penalties as an original licensee, unless herein otherwise expressly provided. Estimated licenses may not be transferred. (Ord. No. 044-88, 11-15-88; Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §28-13.

SECTION 28-14. ADDITIONAL LICENSE TAXES; NOTICE OF INCREASED AMOUNT; PENALTY FOR NONPAYMENT, OVERPAYMENT TO BE CREDITED.

If the Commissioner ascertains, through a correct audit and computation of license tax, that any person assessed with a license tax levied under the provisions of this chapter for any license tax year during the last three (3) years, or including the current license tax year, shall be assessed an increased amount, he shall furnish written notice thereof to the taxpayer. If the assessment of the additional tax or taxes is not paid to the Treasurer within thirty (30) days after written notice to the taxpayer of such additional assessment, there shall be assessed a penalty and interest pursuant to this chapter. The Treasurer shall collect such penalty along with the tax in the same manner as the tax may be collected. Any overpayment of license taxes imposed under the terms of this chapter shall be credited to the amount of license tax due the following year or shall be refunded in case the licensee does not engage in a business, profession, trade or occupation subject to license by the City the following year. (Ord. No. 044-88, 11-15-88; Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §28-15.

SECTION 28-15. ASSESSMENT OF OMITTED LICENSE TAXES.

If the Commissioner ascertains that any person has not been assessed with a license tax levied under the terms of this chapter for any license tax year during the last three (3) years or for the current license tax year, and that the absence of such assessment was not due to the fraudulent intent to evade taxes on the part of such person, it shall be the duty of the commissioner to assess such person with the proper license tax for the year or years omitted, adding thereto the penalty and interest set forth in this chapter. If the tax was

omitted due to fraud by the taxpayer, the Commissioner shall assess the omitted tax for the current license year and the six (6) preceding years. (Ord. No. 044-88, 11-15-88; Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §28-15.
State Law Reference--Code of Virginia, §58.1-3903.

SECTION 28-16. LIMITATIONS AND EXTENSIONS.

(a) Where, before the expiration of the time prescribed for the assessment of any license tax imposed pursuant to this chapter, both the Commissioner and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(b) The period for collecting any local license tax shall not expire prior to the period specified in §58.1-3940 of the Code of Virginia, two (2) years after the date of assessment if the period for assessment has been extended pursuant to this subdivision, two years after the final determination of an appeal for which collection has been stayed pursuant to section 28-17(b) or 28-17(d) of this chapter, or two (2) years after the final decision in a court application pursuant to §58.1-3984 of the Code of Virginia or similar law for which collection has been stayed, whichever is later. (Ord. No. 029-96, 11-12-96)

Source--Va. Code §58.1-3703.1.A.4.

SECTION 28-17. APPEALS AND RULINGS.

(a) Any person assessed with a licensing tax under this chapter as the result of an audit may apply within ninety (90) days from the date of the assessment to the Commissioner for a correction of the assessment. The application must be filed in good faith and sufficiently identify the taxpayer, audit period, remedy sought, each alleged error in the assessment, the grounds upon which the taxpayer relies, and any other facts relevant to the taxpayer's contention. The Commissioner may hold a conference with the taxpayer if requested by the taxpayer, or require submission of additional information and documents, further audit, or other evidence deemed necessary for a proper and equitable determination of the applications. The assessment shall be deemed prima facie correct. The Commissioner shall undertake a full review of the taxpayer's claims and issue a determination to the taxpayer setting forth its position. Every assessment pursuant to an audit shall be

accompanied by a written explanation of the taxpayer's right to seek correction and the specific procedure to be followed in the City, including the name and address to which an application should be directed.

(b) Provided an application is made within ninety (90) days of an assessment, collection activity shall be suspended until a final determination is issued by the Commissioner, unless the Commissioner determines that collection would be jeopardized by delay or that the taxpayer has not responded to a request for relevant information after a reasonable time. Interest shall accrue in accordance with the provisions of section 28-20 of this chapter, but no further penalty shall be imposed while collection action is suspended. The term "jeopardized by delay" includes a finding that the application is frivolous, or that a taxpayer desires (i) to depart quickly from the locality, (ii) to remove his property therefrom, (iii) to conceal himself or his property therein, or (iv) to do any other act tending to prejudice, or to render wholly or partially ineffectual, proceedings to collect the tax for the period in question.

(c) Any person assessed with a license tax under this chapter as a result of an audit may apply within ninety (90) days of the determination by the Commissioner on an application pursuant to subsection (a) above to the Tax Commissioner for a correction of such assessment. The Tax Commissioner shall issue a determination to the taxpayer within ninety (90) days of receipt of the taxpayer's application, unless the taxpayer and the Commissioner are notified that a longer period will be required. The application shall be treated as an application pursuant to §58.1-1821 of the Code of Virginia, and the Tax Commissioner may issue an order correcting such assessment pursuant to §58.1-1822 of the Code of Virginia. Following such an order, either the taxpayer or the Commissioner may apply to the appropriate circuit court pursuant to §58.1-3984 of the Code of Virginia. However, the burden shall be on the party making the application to show that the ruling of the Tax Commissioner is erroneous. Neither the Tax Commissioner nor the Department of Taxation shall be made a party to an application to correct an assessment merely because the Tax Commissioner has ruled on it.

(d) On receipt of a notice of intent to file an appeal to the Tax Commissioner under subsection (c) above, the Commissioner shall further suspend collection activity until a final determination is issued by the Tax Commissioner, unless the Commissioner determines that collection would be jeopardized by delay or that the taxpayer has not responded to a request for relevant information after a reasonable time. Interest shall accrue in accordance with the provisions of section 28-20, but no further penalty shall be imposed while collection action is suspended. The term "jeopardized by delay" shall have the same meaning as set forth in subsection (b).

(e) Any taxpayer may request a written ruling regarding the application of the tax to a specific situation from the Commissioner. Any person requesting such a ruling

must provide all the relevant facts for the situation and may present a rationale for the basis of an interpretation of the law most favorable to the taxpayer. Any misrepresentation or change in the applicable law or the factual situation as presented in the ruling request shall invalidate any such ruling issued. A written ruling may be revoked or amended prospectively if (i) there is a change in the law, a court decision, or (ii) the Commissioner notifies the taxpayer of a change in the policy or interpretation upon which the ruling was based. However, any person who acts on a written ruling which later becomes invalid shall be deemed to have acted in good faith during the period in which such ruling was in effect. (Ord. No 029-96, 11-12-96)

Source--Va. Code §58.1-3703.1.A.5.

SECTION 28-18. EXCLUSIONS AND DEDUCTIONS FROM "GROSS RECEIPTS."

(a) General Rule. Gross receipts for license tax purposes shall not include any amount not derived from the exercise of the licensed privilege to engage in a business or profession in the ordinary course of business or profession.

(b) The following items shall be excluded from gross receipts:

1. Amounts received and paid to the United States, the Commonwealth or any county, city or town for the Virginia retail sales or use tax, or for any local sales tax or any local excise tax on cigarettes, for any federal or state excise taxes on motor fuels.

2. Any amount representing the liquidation of a debt or conversion of another asset to the extent that the amount is attributable to a transaction previously taxed (e.g., the factoring of accounts receivable created by sales which have been included in taxable receipts even though the creation of such debt and factoring are a regular part of its business).

3. Any amount representing returns and allowances granted by the business to its customer.

4. Receipts which are the proceeds of a loan transaction in which the licensee is the obligor.

5. Receipts representing the return of principal of a loan transaction in which the licensee is the creditor, or the return of principal or basis upon the sale of a capital asset.

6. Rebates and discounts taken or received on account of purchases by the licensee. A rebate or other incentive offered to induce the recipient to

purchase certain goods or services from a person other than the offeror, and which the recipient assigns to the licensee in consideration of the sale of goods and services shall not be considered a rebate or discount to the licensee, but shall be included in the licensee's gross receipts together with any handling or other fees related to the incentive.

7. Withdrawals from inventory for purposes other than sale or distribution and for which no consideration is received and the occasional sale or exchange of assets other than inventory, whether or not a gain or loss is recognized for federal income tax purposes.

8. Investment income not directly related to the privilege exercised by a licensable business not classified as rendering financial services. This exclusion shall apply to interest on bank accounts of the business, and to interest, dividends and other income derived from the investment of its own funds in securities and other types of investments unrelated to the licensed privilege. This exclusion shall not apply to interest, late fees and similar income attributable to an installment sale or other transaction that occurred in the regular course of business.

(b) The following shall be deducted from gross receipts or gross purchases that would otherwise be taxable:

1. Any amount paid for computer hardware and software that are sold to a United States federal or state government entity provided that such property was purchased within two (2) years of the sale to said entity by the original purchaser who shall have been contractually obligated at the time of purchase to resell such property to a state or federal government entity. This deduction shall not occur until the time of resale and shall apply to only the original cost of the property an not to its resale price, and the deduction shall not apply to any of the tangible personal property which was the subject of the original resale contract if it is not resold to a state or federal government entity in accordance with the original contract obligation.

2. Any receipts attributable to business conducted in another state or foreign country in which the taxpayer is liable for an income or other tax based upon income. (Ord. No. 029-96, 11-12-96)

Source--Va. Code §58.1-3732.

SECTION 28-19. PENALTIES.

A penalty of ten (10) percent of the tax or the sum of two dollars ($2.00), whichever is greater shall be imposed upon the failure to file an application or the failure to pay the tax by the appropriate due date. Only the late filing penalty shall be imposed by the Commis-sioner if both the application and payment are late; however, both penalties may be assessed if the Commissioner determines that the taxpayer has a history of noncompliance.

In the case of an assessment of additional tax made by the Commissioner, if the application and, if applicable, the return were made in good faith and the understatement of the tax was not due to any fraud, reckless or intentional disregard of the law by the taxpayer, there shall be no late payment penalty assessed with the additional tax. If any assessment of tax by the Commissioner is not paid within thirty (30) days the treasurer shall impose a ten (10) percent late payment penalty. Any penalty, when so assessed, shall become a part of the tax due.

The penalties shall not be imposed, or if imposed, shall be abated by the Treasurer, if the failure to file or pay was not the fault of the taxpayer. In order to demonstrate lack of fault, the taxpayer must show that he acted responsibly and that the failure was due to events beyond his control.

(a) "Acted responsibly" means that:

1. the taxpayer exercised the level of reasonable care that a prudent person would exercise under the circumstances in determining the filing obligations for the business and

2. the taxpayer undertook significant steps to avoid or mitigate the failure, such as requesting appropriate extensions (where applicable), attempting to prevent a foreseeable impediment, acting to remove an impediment once it occurred, and promptly rectifying a failure once the impediment was removed or the failure discovered.

(b) "Events beyond the taxpayer's control" include, but are not limited to, the unavailability of records due to fire or other casualty; the unavoidable absence (e.g., due to death or serious illness) of the person with the sole responsibility for tax compliance; or the taxpayer's reasonable reliance in good faith upon erroneous written information from the Commissioner, who was aware of the relevant facts relating to the taxpayer's business when he provided the erroneous information.

The assessment of any penalty shall not be deemed a defense to any criminal prosecution for failing to make return of taxable property as may be required by law or ordinance. (Ord. No. 029-96, 11-12-96)

Source--Former §28-17; Va. Code § 58.1-3703.1.A.2.d.

SECTION 28-20. INTEREST.

(a) Interest at the rate of ten (10) percent per year shall be charged on the late payment of the tax from the due date until the date paid without regard to fault or other reason for the late payment. Whenever an assessment of additional or omitted tax by the Commissioner is found to be erroneous, all interest and penalty charged and collected on the amount of the assessment found to be erroneous shall be refunded together with interest on the refund from the date of payment or the due date, whichever is later. Interest shall be paid on the refund of any tax paid under this chapter from the date of payment or due date, whichever is later, whether attributable to an amended return or other reason. Interest on any refund shall be paid at the same rate.

(b) No interest shall accrue on an adjustment of estimated tax liability to actual liability at the conclusion of a base year. No interest shall be paid on a refund or charged on a late payment, in event of such adjustment, provided the refund or the late payment is made not more than thirty (30) days from the date of the payment that created the refund, or the due date of the tax, whichever is later.
(Ord. No. 029-96, 11-12-96)

Source--Va. Code §58.1-3703.1.A.2.e.

SECTION 28-21. CRIMINAL PENALTIES.

(a) If any person commences to operate any business, profession, trade or occupation in the City without first obtaining a license, such person shall be guilty of a Class 3 misdemeanor. Each day shall be a separate offense. Any conviction under this provision shall not relieve any such person from the payment of the license tax prescribed by this chapter.

(b) If any person shall continue to provide a business service or shall continue a business, profession, trade or occupation after the expiration date of a license previously issued therefor, without obtaining a new license, such person shall, if such failure to obtain a new license be continued for one month, be subject to the penalty provided for in this chapter. Further, such persons shall be guilty of a Class 3 misdemeanor. Each day shall be a separate offense.

(c) Failure or refusal to file any return required under this chapter at the time or times required therein or for making false statements with intent to defraud in such returns shall constitute: (i) A Class 3 misdemeanor if the amount of the tax lawfully assessed in connection with the return is one thousand dollars ($1,000.00)

or less, or (ii) A Class 1 misdemeanor if the amount of the tax lawfully assessed in connection with the return is more than one thousand dollars ($1,000.00). (Ord. No. 044-88, 11-15-88; Ord. No. 018-92, 11-10-92; Ord. No. 039-93, 11-09-93; Ord. No. 029-96, 11-12-96)

Source--Former §28-19; Va. Code §58.1-3916.1.

SECTION 28-22. POWER TO SUMMON TAXPAYERS AND OTHER PERSONS; PENALTIES.

(a) The Commissioner may, for the purpose of assessing all taxes assessable by his office, summon the taxpayer or any other person to appear before him at his office, to answer, under oath, questions touching the tax liability of any and all specifically identified taxpayers. The Commissioner shall not, however, summon a taxpayer or other person for the tax liability of the taxpayer which is the subject of litigation.

(b) Any person who refuses to (i) furnish to the Commissioner access to books of account or other papers and records, (ii) furnish information to the Commissioner relating to the assessment of taxes, (iii) answer under oath questions touching any person's tax liability, or (iv) exhibit to the Commissioner any subject of taxation liable to assessment by the Commissioner, shall be deemed guilty of a Class 3 misdemeanor. Each day's refusal to furnish such access or information shall constitute a separate offense. (Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §28-20.
State Law References--Code of Virginia, §§58.1-3110, 58.1-3111.

SECTION 28-23. MERCHANTS GOING OUT OF BUSINESS.

If a merchant desires to discontinue business at the close of the year for which he is licensed, and desires additional time in which to dispose of his stock then on hand at the close of the license year, he may, by filing before December 31, a sworn affidavit with the commissioner that he is going out of business, obtain a prorated license not to exceed sixty (60) days, in increments of one (1) month, but in no case shall the fee be less than thirty dollars ($30.00). (Ord. No. 044-88, 11-15-88; Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §28-22.

SECTION 28-24. LICENSE FEE.

Every person or business subject to licensure under this chapter, but not subject to a license tax under this chapter, shall be assessed and required to pay annually a fee for the issuance of each such license in the amount of fifteen dollars ($15.00). (Ord. No. 029-96, 11-12-96; Ord. No. 007-98, 4-14-98)

Source--Va. Code §58.1-3703.

SECTION 28-25. LICENSE TAX RATES.

Every person or business subject to licensure under this chapter with annual gross receipts of more than five thousand dollars ($5,000) shall be assessed and required to pay annually except as may be otherwise provided in §§58.1-3712, 58.1-3712.1 and 58.1-3713 of the Code of Virginia, a license tax on all the gross receipts of such persons includable as provided in this chapter at a rate set forth below for the class of enterprise listed:

(a) For contractors and persons constructing for their own account for sale, sixteen cents ($0.16) per one hundred dollars ($100.00) of gross receipts;

(b) For retailers, twenty cents ($0.20) per one hundred dollars ($100.00) of gross receipts;

(c) For financial, real estate and professional services, fifty-eight cents ($0.58) per one hundred dollars ($100.00) of gross receipts;

Each member of a partnership, firm, limited liability company or corporation whether operating as partners or employees shall pay the tax individually. In the case of employees, gross receipts shall be measured by the salary or commissions received. As to members of partnerships or firms, they shall be taxed based on the same proportion of total "gross receipts" less employee salaries as their respective share in the partnership or firm bears to the total "gross receipts".

(d) For repair, personal and business services and all other businesses and occupations not specifically listed or exempted in this chapter or otherwise by law, thirty-six cents ($0.36) per one hundred dollars ($100.00) of gross receipts;

(e) For wholesalers, purchases not exceeding ten thousand dollars ($10,000.00) - $50.00.

Purchases over ten thousand dollars ($10,000.00) - $50.00 on the first ten thousand dollars ($10,000.00) and twenty cents ($0.20) on each one hundred dollars ($100.00) in excess of ten thousand dollars ($10,000.00).

(f) For fortune tellers, clairvoyants and practitioners of palmistry, one thousand dollars ($1,000.00) per year;

(g) For massage parlors or health clubs as defined in Chapter 13 of this Code, two hundred dollars ($200.00) per year;

(h) For photographers, thirty dollars ($30.00) per year; subject to the provisions of Virginia Code §58.1-3727;

(i) For savings and loan associations and credit unions where the main office is located in the City, fifty dollars ($50.00) per year; and

(j) For direct sellers as defined in §58.1-3719.1 of the Code of Virginia with total annual sales in excess of four thousand dollars ($4,000.00), twenty cents ($0.20) per $100.00 of total annual retail sales or five cents ($0.05) per $100.00 of total annual wholesale sales, whichever is applicable. (Ord. No. 033-89, 12-12-89; Ord. No. 041-90, 12-11-90; Ord. No. 038-91, 10-08-91; Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Va. Code §58.1-3706.

SECTION 28-26. PEDDLERS; ITINERANT MERCHANTS.

(a) For the purpose of this chapter, any person who shall carry from place to place any goods, wares or merchandise and offer to sell or barter the same, or actually sell or barter the same, shall be deemed to be a peddler.

(b) For the purpose of this chapter, the term itinerant merchant means any person who engages in, does, or transacts any temporary or transient business in the City and who, for the purpose of carrying on such business, occupies any location for a period of less than one year.

(c) There is hereby imposed the license tax on peddlers and itinerant merchants a license tax of thirty dollars ($30.00) or twenty cents ($0.20) per one hundred dollars ($100.00) of gross receipts, whichever is greater, but in no case shall the license tax exceed five hundred dollars ($500.00) per year.

(d) This section shall not apply to a peddler at wholesale or to those who sell or offer for sale in person or by their employees ice, wood, charcoal, meats milk, butter, eggs, poultry, 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. A dairyman who uses upon the streets of the City one or more vehicles may sell and deliver from his vehicles, milk, butter cream and eggs in such city without procuring a peddler's license. (Ord. No. 018-92, 11-10-92)

Source--Former §28-32.

State Law Reference--Code of Virginia, §58.1-3716.

SECTION 28-27. LICENSE TAX ON PEDDLERS AT WHOLESALE.

(a) For purposes of this article, any person who or which sells or offers to sell goods, wares or merchandise to licensed dealers, other than at a definite place of business operated by the seller, and at the time of such sale or exposure for sale delivers, or offers to deliver, the goods, wares or merchandise to the buyer shall be deemed a peddler at wholesale. For purposes of this section any delivery made on the day of sale shall be construed as a delivery at the time of sale.

(b) There is hereby imposed on every peddler at wholesale in the City a license tax in the amounts specified in Section 28-25. (Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §28-33.
State Law Reference--Code of Virginia, §58.1-3718.

SECTION 28-28. LIMITATIONS ON LICENSE TAXES IMPOSED ON PEDDLERS, ITINERANT MERCHANTS AND PEDDLERS AT WHOLESALE.

(a) The license tax imposed on peddlers or itinerant merchants or on peddlers at wholesale shall not apply to:

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

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

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

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

5. A farmers' cooperative association;

6. A manufacturer who is subject to Virginia tax on intangible personal property who peddles at wholesale, only the goods, wares or merchandise manufactured by him at a plant, whose intangible personal property is taxed by this Commonwealth. (Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §28-34.
State Law Reference--Code of Virginia, §58.1-3719.

SECTION 28-29. AMUSEMENT MACHINES; GROSS RECEIPTS TAX ON AMUSEMENT OPERATORS.

(a) A license tax is hereby imposed on amusement machines in the City in the amount of one hundred dollars ($100.00) for the operation of ten (10) or more coin-operated amusement machines. For the operation of less than ten (10) coin-operated amusement machines, a license tax of ten dollars ($10.00) per machine is hereby imposed.

The term "amusement operator" means any person leasing, renting or otherwise furnishing or providing a coin-operated amusement machine in the City; however, the term "amusement operator" shall not include a person owning less than three (3) such machines and operating such machines on property owned or leased by such person.

Amusement machine operators shall also be subject to retail merchants license tax on their share of revenues.

(b) The coin machine operator's license tax imposed by subsection (a) shall not be applicable to operators of weighing machines, automatic baggage or parcel checking machines or receptacles, nor to operators of vending machines which are so constructed as to do nothing but vend goods, wares and merchandise or postage stamps or provide service only, nor to operators of viewing machines or photomat machines, nor operators of devices or machines affording rides to children or for the delivery of newspapers.

(c) The Commissioner shall prepare and issue a license which, when signed by the commissioner issuing such license, shall evidence the payment of the license tax.

Every operator shall furnish to the Commissioner a complete list of all machines on location and the address of each location on or before January 31 of each year. (Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §§28-36--38.
State Law Reference--Code of Virginia, §§58.1-3720, 58.1-3722.

SECTION 28-30. PENALTY.

Any person providing any such coin machines or other devices and failing to procure a license shall be guilty of a Class 3 misdemeanor for each offense and the machine or other device shall become forfeited to the City. (Ord. No. 018-92, 11-10-92; Ord. No. 029-96)

Source--Former §28-39.
State Law Reference--Code of Virginia, §58.1-3723.

SECTION 28-31. BONDSMEN.

Every person who shall, for compensation, enter into any bond or bonds for others, whether as a principal or surety, shall obtain a revenue license. No such professional bondsman or his agent shall enter into any such bond or bonds in the City until he shall have obtained such license. With the exception of any bondsman or his agent who has heretofore obtained a certificate and license under this section and whose certificate license and right to act as a bondsman continues to remain in full force and effect, no such license shall be issued unless and until the applicant shall have first obtained a certificate from the judge of the Circuit Court of the City of Winchester. Section 19.2-152.1 of Chapter 9 of Title 19.2 of the Code of Virginia.

Such license shall be revoked for failure to comply with the terms of this chapter and may additionally constitute a Class 2 misdemeanor. (Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §28-40.
State Law Reference--Code of Virginia, §58.1-3724.

SECTION 28-32. COLLECTION AGENCIES.

For purposes of this chapter, any person whose business it is to collect claims, including notes, drafts and other negotiable instruments, on behalf of others, and to render an account of the same shall be deemed a collection agency. This section shall not apply, however, to a regularly licensed attorney-at-law.

No license hereunder shall be issued to any person desiring to act as a collection agent or agency in the City unless such person exhibits a current license or other evidence showing that the applicant has been duly licensed to act as a collection agent or agency by the Virginia Collection Agency Board. (Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §28-41.
State Law Reference-- Code of Virginia, §58.1-3725.

SECTION 28-33. CARNIVALS, CIRCUSES, SPEEDWAYS; PENALTIES; CERTAIN RESTRICTIONS.

(a) A license tax of five hundred dollars ($500.00) is hereby imposed for each performance held in the City given by or upon carnivals, circuses or speedways which are operating within the limits of the City. Until such tax has been paid, the City shall have a lien upon the property of such carnival, circus or speedway to the

extent of the unpaid tax. For the purpose of this section, a performance shall be the entire time or number of days the business is operated in the City during a calendar year.

Every person which exhibits or gives a performance or exhibition of any of the shows, carnivals, or circuses, above described in this section, without the license required shall be fined not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00) for each offense.

In addition to any other license tax imposed by this section, a license tax of one thousand dollars ($1,000.00) for each performance of a traveling circus, carnival or show giving performances in the City in the open air or in a tent or tents, within fifteen (15) days previous to, or during the week of, or within one (1) week after the time of holding any agricultural fair in the City is hereby imposed. The license taxes provided for in this section shall be assessed and paid before any performance is permitted to be held.

It shall be unlawful for any circus, carnival or show to publish or post in any way, in the City at any time within fifteen (15) days prior to the holding of such fair, in the City, advertising of the exhibition of any such circus, carnival or show.

A fine not to exceed two thousand dollars ($2,000.00) for each offense of any person violating any provision of this section shall be imposed. The provisions of this section shall not apply to circuses, carnivals or shows inside the grounds of any agricultural fair held in the City.

For the purpose of this section a "carnival" shall mean an aggregation of shows, amusements, concessions, eating places and riding devices or any of them, operated together on one lot or street or on contiguous lots or streets, moving from place to place, whether or not the same are owned and actually operated by separate persons.

(b) A resident mechanic or artist may exhibit any production of his own art or invention without compensation and no registration, bond or license may be required of any industrial arts exhibit or of any agricultural fair or the shows exhibited within the grounds of such fair or fairs, during the period of such fair, whether an admission is charged or not. In addition, no registration, bond or license may be required of resident persons performing in a show or exhibition for charity or other benevolent purposes, or of exhibitions of volunteer fire companies, whether an admission is charged or not. Whenever such show, exhibition or performance is given, whether licensed or exempted by the terms of this subsection, those persons performing or acting in a show, exhibition or performance and operating under either license or exemption, shall be exempt from such tax.

The provisions of the preceding paragraph shall not be construed to allow, without payment of the tax imposed by this section, a performance for charitable or benevolent purposes by a company, association or persons, or a corporation, in the business of giving such exhibitions, no matter what terms of contract may be entered into or under what auspices such exhibition is given by such company, association or persons, or corporation. It is the intent and meaning of this section that every company, association, person, or corporation in the business of giving exhibitions for compensation, whether a part of the proceeds are for charitable or benevolent purposes or not, shall pay the tax imposed by the authority of this section. Such tax shall not be imposed on a bona fide local association or corporation organized for the principal purpose of holding legitimate agricultural exhibitions or industrial arts exhibits when they rent or lease fair or exhibition grounds or buildings for the purpose of giving such exhibitions or performances and exhibit therein agricultural or industrial arts products as a part of such exhibition. (Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §28-44.
State Law Reference--Code of Virginia, §58.1-3728.

SECTION 28-34. PUBLIC UTILITIES.

Unless prohibited by Section 58.1-3731 of the Code of Virginia, 1950, as amended and effective January 1, 2001, the license tax for the privilege to any person to conduct a gas business or electric light business in the City shall be one-half of one per cent of the preceding year's gross receipts for service rendered. The license tax for the privilege of conducting a telephone service business or a telegraph business within the City shall be one-half of one per cent of the preceding year’s gross receipts for service rendered. (Ord. No. 043-88, 11-15-88; Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96; Ord. No. 001-2001, 1-9-2001)

(Note: The effective date of this Ordinance shall be January 1, 2001.)
Source--Former §28-47.

SECTION 28-35. ALCOHOLIC BEVERAGES.

(a) Every person who shall engage in the business of manufacturing, bottling, wholesaling or retailing alcoholic beverages shall obtain a license therefore and shall pay therefor the license tax hereinafter provided:

1. For each distiller's license, five hundred dollars ($500.00) per annum; no such local license shall be required for any person who shall manufacture not more than five thousand (5,000) gallons of alcohol or spirits or both during such license year;

2. For each winery license, five hundred dollars ($500.00) per annum;

3. For each brewery license, five hundred dollars ($500.00) per annum;

4. For each bottler's license, one hundred fifty dollars ($150.00) per annum;

5. For each wholesale beer license, two hundred dollars ($200.00) per annum;

6. For each wholesale wine distributor's license, fifty dollars ($50.00) per annum, and for each wholesale druggist license, ten dollars ($10.00) per annum;

7. For each retail on-premises wine and beer license for a hotel, restaurant or club; and for each retail off-premises wine and beer license, including each specialty shop and convenience grocery store license, twenty dollars ($20.00) per annum;

8. For each retail on-premises beer license for a hotel, restaurant or club and for each retail off-premises beer license, twenty dollars ($20.00) per annum;

9. For each fruit distiller's license, one thousand five hundred dollars ($1,500.00) per annum.

10. For each person operating a restaurant who holds a mixed beverage restaurant and caterer's license, including restaurants located on premises of and operated by hotels or motels:

    (i) Two hundred dollars ($200.00) per annum for each restaurant with a seating capacity at tables for up to 100 persons;

    (ii) Three hundred fifty dollars ($350.00) per annum for each restaurant with a seating capacity at tables for more than 100 but not more than 150 persons;

    (iii) Five hundred dollars ($500.00) per annum for each restaurant with a seating capacity at tables for more than 150 persons;

    (iv) Five hundred dollars ($500.00) per annum for each caterer; and

    (v) Mixed beverage special events licenses, ten dollars ($10.00) for each day of each event.

11. A private, nonprofit club operating a restaurant located on the premises of such club, three hundred fifty dollars ($350.00) per annum.

(b) No license tax shall be either charged or collected for the privilege of selling wine and beer, beer or mixed beverages, in passenger airplanes, dining rooms and other designated rooms of boats, and in dining cars, buffet cars and club cars of trains, when carrying passengers and in rooms designated by the Alcohol Beverage Control Board of establishments of air carriers of passengers at airports in the City for consumption on the premises only.

(c) The aforesaid license shall be as respectively defined by the act of the General Assembly, known as The Alcoholic Beverage Control Act, and the terms alcoholic beverages, alcohol, spirits, and wine, wherever used in this section shall reflect the meanings respectively prescribed by them by such act.

(d) No license shall be issued to any person, unless such person shall hold or shall secure simultaneously therewith the proper state license provided for in the Alcoholic Beverage Control Act, Code of Virginia §4-1, *et seq.* If any person shall hold a City license without at the same time holding the proper state license, the City license, during the period when such person does not hold the proper state license, shall confer no rights, powers or privileges under the provisions of this article upon such person.

(e) No alcoholic beverage license shall be prorated or transferable.

(f) This tax shall be in addition to applicable license taxes based on gross receipts or gross purchases. In imposing retail merchants' license taxes measured by gross receipts the term "gross receipts" shall be construed to include receipts from the sale of alcoholic beverages by persons licensed under this section. In computing gross receipts, alcoholic beverages shall be included in the base for measuring such license taxes, the same as if the alcoholic beverages were nonalcoholic. No alcoholic beverages license levied under this section shall be construed as exempting any license from any merchant's license tax, and such merchant's license tax shall be in addition to the alcoholic beverage taxes levied under this section. (Ord. No. 044-88, 11-15-88; Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §28-52.
State Law Reference--Code of Virginia, §§4.1-233; 4.1- 205

SECTION 28-36. CREDIT FOR BEER WHOLESALERS.

In ascertaining the liability of a beer wholesaler to local merchants' license taxation under this chapter, and in computing the local wholesale merchants' license tax on such beer wholesaler, purchases of beer up to eighty-five thousand dollars ($85,000.00) shall be disregarded. In ascertaining the liability of a wholesale wine distributor to local merchants' license taxation under this chapter, and in computing the local wholesale

merchants' license tax on such wholesale wine distributor, purchases of wine up to ten thousand dollars ($10,000.00) shall be disregarded. (Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §28-53.
State Law References--Code of Virginia, §§4.1-205; 4.1-233

SECTION 28-37. SUBJECTS NOT MENTIONED IN CHAPTER.

Nothing contained in this chapter shall be construed to repeal any tax imposed by ordinance for any subject not mentioned herein. (Ord. No. 044-88, 11-15-88; Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §28-24.

SECTION 28-38. VALIDITY AND SEVERABILITY.

Each part, section, subsection, paragraph, sentence, clause and phrase of this chapter is hereby declared severable. Should any part, section, subsection, paragraph, sentence, clause or phrase of this chapter be declared invalid by a court of competent jurisdiction, such decision shall not affect the validity of this chapter in its entirety or any part thereof other than that so declared to be invalid. (Ord. No. 044-88, 11-15-88; Ord. No. 018-92, 11-10-92; Ord. No. 029-96, 11-12-96)

Source--Former §28-27.

CHAPTER 29

UTILITIES

Art. I. In General, §§29-1--29-21
Art. II. Water, §§29-22--29-54.3
Div. 1. Generally, §§29-22--29-35
Div. 2. Meters and Service Charges, §§29-36--29-43
Div. 3. Backflow Prevention and Cross-Connection Control, §§29-44--29-54.3
Art. III. Sewers, §§29-55--29-77
Div. 1. Generally, §§29-55--29-68
Div. 2. Sewer Use Standards, §§29-69--29-80
Div. 3. Administration, Enforcement, Penalties and Cost, §§29-81--29-95

ARTICLE I. IN GENERAL

SECTION 29-1. OFFICE OF THE DIRECTOR OF PUBLIC UTILITIES CREATED.

The office of the director of public utilities is hereby created. (Ord. of 5-16-78, §25-1) (Ord. No. 049-95, 10-17-95)

SECTION 29-2. GENERAL RESPONSIBILITY OF THE DIRECTOR OF PUBLIC UTILITIES.

The director of public utilities shall have general supervision of the utilities department, including the sources of water supply, reservoirs, distribution system, pumping stations and filter plants, the sewer collection system, pumping stations and treatment and all other public property pertaining to the utilities department. (Ord. of 5-16-78, §25-2) (Ord. No. 049-95, 10-17-95)

SECTION 29-3. RIGHT OF ENTRY OF THE DIRECTOR OF PUBLIC UTILITIES.

Whenever necessary for the purpose of enforcing the provisions of this chapter, or whenever the director of public utilities has reasonable cause to believe that there exists in any structure or upon any premise any condition which could jeopardize the public health by contamination of the public water system, the director of public utilities or his designated representative may enter such structure or premise at all reasonable times to

inspect the same or to perform any duty imposed by provisions of this chapter, provided that if such structure or premise be occupied, he shall first present proper credentials and request entry. If such entry is refused, the director of public utilities shall have recourse to every remedy provided by law to secure entry. (Ord. of 5-16-78, §25-3)(Ord. No. 049-95, 10-17-95)

Charter reference--Power to furnish public utilities, §9.

Cross references--Public improvements paid for by local assessment, §2-11; building regulations, Ch. 6; erosion and sedimentation control, Ch. 9; collection of garbage and refuse by city, §11-16 *et seq.*; planning, Ch. 19.

State Law Reference--General powers of cities as to public utilities, Code of Virginia, §15.2-2109.

SECTION 29-4. CONSTRUCTION OF WATER AND SEWER MAINS

When a developer or property owner wants to make a connection to the City's water system, the following shall apply:

(a) The Developer or property owner within the corporate limits of the City of Winchester to which a water and/or sewer connection must be installed shall be responsible for the entire cost of installation of the connections and pavement restoration if required.

The installation of the underground piping on the property shall be in accordance with the provisions of the Virginia Uniform Statewide Building Code and shall be enforced by the Building Official for the jurisdiction in which the installation is taking place.

The installation of the underground piping from the street face of the curb or property line to the water and/or sewer main shall be in accordance with the Public Utilities Standards Manual and the work shall be performed by a Class A, heavy-highway contractor licensed in the Commonwealth of Virginia. Pavement restoration shall be done in accordance with the established standards for utility cuts set forth by the Department of Public Works or the Department of Transportation of the Commonwealth of Virginia which ever should apply.

(b) Work shall not commence on any service connection until such time as the developer or property owner has made application for service with the Department of Public Utilities.

All service installations will be subject to inspection by the Department of Public Utilities to insure proper installation and compliance with all applicable standards. The furnishing of service to the property will not be activated until such time that the

installation is inspected and approved by the Director of Public Utilities or his/her designee.

It shall be the responsibility of the developer, property owner or property owner's contractor to notify the Department of Public Utilities twenty-four (24) hours in advance of the installation of any connection. Work on the installation of any connection shall not occur on a weekend or holiday except by written agreement of the Director of Public Utilities.

It will be the responsibility of the developer, property owner or property owner's contractor to obtain any State, County or City permits that may be necessary for work to be performed in a roadway, easement, or right of way.

(c) The Department of Public Utilities shall provide to the applicant requesting service the general location of the water and/or sewer main from which the service shall be installed and the terminating point of the connections.

The Department of Public Utilities shall provide and install the water meter in the meter vault up through two (2) inches in size. For all meter installations larger than two (2) inches, the applicant is responsible for providing a meter meeting the meter specifications of the Department of Public Utilities.

For meters provided by the Department of Public Utilities, the applicant shall pay to the City of Winchester a meter fee equal to the contract price at which the City is purchasing meters at the time of installation of the service.

(d) The Common Council shall have the discretion to direct the Department of Public Utilities to install new water and/or sewer mains to serve existing or future property uses (residential, commercial, industrial). A financial analysis including estimated project costs and proposed funding sources shall be prepared prior to approval by the Common Council. (Code 1959, §22-13; Ord. of 6-14-78; Ord. No. 022-203, 6-10-03)

Cross references--Public improvements paid for by local assessment, §2-11; building permit on existing street not to issue unless water and sewer service is available, §6-17.

SECTIONS 29-5 -- 29-7. RESERVED.

SECTION 29-8. AVAILABILITY CHARGES - WATER, WASTEWATER

(a) Prior to installation of any new water meter, a statement for an availability charge shall be rendered to the developer or property owner. Payment for each property

shall be made before the installation and activation of the water meter for the property.

(b) The following fees for the availability of water service are hereby established and levied, based on the meter size to be utilized by the customer, payable when the connection is established. Dates shown are effective dates for fees. Only property approved for Subdivision by the Common Council for the City of Winchester or the Subdivision Administrator by November 9, 2004 shall qualify for the staggered rates. For properties not approved by November 9, 2004, the fee is the full amount shown for Non-Approved Properties.

APPROVED PROPERTIES AS OF NOVEMBER 9, 2004

	Current Fees	Fees After January 31, 2005	Fees After March 1, 2005
5/8” X 3/4”	$ 2,200	$ 3,600	$ 5,000
1”	$ 4,500	$ 5,500	$ 6,500
1 1/2”	$ 8,500	$ 8,500	$ 8,500
2”	$13,500	$13,500	$13,500
3”	$25,000	$25,000	$25,000
4”	$30,000	$30,000	$30,000
6”	$45,000	$45,000	$45,000

NON-APPROVED PROPERTIES AS OF NOVEMBER 9, 2004

5/8” X 3/4”	$ 5,000
1”	$ 6,500
1/2”	$ 8,500
2”	$13,500
3”	$25,000
4”	$30,000
6”	$45,000

The following fees for the availability of wastewater service are hereby established and levied, based on the water meter size to be utilized by the customer, payable when the connection is established.

APPROVED PROPERTIES AS OF NOVEMBER 9, 2004

	Current Fees	Fees After January 31, 2005	Fees After March 1, 2005
5/8” X 3/4”	$ 3,200	$ 5,300	$ 7,400

1”	$ 4,648	$ 6,524	$ 8,400
1 1/2”	$ 6,000	$ 7,700	$ 9,400
2”	$ 9,600	$10,100	$10,600
3”	$35,000	$35,000	$35,000
4”	$45,000	$45,000	$45,000
6”	$70,000	$70,000	$70,000

NON-APPROVED PROPERTIES AS OF NOVEMBER 9, 2004

5/8” X 3/4”	$ 7,400
1”	$ 8,400
1 1/2”	$ 9,400
2”	$10,600
3”	$35,000
4”	$45,000
6”	$70,000

(c) For connection outside of the City limits, the fees shall be as follows:

WATER

PROPERTY AS OF NOVEMBER 9, 2004

	Current Fees	Fees After January 31, 2005	Fees After March 1, 2005
5/8” X 3/4”	$ 2,200	$ 3,600	$ 5,000
1”	$ 4,800	$ 5,650	$ 6,500
1 1/2”	$ 9,000	$ 9,000	$ 9,000
2”	$17,000	$17,000	$17,000
3”	$30,000	$30,000	$30,000
4”	$35,000	$35,000	$35,000
6”	$50,000	$50,000	$50,000

WASTEWATER

PROPERTY AS OF NOVEMBER 9, 2004

	Current Fees	Fees After January 31, 2005	Fees After March 1, 2005
5/8” X 3/4”	$ 3,652	$ 5,526	$ 7,400
1”	$ 4,800	$ 6,600	$ 8,400
1 1/2”	$ 6,500	$ 7,950	$ 9,400
2”	$10,000	$10,300	$10,600
3”	$40,000	$40,000	$40,000
4”	$50,000	$50,000	$50,000
6”	$75,000	$75,000	$75,000

(Ord. No. 018-99, 7-13-99; Ord. No. 027-2000, 12-12-00; Ord. No. 022-2003, 6-10-03; Ord. No. 045-2004, 11-9-04; Ord. No. 003-2005, 2-8-05)

SECTIONS 29-9 – 29-10. RESERVED

SECTIONS 29-11. WATER RATES.

For all water passing through each meter each billing period, the following schedule of rates shall be in effect based on meter size servicing the account.

Effective June 1, 2009

Base Rates By Meter Size

Meter Size	City	County
	0 – 3,000 gallons	
3/4 - inch	$26.02	$39.18
1 - inch	$42.17	$63.25
1.5 - inch	$54.25	$81.45
2-inch	$87.39	$131.10
3-inch	$331.39	$497.00
4-inch	$451.78	$677.74
6-inch	$722.63	$1,084.11
8-inch	$1054.02	$1,574.31

Water consumption in excess of 3000 gallons per billing period will be billed at a rate of $3.64 per 1,000 gallons for in-city consumption and $5.47 per 1,000 gallons for out-of-city consumption.
(Ord. No. 019-2001, 5-8-01; Ord. No.044-2006, 12-12-06; Ord. No. 2008-20, 4-8-08; Ord No. 2009-14, 5-12-09)

SECTION 29-12. TEMPORARY WATER SERVICE RATES.

Where temporary water service is required for construction purposes and the permanent service cannot be installed, the applicant may install a temporary service at the cost of installation and removal after approval of the Department of Public Utilities and payment of the applicable availability fees. The customer utilizing the temporary service shall pay for water used at the prevailing water rate. Whenever possible, the permanent service will be installed and utilized for construction purposes. (Ord. No. 022-2003, 6-10-03)

SECTION 29-13. SEWER RATES

Effective June 1, 2009

The sewer charges shall be based upon the total amount of water used, each billing period at the following rates, except as modified in Section 29-14:

Inside Corporate Limits - $6.64 per thousand gallons
Outside Corporate Limits - $6.64 per thousand gallons

The sewer charge for premises connected to the sanitary system, but not to the water system, shall be as follows:

Inside Corporate Limits - $79.75 bi-monthly
Outside Corporate Limits - $79.75 bi-monthly

THE EFFECTIVE DATE OF THIS ORDINANCE SHALL BE JUNE 1, 2009.
(Ord. No. 028-2000, 12-12-00; Ord. No. 022-2003, 6-10-03; Ord. No. 044-2006, 12-12-06; Ord. No. 2008-20, 4-8-08; Ord. No. 2009-14, 5-12-09)

SECTION 29-14. APPROVED FLOW METERS; WHEN PERMITTED.

An industrial plant, manufacturing plant, commercial establishment, or hospital which utilized water for cooling, boilers and processing where the usage is not discharged to the sanitary sewer system, may install an approved flow meter at its own expense to measure such usage upon written application to and written approval by the Director of Public Utilities. The sewer charge shall be based on the total amount of water used, less the readings of such approved flow meters, in accordance with the rates set forth in Section 29-13.

SECTION 29-15. MISCELLANEOUS WASTEWATER REGULATIONS.

All persons who discharge into the City's sewage collection system shall be subject to the City's Wastewater Use Ordinance, as it regulates discharges into the system.

If both water and sewer services are available, the premises shall be connected to both the water and sewer. (Ord. No. 022-2003, 6-10-03)

SECTION 29-16. BILLING TERMS.

All water and sewer bills shall be rendered on a 60-day billing cycle for residential users and a 30-day cycle for commercial and industrial users. Payment must be postmarked or received 30 days from the date of billing for residential accounts and 25 day for commercial and industrial accounts.

Any bill not paid by the due date or by the next regular workday if the due date falls on Saturday, Sunday or legal holiday for the office of the government of the City of Winchester, shall be assessed a 10% late payment charge.

Where any water and sewer bill has not been paid by the due date, the water service shall be subject to disconnection ten (10) days after the mailing of a second notice to the customer's address of record. The water and sewer account, once subject to disconnection for non-payment of bill, shall be assessed a processing fee of twenty dollars ($20.00). Service shall not be reconnected until all outstanding water and sewer bills, including a late payment charge, are paid.

The owner of the property shall be responsible to the City of Winchester for the payment of water and sewer bills. On written request of the owner of the property, the tenant may be billed in the owner's name for water and sewer service, but this request shall not relieve the owner from responsibility.

All water and sewer bill for the billing period ending May 1, 1999 and each month thereafter shall be computed on the rates prescribed in Sections 29-11 and 29-13. (Ord. No. 022-2003, 6-10-03)

SECTION 29-17. APPLICATIONS FOR SERVICE; INSPECTIONS.

All applications for water and sewer service shall be made in writing to the Department of Public Utilities on forms prepared for that purpose. A new application is required upon change of ownership of any property connected to the water and/or sewer systems.

An inspection permit, according to the Virginia Uniform Statewide Building Code, shall be secured before service connections are made to premises located inside or outside the corporate limits. (Ord. No. 022-2003, 6-10-03)

SECTION 29-18. SEPARATE CONNECTIONS REQUIRED.

Each premise shall have a separate water and sewer connection. For that purpose of this Section, a premise is defined as a property which cannot be divided in its present condition through sale, except that condominiums may have single water and sewer services provided the condominium association accepts full responsibility, in writing, for water and sewer service line maintenance. Each unit must be individually metered and the unit owner responsible for payment of the water sewer bill.

SECTION 29-19. DEPOSIT.

Before service shall be rendered to any of the following water and sewer customers, a deposit of $90.00 shall be paid to the City of Winchester.

(a) Any customer who is not the owner of the property to be served and for which the property owner has authorized the water and sewer account to be placed in the name of that individual through the signing of a Tenant Form.

(b) Any homeowner establishing a residential account who has not had an account with the City of Winchester.

(c) Any homeowner with an existing account prior to the effective date of this Ordinance who established a new account to another location served by the City and who has been delinquent in payment of a water and/or sewer bill within the last two years.

An individual's deposit is transferable from one service location to another within the City's service area. (Ord. No. 022-2003, 6-10-03)

SECTION 29-20. DEPOSIT REFUND.

When a customer terminates service or has one year of service without delinquency, the deposit shall be refunded, without interest, by crediting it to the customer's account. Upon termination of service and after deducting any charges due to settle the customer's account with the City, the balance shall be refunded within fourteen (14) calendar days. Refunds shall be made only to the individual in whose name the water and sewer was established. (Ord No. 009-99, 4-13-99)

SECTION 29-21. RESERVED.

ARTICLE II. WATER

DIVISION 1. GENERALLY.

SECTION 29-22. DESIGNATION OF MAIN OR HOUSE SERVICE.

For the purpose of this article, all water pipeline running in the public streets with which the water pipelines running into the lots abutting on the streets connecting at the water meter are water "mains", and all water piping leading from the main to the property on either side are "house services." (Ord. No. 022-2003, 6-10-03)

SECTION 29-23. BY WHOM MAINTAINED.

(a) It shall be the responsibility of the property owner to maintain the water house service to the water meter.

(b) If the property owner wishes to renew the house service from the building to the water meter, it shall be the responsibility of the property owner. (Ord. No. 022-2003, 6-10-03)

SECTION 29-24. STOP AND WASTE VALVE REQUIRED.

A stop and waste valve located in a place accessible to the consumer of city water shall be placed by the property owner upon every water service. The charges for water service rendered by the City and for the use of city water shall be in accordance with rates established by ordinance, and may be revised from time to time as determined by the City Council. Nothing in this Code or the ordinance adopting this Code shall affect any ordinance prescribing such rates, and all such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this Code. (Ord. of 5-16-78, §25-7; Ord. No. 022-2003, 6-10-03)

SECTION 29-25. INJURING, DEFACING, TAMPERING WITH, ETC., WATERWORKS PROPERTY.

(a) It shall be unlawful for any person to injure or deface the pumping station or reservoir or any house, wall, fire hydrant or other fixture connected with or pertaining to the city waterworks.

(b) It shall be unlawful for any person to tamper with or turn on any water meter, pipeline, valve, or hydrant which is part of the city water system or to attach to a public water pipe, except an employee of the water and sewer department, duly authorized members of the fire department during emergency situations, or other individuals specially authorized to do so by the director of public utilities. (Ord of 5-16-78, §§25-7, 25-8; Ord. No. 005-80, 4-08-80; Ord. No. 049-95, 10-17-95; Ord. No. 022-2003, 6-10-03)

SECTION 29-26. OBSTRUCTING ACCESS TO DISTRIBUTION SYSTEM FIXTURES.

It shall be unlawful for any person to place any building material or other thing on any water fixture or water pipeline of the water distribution system so as to obstruct access thereto. (Ord. of 5-16-78, §25-9; Ord. No. 022-2003, 6-10-03)

SECTION 29-27. VOLUNTARY WATER CONSERVATION

(a) The city manager is hereby authorized to invoke voluntary restrictions on the use of water during any period in which moderate or limited supplies of water are available. The phrase “moderate or limited supplies”, as used herein, shall be defined to mean, but not necessarily be limited to mean, that less than sixty percent (60%) of the City’s total available water storage is on hand, or, that the daily consumption of water has equaled or exceeded ninety percent (90%) of the capacity of the components of the City’s water system to deliver water, as determined by the Director of Public Utilities.

(b) During such periods of moderate or limited supplies, the city manager shall request all persons whose water supply is furnished from a city owned or city operated water system to entirely cease:

1. Watering shrubbery, trees, lawns, or other vegetation.

2. Washing cars, trucks, or other vehicles, except from a bucket or other container not exceeding three (3) gallons capacity, or, at an automatic car wash.

3. Washing or flushing streets, driveways, building exteriors, or other outdoor surfaces.

4. Operation of any ornamental fountain or other similar fixtures.

5. Filling or adding water to swimming or wading pools.

6. Serving drinking water in restaurants, except on request.

(c) In declaring voluntary restrictions pursuant to this section the city manager shall by written notice advise each city council member of the declaration; shall post a written notice at the entrance in City Hall; and shall advise the news media. The notices herein prescribed should encourage all users to voluntarily continue other water conservation practices.

(d) Nothing herein shall, in any way, be construed to impinge or hinder the authority of the Council to impose mandatory conservation measures on all of the City's water customers by duly adopted Ordinance, and to provide for penalties in such an Ordinance for any of its customers who violate such measures. (Ord No. 003-2000, 3-14-00; Ord. No. 022-2003, 6-10-03)

Cross references--Duty of city auditors to keep records concerning water utility, §2-160

State Law References--Municipal water supplies and facilities, Code of Virginia, §§15.2-2109; 15.2-2143-15.2-2148; 15.2-1906; public water supply, §32.1-167 *et seq*

SECTION 29-28. RESTRICTIONS ON USE OF WATER DURING WATER SUPPLY EMERGENCY

Pursuant to Section 15.2-924 of the Code of Virginia, 1950, as amended, the Common Council for the City of Winchester, upon a finding that a water supply emergency exists or is reasonably likely to occur if water conservation measures are not taken, may adopt an ordinance restricting the use of water within the City of Winchester.

Such ordinance, once duly enacted by the Common Council, shall:

(a) restrict the use of water by the citizens of the City of Winchester for the duration of such emergency or for a period of time necessary to prevent the occurrence of a water supply emergency; and
(b) apply only to water supplied by the City of Winchester for a fee or charge.

Such ordinance may include appropriate penalties designed to prevent excessive use of water, including, but not limited to, a surcharge on excessive amounts used and/or discontinuance of water services. (Ord. No. 022-2003, 6-10-03)

SECTION 29-29. UNAUTHORIZED USE OF WATER.

It shall be unlawful for any person to use water from the city waterworks for any purpose for which he has neither paid nor obtained permission. (Ord. of 5-16-78, §25-10)

SECTION 29-30. POLLUTION OF WATER SUPPLY.

It shall be unlawful for any person to pollute the water supply of the City. (Ord. of 5-16-78, §25-11)

State Law Reference--Prevention of water pollution by city, Code of Virginia, §15.2-2109.

SECTION 29-31. DISCONTINUANCE OF SERVICE UPON CONVICTION OF CERTAIN OFFENSES.

Any person who shall incur a penalty or forfeiture under any provision of this chapter respecting water service shall, on conviction thereof, be regarded as having forfeited his right to such water service and shall be subject, in the discretion of the city council, to have the pipe conveying water to such service severed from the public pipe or the water turned off from his premises. (Ord. of 5-16-78, §25-12)

SECTION 29-32. DECLARED WATER SUPPLY EMERGENCY; MANDATORY CONSERVATION; PENALTIES

(a) In the event the Common Council ratifies a declaration of a local emergency within the City, as required by Section 44-146.21 (a) of the Code of Virginia, 1950, as amended, and such declaration is caused by a water supply shortage within the City, then the following provisions shall take effect at the time of such ratification and shall remain in effect throughout the duration of the declared emergency:

1. The watering of trees, shrubbery, lawns, or any other vegetation from City water supplies shall be prohibited.
2. The washing of cars, trucks, or any other vehicles utilizing City water supplies shall be prohibited, to include commercial car washes.
3. The washing or flushing of streets, driveways, building exteriors, or other outdoor surfaces utilizing City water supplies shall be prohibited.
4. The operation of any ornamental fountain or other similar fixtures making use of City water supplies shall be prohibited.
5. The filling or addition of water to swimming or wading pools from City water supplies shall be prohibited.

6. The serving of drinking water in restaurants, except on request, from City water supplies shall be prohibited.
7. The operation of any water-cooled comfort air-conditioning which operates from City water supplies shall be prohibited, unless water-conserving equipment is part of the unit and is in normal, working operation, or, unless the operation of such equipment is a bona fide medical necessity.
8. The use of water from any fire hydrant which operates from City water supplies shall be prohibited, except for fire suppression purposes.
9. Residential uses of City water supplies shall be restricted to drinking, bathing, cooking and sanitary uses, and any other uses of such supplies shall be prohibited.
10. The operation of any industrial or commercial activity or process, to expressly include any type of building construction, utilizing City water supplies shall be prohibited. Commercial and industrial users of City water supplies shall be restricted to the sanitary and drinking needs of employees, customers, and visitors.

(b) Any person, firm, association, or corporation violating any provision of this Section shall be immediately assessed a surcharge of One Hundred Dollars ($100.00) and shall be immediately disconnected from the City's water system for the duration of such emergency by the Director of Public Utilities. Such service shall not be restored after the duration of the emergency until the processing fee specified by this Code shall have been paid, together with all outstanding charges, to expressly include the surcharge herein described. (Ord. No. 006-2000, 3-14-00; Ord. No. 022-2003, 6-10-03)

SECTIONS 29-33 -- 29-35. RESERVED.

DIVISION 2. METERS AND SERVICE CHARGES.

SECTION 29-36. RESERVED.

SECTION 29-37. RESPONSIBILITY OF CONSUMER TO PROTECT METER FROM DAMAGE.

(a) Every consumer of city water shall ascertain the location of his water meter; shall use every care to protect his water meter from damage due to freezing or any other cause; and, where the meter has been damaged, shall notify the utilities department. (Ord. of 5-16-78, §25-14; Ord. No. 022-2003, 6-10-03)

SECTION 29-38. REPAIR OF DAMAGED METERS.

(a) The utilities department shall be responsible for the repair of all water meters damaged by freezing or any other cause, and the consumer shall pay for such repairs only if the damage was the direct result of negligence on the part of the consumer.

(b) It shall be unlawful for any person, other than personnel of the utilities department, to thaw or otherwise attempt to repair a water meter unless specifically authorized by the director of public utilities.

(c) Unless authorized in advance, the City will not pay a plumbing bill for the thawing of a water meter. (Ord. of 5-16-78, §25-14; Ord. No. 049-95, 10-17-95)

SECTION 29-39. SERVICE CHARGES GENERALLY.

Nothing in this Code or the ordinance adopting this Code shall affect any ordinance prescribing the rates of charges for water service rendered by the City or otherwise relating to such charges, and all such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in the Code.

State Law References--Authority of city to charge and collect compensation for water furnished, Code of Virginia, §15.2-2143. See also §15.2-2111, regulation of water service.

SECTION 29-40. COMPLAINTS IN CONNECTION WITH CHARGES; TESTING METERS.

All consumers of city water having any complaint in connection with the charge for the supply or use of water furnished by the City shall report the same, in writing, to the Director of Public Utilities. Any consumer of city water who feels that he is being overcharged may have his meter tested. If the meter is found to be over-registering or under registering, the meter will be repaired and no cost assessed against the consumer. In the event of a meter over-registering, the consumer's bill will be adjusted accordingly. If, after a complaint is made by a consumer, the water meter is found to be in good working order, a fee of twenty-five dollars ($25.00) will be charged the consumer. Meter accuracy shall be in accordance with standards of the American Water Works Association (AWWA - C700). (Ord. of 5-16-78, §25-17; Ord. No. 049-95, 10-17-95; Ord. No. 022-2003, 6-10-03)

SECTION 29-41. AVERAGE BILL FOR CHARGES IN CASE OF DEFECTIVE METER.

If a water meter becomes defective or ceases to register, it shall be repaired or replaced at once and an average bill for a like period of time shall be charged the consumer of city water. (Ord. of 5-16-78, §25-15)

SECTION 29-42. ADJUSTMENT OF WATER AND WASTEWATER CHARGES.

(a) READING OR BILLING ERROR

1. If, at any time, it is discovered that an error has occurred in the reading of a water meter, or that an error was made in the preparation of a bill, the Department of Public Utilities shall adjust the reading and billing based on the rereading of the meter and recalculation of the water and sewer charges.

2. The Department of Public Utilities shall, upon making any necessary adjustment, issue an adjusted billing and provide the customer with 30 days in which to pay the adjusted amount due.

(b) LEAK RESULTING IN HIGH CONSUMPTION

1. Should a high consumption occur due to a leak, an adjustment to the water and sewer bill may be made, for Residential Customers only, to allow for a credit for a period of such high consumption not exceeding two (2) months. The adjustment shall be calculated by subtracting the average water and sewer bill for the billing period prior to or following repair of the leak as provided in Section 29-42(b)(2) from the water and sewer bills for the period during which the leak occurred. Any credit provided shall not be transferable to any new owner of the property.

2. In order for an adjustment to be made, the property owner must have the leak repaired within fifteen (15) business days after notification is given by the Department of Public Utilities through receipt of a High Consumption Notice or a billing for water and sewer service. A request must be made to the said Department, as described hereafter in subsection (b)(3). Nothing herein shall otherwise require a property owner to make the repairs described.

3. The request for an adjustment must be made in writing to the Department of Public Utilities and should contain the following information:

   A. The dates that the leak was discovered and repaired.

B. Who made the repairs.

C. A copy of receipts for materials and services documenting the repair.

5. The customer shall be allowed an adjustment for only one period of high consumption occurring in a twelve (12) month period.

(Ord. of 5-16-78, §25-18; Ord. No. 027-88, 6-14-88; Ord. No. 030-97, 11-11-97, Ord. No. 025-98, 12-8-98; Ord. No. 009-2001, 3-13-01; Ord. No. 022-2003, 6-10-03; Ord. No. 2007-45, 12-11-07)

SECTION 29-43. RESERVED

DIVISION 3. BACKFLOW PREVENTION AND CROSS-CONNECTION CONTROL

SECTION 29-44. TITLE OF DIVISION.

The provisions of this division shall constitute and be known and cited as the "Backflow Prevention and Cross-Connection Control Program" for the City of Winchester, Virginia. (Ord. of 11-15-78, §1)

SECTION 29-45 DEFINITIONS.

As used in this division, the following words, phrases and terms shall have the meanings ascribed to them in this section, unless clearly indicated to the contrary:

Air gap: The unobstructed vertical distance through the free atmosphere between the lowest opening of any pipe or faucet supplying potable water to a plumbing fixture or other device, and the rim of the receptacle.

Anti-siphon: A term applied to valves or mechanical devices that eliminate siphonage or reverse direction flow.

Approved: Material, equipment, workmanship, process or method that has been accepted by the City.

Auxiliary water system: Any water source or system other than public water supply that may be available in the building or premises.

Backflow: The flow of contaminants, pollutants, process fluids, used waters, untreated waters, chemicals, gases or nonpotable waters into any part of the waterworks. Backsiphonage and backpressure are types of backflow.

Backflow prevention: Any approved device, method or type of construction intended to prevent backflow into a waterworks.

Backflow preventer, reduced pressure zone type (RPZ Device): An assembly of differential valves and check valves including an automatically opened spillage part to atmosphere.

Backsiphonage: The flowing back of used, contaminated or polluted water from a plumbing fixture or vessel or other sources into a potable water supply pipe due to a negative pressure in such pipe.

Board/Bureau: The state board of health, bureau of water supply engineering.

City: The council, department or individual official of the City established or authorized by state statute or local ordinance to administer and enforce the provisions of this division, as adopted or amended.

Contamination: Any introduction into pure water of micro-organisms, wastes, wastewater, undesirable chemicals or gases.

Cross-connection: Any physical connection or arrangement between two (2) otherwise separate piping systems, one of which contains potable water and the other either water of unknown or questionable safety or steam, gas or chemicals whereby there may be a flow from one system to the other, the direction of flow depending on the pressure differential between the two (2) systems. Furthermore, it is any potable water supply outlet which is submerged in waste or any other source of contamination.

Degree of hazard: A term derived from the evaluation of the potential risk to health and the adverse effect upon the waterworks.

Double check valve assembly: An approved assembly composed of two (2) internally loaded, specially designed and independently operating check valves, together with a tightly closing valve on the upstream and the downstream side of the check valves, equipped with properly placed female thread test cocks.

Flood-level rim: The edge of the receptacle from which water flows.

Health hazard: Any condition, device or practice in a waterworks or its operation that creates, or may create, a danger to the health and well-being of the water consumer.

Individual water supply: A supply other than an approved public water supply which serves one or more families, businesses, institutional establishments or industries.

Jurisdictional area: For the purpose of enforcing the provisions of this division, the jurisdictional area of the City shall consist of the entire area within the corporate limits and residential, commercial, institutional and industrial establishments outside the City's corporate limits which have a service connection directly to the city's water system.

Owner or designated agent: The person in charge, care or control of the property; the tenant; the consumer who signed the water service agreement.

Pollution: The presence of any foreign substance (chemical, physical, radiological or biological) in water that tends to degrade its quality so as to constitute an unnecessary risk or impair the usefulness of the water.

Potable water: Water suitable for drinking.

Purveyor: The supplier of water as a matter of business; the City of Winchester, Virginia.

Service connection: The joining of the waterworks to a metered consumer.

Service line: That portion of the water line from the consumer's side of the meter to the first water outlet.

Director of Public Utilities: The director of public utilities, or his designated representative, for the City, who is responsible for the enforcement of this division.

Vacuum breaker, atmospheric: A vacuum breaker which is not designed to be subjected to a line pressure without water flow.

Vacuum breaker, pressure type: A vacuum breaker designed to operate under conditions of constant pressure, both with water flow and without. (Ord. of 11-15-78, §2; Ord. No. 049-95, 10-17-95)

SECTION 29-46. PURPOSE OF DIVISION.

The purpose of this division is:

1. To protect the public potable water supply of the City's complete water distribution system from the possibility of contamination or pollution by isolating within its customers' internal distribution systems such contaminants or pollutants which could backflow into the public water supply system; and

2. To eliminate or control cross-connections, actual or potential, at each water outlet from the consumer's service line; and

3. To provide for the maintenance of a continuing program of cross-connection control which will systematically and effectively prevent the contamination or pollution of the potable water system. (Ord. of 11-15-78, §3)

SECTION 29-47. RESPONSIBILITY FOR ENFORCEMENT OF DIVISION.

The enforcement of the provisions of this division shall be the responsibility of the director of public utilities. (Ord. of 11-15-78, §4; Ord. No. 049-95, 10-17-95)

SECTION 29-48. ENFORCEMENT OF DIVISION BY DISCONTINUANCE OF WATER SERVICE.

Water service will be denied or discontinued to a customer, if the backflow prevention device required by this division is not installed or it is found that the device has been removed or by-passed; if a cross-connection not adequately protected exists on the premises; if the pressure in the City's lines is reduced below 10 psi; or if a violation of this division has not been corrected in the time period established in section 29-50(b). Water service to the consumer shall not be restored until all deficiencies have been corrected or eliminated in accordance with this division. (Ord. of 11-15-78, §12)

SECTION 29-49. GENERAL RESPONSIBILITY OF PURVEYOR.

(a) The City, as purveyor, recognizes a responsibility to provide its customers, at the service connection, with safe, potable water under all foreseeable circumstances. To this extent, in the exercise of this responsibility, the water purveyor must take reasonable precaution to protect the distribution system from the actual or potential hazards originating on the premises of its customers.

(b) It is realized that a cross-connection control program is regulatory in nature. Therefore, in conformance with rules and regulations, the requirements of this program are in conformance with the Water Works Regulations, section 6.00, approved by the State Board of Health, and the BOCA Basic Plumbing Code, section P-1605.0. (Ord. of 11-15-78, 5-1)

Editor's note—The BOCA Basic Plumbing Code is a part of the building code adopted in Article II of Chapter 6 of this Code.

SECTION 29-50. INSPECTIONS GENERALLY; CORRECTION OF DEFECTS.

(a) The director of public utilities shall notify, in writing, the owner or his designated agent of any buildings or premises to correct, within a reasonable time set by the Director of Public Utilities, any plumbing installed or existing contrary to, or in violation of, this division, and which, in his judgment may permit the pollution of the City's potable water supply or otherwise adversely affect the public health. (Ord. of 11-15-78, §§5-2, 5-3; Ord. No. 049-95, 10-17-95; Ord. No. 022-2003)

SECTION 29-51. RIGHT OF ENTRY.

The Water Works Regulations, adopted by the Virginia Department of Public Health, require that this program be initiated, to insure the consumer is supplied safe potable water at all times. The City, as purveyor of the public water supply, has the right of entry to any building or premise where cross-connections or possible cross-connections are evident or suspected, for the protection of the public water supply and the health and safety of its consumers. The refusal of access, when required, shall be deemed evidence of the presence of cross-connection. (Ord. of 11-15-78, §11)

SECTION 29-52. RECORDS OF INSPECTIONS AND TESTS MADE PURSUANT TO DIVISION.

Records of all inspections and tests made pursuant to this division shall be kept on city forms for ten (10) years, and shall be available for inspection in accordance with the Freedom of Information Act. (Ord. of 11-15-78, §11)

State Law Reference--Freedom of Information Act, Code of Virginia, §2.2-3700 *et seq*.

SECTION 29-53. GENERAL DESIGN, INSTALLATION AND MAINTENANCE STANDARDS FOR POTABLE WATER SUPPLY SYSTEM.

A potable water supply system shall be designed, installed and maintained in such manner as to prevent contamination from nonpotable liquids, solids or gases, either harmful or benign, being introduced into the potable water supply through cross-connections or any piping connection to the system. This is accomplished by protecting the potable water system from every water outlet which poses a possible cross-connection. Whenever the potable water supply cannot be protected from every water outlet or other possible cross-connection by a minimum air gap, a mechanical device shall be used to prevent backflow from backsiphonage or backpressure, as appropriate to the degree of hazard. In cases where, in the judgment of the City, water usage is sufficiently complex, or severity of hazard warrants, an air gap or backflow prevention device may be required immediately downstream from the service connection or at a point approved by the City. (Ord. of 11-15-78, §7)

SECTION 29-54. BACKFLOW PREVENTIVE DEVICES GENERALLY.

(a) An approved backflow prevention device shall be installed on each service line to a consumer's water system where, in the judgment of the City, a health, pollutional or system hazard to the waterworks exists, and as a minimum, but not limited to, where the following conditions exist:

1. Premises having an auxiliary water system.

2. Premises on which any substance is handled in such a manner as to create an actual or potential hazard to a waterworks.

3. Premises having internal cross-connections that, in the judgment of the City, may not be easily correctable, or intricate plumbing arrangements which make it impracticable to determine whether or not cross-connections exist.

4. Premises where, because of security requirements or other prohibitions or restrictions, it is impossible or impractical to make a complete cross-connection survey.

5. Premises having a repeated history of cross-connections being established or re-established.

(b) Inspections shall be performed on the following types of facilities. If inspection of the facilities determines a health, pollutional or system hazard, as outlined in subsection (a) above, an approved backflow prevention device shall be installed on each service line to the facilities:

1. Hospitals, mortuaries, clinics, nursing homes, medical buildings, sanitariums and autopsy facilities.

2. Laboratories.

3. Waterfront facilities and industries.

4. Sewage and storm drain facilities.

5. Food and beverage processing plants.

6. Chemical plants, dyeing plants, laundries.

7. Metal plating, manufacturing, cleaning, processing and fabricating plants.

8. Petroleum processing, storage and transmission facilities.

9. Radioactive materials processing plants or nuclear reactors.

10. Car washes.

11. Lawn sprinkler systems and irrigation systems.

12. Fire service systems, except as noted in Section 29-54.3.

13. Slaughterhouses and poultry processing plants.

14. Farms where the water is used for other than household purposes.

15. Auxiliary water systems.

16. High-rise hotels and apartment buildings.

17. Cold storage facilities.

18. Pools.

19. Restricted or classified facilities or facilities closed for inspection.

20. Others specified by the City or the bureau where reasonable cause can be shown for potential backflow or cross-connection hazard.

(c) The City will have available, upon request, a list of approved backflow prevention devices. Devices not appearing on the list will be considered by the City, provided they have been tested by a recognized testing laboratory or evaluation agency, are of satisfactory materials and conform to AWWA Standard C506. (Ord. of 11-15-78, §§8, 9-1, 9-2)

SECTION 29-54.1. INSTALLATION OF BACKFLOW PREVENTION DEVICES.

(a) Backflow prevention devices shall be installed in a manner to facilitate easy access for testing, maintenance, repair and replacement. Reduced pressure principle type backflow preventors shall not be installed in pits or areas subject to flooding or freezing. Double gate double-check valve assemblies shall not be installed in areas subject to flooding. If installed in pits, the pits must have gravity drains or a sump pump. (Ord. of 11-15-78, §9-3)

SECTION 29-54.2. TESTING, INSPECTING, ETC., BACKFLOW PREVENTIVE DEVICES.

(a) As a minimum, operational tests and inspections shall be made annually of backflow prevention devices which are required and installed. Tests and inspections shall be in accordance with the manufacturer's instructions.

(b) Inspections of backflow prevention devices shall be performed by a certified backflow prevention devices testing firm and the written certification of such shall be provided to the City.

(c) Backflow prevention devices found to be defective shall be promptly repaired by the consumer. Positive action shall be taken immediately to insure that the City's water system is protected.

(d) Backflow prevention devices shall be overhauled at intervals not exceeding five (5) years. (Ord. of 11-15-78, §9-4; Ord. 022-2003)

SECTION 29-54.3. PROTECTIVE DEVICES FOR FIRE SERVICE SYSTEMS.

(a) For the purposes of this section, fire service systems shall be classified as follows:

1. Class 1: Direct connections from public water mains only; no pumps, tanks or reservoirs; no physical connection from other water supplies; no antifreeze or other additives of any kind; all sprinkler drains discharging to atmosphere, dry wells or other safe outlets.

2. Class 2: Same as Class 1, except that booster pumps may be installed in the connections from the street mains (booster pumps do not affect the potability of the system; it is necessary, however, to avoid drafting so much water that pressure in the water main is reduced below 10 psi).

3. Class 3: Direct connection from public water supply main plus one or more of the following: Elevated storage tanks; fire pumps taking suction from aboveground covered reservoirs or tanks; and pressure tanks (all storage facilities are filled or connected to public water only, the water in the tanks to be maintained in a potable condition. Otherwise, Class 3 systems are the same as Class 1.)

4. Class 4: Directly supplied from public mains similar to Classes 1 and 2, and with an auxiliary water supply on or available to the premises; or an auxiliary supply may be located within one thousand seven hundred (1,700) feet of the pumper connection.

5. Class 5: Directly supplied from the public mains, and interconnected with auxiliary supplies; such as: Pumps taking suction from reservoirs exposed to contamination, or rivers and ponds; driven wells; mills or other industrial water systems; or where antifreeze or other additives are used.

6. Class 6: Combined industrial and fire protection systems supplied from the public water mains only, with or without gravity storage or pump suction tanks.

(b) Generally, fire service systems of Classes 1 and 2 will not require backflow protection at the service connection. Pumper connections of automotive fire department equipment to street hydrants are not ordinarily health hazards.

(c) Class 3 fire service systems will generally require minimum protection (approved double-check valves) to prevent stagnant waters from backflowing into the public potable water system.

(d) Class 4 fire service systems will normally require backflow protection at the service connection. The type (air gap, reduced-pressure, or double-check valves) will generally depend on the quality of the auxiliary supply.

(e) Classes 4 and 5 fire service systems normally would need maximum protection (air gap or reduced pressure) to protect the public potable water system.

(f) Class 6 fire service system protection would depend on the requirements of both industry and fire protection, and could only be determined by a survey of the premises.

(g) An underwriter approved detector check meter, Hersey or approved equal, will be installed on all fire service lines, but will not be permitted as part of a backflow protection device. An exception may be made, however, if the meter and backflow prevention device are specifically designed for that purpose. (Ord. of 11-15-78, §10)

ARTICLE III. SEWERS

DIVISION 1. GENERALLY

SECTION 29-55. DESIGNATION OF MAIN AND HOUSE SERVICE.

For the purpose of this article, all sewers running in the streets of the City with which the sewers running into the lots abutting on the streets connect at the outside curbline are "main" sewers, and all sewers leading from the main sewers to the property on either side are "house services." (Ord. of 5-16-78, §25-20; Ord. No. 022-2003, 6-10-03)

SECTION 29-56. BY WHOM MAINTAINED.

When a developer or property owner wants to make a connection to the City's sewer system, the following shall apply:

(a) It shall be the responsibility of the property owner to maintain the sewer house service.

(b) In case of any stoppage in the main sewer, the City shall remove the obstruction. If the stoppage occurs in the house service, the property owner whose property connects with the main sewer shall remove the obstruction.

(c) The owner of the building shall be responsible for cleaning the house service from the building to the main. If the owner renews the house service from the building to the curb, the City will renew the house service from the curb to the main. If the stoppage is found to be in the sewer main, the City will clean the main and pay the property owner's plumber for the time spent working on the stoppage. (Ord. of 5-16-78, §§25-21, 25-24, 25-24.1; Ord. No. 022-2003, 6-10-03)

Charter reference--Borrowing by city for construction of sewers, §18.

State Law References--Power of city council to construct sewers and drains, Code of Virginia, §15.2-2109; contracts between local governments for sewers and sewage disposal, §§15.2-2124, 15.2-2125; sewage disposal systems and bond issues therefor generally, §15.2-2122 *et seq*.; regulation of septic tanks and sewage disposal, §15.2-2157; power of municipal corporations to provide and operate sewers, drains and sewerage disposal systems, §15.2-2122.

SECTION 29-57. RESERVED.

SECTION 29-58. CITY NOT RESPONSIBLE FOR FLOODING WHEN OUTLETS INSTALLED BELOW STREET ELEVATION.

The City will not be responsible for damage to the building, due to flooding with sewage, where sewer outlets are installed below the street or road elevation. (Ord. of 5-16-78, §25-24.1)

SECTION 29-59. WHEN CONNECTION REQUIRED; INSTALLATION OF SEPTIC TANK WHERE SEWER NOT ACCESSIBLE.

(a) Every property within the City or its jurisdiction shall be connected with the City sewer, if accessible, within thirty (30) days after written notice by the health director.

(b) If the City sewer is not accessible, a septic tank, as approved by the state department of health, shall be installed.

(c) This section shall be enforced by the health director.
(Ord. of 5-16-78, §25-22)

Cross reference--Prohibition against use of privies or cesspools, §16-24.

State Law Reference--Authority to require sewer connections or septic tanks, Code of Virginia, §§15.2-2157.

SECTION 29-60. RESERVED.

SECTION 29-61. SERVICE CHARGES.

The charges for sewer service rendered by the City and for the use of city sewers shall be in accordance with rates established by ordinance, and may be revised from time to time as determined by the city council. Nothing in this Code or the ordinance adopting this Code shall affect any ordinance prescribing such rates, and all such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this Code. (Ord. of 5-16-78, §25-26)

SECTIONS 29-62 - 29-68. RESERVED.

DIVISION 2. SEWER USE STANDARDS

SECTION 29-69. DISCHARGE OF RAINWATER, SURFACE WATER, ETC.

It shall be unlawful for any person to permit rainwater from the roofs of houses, surface water, house foundation drains or drainage from the yard to flow into the sewer, but connections may be made for basement drains in a manner to be approved by the director of public utilities. (Ord. of 5-16-78, §25-25)(Ord. No. 049-95, 10-17-95)

GENERAL PROVISIONS

SECTION 29-70. PURPOSE AND POLICY.

These standards set forth uniform requirements for discharge into the wastewater collection system of the City of Winchester and enables the City to comply with all applicable State and Federal laws required by the Clean Water Act, the general pretreatment regulations (40 CFR, Part 403), Virginia Pretreatment Regulation (VR680-14-01, Part VII), and the Rules and Regulations as set forth by the Frederick-Winchester Service Authority.

The objectives of these standards are:

1. To prevent the introduction of pollutants into the wastewater collection system which will interfere with the operation of the system or contaminate the resulting sludge;

2. To prevent the introduction of pollutants into the wastewater collection system which will pass through the system, inadequately treated, into receiving waters or the atmosphere or otherwise be incompatible with the system;

3. To improve the opportunity to recycle and reclaim wastewaters and sludges from the system; and

4. To provide for equitable distribution of the cost of the wastewater system.

These standards: (1) provide for regulation of the use of the wastewater system through enforcement of general requirements for all users' and through the issuance of permits to certain nondomestic users; (2) authorize monitoring and enforcement activities; and (3) require user reporting.

These standards shall apply to all persons who, whether by contract, permit, agreement, or otherwise, discharge effluent or waste into the wastewater collection system of the City of Winchester, or who are in any way users of the City's wastewater collection system. (Ord. No. 008-91, 3-12-91) .

SECTION 29-71. DEFINITIONS.

Unless the context specifically indicates otherwise, the following terms and phrases, as used in these standards, shall have the meanings hereinafter designated:

1. Act or the Act. The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251 *et seq*.

2. Analysis. Any analysis required in these standards shall be performed by a laboratory using procedures established by the Environmental Protection Agency pursuant to Section 304(9) of the Act and contained in 40 CFR, Part 136, and amendments thereto or with any of the test procedures approved by the Environmental Protection Agency. Sampling shall also be performed in accordance with techniques approved by the Environmental Protection Agency.

3. Approval authority. The Virginia State Water Control Board.

4. Authorized representative industrial user. An authorized representative of an industrial user may be:

    a. A principal executive officer of at least the level of vice-president, if the industrial user is a corporation;

    b. A general partner or proprietor if the industrial user is a partnership or proprietorship, respectively;

    c. A duly authorized representative of the individual designated above if such representative is responsible for the overall operation of the facilities from which the discharge originates.

5. Biochemical Oxygen Demand (BOD). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure, for five (5) days at twenty (20) degrees centigrade expressed in terms of weight and concentration (milligrams per liter - mg/l).

6. Categorical standards. National categorical pretreatment standards or pretreatment standard.

7. Cooling water. The water discharged from any use such as air conditioning, cooling or refrigeration, or to which the only pollutant added is heat.

Editor's note--Ord. No.008-91, adopted March 12, 1991 repeals and re-enacts previous ordinances of the same title respectively adopted August 14, 1990 and October 9, 1990.

6. Categorical standards. National categorical pretreatment standards or pretreatment standard.

7. Coolinq water. The water discharged from any use such as air conditioning, cooling or refrigeration, or to which the only pollutant added is heat.

8. Control authority. The term "Control Authority" shall refer to the Frederick-Winchester Service Authority.

9. Critical or significant industrial user. User of the City of Winchester wastewater disposal system that is either (1) a categorical industrial user, or (2) a noncategorical industrial user that:

    a. discharges 25,000 gallons per day or more of process wastewater ("process wastewater" excludes sanitary, noncontact cooling, and boiler blowdown wastewaters), or

    b. contributes a process wastestream which makes up five percent or more of the average dry weather hydraulic or organic (BOD, TSS, etc.) capacity of the treatment plant, or

    c. has a reasonable potential, in the opinion of the Control or Approval Authority to adversely affect the POTW operation (inhibition, pass through of pollutants, sludge contamination, or endangerment of POTW workers).

10. Environmental Protection Agency or EPA. The U.S. Environmental Protection Agency, or where appropriate the term may also be used as a designation for the administrator or other duly authorized official of said agency.

11. Grab sample. A sample which is taken from a waste stream on a one-time basis with no regard to the flow in the waste stream and without consideration of time.

12. Holding tank waste. Any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum-pump trucks.

13. Indirect discharge. The discharge or the introduction of nondomestic pollutants from any source regulated under Section 307(b) or (c) of the Act (33 U.S.C. 1317), into the POTW (including holding tank waste discharged into the system).

14. Industrial user. A nondomestic discharge to a POTW.

15. Interference. A discharge which, alone or in conjunction with a discharge or discharges from other sources, both:

a. Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes, use or disposal; and

b. Therefore is a cause of a violation of any requirement of the POTW's VPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), and including State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of the SWDA, the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.

16. National categorical Pretreatment standard or requirement or pretreatment standard or requirement. Any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Act (33 U.S.C. 1317) which applies to a specific category of industrial users (as established in 40 CFR, Chapter 1, Subchapter N).

17. National prohibitive discharge standard or prohibitive discharge standard. Any regulation developed under the authority of Section 307 (b) of the Act and 40 CFR, Section 403.5.

18. New source. Any source, the construction of which is commenced after the publication of proposed regulations prescribing a Section 307(c) (33 U.S.C. 1317) categorical pretreatment standard which will be applicable to such source. The term "new source" as it applies to the FWSA Pretreatment Program shall have the same meaning as provided in 40 CFR, Section 403.3(k).

19. Pass Through. A discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of any requirement of the POTW's VPDES permit (including an increase in the magnitude or duration of a violation).

20. Person. Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or its legal representatives, agents or assigns. The masculine gender shall include the feminine, the singular shall include the plural where indicated by the context.

21. pH. The logarithm (base 10) of the reciprocal of the concentration of hydrogen ions expressed in grams per liter of solution.

22. Pollution. The man-made or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.

23. Pollutant. Any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water.

24. Pretreatment or treatment. The reduction of the amount of pollutants, the elimination of pollutants, the alteration of the nature of pollutants, or the alteration of the nature of pollutant properties in wastewater to a less harmful state prior to or in lieu of discharging or otherwise introducing such pollutants into a POTW. The reduction or alteration can be obtained by a physical, chemical, or biological process, process changes or other means except as prohibited by 40 CFR, Section 403.6(d).

25. Pretreatment requirements. Any substantive or procedural requirement related to pretreatment, other than a National Pretreatment Standard imposed on an industrial user.

26. Publicly Owned Treatment Works (POTW). A treatment works as defined by Section 212 of the Act, (33 U.S.C. 1292) which is owned in this instance by the FWSA. This definition covers any sewers that convey wastewater to the POTW. It does not include pipes or sewers designated to convey stormwater and which are not connected to a facility providing treatment.

27. POTW treatment plant. That portion of the POTW designed to provide treatment to wastewater.

28. Shall is mandatory; may is permissive.

29. Significant non-compliance. A user is in "significant noncompliance" if its violation meets one or more of the specific criteria listed in 40 CFR, 403.8.

30. Slug load. Any pollutant (including Biochemical Oxygen Demand) released in a discharge at a flow rate or concentration which will cause a violation of the specific discharge prohibitions in 40 CFR, 403.5(b) to 403.12(f).

31. State. Commonwealth of Virginia.

32. Standard industrial classification (SIC). A classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, 1972.

33. Storm water. Any flow occurring during or following any form of natural precipitation and resulting therefrom.

34. Suspended solids. The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquids, and which is removable by laboratory filtering.

35. Toxic pollutant. Any pollutant or combination of pollutants listed as toxic in regulations promulgated by the administrator of the Environmental Protection Agency under the provision of the Clean water Act, Section 307(a), or other acts.

36. User. Any person who contributes, causes, or permits the contribution of wastewater into the City of Winchester's collection system.

37. Virginia Pollutant Discharge Elimination System. The programs of issuing, conditioning, and denying permits for the discharge of pollutants from point sources, pursuant to Section 402 of the Federal Act.

38. Wastewater. The liquid and water-carried industrial or domestic wastes from dwellings, commercial buildings, industrial facilities, and institutions, together with any groundwater, surface water, and storm water that may be present as a result of infiltration or inflow.

39. Wastewater discharge permit. That permit which significant industrial users are required to obtain from the FWSA in accordance with these standards.(Ord. No. 008-91, 3-12-91)

SECTION 29-72. ABBREVIATIONS.

The following abbreviations shall have the designated meanings:

BOD -Biochemical Oxygen Demand
CFR -Code of Federal Regulations
COD -Chemical Oxygen Demand
EPA -Environmental Protection Agency
FWSA -Frederick-Winchester Service Authority
l -Liter
mg -Milligrams
mg/l -Milligrams per liter
OWRF -Opequon Water Reclamation Facility
POTW -Publicly Owned Treatment Works
SIC -Standard Industrial Classification
SWDA -Solid Waste Disposal Act, 42 U.S.C. 6901, *et seq.*
TSS -Total Suspended Solids
U.S.C. -United States Code
VPDES-Virginia Pollutant Discharge Elimination System
VWCB-Virginia Water Control Board

(Ord. No. 008-91, 3-12-91).

REGULATIONS

SECTION 29-73. GENERAL DISCHARGE PROHIBITIONS.

No user shall contribute or cause to be contributed, directly or indirectly, any pollutant or wastewater which will pass through the treatment plant, or interfere with the operation or performance of the POTW, or contaminate the sludge. These general prohibitions apply to all users of the City of Winchester's collection system whether or not the user is subject to national categorical pretreatment standards, or any other national, State, or local standard or requirement. A user shall not contribute the following substances to the City of Winchester's collection system.

(a) Any liquids, solids, or gases which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fire or explosion or be injurious in any other way to the POTW or the operation of the POTW. At no time, shall two (2) successive readings on an explosion hazard meter, at the point of discharge into the system (or at any point in the system) be more than five (5) percent nor any single reading over ten (10) percent of the lower explosive limit (LEL) of the meter. Prohibited materials include, but are not limited to, gasoline, kerosene, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides, and sulfides or any wastestreams with a flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade using the test methods specified in 40 CFR 261.21.

(b) Solid or viscous substances which may cause obstruction to the flow in a sewer or other interference with the operation of the wastewater treatment facilities such as, but not limited to: grease, garbage with particles greater than one-half inch in any dimension, animal guts or tissues, paunch manure, bones, hair, hides or fleshing, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dust, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastic' tar, asphalt residues, residues from refining or processing of fuel or lubricating oil, mud, or glass grinding or polishing wastes.

(c) Any wastewater not having a pH between 5.5 and 11.0, or wastewater having any other corrosive property capable of causing damage or hazard to structures, equipment, and/or personnel of the POTW.

(d) Any wastewater containing toxic pollutants in sufficient quantity either singly or by interaction with other pollutants to injure or interfere with any wastewater treatment process, constitute a hazard to humans or animals, create a toxic effect

in the receiving waters of the POTW, or to exceed the limitation set forth in a categorical pretreatment standard. A toxic pollutant shall include, but not be limited to, any pollutant identified pursuant to Section 307(a) of the Act.

(e) Any noxious or malodorous liquids, gases, or solids which either singly or by interaction with other wastes are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewer system for maintenance and repair.

(f) Any substance which may cause the POTW's effluent or any other product of the POTW such as residues, sludges, or scums to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case shall a substance discharged to the POTW cause the POTW to be in non-compliance with sludge use or disposal criteria, guidelines, or regulations developed under Section 405 of the Act, any criteria, guidelines, or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substance Control Act, or state criteria applicable to the sludge management method being used.

(g) Any substance which will cause the POTW to violate its VPDES permit or the receiving water quality standards.

(h) Any wastewater with objectionable color not removed in the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions.

(i) Any wastewater having a temperature which will inhibit biological activity in the POTW treatment plant resulting in interference, but in no case wastewater with a temperature at the introduction into the POTW which exceeds one hundred four (104) degrees Fahrenheit or forty (40) degrees Celsius.

(j) Any pollutants, including oxygen demanding pollutants [such as Biochemical Oxygen Demand (BOD's)] released at a flow rate and/or pollutant concentration which will cause interference to the POTW. In no case shall a slug load have a flow rate or contain concentrations or qualities of pollutants that exceed for any time period longer than fifteen (15) minutes more than five (5) times the average twenty-four hour concentration, quantities, or flow during normal operation.

(k) Any wastewater containing any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the FWSA in compliance with applicable State or federal regulations.

(l) Any wastewater which causes a hazard to human life or creates a public nuisance.

(m) Any stormwater or unpolluted drainage water.

(n) Any hauled or trucked waste and/or pollutants is prohibited from discharge to the City of Winchester's collection system. (Ord. No. 008-91, 3-12-91)

SECTION 29-74. SPECIFIC POLLUTANT LIMITATIONS.

No person shall discharge wastewater containing pollutants in excess of those limits set forth by the Frederick-Winchester Service Authority through their Rules and Regulations for wastewater discharge. Whenever any of the above prohibitions are violated, the City of Winchester and/or the Executive Director - FWSA, may initiate enforcement actions to remedy the pollutant in excess of limits.

When the Executive Director - FWSA and/or the City of Winchester determines that a user is contributing to the collection system or treatment facility, any of the above-enumerated substances in such amounts as to pass through or interfere with the operation of the POTW, the Executive Director - FWSA shall:

1. Advise the user of the impact of the contribution of the POTW; and

2. Develop effluent limitations for such user; and/or initiate enforcement action in accordance with the Rules and Regulations of the FWSA. (Ord. No. 008-91, 3-12-91) .

SECTION 29-75. STATE AND FEDERAL REQUIREMENTS.

The most stringent of Federal, State, or FWSA requirements and limitations on discharges shall be applicable.

SECTION 29-76. NATIONAL CATEGORICAL PRETREATMENT STANDARDS.

Upon the promulgation of the national categorical pretreatment standards for a particular industrial subcategory contained in 40 CFR, Chapter 1, Subchapter N, Part 405471, the City of Winchester will amend and re-enact this ordinance to incorporate these standards, if more stringent than limitations imposed under this chapter for sources in the subcategory. The Executive Director - FWSA shall notify all affected users of the applicable reporting requirements under 40 CFR, Section 403.12. (Ord. No. 008-91, 3-12-91)

SECTION 29-77. RIGHT TO REVISION.

The City of Winchester reserves the right to establish by ordinance more stringent limitations or requirements on discharges if deemed necessary by the FWSA to comply with pretreatment standards. (Ord. No. 008-91, 3-12-91)

SECTION 29-78. EXCESSIVE DISCHARGE.

No user shall ever increase the use of process water or, in any way, attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with the limitations contained in the national categorical pretreatment standards, or any other pollutant-specific limitations developed by the FWSA or the State. (Ord. No. 008-91, 3-12-91)

SECTION 29-79. ACCIDENTAL DISCHARGES.

(a) Each user shall provide protection from accidental discharge of prohibited materials or other substances regulated by these standards, and shall comply with Section 5 of Division 3 (Protection from Accidental Discharge), of the FWSA Rules and Regulations.

(b) All critical or significant industrial users shall obtain approval from the FWSA of a Protection from Accidental Discharge Plan before discharge to the City of Winchester collection system will be allowed. (Ord. No. 008-91, 3-12-91)

SECTION 29-80. SLUG CONTROL PLAN.

(a) The City and/or FWSA under this ordinance shall have the authority to require any user to develop a slug control plan when it is deemed that a slug discharge or accidental spill could cause interference with the POTW.

(b) This plan shall contain a description of discharge practices both of a routine or nonroutine nature, description of stored chemicals along with MSDS data sheets, procedures for immediate notification to the POTW of slug discharges, and written procedures to prevent adverse impacts from any accidental spill. (Ord. No. 008-91, 3-12-91).

DIVISION 3. ADMINISTRATION, ENFORCEMENT, PENALTIES AND COST.

SECTION 29-81. WASTEWATER DISCHARGE PERMITS.

(a) Mandatory permits. It is unlawful to discharge without a permit except as authorized herein. All critical or significant industrial users connected to or proposing to connect to or to contribute to the City's collection system shall obtain a wastewater discharge permit before connecting to or discharging to the City's collection system.

(b) Permit application. Critical or significant industrial users shall complete and file with the FWSA an application in the form prescribed by the FWSA.

(c) The critical or significant industrial user shall provide the following information:

1. Name, address, and location;

2. SIC number according to the Standard Industrial Classification Manual, Bureau of the Budget, 1972, as amended;

3. Wastewater constituents and characteristics;

4. Time and duration of contribution;

5. Average daily and thirty-minute peak wastewater flow rates, including daily, monthly, and seasonal variations, if any;

6. Site plans, floor plans, mechanical and plumbing plans and details to show all sewers, sewer connections, and appurtenances by size, location, and elevation;

7. Descriptive definition of any discharges, by-products or runoffs from any process, activities or facilities, both normal and abnormal;

8. Where known, the nature and concentration of any pollutants in the discharge which are limited by these standards, FWSA Rules and Regulations, and State or National pretreatment standards;

9. For each product produced, the type and amount of discharge generated (for average and maximum day);

10. Any other information as may be deemed by the FWSA to be necessary to evaluate the permit application; and

11. If additional pretreatment and/or operations and maintenance will be required to meet the Pretreatment Standards, industrial users are required to submit a compliance schedule in accordance with 40 CFR, Part 403 and VR680-14-1, Part 7. (Ord. No . 00 8-91, 3-12-91)

SECTION 29-82. PERMIT CONDITIONS.

Wastewater discharge permits shall be expressly subject to all provisions of these standards and all other applicable regulations, user charges, and fees established by the FWSA.

An issued Wastewater Discharge Permit may be modified, revoked and reissued, or terminated for good causes including, but not limited to, the following:

(a) To incorporate any new or revised federal, State, or local pretreatment standards or requirements;

(b) Material or substantial alterations or additions to the discharger's operation which were not covered in the effective permit;

(c) A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge;

(d) Information indicating that the permitted discharge poses a threat to the Frederick Winchester Service Authority treatment systems, POTW personnel, or the receiving waters;

(e) Violation of any terms or conditions of this permit;

(f) Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts; or

(g) Upon request of the permittee, provided such request does not create a violation of any existing applicable requirements, standards, laws, or rules and regulations.

The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit conditions. (Ord. No. 008-91, 3-12-91)

SECTION 29-83. CONFIDENTIAL INFORMATION.

Information and data on a user obtained from reports, questionnaires, permit applications, permits and monitoring programs, and from inspections shall be available to the public or other governmental agency without restriction unless the user specifically requests and is able to demonstrate to the satisfaction of the City and FWSA that the release of such information would divulge information, processes or methods of production entitled to protection as trade secrets of the User. Wastewater constituents and characteristics will not be recognized as confidential information.

Information accepted by the City of FWSA as confidential shall not be transmitted to the general public by the City or FWSA until and unless a ten-day notification is given to the User. (Ord. No. 008-91, 3-12-91)

SECTION 29-84. MONITORING FACILITIES.

The FWSA shall require monitoring facilities to allow inspection, sampling, and flow measurement of the wastewater at a suitable point in the sewer which conveys such wastewater from the user's premises into the collection system. Said facilities are to be provided and operated at the expense of the critical or significant industrial user. (Ord. No. 008-91, 3-12-91)

SECTION 29-85. INSPECTION AND SAMPLING.

The City of Winchester as authorized by the FWSA may inspect the facilities of any user to ascertain whether the purpose of these regulations is being met and all requirements are being complied with. Persons or occupants of premises where wastewater is created or discharged shall allow the City of Winchester or FWSA or its representatives ready access at all reasonable times to all parts of the premises for the purposes of inspection, sampling, examination, and copying of monitoring reports and results. The City or FWSA shall have the right to install on the user's property such devices as may be necessary to conduct sampling, compliance monitoring and/or metering operations. Acceptance of a permit by a user shall serve as the user's permission for the City or FWSA to do the things set out in this section. The user's permit shall be suspended upon any refusal to allow the City or FWSA to carry out the provisions of this section. (Ord. No. 008-91, 3-12-91)

SECTION 29-86. REPORTING REQUIREMENTS.

All industrial users subject to the Pretreatment Standards and Requirements and significant industrial users shall meet the reporting requirements in accordance with 40 CFR, Part 403.12 and VR680-14-01, Part 7.

Critical or significant industrial users shall give notice to the FWSA 90 days prior to any facility expansion, production increase, or process modifications which result in new or substantially increased discharges or a change in the nature of the discharge.

All sampling and analysis that may be required of a critical or significant industrial user under the Wastewater Discharge Permit issued must be conducted using methods and procedures in 40 CFR, part 1 36. (Ord. No. 008-91, 3-12-91)

SECTION 29-87. NOTIFICATION ON THE DISCHARGE OF HAZARDOUS WASTE.

An industrial user shall notify the FWSA, the EPA Regional Waste Management Division Director, and the State Hazardous Waste Agency in writing of discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR, Part 261. (Ord. No. 008-91, 3-12-91)

SECTION 29-88. PRETREATMENT.

Users shall provide necessary wastewater treatment as required to comply with these standards. Any facilities required to pretreat wastewater to a level acceptable to the FWSA shall be provided, operated, and maintained at the user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the FWSA for review, and shall be acceptable to the FWSA before construction of the facility. (Ord. No. 008-91, 3-12-91)

SECTION 29-89. HARMFUL CONTRIBUTIONS.

The City of Winchester as authorized by the FWSA may suspend the wastewater treatment service and/or a Wastewater Discharge Permit when such suspension is necessary, in the opinion of the FWSA and/or the City of Winchester, in order to stop an actual or threatened discharge which fails to comply with permit limits or which causes or is likely to cause the POTW to violate any condition of its permit, or presents or is likely to present a danger to human health or the environment.

Any person notified of a suspension pursuant to these standards for the wastewater treatment service and/or the Wastewater Discharge Permit shall immediately stop or eliminate the discharge. In the event of a failure of the person to comply voluntarily with the suspension order, the City of Winchester shall take such steps as deemed necessary, including immediate severance of the sewer connection. The City of Winchester shall reinstate the wastewater discharge service upon proof of the elimination of the non-complying discharge being provided to the FWSA. (Ord. No. 008-91, 3-12-91)

SECTION 29-90. REVOCATION OF PERMIT.

Any permittee who violates any of the following conditions of these standards or the FWSA Rules and Regulations or applicable State or federal regulations is subject to having the permit revoked in accordance with the procedures of this section:

1. Failure to accurately report the constituents and characteristics of the wastewater discharged;

2. Failure to report significant changes in operations or discharge constituents or characteristics;

3. Refusal to permit reasonable access for the purposes of inspection or monitoring; or

4. Violation of permit conditions.

SECTION 29-91. NOTIFICATION OF VIOLATION.

Whenever the City of Winchester finds that any user has violated or is violating any provision of these standards, any condition of a wastewater discharge permit, or any prohibition, limitation or other requirements, the City shall serve upon such person a written notice stating the nature of the violation, and serve notice to the FWSA for enforcement under the Rules and Regulations of the Authority. (Ord. No. 008-91, 3-12-91)

SECTION 29-92. LEGAL ACTION.

If any person discharges sewage, industrial wastes, or other wastes into the City of Winchester's collection system contrary to the provisions of these standards, national categorical pretreatment requirements, any order of the FWSA, or violates any pretreatment standard or requirement, the City's attorney may commence an action for appropriate legal and/or equitable relief, in the circuit courts of the City of Winchester, or Frederick County. The City may recover reasonable attorney's fees, court reporter's fees, and other expenses of litigation by appropriate suit at law against the person found to have violated these standards or the orders, rules, regulations, and permits issued hereunder. (Ord. No. 008-91, 3-12-91)

SECTION 29-93. PENALTIES.

It shall be unlawful for any person or user to violate any order of the FWSA or knowingly or negligently fails to comply with any provision of these standards or the orders, rules, regulations, and permits issued such person, shall be fined not less than one thousand dollars ($1,000.00) for each offense. Each day on which a violation shall occur or continue shall be deemed a separate and distinct offense. In addition to the penalties provided herein, the City may recover reasonable attorney's fees, court reporter's fees, and other expenses of litigation by appropriate suit at law against the person found to have violated these standards or the orders, rules, regulations, and permits issued hereunder. (Ord. No. 008-91, 3-12-91)

SECTION 29-94. FALSIFYING INFORMATION.

Any person or user who knowingly makes any false statements, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to these standards or rules and regulations of the FWSA or Wastewater Discharge Permit or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required under these standards shall be subject to prosecution under Section 29-93 - Penalties. (Ord. No. 008-91, 3-12-91)

SECTION 29-95. PUBLISH LIST OF SIGNIFICANT VIOLATORS.

The City shall provide annual public notification in a newspaper of general circulation with the City of Winchester of users which significantly violated applicable pretreatment standards and requirements during the previous 12 months. (Ord. No. 008-91, 3-12-91)

CHAPTER 30

VEGETATION

Art. I. In General, §§30-1--30-15
Art. II. Trees on Public Property, §§30-16--30-48
Div. 1. Generally, §§30-16--30-31
Div. 2. Tree Commission, §§30-32--30-48
Art. III. Grass, Weeds and Other Foreign Growth on Private Property, §§30-49--30-52

ARTICLE I. IN GENERAL

SECTIONS 30-1 - 30-15. RESERVED.

ARTICLE II. TREES ON PUBLIC PROPERTY

DIVISION 1. GENERALLY

SECTION 30-16. VIOLATIONS OF ARTICLE.

Unless otherwise specifically provided, a violation of any provision of this article shall constitute a Class 4 misdemeanor. In addition, wherever the words "city manager" shall appear in this Article, they shall be deemed to include the City Manager's designee. (Ord. No. 020-2001, 5-8-2001)

SECTION 30-17. ISSUANCE AND EXPIRATION OF PERMITS REQUIRED BY ARTICLE; APPEALS.

(a) All permits required by this article shall be issued by the city manager, who may, at his option, with the exception of the situations described in Sections 30-20(b) and 30-21, consult the members of the tree commission as to such matters. Any and all such permits shall expire at such time as may be designated therein.

(b) The city manager shall advise the applicant and the chairman of the Tree Commission in writing of his decision to issue or deny any permit required by the Article. Any person aggrieved by the decision of the city manager to issue or deny any such permit shall have the right to appeal the decision to the Common Council by advising the City Manager's Office in writing within Ten (10) days of the date of the city manager's decision. The Deputy Clerk of the Council shall place the appeal on the Agenda for the next regularly scheduled meeting of the Common Council.

(Ord. No. 020-2001, 5-8-2001)

SECTION 30-18. PERMIT TO PLANT.

It shall be unlawful for any person to plant any tree in any street, park, public place or public grounds of the City, without first having obtained a written permit therefor from the city manager, who may, at his option, consult the tree commission, setting forth the variety thereof and the location where the same may be planted, and without in all respects complying with the conditions and terms of such permit. (Code 1959, §19-9; Ord. No. 020-2001, 5-8-2001)

SECTION 30-19. PERMIT FOR ATTACHMENTS.

It shall be unlawful for any person, without first having obtained a written permit from the city manager, who may, at his option, consult the tree commission, to attach any wire, insulator, rope, sign, poster, handbill or other thing or substance on any tree growing in any street, park or public place or grounds or on any guard or protection device of such tree. (Code 1959, §§19-1, 19-12; Ord No. 020-2001, 5-8-2001)

SECTION 30-20. PERMIT FOR SPRAYING, TRIMMING, ETC.

(a) It shall be unlawful for any person, except such as may be working under the direction of the city manager, spray or otherwise treat or trim any living tree, or any part thereof, growing in any street, park, public place or public grounds, without first having obtained a written permit from the city manager, who may, at his option, consult the tree commission. (Code 1959, §19-10)

(b) It shall be unlawful for any person, to remove, destroy, or cut down any living tree growing in any street, park, public place or public grounds, without first having obtained a written permit from the city manager, who shall consult the tree commission before issuing any such permit. (Ord. No. 020-2001, 5-8-2001)

SECTION 30-21. MANNER OF CUTTING.

No cutting, meaning removal and/or destruction, of any live tree in any street, park, public place or grounds in connection with the work of any city department or agency of the City, other than the city manager, or of any public service corporation or other person having a right to use the street, park, public place or grounds shall be done except in such manner as directed by the city manager, who shall consult the tree commission before directing such work to be performed or issuing any permit for same. (Code 1959, §19-11; Ord. No. 020-2001, 5-8-2001)

SECTION 30-22. REMOVING OR DAMAGING PROTECTIVE DEVICES.

It shall be unlawful for any person to remove, injure or misuse any guard or device placed or intended to protect any tree growing in any street, park or public place or grounds. (Code 1959, §19-2)

SECTION 30-23. PROTECTION DURING BUILDING OPERATIONS.

In the erection, alteration or repair of any building or structure, the owner thereof shall place, or cause to be placed, in accordance with the directions of the city manager, who may, at his option, consult the tree commission, such guards around nearby trees in the streets or public places or grounds as shall effectively prevent injury to such trees. (Code 1959, §19-14; Ord. No. 020-2001, 5-8-2001)

SECTION 30-24. OBSTRUCTING FLOW OF WATER AND AIR TO ROOTS.

It shall be unlawful for any person to place or maintain in a street or public place or grounds, any stone, cement or other substance which shall impede the free entrance of water and air to the roots of any tree. (Code 1959, §19-3)

SECTION 30-25. DESTRUCTION OF TREES, SHRUBS, ETC.

It shall be unlawful for any person to pick, pull, pull up, tear, tear up, dig, dig up, cut, break, injure, burn or destroy, in whole or in part, any tree, shrub, vine, plant, flower or turf found, growing or being upon any land reserved, set aside or maintained by the City as a public park, or as a refuge or sanctuary for wild animals, birds or fish without having previously obtained the permission in writing of such other or his agent or of the superintendent or custodian of such park, refuge or sanctuary so to do, unless the same be done under the personal direction, such superintendent or custodian of such park, refuge or sanctuary.

Any person violating this section shall be guilty of a Class 3 misdemeanor; provided, however, that the approval of the superintendent or custodian of such park or sanctuary afterwards given in writing or in open court shall be a bar to further prosecution or suit. (Code 1950, §18.1-178; 1960, c. 358; 1975, cc. 14, 15; 1976, c. 757.)

State Law Reference--Similar provision, Code of Virginia, §18.2-140.

SECTIONS 30-26 - 30-31. RESERVED.

DIVISION 2. TREE COMMISSION

SECTION 30-32. CREATED; COMPOSITION; APPOINTMENT AND TERMS OF MEMBERS; FILLING VACANCIES.

(a) There is hereby created a tree commission, to be composed of seven (7) qualified voters of the City elected by the council. Initially, three (3) of the members shall be elected to serve until December 31,1966, two (2) to serve until December 31, 1968, and two (2) to serve until December 31, 1983. Thereafter all members shall serve for a term of four (4) years or until their successors take office.

(b) Vacancies occurring on the tree commission otherwise than through the expiration of term shall be filled for the unexpired term by the election of council. (Code 1959, §19-4; Ord. No. 001-80, 1-8-80)

SECTION 30-33. MEMBERS NOT COMPENSATED.

All members of the tree commission shall serve without compensation (Code 1959, §19-4; Ord. No. 001-80, 01-08-80)

SECTION 30-34. ORGANIZATION; ELECTION OF OFFICERS; QUORUM.

The members of the tree commission shall, immediately after their appointment, meet and organize. They shall elect a chairman, a vice-chairman and such other officers as they may deem necessary. A majority of the members of the commission shall constitute a quorum for the transaction of business. (Code 1959, §19-5)

SECTION 30-35. POWERS.

The tree commission, at the request of the city manager or of the Council, shall provide advice and expertise regarding the trees now standing or hereafter planted on the streets, parks, public places and public grounds of the City. It shall have the duty to render advice and assistance to the city manager, at his request, as to the planting, trimming and removing of such trees and to provide advice and expertise to the city manager, at his request, as to the issuance of permits therefor. (Code 1959, §19-6; Ord. No. 020-2001, 5-8-2001)

SECTION 30-36. RECOMMENDATIONS TO COUNCIL.

The tree commission shall, on or before March 1st of each year, recommend to the council such regulations as may be necessary for the proper preservation and protection of trees and the improvement of any public park, public place or public grounds, to

specifically include recommendations for planting and maintenance of such trees. (Code 1959, §19-7; Ord. No. 020-2001, 5-8-2001)

SECTION 30-37. INTERFERING WITH COMMISSION.

It shall be unlawful for any person in any way to interfere, or cause any person to interfere, with the tree commission, its agents or employees while planting, spraying, removing or otherwise caring for and protecting any tree in any street, park, public place or grounds. (Code 1959, §19-13)

SECTIONS 30-38 - 30-48. RESERVED.

ARTICLE III. GRASS, WEEDS AND OTHER FOREIGN GROWTH ON PRIVATE PROPERTY

SECTION 30-49. DEFINITIONS.

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

Owners: Persons holding title to any land or lot in the City; lessees, tenants and principal occupants of any land or lot in the City or agents of persons holding title to such lands or lots, and agents of persons having care, custody, control or management of the land or lot; and fiduciaries holding title to or having the care, custody, control or management of land or lots in the City for others.

Weeds: Wild or uncontrolled growth or vegetation of every kind standing on land, other than trees, ornamental shrubbery, flowers and garden vegetables. (Code 1959, §1-5) (Ord. No. 049-95, 10-17-95)

SECTION 30-50. DUTY OF PROPERTY OWNERS TO CUT.

(a) Owners of property within the City shall not allow grass, weeds and other foreign growth thereon to exceed ten (10) inches in height. All grass, weeds and foreign growth on a one hundred (100) feet by one hundred (100) feet or smaller lot or acreage must be cut. In case of a larger lot or acreage, all grass, weeds and foreign growth thereon must be cut a distance of one hundred (100) feet from all adjoining property lines.

(b) Any owner who violates any provision of this section shall be subject to a civil penalty of Fifty Dollars ($50.00) for the first violation, or violations arising from the same set of operative facts. The civil penalty for subsequent violations not arising from the same set of operative facts within twelve (12) months of the first violation

shall be Two Hundred Dollars ($200.00). Each business day during which the same violation is found to have existed shall constitute a separate offense. In no event shall a series of specified violations arising from the same set of operative facts result in civil penalties that exceed a total of Three Thousand Dollars ($3,000.00) in a twelve (12) month period.

(c) Violations of any provision of this section shall be a Class 3 misdemeanor in the event three (3) civil penalties have previously been imposed on the same defendant for the same or similar violation, not arising from the same set of operative facts, with a twenty-four (24) month period. Classifying such subsequent violations as criminal offenses shall preclude the imposition of civil penalties for the same violation.
(Code 1959, §11-5; Ord. No. 022-94, 07-12-94; Ord. No. 13-2006, 4-11-06)

SECTION 30-51. NOTICE TO CUT.

Where grass, weeds or other foreign growth in excess of ten (10) inches in height are found upon property, the code enforcement officer, as defined in section 11-2 shall immediately notify the owner of such property to cut such grass, weeds, or other foreign growth down to a height not to exceed three (3) inches. Notifications shall be made by the same procedure as set forth in Section 11-37 of this Code. (Code 1959, §11-5; Ord. No. 048-88, 11-15-88; Ord. No. 029-91; 6-11-91; Ord. No. 022-94, 07-12-94; Ord. No. 028-97, 10-14-97)

SECTION 30-52. CUTTING BY THE CITY.

(a) If grass, weeds, or other foreign growth have not been cut within ten (10) days from the date the notice provided for in Section 30-51 is sent, the code enforcement officer, as defined in section 11-2 shall cause the cutting by the City's forces or the City's agent of such grass, weeds or other foreign growth forthwith.

(b) Where grass, weeds or other foreign growth have been cut by order of the code enforcement officer pursuant to the provisions of this section, the cost of such cutting shall be billed to the owner of the property. If such bill is not paid, it shall be added to the City real estate tax bill on such property and shall be a lien on such property to the same extent and effect as such real estate tax is. (Code 1959, §11-5; Ord. No. 048-88, 11-15-88; Ord. No. 029-91, 6-11-91; Ord. No. 022-94, 07-12-94; Ord. No. 028-97, 10-14-97)

State Law References--Authority of city to require cutting or removal of weeds and other foreign growth, Code of Virginia, §§15.1-11, 15.1-867, §15.1-901(penalty).

CHAPTER 31

VEHICLES FOR HIRE

Art. I. In General, §§31-1--31-15
Art. II. Taxicabs, §§31-16--31-73
Div. 1. Generally, §§31-16--31-38
Div. 2. Certificate of Public Convenience and Necessity, §§31-39--31-58
Div. 3. Driver's Permit, §§31-59--31-72

ARTICLE I. IN GENERAL

SECTIONS 31-1 - 31-15. RESERVED.

ARTICLE II. TAXICABS

DIVISION 1. GENERALLY

SECTION 31-16. DEFINITIONS.

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

Certificate: The certificate of public convenience and necessity granted by the city council to persons in the business of operating taxicabs as provided in this article.

Driver: Any person in charge of or driving any taxicab.

Owner: Any person having control of the operation or maintenance of taxicabs, including any person having control of the collection of revenue derived from the operation of taxicabs, and including the purchaser of any taxicab under conditional sales contract, or other title-reserving agreement.

Taxicab: Any motor-driven vehicle used for the transportation, for hire or reward, of passengers upon any street, of the City, except buses being operated under franchise or by the City and over fixed routes between fixed termini. (Code 1959, §23-1)

Cross references--Motor vehicles and traffic, Ch. 14; railroads, Ch. 22; streets and sidewalks, Ch. 26; disorderly conduct in public places, §16-6.1.

Charter reference--Regulation of taxicabs, §16.

State Law Reference--Authority of city to regulate taxicabs, Code of Virginia, §56-291.3:1, *et seq*.

SECTION 31-17. APPLICATION OF ARTICLE; COMPLIANCE.

The operation of taxicabs in the City shall be subject to the conditions, regulations and restrictions set forth in this article, and it shall be unlawful to operate, or cause to be operated, within the City any taxicab unless the conditions, regulations and restrictions herein set forth and prescribed have been complied with by such owner. (Code 1959, §23-18)

SECTION 31-18. LIABILITY INSURANCE OR BOND.

(a) Every owner of any taxicab operated in the City shall file with and have approved by the chief of police and shall keep enforce at all times one of the following:

1) An insurance policy or bond;

2) A certificate of insurance in lieu of the insurance policy or bond, certifying that such policy or bond covers the liability of such motor carrier in accordance with the provisions of this article, is issued by an insurer authorized to transact business in this Commonwealth, or in the case of bonds, is an amount approved by the Commission, and are bonds of the Commonwealth of Virginia, the United States of America, or of any municipality in the Commonwealth. Such state, federal or municipal bonds shall be deposited with the State Treasurer, and such surety shall not be reduced during the life of such certificate or permit, except in accordance with an order of the Commission; or

3) An unconditional letter of credit issued by a bank doing business in Virginia for an amount approved by the Commission and the term of which runs concurrently with the certificate or permit.

(b) If any such policy of insurance is canceled, the owner shall not operate, or cause to be operated, any vehicle covered by such policy until other insurance is

obtained or a certificate of insurance, bond or letter of credit is given, pursuant to Virginia Code §56-291.3:7.

(c) Each such policy of insurance so filed shall contain a clause to the effect that the insurance carrier may cancel the policy upon not less than thirty (30) days written notice to the chief of police, as well as such other notice as may be required by law to be given the owner. (Ordinance No. 027-94, 11-15-94)

State Law Reference--Regulation of taxicabs, Code of Virginia §56-291.3:7.

SECTION 31-19. GENERAL VEHICLE REQUIREMENTS.

Every taxicab shall be of the enclosed or sedan type with four (4) doors, at least two (2) seats and of not less than five (5) passenger capacity. (Code 1959, §23-11)

SECTION 31-20. IDENTIFICATION OF VEHICLES.

Every taxicab shall bear on the outside, on at least two (2) sides, the name of the owner, in letters not less than two (2) inches high and plainly visible at a distance of one hundred (100) feet, and on two (2) sides and the back, the owner's number in letters three (3) inches high and plainly visible at a distance of one hundred (100) feet. However, owners shall be permitted, if they so desire, to maintain one unmarked taxicab for each four (4) marked taxicabs, such unmarked taxicab to be used for private charter trips. (Code 1959, §23-14)

SECTION 31-21. CONDITION OF VEHICLE.

(a) Every taxicab shall be at all times in good order and repair and clean, when in operation.

(b) Owners of taxicabs are prohibited from transporting or permitting to be transported objects or materials within their vehicles which might leave dirt, stains or dust or otherwise soil or leave unclean the cabs or cab drivers in such a way that the presence of these conditions might be damaging or objectionable to other persons using the cabs or lead to an unclean condition therein. (Code 1959, §§23-12, 23-16)

SECTION 31-22. INSPECTION OF VEHICLE; CORRECTION OF DEFECTS.

The chief of police or a member of the police department designated by him may, at any time, cause to be inspected each taxicab within the City. Such inspection shall be made at any state-authorized inspection station. If any such taxicab is found to be unsafe, unfit or

in an unclean condition, the owner thereof shall be notified at once that such vehicle shall not be operated thereafter until such defective or unclean condition has been remedied. The costs of any such inspection shall be paid by the owner. (Code 1959, §23-13; Ord. No. 006-97, 2-11-97)

SECTION 31-23. POLICE RADIO RECEIVERS PROHIBITED.

It shall be unlawful to operate any taxicab along the streets of the City in which a radio is installed which is capable of receiving police calls. (Code 1959, §23-15)

SECTION 31-24. RESERVED.

SECTION 31-25. STANDS.

(a) Upon written application to the chief of police, he may designate and assign stands for taxicabs at such places within the City as will best serve the convenience and necessity of the general public, such stands to be plainly marked. Such application shall state the location of the desired stand and the number of spaces which the applicant desires to occupy and shall contain the written consent of the owner of the property abutting the stand, unless such property is owned or controlled by the City.

(b) One stand not exceeding twenty-two (22) feet in length, abutting the curb, will be furnished each owner, for his exclusive use, without charge, which stand is to be located on a street where it will not interfere with normal use of such street by the general public, and such stand shall be approved by the chief of police. The right is reserved by the City and the chief of police to cancel any stand or space allotted to any owner at any time, when or if it becomes necessary for the City to utilize such stand for facilitating the movement of traffic over the street upon which such stand is located. (Code 1959, §23-4)

Cross references--General provisions relative to designation and use of taxicab stands, §§14-52, 14-53; taxicab stands in parking meter zones, §14-74.

SECTION 31-26. DRIVERS TO ATTEND VEHICLES.

Every taxicab, while in operation for the solicitation or transportation of passengers, shall be attended by the driver at all times, except when such driver is actually engaged in loading and unloading. (Code 1959, §23-9)

SECTION 31-27. CARRYING MORE THAN ONE PASSENGER.

Not more than one passenger shall be transported at one time in a taxicab without the consent of the person first engaging the vehicle. (Code 1959, §23-8)

SECTION 31-28. TRANSPORTING NONPAYING PASSENGERS.

A non-paying passenger shall not be transported in a taxicab with a paying passenger, except bona fide officers or employees of the owner or a police officer engaged in the performance of his duty and unable to obtain other adequate means of transportation. (Code 1959, §23-7)

SECTION 31-29. COMPLETION OF ACCEPTED CALLS.

A taxicab driver shall not fail or refuse to complete an accepted call as promptly as possible. (Code 1959, §23-10)

SECTION 31-30. RECORD OF CALLS.

Every taxicab owner shall keep a clear, neat record of the origin and destination of all calls and it shall be the duty of all drivers and employees of the owner to report such calls. Such records shall be open at all times to inspection by any member of the police department and shall be preserved for a period of not less than six (6) months. No person shall knowingly make a record of a fictitious call or use any fictitious name in reporting a bona fide call, nor shall a fictitious or false address of the point of origin or destination be knowingly reported. (Code 1959, §23-6)

SECTION 31-31. ACCIDENT REPORTS.

Every accident, however slight, in which any taxicab is involved shall be immediately reported to the police department. Such report shall not be used against the owner or driver making it in any criminal proceeding. Such report shall be available to any person, or his attorney, injured in such accident or by reason thereof. (Code 1959, §23-5)

Cross reference--Traffic accident reports generally, §14-125 *et seq*.

SECTION 31-32. SCHEDULE OF RATES.

(a) *Filing.* The rates established for services rendered by taxicabs within the City shall be filed with the clerk of council and the chief of police at least five (5) days prior to the effective date of any increase or change.

(b) *Printing and posting.* The schedule of rates shall be printed and posted in a conspicuous place, as designated by the police department of the City, in each taxicab. (Ord. No. 018-79, 6-12-79)

SECTIONS 31-33 - 31-38. RESERVED.

DIVISION 2. CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

SECTION 31-39. REQUIRED.

No business license for the operation of a taxicab shall be issued by the commissioner of the revenue, nor shall any taxicab be operated on the streets of the City unless and until the chief of police has issued a certificate pursuant to §31-41 to the owner. (Code 1959, §23-19) (Ord. No. 027-94, 11-15-94)

SECTION 31-40. FILING AND CONTENTS OF APPLICATION.

An application for a certificate, as required in this division, shall be made, under oath, by the owner or proposed owner to the chief of police upon forms provided therefor by the City. The application shall contain the following information:

(1) The full name and business address of the applicant and home address if the applicant is an individual.
(2) The trade name under which the applicant does or proposes to do business.
(3) The number and kind of vehicles, showing seating capacity, design and color scheme of each.
(4) The address and size of each depot or terminal to be used.
(5) For the owner, and for each holder of a majority of the stock of the owner and for any partner if the owner is a partnership, each conviction of the violation of any criminal law, or guilty or nolo contendere plea thereto, whether such violation be of a city ordinance, state law or federal law.
(6) The specific experience of the applicant in the transportation of passengers for hire.

(7) All facts or circumstances upon which the applicant bases his belief that public convenience and necessity require the granting of his application. (Code 1959, §§23-20.23-21) (Ord. No. 027-94, 11-15-94)

SECTION 31-41. ACTION OF CHIEF OF POLICE ON APPLICATION - CERTIFICATE CRITERIA.

Upon the filing of an application with the chief of police, he shall promptly make an investigation as to the suitable character and qualification of the applicant to conduct such business and, in the case of corporations, partnerships or other such entities to investigate the fitness of the officers, directors, partners, majority stockholders, other owners and responsible persons. Within thirty (30) days of receiving such application, the chief of police shall make a determination of whether the applicant can provide safe transportation to the public, and therefore, whether a certificate shall be issued, based on compliance with §31-18, the criteria set forth in §31-42 and the criteria in this section. The applicant shall be notified of the decision in writing, when it is made.

Each certificate shall contain:

(1) The name and address of the applicant;
(2) The number, make, color, vehicle identification number of each taxi authorized to be operated by the certificate; and
(3) The date of issuance.

A certificate issued under this division shall not be transferable.
(Ord. No. 027-94, 11-15-94)

SECTION 31-42. SUBSTITUTION OF EQUIPMENT AFTER ISSUANCE.

No equipment shall be substituted for that described in a certificate issued under this division unless and until it has been inspected and approved by the chief of police or a member of the police department designated by him, and the substitution or addition has been endorsed on the certificate by the chief of police and attested by the clerk of council. (Code 1959, §23-32)(Ord. No. 027-94, 11-15-94)

SECTION 31-43. TERM.

Every certificate issued under this division shall be good and valid, unless revoked or suspended as provided in this division, from the date of issuance until the following thirty-first day of December of each year. (Code 1959, §23-27)(Ord. No. 027-94, 11-15-94)

SECTION 31-44. REVOCATION OR SUSPENSION.

The chief of police may, for cause, cancel, revoke, or suspend any certificate issued pursuant to this division, after giving five (5) days written notice to the certificate holder. (Ord. No. 027-94, 11-15-94)

SECTIONS 31-45 - 31-58. RESERVED.

DIVISION 3. DRIVER'S PERMIT

SECTION 31-59. REQUIRED.

(a) It shall be unlawful for any person to drive a taxicab within the City unless he shall have obtained a special permit to be known as a "taxicab driver's permit," which shall be in addition to any other license required of such person. Any person convicted of a violation of this subsection shall be guilty of a Class 1 misdemeanor, as defined by Section 1-11(a)(1) of this Code.

(b) It shall be unlawful for any owner of a taxicab to permit the same to be operated by any person who does not have a valid and effective taxicab driver's permit. Any person convicted of a violation of this subsection shall be guilty of a Class 1 misdemeanor, as defined by Section 1-11(a)(1) of this Code.

(c) It shall be unlawful for any person to transport a passenger who shall be less than eighteen (18) years old while in possession of only a temporary driver’s permit as described in Section 31-69 of this Code. Any person convicted of a violation of this subsection shall be guilty of a Class 1 misdemeanor, as defined by Section 1-11(a)(1) of this Code, and shall, in addition, permanently forfeit any such temporary permit and the privilege to apply for any other permit under this Division of this Code.

(Ord. No. 016-2002, 6-11-02)

SECTION 31-60. APPLICATION--CONTENTS.

Application for a permit required by this division shall be made in writing under oath to the chief of police and shall show the following:

1. Full name of applicant.

2. Present address.

3. Age.

4. Place of birth.

5. Place of previous address and employment for the past five (5) years, and a copy of the applicant's record from the Virginia Department of Motor Vehicles, or similar agency or agencies in another state for at least the last ten (10) years.

6. Height.

7. Weight.

8. Color of eyes.

9. Color of hair.

10. Sex.

11. Whether or not applicant is in good physical condition.

12. Whether or not applicant has good hearing and good eyesight.

13. Whether or not applicant uses, or has used within the past five (5) years, intoxicating liquors, drugs or any other form of narcotic and, if so, to what extent.

14. Whether or not applicant has ever been convicted of, plead guilty to or entered the plea of nolo contendere to the violation of any city, state, federal or other criminal law, and if so, the number of times and the kind of offenses and such other information as may be required by the chief of police. In addition, the applicant will provide signed consent for the City to access his/her criminal record and his/her record, if any, as shown on the Central Registry for Child Abuse, as more fully described in Section 63.1-248.8 of the Code of Virginia, 1950, as amended. The applicant shall declare, under oath, that he/she is not listed by either database, except as disclosed above.

15. What experience, if any, applicant has had in the operation of motor vehicles.

16. Whether or not applicant has previously been employed or licensed as a driver or chauffeur and, if so, whether or not his license has ever been revoked or suspended for any reason. (Ord. No. 016-2002, 6-11-02)

SECTION 31-61. SAME--TO BE MADE IN PERSON; FINGERPRINTS.

Each applicant for a taxicab driver's permit shall apply for his permit in person and have his fingerprints taken, which fingerprints shall constitute a part of his application. (Code 1959, §23-35)

SECTION 31-62. SAME--PHOTOGRAPHS.

Each applicant for a taxicab driver's permit shall file with his application two (2) recent photographs of himself of a size designated by the chief of police, one of which shall be attached to and become a part of the application. (Code 1959, §23-36)

SECTION 31-63. SAME--INVESTIGATION.

The chief of police shall promptly make an investigation of the facts stated in an application filed under this division and shall make a written memorandum of his findings, which shall be kept on file in his office for the benefit of any interested party. (Code 1959, §23-38)

SECTION 31-64. PHYSICAL EXAMINATION OF APPLICANT.

The chief of police shall require of the applicant for a taxicab driver's permit such medical examination as he may deem proper. (Code 1959, §23-37)

SECTION 31-65. FEES.

(a) The schedule of fees with reference to taxicab drivers' permits shall be as follows:

For each application $25.00
For each application for renewal of permit.....25.00

(b) All fees provided for in this section shall be collected by the chief of police, or some member of the police department designated by him, and shall promptly be paid over to the city treasurer to be placed in the general fund. (Ord. No. 016-2002, 6-11-02)

SECTION 31-66. ISSUANCE OR REFUSAL GENERALLY.

If the chief of police, upon the investigation made as provided in Section 31-63, finds that the applicant is duly qualified and of good moral character, he shall issue him a taxicab driver's permit. If the chief of police is not satisfied as to the qualifications and fitness of the applicant to operate taxicabs upon the streets of the City, he shall refuse to issue such permit. (Code 1959, §23-39)

SECTION 31-67. APPEAL FROM REFUSAL.

The applicant shall have the right, within five (5) days from the day a taxicab driver's permit is denied, as provided in Section 31-66, to appeal to the Community Safety Committee of the Common Council from the decision of the chief of police denying the permit. The decision of the Community Safety Committee of the Common Council, after hearing relevant evidence, shall be final. (Code 1959, §23-40)(Ord. No. 2008-14, 3-11-08)

SECTION 31-68. FORM AND CONTENTS.

Each taxicab driver's permit issued under this division shall contain a statement of the name, home address, business address and the employer of the holder thereof. One of the photographs filed by an applicant for a taxicab driver's permit, as provided in section 31-62, shall be attached to his permit in such manner that no other photograph may be substituted therefor without probability of detection. Taxicab drivers' permits shall be serially numbered. (Code 1959, §23-41)

SECTION 31-69. TERM.

All taxicab drivers' permits issued under this division shall be issued for three (3) years regardless of the date of issue, PROVIDED, HOWEVER, if the chief of police is unable to access the records described in Section 31-60(14), above, he may, in his discretion and upon the same findings described in Section 31-66, above, issue a temporary driver’s permit which shall be valid for no more than sixty (60) days from the date of issue. If, prior to the expiration of such temporary permit, the chief of police discovers that any false statements have been made on the application form described in Section 31-60, above, then he shall promptly revoke such permit and notify the taxicab owner in writing of such revocation, and the person making such statements shall be barred from making further application under this Division for a period of not less than five (5) years. (Ord. No. 016-2002, 6-11-02)

SECTION 31-70. DISPLAY.

Each taxicab driver's permit issued under this division shall be posted in a conspicuous place in the taxicab while such taxicab is being operated by or in the charge of the holder of such permit. (Code 1959, §23-42)

SECTION 31-71. TRANSFERABILITY.

No taxicab driver's permit issued under this division shall be transferable. (Code 1959, §23-46)

SECTION 31-72. REVOCATION OR SUSPENSION.

The Community Safety Committee of the Common Council, upon application of the chief of police or any other interested party and upon ten (10) days' notice by personal service, shall have the power to revoke or suspend the taxicab driver's permit of any driver holding a taxicab driver's permit hereunder for any of the following causes:

1. Repeated and persistent violation of traffic and safety laws and ordinances.

2. Failure to report any accident in which such driver is involved, however slight.

3. Operation of any taxicab known to the driver not to be in good order and repair.

4. Conviction of reckless driving more than twice in any calendar year.

5. Violation of any substantial provisions of this article.

6. Violation of the laws of any state or the ordinances of any municipality. (Code 1959, §23-48) (Ord. No. 2008-15, 3-11-08)

CHAPTER 7.1

EMERGENCY MEDICAL SERVICES

Art. I. Cost Reimbursement for Emergency Medical Transport; §§7.1-1 – 7.1 – 130

ARTICLE I. COST REIMBURSEMENT FOR EMERGENCY MEDICAL TRANSPORT

SECTION 7.1-1. SERVICE FEES FOR EMERGENCY MEDICAL TRANSPORT

Reasonable fees shall be charged for emergency medical transport services provided by the City of Winchester Fire and Rescue Department. The schedule of rates for services shall be published herein as adopted by the Winchester Common Council. The funds received from the payment of this fee shall be paid into the general fund of the City to be used exclusively in defraying the cost of providing EMS services.

1. The fees which shall be charged by the City of Winchester for the following described emergency medical services provided by City of Winchester owned, operated, funded, housed or permitted emergency vehicles shall be as follows:

Basic Life Support (BLS) Emergency	$400.00
Advanced Life Support (ALS) 1 Emergency	$450.00
Advanced Life Support (ALS) 2 Emergency	$600.00

   Mileage: Nine Dollars ($9.00) per loaded mile from the point of pick-up to the emergency room (ER). Ambulance transport fees shall only be charged for the actual transport of an individual.

2. No recipient of ambulance service who cannot afford to pay the ambulance transport fee will be required to do so.

3. This Ordinance shall be in full force and effect on and after May 13, 2008. (Ord. No. 2008-30, 06-10-08)

Editor's note: OrdinanceNo. 037-2005 adopted on December 13, 2005, enacted this chapter.

SECTION 7.1-2. DEFINITIONS

(1) *Basic Life Support (BLS):* Services shall be medical treatment or procedures to a patient as defined by the Department of Health and Human Services, Centers for Medicare and Medicaid Services.

(2) *Advanced life support, level 1 (ALS1)*: Services shall be medical treatment or procedures provided to a patient beyond the scope of an EMT-Basic as defined by the Department of Health and Human Services, Centers for Medicare and Medicaid Services.

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

(i) Defibrillation/cardioversion;

(ii) Endotracheal intubation;

(iii) cardiac pacing;

(iv) chest decompression;

(v) intraosseous line; and/or

(vi) the administration of three or more medications.

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

SECTION 7.1-3. AUTHORITY OF CHIEF OF FIRE AND RESCUE

The Chief of the City of Winchester Fire and Rescue Department, or his or her designee, is hereby authorized and directed to establish rules and regulations for the administration of the charges imposed by this Article, including, but not limited to, payment standards for those persons who demonstrate economic hardship, as permitted by applicable law.

SECTIONS 7.1-4 – 7.1-130. RESERVED.

NOTE: This ordinance shall be effective on the date of passage, but shall not be enforced or administered until the Common Council for the City of Winchester adopts a resolution establishing specific fees for the defined services.

(Ordinance No. 037-2005, 12/13/05)

CHAPTER 8.1

TECHNOLOGY ZONE

Art. I. General Provisions, §§8.1-1--8.1-9
Art. II. Tax Rebates and Exemptions, §§8.1-10--8.1-19
Art. III. Rebate of Land Development Fees, §§8.1-20--8.1-29
Art. IV. Education and Promotion, §8.1-30

ARTICLE I - GENERAL PROVISIONS

SECTION 8.1-1. PURPOSE.

The City of Winchester finds that the development of its commercial and industrial tax base requires incentives, and determines that the most appropriate method of offering incentives for the area described below is to create a technology zone in that area, as guided and authorized by the Code of Virginia, §58.1-3850. The City believes that the establishment of a technology zone will improve the economic conditions of the downtown area of Winchester which could, in turn, benefit the welfare of the citizens of Winchester. (Ord. No. 031-96, 12-10-96)

SECTION 8.1-2. ADMINISTRATION.

The Administrator of the Winchester Technology Zone shall be the City Manager or his designee. The Administrator shall determine and publish the procedures for obtaining the benefits created by this chapter and for the administration of this chapter.
(Ord. No. 031-96, 12-10-96)

SECTION 8.1-3. DEFINITIONS.

For the purposes of this chapter, the following words and phrases shall have the following meanings, unless clearly indicated to the contrary:

(a) *QUALIFIED TECHNOLOGY BUSINESS*. The term qualified technology business shall mean a business, to the extent which its gross receipts are derived from computer hardware, software or telecommunications sales,

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Editor's note--Ord. No. 031-96 adopted on December 10, 1996 enacted this chapter, effective January 1, 1997.

leases, licensing or services , and, for which the computers or telecommunication is used to provide sales, leases, licensing or services directly to the customer. Examples include electronic information operations and providers, internet service providers, software design and development companies, computer and computer peripherals sales or assembly businesses, multi-media content developers, internet-based sales or service companies, hardware design and development companies, long distance video service companies, and computer supply and/or service companies. Examples also include retailers, to the extent that sales are made to the customer via the internet, without the customer's physically coming to the retail establishment. Examples of businesses using telecommunications to provide sales, leasing or services directly to the customer include credit card authorization centers, retail catalogue sales centers, hotel or airline reservation centers and telephone company operator, repair dispatching, or sales centers.

In no case shall the use of computers or telecommunication services by a business in its internal operations qualify the business as a technology business.

To qualify, the company must have a minimum of three (3) employees and an investment of at least ten thousand dollars ($10,000). The investment may be established by the value of personal property; real estate owned; or the value of a lease of real property for the operation of the technology business.

Notwithstanding the above, during the first year of operation of a business, which is not a successor to a business which would qualify as a technology business, if the newly created business qualifies for the micro-enterprise loan program or if the business operates within the City's business incubator program, at the time such program is created, it shall qualify as a qualified technology business.

Existing companies within the boundaries of the technology zone which qualify under any of the criteria set forth above may be qualified as a technology company. A company meeting the criteria which moves into the technology zone may also qualify.

(b) *QUALIFIED ZONE RESIDENT*. The term qualified zone resident shall mean an owner or tenant of real property located in the technology zone who expands or rehabilitates such property to facilitate the operation of a qualified technology business within the technology zone.

The term property for this subsection shall be the unit or units for which a site plan is submitted or for which a building code application is submitted.

(c) *TELECOMMUNICATIONS*. The term telecommunications shall mean internet, email or similar services, but shall exclude voice telephone and facsimile

communications except for the examples listed above in subsection (a) as businesses using telecommunications to provide sales, leasing or services directly to the customer. (Ord. No. 031-96, 12-10-96)

SECTION 8.1-4. BOUNDARIES.

The technology zone shall be that area located within the following boundary lines:

Commencing on East Lane at National Avenue;
thence south along East Lane to East Cork Street;
thence west along East Cork Street to South Cameron Street;
thence south along Cameron Street to East Cecil Street;
thence west along Cecil Street to the intersection of West Cecil Street and South Braddock Street;
thence north along South Braddock Street to Cork Street;
thence west along Cork Street to South Washington Street;
thence north along Washington Street to the intersection of North Washington Street and West Fairfax Lane;
thence east along Fairfax Lane to the intersection of Fairfax Lane and North Loudoun Street;
thence north along North Loudoun Street to Baker Street;
thence east along Baker Street to North Cameron Street;
thence south along North Cameron Street to East Fairfax Lane;
thence east along East Fairfax Lane to the beginning at East Lane and National Avenue. (Ord. No. 031-96, 12-10-96; Ord. No. 023-97, 10-14-97)

SECTIONS 8.1-5 - 8.1-9. RESERVED.

ARTICLE II. TAX REBATES AND EXEMPTIONS

SECTION 8.1-10. TAXES ELIGIBLE FOR REBATE.

Qualified technology businesses shall receive a rebate of a percentage of the utility tax on local telephone usage, electric usage and cable television usage imposed by Article V of Chapter 27 of the Winchester City Code. (Ord. No.-031-96, 12-10-96)

SECTION 8.1-11. TAXES ELIGIBLE FOR EXEMPTION.

Qualified technology businesses shall be exempted from a percentage of the following local taxes:

> The business, professional and occupational license taxes and fees imposed by Chapter 28 of the Winchester City Code.

SECTION 8.1-12. AMOUNT OF REBATE OR EXEMPTION.

The amount of each type of tax rebate or exemption under §8.1-10 or §8.1-11 shall be a percentage of that tax paid or due by the qualified technology business each year. The percentage rebated or exempted each year shall be determined by the following schedule:

Year 1 . . . . . 100%
Year 2 . . . . . 80%
Year 3 . . . . . 60%
Year 4 . . . . . 40%
Year 5 . . . . . 20%

Year 1 is the calendar year in which the business becomes a qualified technology business if it qualified prior to June 30 of the year. Otherwise, year 1 shall be the year following the year in which the business becomes a qualified technology business. Qualified technology businesses shall receive the tax rebates or exemptions established by this article for five years. Once a business has qualified has a technology business, it shall not be entitled to additional periods of five years or any parts thereof by reason of expansion of investment or number of employees. If a business ceases to be a qualified technology business during a year in which the rebates or exemptions apply, they shall be prorated for the months the business was a qualified technology business.

If a majority of the gross receipts of a qualified technology business is derived from the operations which qualify the business, all of its gross receipts shall be included in the rebates and exemptions.

If a minority of a business' gross receipts is derived from such operations, the rebates or exemptions shall be applied only to that part of the gross receipts which is based on the sales or services via such qualifying operations. (Ord. No. 031-96, 12-10-96)

SECTION 8.1-13. PROCEDURE FOR REBATE OR EXEMPTION.

In the case of rebates, each business desiring inclusion in the program shall pay the taxes listed in §8.1-10 or §8.1-11 in the manner prescribed by the Winchester City Code. The business shall apply to the Administrator for certification as a qualified technology

business. The application must be made within twelve (12) months of the month in which the applicant met the definition of a qualified technology business. The Administrator shall investigate such matters. Upon certification and proof that no taxes are outstanding at the time of application, the qualified technology business shall be entitled to the rebates created by this article The Commissioner shall rebate taxes on a quarterly basis. Failure of the business to pay in full by the due date any of the taxes listed in this article, or other taxes imposed by the City shall result in forfeiture of the rebate of that tax for that year upon a finding by the Administrator that such delinquency is significant.

In the case of tax exemptions, the business shall file all necessary tax applications. The business shall apply to the Administrator for certification. The application must be made within twelve (12) months of the month in which the applicant met the definition of a qualified technology business. The Administrator shall investigate such matters. Upon certification and proof that no taxes are outstanding at the time of application, the business shall be entitled to the exemptions created by this article. Failure of the business to pay in full by the due date any taxes imposed by the City shall result in the loss of the exemption for the remainder of the current year upon a finding by the Administrator that such delinquency is significant. (Ord. No. 031-96, 12-10-96)

SECTIONS. 8.1-14 - 8.1-19. RESERVED.

ARTICLE III. REBATE OF LAND DEVELOPMENT FEES

SECTION 8.1-20. APPLICABILITY OF REBATE OF LAND DEVELOPMENT FEES.

The fees identified in this article shall be rebated as follows:

(1) Any owner of real estate located within the area delineated in Section 8.1-4 of this Code who plans to perform alterations to a structure in order to allow occupancy by one or more qualified technology businesses may apply, in writing, to the City Manager, or his designee, for a rebate of the fees described in Sections 8.1-21 through 8.1-24, both inclusive, of this Code, provided at least 40% of the cost of the expansion or rehabilitation of the structure is to house a “qualified technology business” as defined by Section 8.1-3 hereof.

(2) The City Manager, or his designee, shall carefully review the application to determine whether or not the applicant meets the definition of “qualified zone resident” stated in Section 8.1-4 of this Code, and to determine whether or not a “qualified technology business” physically occupies the structure which is the subject of the application, as well as the additional criteria specified in (1), above.

(3) Notwithstanding any other provisions of this Chapter, if the City Manager, or his designee, determines that all of the conditions specified in (1) and (2), above, have been met by the applicant, he is authorized to rebate not more than twenty percent (20%) of the total amount of fees described in this Article and paid by the applicant.

(4) The applicant who initially qualifies hereunder may, thereafter, once each year for a period of five (5) years measured from the date of the first application, reapply for additional rebate of the same said fees, but shall be entitled to no more than twenty percent (20%) per year of the initial total of all such fees. At the time of each such subsequent application, the applicant must meet all of the criteria herein specified, and failure to do so will disqualify the applicant entirely from any further consideration for any additional rebate of such fees. However, an applicant who initially qualifies hereunder for a rebate shall not thereafter be disqualified solely because the qualified technology business is no longer occupying the subject structure if another qualified technology business has replaced it in the same structure.

SECTION 8.1-21. BUILDING CODE FEES.

Qualified zone residents shall be rebated the building permit fees imposed by Winchester City Code §6-27. (Ord. No. 031-96, 12-10-96; Ord No. 010-98, 5-12-98)

SECTION 8.1-22. WATER AND SEWER AVAILABILITY CHARGE.

Qualified zone residents shall be rebated the availability charge imposed by Winchester City Code §29-7(c) on water and sewer connections. (Ord. No. 031-96, 12-10-96; Ord No. 010-98, 5-12-98)

SECTION 8.1-23. ZONING ORDINANCE FEES.

Qualified zone residents shall be rebated the fees imposed by §23-8-1 *et seq.* of the Zoning Ordinance. (Ord. No. 031-96, 12-10-96; Ord No. 010-98, 5-12-98)

SECTION 8.1-24. SUBDIVISION ORDINANCE FEE.

Qualified zone residents shall be rebated the charge for the submission of a subdivision plat imposed by the Subdivision Ordinance §4-8. (Ord. No. 031-96, 12-10-96; Ord No. 010-98, 5-12-98)

TECHNOLOGY ZONE

SECTION 8.1-25. NONWAIVER.

This article shall not be construed to waive the requirement of any application, permit, or approval from the City as mandated by other code sections. Nothing in this article shall be construed as waiving the right of the City of Winchester to collect any fines or penalties imposed by other sections of the Code. (Ord. No. 031-96, 12-10-96)

SECTION 8.1-26. RESTRICTIONS.

No property owner may apply for a rebate under this article on the basis of a building permit issued prior to the establishment of the technology zone. (Ord. No. 031-96, 12-10-96; Ord No. 010-98, 5-12-98)

SECTIONS 8.1-27 - 8.1-29. RESERVED.

ARTICLE IV. EDUCATION AND PROMOTION

SECTION 8.1-30. EDUCATION AND PROMOTION.

The Administrator or his designee shall develop programs to educate the public and potential businesses of the benefits of the technology zone.

It is the intention of Council that the technology zone, the telecommuting center, the T-1 internet cable access and related technologically-based benefits of downtown Winchester be promoted regionally, nationally and internationally. The Administrator or his designees shall carry out such promotion with the advice and assistance of the economic development entities in the community, including, but not limited to the Winchester-Frederick Economic Development Commission, the Chamber of Commerce, the Old Town Development Board, and in cooperation with computer and telecommunication businesses participating in the technology zone. (Ord. No. 031-96, 12-10-96)

SECTION 1. CITY CONTINUED AS BODY CORPORATE; NAME; GENERAL POWERS, LIABILITY, ETC.

The inhabitants of the City of Winchester, within the boundaries as now established or as hereafter established in the manner provided by law, shall continue to be a body politic and corporate by the name of the City of Winchester for all purposes for which cities and towns are incorporated in this Commonwealth; shall continue to be a body politic in fact and in name, under the style and name of the City of Winchester, and as such shall have, exercise and enjoy all the rights, immunities, powers, and privileges, and be subject to all the duties and obligations incumbent upon and pertaining to said city as a municipal corporation; provided, that the said City of Winchester shall be and continue liable for all the existing indebtedness, whether funded or floating, outstanding in the name of the City; and the said City of Winchester may sue in its corporate name on all bonds, notes, accounts or contracts payable to the City and under the aforesaid name it shall have perpetual succession; may use a corporate seal; may sue and be sued; may acquire property within or without its boundaries for any municipal purpose, in fee simple or lesser interest or estate, by purchase, gift, devise, lease or condemnation, and may sell, lease, hold, manage and control such property as its interest may require; and, except as prohibited by the Constitution of Virginia or restricted by this charter, the City of Winchester shall have all municipal powers, functions, rights, privileges and immunities of any name or nature whatsoever, and it now appearing that the City of Winchester, having a population in excess of ten thousand, is, under the laws now existing in the State of Virginia, a city of the first class, it shall enjoy all of the rights, privileges and immunities of a city of that class now authorized under the constitution and statues of the State of Virginia or that might hereafter be authorized by any amendment thereto.

Editor's note--The Charter is set out herein as enacted by Section 1 of Chapter 39, 1932 Acts of the General Assembly (approved February 20, 1932), as amended. Amendments have been worked into their proper places and are indicated by history notes appearing in parentheses ( ) at the end of the amended sections. The absence of such a note indicates that the section is derived, unamended, from Acts 1932, Chapter 39. Any words appearing in brackets [ ] were added by the editor for clarity.

Sections 2, 3 and 4 of Acts 1932, Chapter 39, read as follows:

> "2. Nothing in this charter shall be construed as precluding the City of Winchester from hereafter adopting by the procedure set forth in the present Code of Virginia and any amendments thereto, one of the several plans of government now available for cities of the first class.
>
> "3. If any of the provisions of this charter are hereafter declared to be unconstitutional by any court of competent jurisdiction, it shall not affect any of the other provisions of this charter.
>
> "4. An emergency existing due to the transition of the City of Winchester from a city of the second class to a city of the first class, this charter shall be in effect from the date of its passage."

SECTION 1.01. ASSESSMENT AND COLLECTION OF LICENSES AND TAXES.

In addition to the powers granted by other sections of this charter the City shall have the power to raise annually by taxes and assessments in the City such sums of money as the council shall deem necessary to pay the debts and defray the expenses of the City, in such manner as the council shall deem expedient, provided that such taxes and assessments are not prohibited by the laws of the Commonwealth. In addition to, but not as a limitation upon, this general grant of power the City shall, when not prohibited by the laws of the Commonwealth, have power to levy and collect ad valorem taxes on real estate and tangible personal property and machinery and tools, and a capitation tax not exceeding one dollar per annum on each resident of the Commonwealth within the limits of the City; to levy and collect taxes for admission to other charge for any public amusement, entertainment, performance, exhibition, sport or athletic event in the City, which taxes may be added to and collected with the price of such admission or other charge; to levy on and collect taxes from purchasers of any public utility service used within the City, which taxes may be added to and collected with the bills rendered purchasers of such service; to require licenses, prohibit the conduct of any business or profession without such a license, require taxes to be paid on such licenses in respect of all businesses and professions which cannot, in the opinion of the council, be reached by the ad valorem system; and to require licenses of resident owners of vehicles of all kinds for the privilege of using the streets, alleys and other public places in the City, require taxes to be paid on such licenses and prohibit the use of streets, alleys and other public places in the City without such license; provided, however, that nothing herein contained shall be construed as permitting the City to levy and collect directly or indirectly a tax on payrolls. (Acts 1954, Ch. 85, §1)

SECTION 1.02. ACQUISITION OF PROPERTY FOR PUBLIC PURPOSES.

(a) *Eminent domain*. The City is hereby authorized to acquire within the City by condemnation proceedings lands, buildings, structures and personal property or any interest, right, easement or estate therein, of any person or corporation, whenever in the opinion of the council a public necessity exists therefore, which shall be expressed in the resolution or ordinance directing such acquisition, and whenever the City cannot agree on terms of purchase or settlement with the owners of the subject of such acquisition because of incapacity of such owner, or because of the inability to agree on the compensation to be paid or other terms of settlement or purchase, or because the owner or some one of the owners is a nonresident of the State and cannot with reasonable diligence be found in the State or is unknown.

Such proceedings may be instituted in the corporation court of the City of Winchester. The court or the judge thereof, shall appoint five disinterested freeholders any three of whom may act as commissioners as provided by law.

Editor's note--The corporation court is now the circuit court.

(b) *Alternative Procedures in Condemnation*. The City may, in exercising the right of eminent domain conferred by subsection (a) make use of the procedure prescribed by the general law of the Commonwealth as modified by subsection (a) or may elect to proceed as hereinafter provided. In the latter event, the resolution or ordinance directing acquisition of any property, as set forth in the preceding section, shall provide therein a lump sum the total funds necessary to compensate the owners thereof for such property to be acquired or damaged. Upon the adoption of such resolution or ordinance the City may file a petition in the clerk's office of a court enumerated in the preceding section, having jurisdiction of the subject, which shall be signed by the city manager and set forth the interest or estate to be taken in the property and the uses and purposes for which the property or the interest or estate therein is wanted, or when property is not to be taken but is likely to be damaged, the necessity for the work or improvement which will cause or is likely to cause such damage. There shall also be filed with the petition a plat of a survey of the property with a profile showing cuts and fills, trestles and bridges, if any, and a description of the property which, or an interest or estate in which, is sought to be taken or likely to be damaged and a memorandum showing names and residences of the owners of the property, if known, and showing also the quantity of property which, or an interest or estate in which, is sought to be taken or which will be or is likely to be damaged. There shall be filed also with said petition a notice directed to the owners of the property, if known, copies of which shall be served on such owners or tenants of the freehold of such property, if known. If the owner or tenants of the freehold be unknown or a nonresident of the State or cannot with reasonable diligence be found in the State, or if the residence of the owner or tenant be unknown, he may be proceeded against by order of publication which order, however, need not be published more than once a week for two successive weeks and shall be posted at a main entrance to the courthouse. The publication shall in all other respects conform to §§8-71, 8-72 and 8-76 (now 8.01-316, 8.01-317 and 8.01-319) of the Code of Virginia.

Upon the filing of said petition and the deposit of the funds provided by the council for the purpose in a bank or the credit of the court in such proceedings and the filing of a certificate of deposit therefore, the interest or estate of the owner of such property shall terminate and the title to such property or the interest or estate to be taken in such property shall be vested absolutely in the City and such owner shall have such interest or estate in the funds so deposited as he had in the property taken or damaged and all liens by deed of trust, judgment or otherwise upon said property or estate shall be transferred to such funds and the City shall have the right to enter upon and take possession of such property for its uses and purposes and to construct its works or improvements. The clerk of the court in which such proceeding is instituted shall make and certify a copy of the petition, exhibits filed therewith, and orders, and deliver or transmit the same to

the clerk of the court in which deeds are admitted to record, who shall record the same in his deed book and index them in the name of the person or persons who had the property before and in the name of the City, for which he shall receive the same fees prescribed for recording a deed, which shall be paid by the City.

If the City and the owner of property so taken or damaged agree upon compensation therefore, upon filing such agreement in writing in the clerk's office of such court the court or judge thereof in vacation shall make such distribution of such funds as to it may seem right, having due regard to the interest of all persons therein whether such interest be vested, contingent or otherwise, and to enable the court or judge to make a proper distribution of such money it may in its discretion direct inquiries to be taken by a special commissioner in order to ascertain what persons are entitled to such funds and in what proportions and may direct what notice shall be given to the making of such inquires by such special commissioner.

If the City and the owner cannot agree upon the compensation for the property taken or damaged, if any, upon the filing of a memorandum in the clerk's office of said court to that effect, signed by either the City or the owner, the court shall appoint commissioners provided for in §25-12 (now 25-46.20) of the Code of Virginia or as provided for in subsection (a) hereof, and all proceedings thereafter shall be had as provided in §§25-12 through 25-38 (now 25-46.20, *et seq*.) or §§33-59 through 33-67 (now 33.1-98 - 33.1-113) of the Code of Virginia insofar as they are then applicable and are not inconsistent with the provisions of this and the preceding section, and the court shall order the deposit in bank to the credit of the court of such additional funds as appear to be necessary to cover the award of the commissioners or shall order the return to the City of such funds deposited that are not necessary to compensate such owners for property taken or damaged. The commissioners so appointed shall not consider improvements placed upon the property by the City subsequent to its taking nor the value thereof nor the enhancement of the value of said property by said improvements in making their award.

(c) *Enhancement in value when considered.* In all cases under the provisions of subsection (b) hereof, the enhancement, if any, in value of the remaining property of the owner by reason of the construction or improvement contemplated or make by the City, shall be offset against the damage, if any, resulting to such remaining property of such owner by reason of such construction or improvement, provided such enhancement in value shall not be offset against the value of the property taken, and provided further, that if such enhancement in value shall exceed the damage there shall be no recovery over against the owner for such excess.

(d) *Unclaimed funds in condemnation cases*. Whenever any money shall have remained for five years in the custody or under the control of any of the courts enumerated in subsection (a) hereof, in any condemnation proceeding instituted therein by the City, without any claim having been asserted thereto such court

shall act in accordance with §§8-746 and 8-747 (now 8.01-602 and 8.01-603) of the Code of Virginia. (Acts 1954, Ch. 85, §1)

SECTION 1.03. POLICE AND WELFARE POWERS.

The City shall have power to exercise full police powers and to enact any ordinances and regulations to preserve and further the public peace, order, health, morality, safety, security and welfare of its inhabitants, provided such ordinances and regulations are not inconsistent with this charter or prohibited by the general laws of the Commonwealth. (Acts 1954, Ch. 85, §1)

SECTION 2. ENUMERATED POWERS NOT EXCLUSIVE; MANNER OF EXERCISING POWERS.

The enumeration of particular powers by this charter shall not be held or deemed to be exclusive, but, in addition to the powers enumerated therein, employed thereby, or appropriated to the exercise thereof, it is intended that the City of Winchester shall have, and may exercise, all powers which, under the Constitution of Virginia, it would be competent for this charter specifically to enumerate. All powers of the city, whether express or implied, shall be exercised in the manner prescribed by this charter, or, if not prescribed therein, then in the manner provided by ordinances or resolutions of the council.

SECTION 3. ADMINISTRATION OF THE CITY; OFFICERS ENUMERATED.

The administration and government of said city shall be vested in a mayor and a board called the common council of Winchester, and such other boards and offices as are now, or hereafter may be provided for. The offices of said corporation shall be a mayor, judge of the corporation court, clerk of the corporation court, treasurer, commissioner of the revenue, attorney for the Commonwealth, city sergeant, a justice of the peace at large, a police justice, twelve councilmen, and such other offices as are now provided by general ordinances of the City of Winchester and as hereafter may be provided for and elected by the common council.

Editor's note--The references above to the corporation court and justices should be considered in light of Code of Virginia, Titles 16.1 and 17. See also §24 of this Charter. The office of city sergeant has been abolished by Code of Virginia, §15.1-796.1. As to city sheriff, see Code of Virginia, §15.1-796.

SECTION 3.01. OFFICE OF VICE-MAYOR.

The common council may by ordinance create the office of vice-mayor who shall act in all official matters of the city in the absence of the mayor. The vice-mayor shall be a

member of the common council and shall be elected by the common council for a term of one year. In the absence of the mayor the vice-mayor shall have, possess and exercise the same rights and powers and be subject to the same duties and limitations as are provided by law for the office of mayor; provided, however, that, in the event the office of mayor becomes vacant, the vice-mayor shall only act during the interim until a new mayor is elected in the manner provided by §23 of this charter. (Acts 1954, Ch. 85, §1)

SECTION 4. COMPOSITION, ELECTION, TERMS, ETC., OF COUNCIL.

Except as otherwise provided in this charter, all powers of the city shall be vested in a mayor and city council. The general elections held in the City in 2006 shall be held on the first Tuesday after the first Monday in November 2006, and every two years thereafter. Beginning in the 2006 general elections, there shall be four wards in the city with each ward electing two members from the territory of the ward in the manner provided in this section, and the mayor elected at-large. In the November 2006 general elections, four members shall be elected to the council, one from each of four wards described in Sections 7-2 and 7-3, 7-3A, and 7-3B of the Code of the City of Winchester. Each of the four city council members elected in 2006 shall be elected to a term of office of four years, and that term of office shall begin on the first day of January following their election. Thereafter, in the 2008 elections, four members shall be elected to the city council, one from each of the four wards described in Sections 7-2, 7-3, 7-3A, and 7-3B of the Code of the City of Winchester. The term of office of the members of the council and the mayor shall be for a period of four years, with council positions staggered such that four members of the council shall be elected every two years beginning in 2006. Council members elected in the 2002 elections whose terms expire in 2006 shall serve until their successors in office have been elected in the November 2006 general elections and until their successors in office begin their term of office. Council members elected in the 2004 elections whose terms expire in 2008 shall serve until their successors in office have been elected in the November 2008 general elections and until their successors in office begin their term of office. If a vacancy occur in the council, it shall be filled in accordance with §23 of this charter. Members of the council shall be qualified electors of the city and shall not hold any other public office. A member of the council ceasing to possess any of the qualifications specified in this section, or convicted of a felony or of a misdemeanor involving moral turpitude while in office, shall immediately forfeit such office. The mayor, council members and all other officials elected by the vote of the people shall serve out the present term for which they have been elected as specified above, and no change (shall be) made in the compensation of salaried and fee officials during their present term of office. The mayor shall be a member of the council, with voting powers of a council member, but the mayor shall have no veto powers. (Ord. No. 035-2004, 8-10-04) (Acts 2005, Ch. 626)

SECTION 5. POWERS AND DUTIES OF COUNCIL; APPOINTMENT, POWERS, ETC., OF CITY MANAGER.

(a) Council shall have, possess and exercise the general management of the affairs of the city, and shall exercise and perform all the powers and duties now authorized or imposed by law or special act, in so far as they are not inconsistent with this charter.

(b) Council shall at its first meeting, or as soon thereafter as practicable, determine what appointive officers, in addition to any specifically provided for in this charter, are necessary for the proper and efficient administration of the city, and shall prescribe the qualifications, powers and duties of such officers and fix their compensation; and shall forthwith, or as soon as desirable, make appointments to fill such offices.

(c) Council shall have the right to elect or appoint the chiefs or heads of departments, and all such other officials and employees authorized by this charter or general law, and remove the same at pleasure; except as to those officers provided for by the general law of Virginia, or by any special act, and shall have the right to abolish any office created by them. Council may, by a majority vote of all members elected to the council, abolish any board or boards and perform all of the duties now performed by them.

(d) Council is hereby empowered to employ a person, who may or may not be a resident or qualified voter of this city or this State, to be known as "city manager", and who shall, under the control of the council, have the general charge and management of the administrative affairs and work of the city and who shall perform such other duties as may be required of him. He shall receive such salary as shall be allowed him by such council. Council and its members shall deal with that portion of the administrative service for which the manager is responsible, solely through the manager, except for purposes of inquiry.

The city manager shall be appointed for such time as the council shall provide.

(e) Council is hereby empowered to employ a city attorney, and may employ or contract for the services of one or more assistants to the city attorney. Each such person shall be an attorney at law licensed to practice under the laws of the Commonwealth. The city attorney shall be the legal adviser of the council, the city manager, the departments, boards, commissions, and agencies of the city, including the school board, in all matters affecting the interest of the city, and shall perform such other duties as may be required of him by the council. He shall be authorized to represent the city in all legal proceedings, including the prosecution of violations of city ordinances. The city attorney may authorize any assistant city attorney or special counsel to perform any of the duties imposed upon him in this charter. (Ord. No. 041-87, 12-08-87)

SECTION 5.01 ANNUAL BUDGET.

(A) Fiscal year. The fiscal year of the city shall begin on the first day of July and shall end on the last day of June of each calendar year. Such fiscal year shall also constitute the budget and accounting year.

State Law References: Fiscal year, Code of Virginia, §§ 15.2-2500, 15.2-2503.

(B) Submission. The City Manager shall submit to the council a budget and a budget message at least sixty (60) days prior to the beginning of each budget year.

(C) Preparation. It shall be the duty of the head of each department, the judges of the courts not of record, each board or commission, including the school board, and each other office or agency supported in whole or in part by the city, to file at such time as the City Mmanager may prescribe estimates of revenue and expenditure for that department, court, board, commission, office or agency for the ensuring [ensuing] fiscal year. The City Manager shall hold such hearings as he may deem advisable and shall review the estimates and other data pertinent to the preparation of the budget and make such revisions in such estimates as he may deem proper, subject to the laws of the Commonwealth relating to obligatory expenditures for any purpose, except that in the case of the school board he may recommend a revision only in its total estimated expenditure. The budget shall be prepared in accordance with accepted principles of municipal accounting and budgetary procedures and techniques.

(D) Budget to be balanced. In no event shall the expenditures recommended by the City Manager in the budget exceed the receipts estimated, taking into account the estimated cash surplus or deficit at the end of the current fiscal year, unless the City Manager shall recommend an increase in the rate of ad valorem taxes on real estate and tangible personal property or other new or increased taxes or licenses within the power of the city to levy and collect in the ensuring [ensuing] fiscal year, the receipts from which estimated on the basis of the average experience with the same or similar taxes during the three (3) tax years last past will make up the difference. If estimated receipts exceed estimated expenditures, the City Manager may recommend revisions in the tax and license ordinances of the city in order to bring the budget into balance.

(E) Message. The budget message shall contain the recommendations of the City Manager concerning the fiscal policy of the city, a description of the important features of the budget and an explanation of all significant changes in the budget as to estimated receipts and recommended expenditures as compared with the current and last preceding fiscal years.

(F) Appropriation and additional tax ordinances. At the same time that he submits the budget, the City Manager shall introduce and recommend to the council an appropriation ordinance which shall be based on the budget. He shall also introduce at the same time any ordinances levying a new tax or altering the rate on any existing tax necessary to balance the budget as provided in section 5.04 of this Charter. In levying

taxes, the council may provide that any tax so levied shall continue from year to year unless otherwise changed by the council.

State law references: Borrowing of money, appropriations over $500.00 or imposition of taxes requires vote of majority of members elected, Va. Const., Art. VII, §7.

(G) Public hearing. The council shall hold a public hearing on the budget as submitted, at which all interested persons shall be given an opportunity to be heard. The council shall cause to be published a notice of the time and place of the hearing not less than seven (7) days prior to the date of the hearing. One copy of the budget and budget message shall always be available for public inspection in the office of the city clerk during regular business hours.

(H) Adoption. After the public hearing, the council may make such changes in the budget as it may determine, except that no item of expenditure for debt service shall be reduced or omitted. The budget shall be adopted by the vote of at least a majority of all members of the council not later than the end of the current fiscal year. Should the council take no action prior to such day, the budget shall be deemed to have been finally adopted as submitted. In no event shall the council adopt a budget in which the estimated total of expenditures exceeds receipts, unless at the same time it adopts measures to provide additional revenue estimated to be sufficient to make up the difference.

(I) Additional appropriations. Appropriations in addition to those contained in the general appropriation ordinance may be made by the council only if there is available in the general fund an unencumbered and unappropriated sum sufficient to meet such appropriations.

(J) Lapse of appropriations. All appropriations shall lapse at the end of the budget year to the extent that they shall not have been expended or lawfully obligated or encumbered.

(Ord. No. 028-2004, Acts 2005, Ch. 626) (Ord. No. 2007-42, Acts 2008, Ch. 0307)

SECTION 6. GENERAL POWERS AND DUTIES OF MAYOR.

The mayor shall have, possess and exercise the same rights and powers given him by general law or by special act, except in so far as the same may be amended or modified by the provision of this charter, and in addition thereto, he shall sit as a member of the city council, with the right to vote as such, but the mayor shall not be clothed with any veto authority.

SECTION 7. INVESTIGATIONS BY COUNCIL OR MANAGER.

The council, or the city manager, if so authorized by the council, shall have the right to make such investigations relating to municipal affairs as it may deem necessary, and shall have the power to summon and enforce attending of witnesses, et cetera.

SECTION 8. CHANGE OF CHARTER.

This charter may be changed by a special act of the general assembly of Virginia, by the presentation to the general assembly of an ordinance, regularly passed by the city council by the vote of at least nine of the members elected to the council.

SECTION 9. UTILITIES.

The City shall have the power to furnish all local public service; to purchase, hire, construct, maintain and operate or lease public utilities; to acquire by condemnation or otherwise, within or without the city limits, land and property necessary for such purposes; provided, that the power of condemnation shall not extend to the properties of existing public utilities. And the City shall have full and complete powers to operate any such public utility so acquired so as to enjoy for its citizens fully and completely all benefits to be derived therefrom.

SECTION 10. QUARRIES.

The City shall have authority, through its council or other governing body, to acquire and own land suitable for stone quarries, or the quarry rights in such lands; to take stone therefrom and to manufacture the same into crushed stone for its own use, and shall have further authority to furnish said stone, mix the same with approved material for laying pavements in the City of Winchester, on its own account.

SECTION 11. TRANSFER OF APPROPRIATIONS.

Upon the written recommendation of the city manager, the council may at any time transfer any portion of an unexpended balance of any appropriation to any other purpose or object.

SECTION 12. CITY PLANNING AND ZONING.

The City shall have full and complete powers to pass any ordinances not in conflict with the State laws for planning and zoning the City for any purpose deemed advisable by the city council, as completely as if all such purposes are fully set forth specifically herein.

SECTION 13. FLOATING INDEBTEDNESS.

The city council is authorized to borrow, during each calendar year, to be repaid during said calendar year, not exceeding fifty per centum of the anticipated general revenue for that calendar year for which said borrowing is made. And in this connection, it shall execute its note or notes, payable within the calendar year, signed by the mayor, the president of the city council and the city treasurer.

SECTION 14. ADVISORY COMMITTEE.

The council or the city manager, when so authorized by the council, may appoint a board or committee of citizens to act in an advisory capacity, to act in connection with any municipal activity.

SECTION 14.01. APPOINTMENT AND TERM OF SCHOOL BOARD MEMBERS.

(a) The School Board of the City of Winchester shall consist of nine (9) members, who shall be appointed by the Common Council. One (1) member shall be appointed for each of the four districts (wards) in the City, and five (5) members shall be appointed at-large; provided, however, no more than three (3) members shall be residents of the same district. Notwithstanding the residency requirement of this provision, any school board member in office on July 1, 2007, who is otherwise eligible for reappointment shall be eligible for reappointment upon expiration of his or her term.

(b) At the vacancy of the terms of the current school board members in office on the day of adoption of this ordinance, any new term shall be filled consistent with the provisions of this ordinance.

(c) In the event any vacancy occurs on the School Board, Council shall fill the vacancy for the unexpired term.

(d) The School Board shall be a continuing body, and no measure pending before the School Board shall abate or be discontinued by reason of the change in terms or membership of the School Board members as provided herein.
(Ord. No. 026-2003, 7-8-03) (Acts 2004, Ch. 31) (Ord. No. 039-2006, 11-14-06) (Acts 2007, Ch. 936) (Ord. No. 2007-36, 10-9-07) (Acts 2008, Ch. 0006)

SECTION 15. BUYING FROM COUNCIL MEMBERS.

Neither the City nor any of its departments shall make any purchases from a city council member unless as a result of competitive sealed bidding where the City Council has established a need for the same or substantially similar goods/services through purchases prior to the election of the council member. However, the council member shall have no involvement in the preparation of the specifications for such contract, and the remaining members of the City Council, by written resolution, shall state that it is in the public interest for the council member to bid on such contract.
(Ord. No. 029-2004, 08-10-04, Acts 2005, CH. 626)

SECTION 16. REGULATION OF TRAFFIC, TAXICABS, ETC.

The council shall have full and complete powers to prescribe ordinances for traffic regulations upon the streets and alleys of the City and it shall have full authority by ordinance to require all public conveyances, cabs, buses and trucks, operated by motor or other power, within the City or in and out of the City, to provide terminals at such points as shall meet with the approval of the council and to provide all reasonable regulations governing the same and to pass all regulations deemed necessary and expedient by the city council for the general welfare of the City and its citizens.

SECTION 17. COUNCIL POWERS RELATIVE TO STREETS AND SIDEWALKS.

(a) The council may establish, open, widen, extend, grade, improve, construct, maintain, alter or close public highways and streets and regulate the use thereof. No property within the corporate limits of the City or within three miles of the limits, as now or hereafter established, shall be laid out with streets or alleys thereon, except upon a plan or plat to be submitted to the city manager and approved by the council; provided, however, that any such plans affecting territory more than two miles beyond such corporate limits must be approved by the governing body of the county in which the same is located. Said plat or plan shall, if so approved by the council, be recorded in the clerk's office of the corporation court of the City within sixty days after approval. The council may, after said approval, require the owner to lay out and establish proper building lines on the platted land and to show on the plat that all conveyances of lots shown on the plat are to be made with reference to such building lines, for the benefit of the respective lot owners of the City. The City shall not be liable for

any accidents or damages which may occur or be sustained upon any such street, alley, boulevard or way, heretofore or hereafter laid out, until the same has been finally accepted by the council by proper ordinance.

(b) The council shall have the power to cause the footways or sidewalks upon the existing streets of the City to be paved, repaved and repaired, at the expense of the abutting owners or occupiers of the lots or parts of lots; provided the assessment so imposed shall not be in excess of the peculiar benefits resulting therefrom to such abutting landowners; and in case they or either of them shall neglect or refuse to pave, repave or repair the sidewalks when required, it shall be lawful for the council to have the same paved, repaved or repaired, and to recover the expense thereof before the trial justice or the corporation court, and in all cases where a tenant is required to pave in front of the property in his or her occupation, the expense of the paving so done shall be a good offset against so much of the rent as he or she shall have paid toward such paving, but no tenant shall be required to pay more for or on account of such paving than such tenant may owe at the time of the commencement of said work, or as may become due to the end of his or her tenancy, provided that no owner, or occupier of a lot or lots in front of which paving is laid shall be required to repave or repair said footways or sidewalks, in whole or in part, at his own expense oftener than once in five years. (Acts 1954, Ch. 85, §1; Acts 1958, Ch. 137, §1)

Editor's note--The corporation court is now the circuit court. The reference to "trial justice" should now read "general district court".

SECTION 18. CERTIFICATES OF DEBT AND CERTIFICATES OF DEBT AND BONDS GENERALLY.

(a) The council may, in the name and for the use of the City, cause to be issued certificates of debt or bonds for any purpose or project set forth in the Public Finance Act, Title 15.1, Chapter 5, §15.1-170, *et seq*. of the Code of Virginia, as amended from time to time, and in compliance with the provisions thereof. All bonds issued pursuant to this section shall be signed by the president of the council and the treasurer of the City and the seal of the City shall be affixed and attested by the clerk of council. Said bonds shall be sold in the manner provided for in the Public Finance Act and the proceeds used for purposes for which issued, under the direction of the council. Every such bond or other obligation issued by the council hereunder shall state on its face for what purpose or purposes it is issued, and the proceeds shall be applied exclusively to the purpose or purposes for which the same are issued. In the issuance of bonds and other interest-bearing obligations, the City shall be subject to the limitations as to amount and the manner of ascertaining such amount limitations as provided in the applicable provisions of Article VII, §10 of the Constitution of the Commonwealth of Virginia of 1971. (Acts 1954, Ch. 85, §1; Acts 1968, Ch. 54, §1.)

(b) Council may provide, by resolution adopted upon the affirmative vote of at least nine members of council, for the submission of the question of the issuance of any such debt to the vote of the qualified voters of the City. The vote of council on a resolution providing for such referendum shall be held, if at all, prior to the adoption by council of the ordinance providing for the issuance of such debt, and no such resolution shall be considered after the adoption of such ordinance. At such election the ordinance of council providing for the issuance of such debt shall be submitted to such voters at an election for such purpose to be called, held and conducted in accordance with the general laws of the Commonwealth. If approved by the voters, the issuance of such debt shall be done in accordance with subsection (a) of this section. (Ord. No. 050-88, 12-13-88.)

Editor's note--Go to bond issues pursuant to the Public Finance Act, see Code of Virginia, §15.1-175, *et seq.*

SECTION 19. REFUNDING BONDS.

The council shall have authority to issue bonds for the purpose of refunding any bonds of the City pursuant to and in compliance with Article 4 of the Public Finance Act, Title 15.1, Chapter 5, §15.1-192, *et seq*. of the Code of Virginia, as amended from time to time. (Ord. No. 050-88, 12-13-88.)

SECTION 20. WORKING PRISONERS.

Subject to the general laws of the State regulating the working of those convicted of offenses against the State, the council shall have the power to provide by ordinance for the employment or the working, either within or without the City limits, or within or without any city prison or jail, of all persons sentenced to confinement in said prison or jail for the violation of the laws of the State of Virginia, or the ordinances of the City of Winchester.

SECTION 21. PENSION FUNDS.

The council of said city shall have authority to establish a fund or funds for the relief or pensions of persons in the service of said city; to receive gifts, devises and bequests of money or property for the benefit of such fund or funds; to make contributions of public monies thereto on such terms and conditions as it may see fit; and to make rules and regulations for the management, investment and administration of such fund or funds.

SECTION 22. ELECTION AND TERM OF TREASURER.

The treasurer of the City of Winchester shall be elected by the voters at large for a period of four years at the general city election, to be held in the year nineteen hundred thirty-three, and each four years thereafter, his term of office to begin on the first of January succeeding his election. (Acts 1975, Ch. 4 §1)

SECTION 23. VACANCIES IN COUNCIL.

Vacancies in the council shall be filled within thirty days from (for) the unexpired term, by a majority vote of the remaining members; provided, however, that if the term of office to be filled does not expire for two years or more after the next regular election following such vacancy and such vacancy occurs in time to permit it, a qualified person shall be elected by the qualified voters of the ward in which the vacancy occurs and shall from and after the date of his qualification succeed such appointee and serve the unexpired term.
State Law Reference -- Court appointments to fill vacancies, Code of Virginia, §24.1-76.

SECTION 24. CIVIL AND POLICE JUSTICE.

The common council of the City of Winchester shall, on or before the first day of July, nineteen hundred and forty-two, elect a civil and police justice for the City of Winchester, for a term ending the thirty-first day of December, nineteen hundred and forty-five, and in the month of December, nineteen hundred and forty-five and every four years thereafter, the common council shall elect a civil and police justice for the City, for a term of four years, beginning the first day of January next succeeding his election.

Such civil and police justice shall have and possess the same powers, authority and jurisdiction as are now, and may hereafter be conferred by law upon and vested in civil and police justices of cities of the first class.

There shall be a substitute civil and police justice and the same shall be appointed by the corporation court for the City of Winchester pursuant to the provisions of general law pertaining to civil and police justices of cities of the first class, who shall have the same powers, authority and jurisdiction as the civil and police justice. (Acts 1940, Ch. 405; Acts 1942, Ch. 474; Acts 1954, Ch. 85, §1)

Editor's note--Sections 24 and 25 should be considered in light of Code of Virginia, Titles 16.1 and 17.

SECTION 25. JUDGE OF THE CORPORATION COURT.

The judge of the corporation court shall have the qualifications of the judges of other corporation courts of cities of the first class, except the judge of the circuit court of Frederick County may, when he resides within the jurisdiction of the corporation court of

the City of Winchester, be eligible to hold the office of the judge of said corporation court also, and when the office is so held by said circuit judge the said judge shall receive a salary of eight hundred dollars a year for his service as judge of said corporation court.

Editor's note -- See note following §24

SECTION 26. CONTINUATION OF ORDINANCES AND STATE ACTS; APPLICABILITY OF GENERAL LAWS RELATING TO FIRST CLASS CITIES.

All ordinances of the City of Winchester and all acts of the general assembly applicable to cities of the first class and not inconsistent with this charter shall remain in full force and virtue and all general laws applicable to cities of the first class and not inconsistent with any of the provisions of this charter or of any ordinances of the City shall be applicable to the City of Winchester, and all general laws of the State of Virginia applicable to cities of the first class shall apply to the City of Winchester as if fully set forth in this charter, except where the same may be inconsistent with the specific provisions of this charter.

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OFFICIALS
OF THE
CITY OF WINCHESTER

Elizabeth A. Minor
Mayor

Michael L. Butler
Vice-Mayor

Jeffrey B. Buettner
President

Arthur H. Major
Vice-President

Evan H. Clark
John W. Hill
Milt F. McInturff, Sr.
Les C. Veach
John A. Willingham

The Common Council

Anthony C. Williams

City Attorney

SUPPLEMENT 26
JULY 2009

CODE OF THE CITY OF
WINCHESTER, VIRGINIA

Remove and replace pages as shown below. Ensure that previous change (January 2009 Supplement) is already incorporated before entering this change.

This update contains all Code-related ordinances for inclusion through
*****ORDINANCE NO. 2009-14, ENACTED MAY 12, 2009.

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