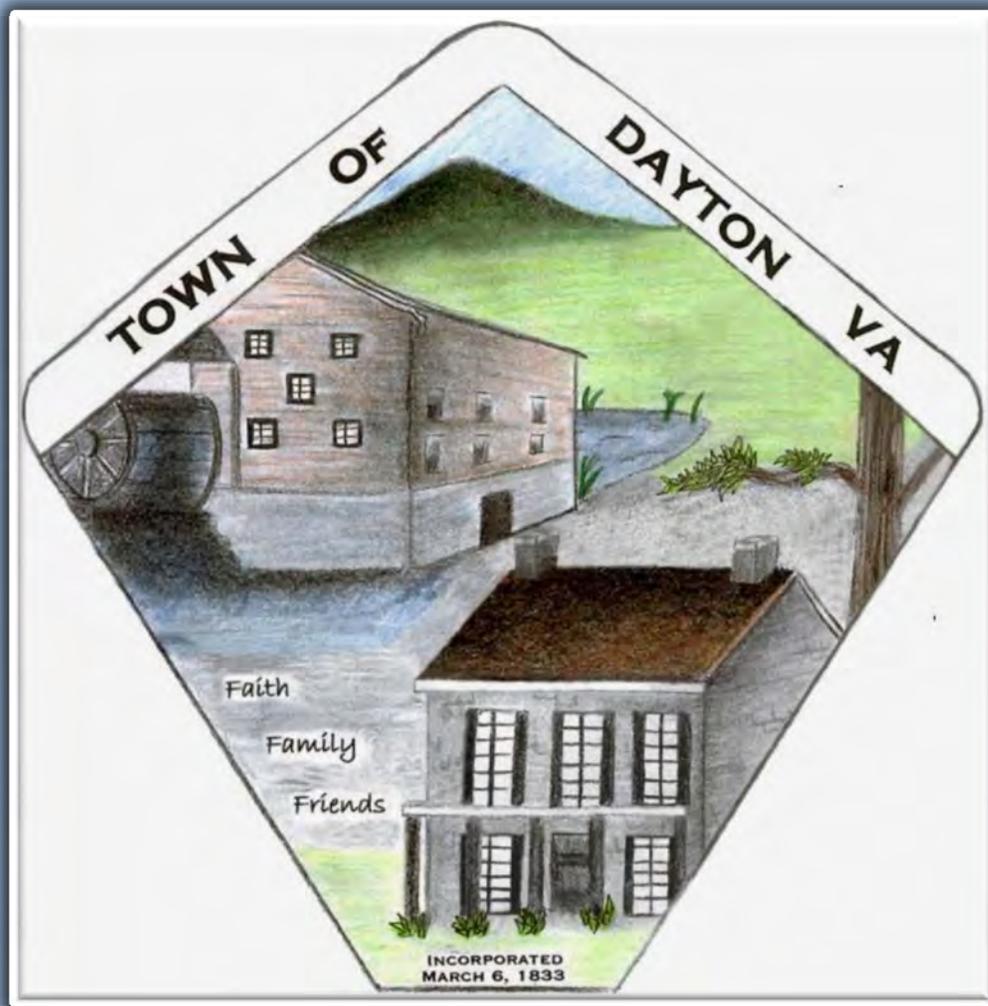


TOWN OF DAYTON, VIRGINIA



Charter and Code of Ordinances

DAYTON CODE OF ORDINANCES
LEGISLATIVE HISTORY

1. While all of the titles in this Code have been enacted earlier, the entire Code was re-enacted and recodified on December 5, 1988.
2. On August 6, 1990, Chapter 13 of Title 9 was repealed. Chapter 13.1 was enacted on that date. On December 3, 1990, the following sections were amended by the addition of provisions dealing with child care and in-home care of children: §§ 9-22, 9-24, 9-25, 9-38, 9-52, 9-67, 9-80, and 9-180. The entire title was reprinted and distributed in December, 1990.
3. On September 10, 1990, § 1-5.1, Chapter 1 of Title 1 was added. The entire title was reprinted in October, 1990 and distributed in December, 1990.
4. On February 4, 1991, § 2-6 was amended. One page (front and back) was reprinted and distributed in February, 1991.
5. On October 29, 1990, §§ 9-38.1 and 9-52.1 were added. They were not codified until February, 1991, however. In February, 1991, the entire title was reprinted and distributed.
6. On March 13, 1991, typographical errors in §§ 7-2(e), 7-7(c), 7-8, and 7-12 were corrected by the editor. Replacement sheets were printed and distributed.
7. On April 1, 1991, the model Sewer Ordinance was amended. The amendment involved repealing Chapter 3 of Title 6, and adopting new Chapters numbered 3.1 and 3.2. In May, 1991, the entire title was reprinted and distributed.
8. On January 7, 1991, the town's Erosion and Sedimentation Control Ordinance was amended and codified as Title 11, which was printed and distributed in September, 1991.
9. On September 9, 1991, Title 8 of the Town Code was extensively amended. The entire title was reprinted and distributed in September, 1991.
10. On April 5, 1993, § 6-78.53(m) was amended. A single replacement page was reprinted and distributed in April, 1993.
11. On December 6, 1993, business license tax rates in §§ 3-27, 3-29, 3-32, 3-36 were amended. The entire title was reprinted and distributed in August, 1994.
12. On June 6, 1994, Chapter 23 of Title 9 was repealed and Chapter 23.1 was adopted. Replacement pages were printed and distributed in August, 1994.
13. On May 1, 1995, Title 9 was extensively re-written. The entire title was reprinted and distributed in July, 1995.

14. On July 10, 1995, §§ 3-32 and 3-36 were amended, effective January 1, 1996. Title Three was reprinted and distributed in July, 1995.
15. On September 16, 1996, § 9-15(a) was amended and § 9-67(c7) was enacted. Replacement pages were distributed in September, 1996.
16. On November 4, 1996, Title 3 was superseded by Title 3.1. The new title was printed and distributed in November, 1996.
17. On August 5, 1996, § 1-48 was amended. Replacement pages were printed and distributed in February, 1997.
18. On September 8, 1997, § 3.1-3 was amended. The entire title was reprinted and distributed in September, 1997.
19. On July 13, 1998, several changes were made to Title 9: Chapter 11 was replaced with Chapter 11.1, Chapter 12 was replaced with Chapter 12.1, and § 9-22 was amended. The entire title was reprinted and distributed in July, 1998.
20. On August 3, 1998, § 6-8.1 was added. The entire title was reprinted and distributed in August, 1998.
21. On March 1, 1999, Title 11 was amended and re-enacted. The entire title was reprinted and distributed in April, 1999.
22. On April 5, 1999, Title 1 was amended and re-enacted. The entire title was reprinted and distributed in April, 1999.
23. On April 5, 1999, Title 2 was amended and re-enacted. The entire title was reprinted and distributed in April, 1999.
24. On October 4, 1999, §§ 1-48.2 and 1-48.3 were enacted. The entire title was reprinted and distributed in October, 1999.
25. On November 1, 1999, Chapter 12.2 of Title 9 was adopted. The entire title was reprinted and distributed in February, 2000.
26. On February 7, 2000, amendments were made to Chapters 1, 18, 20 and 21 of Title 9. The entire title was reprinted and distributed in February, 2000.
27. On February 7, 2000, § 1-48(f) was adopted. Pages 13 and 14 of Title 1 were reprinted and distributed in February, 2000.

28. On February 7, 2000, Title 8.1 was adopted. The new title was printed and distributed in February, 2000.
29. On July 10, 2000, extensive revisions were made to Title 10. The entire title was printed and distributed in July, 2000.
30. On October 2, 2000, Title 5 was extensively amended. The new title was reprinted and distributed in January, 2001.
31. On November 6, 2000, various revisions were made to Title 9 of the Town Code. The entire title was reprinted and distributed in January, 2001.
32. On December 4, 2000, Title 12 was adopted. The title was printed and distributed in January, 2001.
33. On February 5, 2001, § 9-184.1 was amended. A single copy of the revised title was printed and delivered to the Town in March, 2001.
34. On March 5, 2001, § 6-81 was amended. A single copy of the revised title was printed and delivered to the Town in April, 2001.
35. On March 4, 2002, Title 11 of the Town Code was repealed, and erosion and sedimentation enforcement was ceded back to Rockingham County.
36. On May 6, 2002, Title 8 was revised extensively. A single copy of the revised title was printed and delivered to the Town in June, 2002.
37. On May 5, 2003, § 12-4 was adopted. A single copy of the revised Title 12 was delivered to the Town in June, 2003.
38. On June 9, 2003, Title 13 was adopted. A single copy of the new Title 13 was delivered to the Town in June 2003.
39. On February 9, 2004, §§ 9-32, 9-45, and 9-59 were adopted. A single copy of the revised Title 9 was delivered to the Town in February, 2004.
40. On July 11, 2005, §§ 9-22.1 and 9-196.1 were adopted, and §§ 9-80, 9-92, and 9-93.1 were amended. A single copy of the revised Title 9 was delivered to the Town in July, 2005.
41. On June 12, 2006, § 13-7 was amended, and on June 11, 2007, § 13-2 was amended. A single copy of the Revised Title 13 was delivered to the Town on June, 2007.
42. On April 9, 2007, § 3.1-7 was amended. A single copy of the Revised Title 3.1 was delivered to the Town in June, 2007.

43. On July 9, 2007, Chapter 2 of Title 6 was amended. A single copy of the revised Title 6 was delivered to the Town in January, 2008.
44. On December 10, 2007, and January 28, 2008, Title 9 was amended extensively. A single copy of the revised Title 9 was delivered to the Town in February, 2008.
45. On February 15, 2010, § 1-50 of Title 1 was amended. A single copy of the revised section was delivered to the Town in February, 2010.
46. On April 12, 2010, § 1-49 of Title 1 was amended. A single copy of the revised section was delivered to the Town in April, 2010.
47. On August 8, 2010, § 2-6 of Title 2 was amended. A single copy of the revised section was delivered to the Town in August, 2010.
48. On July 11, 2011, § 2-6 of Title 2 was amended. A single copy of the revised section was delivered to the Town in July, 2011.
49. On September 12, 2011, §§ 2-70, 2-71, and 2-75 were amended. A single copy of the revised sections were delivered to the Town in September, 2011.
50. On December 12, 2011, § 3.1-10 of Title 3 was amended. A single copy of the revised section was delivered to the Town in December, 2011.
51. On July 9, 2012, § 2-6 of Title 2 was readopted. A single copy of the revised section was delivered to the Town in July, 2012.
52. On August 13, 2012, §§ 2-68, 2-70, 2-72, 2-74, 2-76, 6-80, and 6-81 were amended. A single copy of the revised sections were delivered to the Town in August, 2012.
53. On June 10, 2013, §§ 6-81, 7-10, and 7-11 were amended and § 7-15 was adopted. A single copy of the revised sections were delivered to the Town in June, 2013.
54. On July 8, 2013, § 1-52 was revised extensively and § 2-6 was amended and readopted. A single copy of the revised sections were delivered to the Town in July, 2013.
55. On September 9, 2013, Chapter 6 of Title 6 was adopted. A single copy of Chapter 6, Title 6 was delivered to the Town in September, 2013.
56. On October 14, 2013, §§ 3.1-3 and 13-4 (d)(7) were amended. A single copy of the revised sections were delivered to the Town in October, 2013.

57. On November 11, 2013, Chapter 4 of Title 1 was adopted and §§ 9.9, 9-27, 9-30, 9-40, 9-43, and 9-184.4 were revised. A single copy of the revised sections were delivered to the Town in November 2013.
58. On December 9, 2013, § 1-61 was revised and Title 14 was adopted. On March 11, 2013, § 3.1-2 was amended with an effective date of January 1, 2014. A single copy of the revised sections were delivered to the Town in January 2014.
59. On April 14, 2014, § 3.1-10 (b)(3) was amended. A single copy of the Revised Title 3.1 was delivered to the Town in April 2014.
60. On August 11, 2014, Chapter 5 of Title 2 was adopted. A single copy of the adopted chapter was delivered to the Town in August 2014.

DAYTON, VIRGINIA TOWN CHARTER

Enacted by the General Assembly of Virginia on March 16, 1988 by Chapter 136 of the Acts of Assembly of 1988. Amended and reenacted by Chapter 300 of the Acts of Assembly of 1999 (§§ 2.2, 3.5, and 4.5). Amended and reenacted by Chapter 439 of the Acts of Assembly of 2011 (§ 3.1).

CHAPTER ONE

Incorporation and Boundaries

§ 1.1. Incorporation.

The inhabitants of the territory comprised within the present limits of the Town of Dayton, as such limits may be altered and established by law, shall constitute and continue to be a body politic and corporate to be known and designated as the Town of Dayton (“the town”), and as such, shall have perpetual succession, may sue and be sued, plead and be impleaded, contract and be contracted with, and may have a corporate seal which it may alter, renew, or amend at its pleasure by ordinance.

§ 1.2. Boundaries.

The boundaries of the town, until altered, shall be as recorded in the Clerk’s Office of the Circuit Court of Rockingham County, Virginia, in Deed Book 884 at page 264.

CHAPTER TWO

Powers

§ 2.1 General grant of powers.

The town shall have and may exercise all powers which are now or hereafter may be conferred upon or delegated to towns under the Constitution and laws of the Commonwealth of Virginia as fully and completely as if such powers were specifically enumerated in this charter. No enumeration of particular powers in this charter shall be held to exclude other, unmentioned powers. The town shall have, exercise, and enjoy all the rights, immunities, powers, and privileges and be subject to all the duties and obligations now appertaining to and incumbent upon the town as a municipal corporation.

§ 2.2 Adoption of powers granted by the General Assembly.

In addition to the powers in § 2.1 of this charter the town is granted, but not limited to, all powers set forth in Chapter 9 (§ 15.2-900 et seq.) and Chapter 11 (§ 15.2-1100 et seq.) of Title 15.2 of the Code of Virginia, 1950, including subsequent amendments and recodifications thereof. (Amended and reenacted, 1999, c. 300).

CHAPTER THREE

Elected Officers

§ 3.1 *Government of town.*

The town shall be governed by a town council composed of six members and a mayor, all of whom shall be qualified voters in the town. (Amended and reenacted, 2011, c. 439).

§ 3.2 *Mayor.*

The mayor shall be the chief executive of the town. He shall have and exercise all the privileges and authority conferred by general law not inconsistent with this charter. He shall preside over the meetings of the council and shall have the right to speak therein. He shall have a vote as a member of the council, but shall have no veto power. He shall be the head of town government for all ceremonial purposes and shall perform such other duties consistent with his office as may be imposed by the council. He shall see that the duties of the various town officers are faithfully performed and shall authenticate his signature on such documents or instruments as the council, this charter, or the laws of the Commonwealth shall require.

§ 3.3 *Vice-Mayor.*

The chairman of the council's finance committee shall serve as Vice-Mayor, and shall possess the powers and discharge the duties of the Mayor during any absence or disability of the Mayor.

§ 3.4 *Council as a continuing body.*

The council shall be a continuing body, and no measure pending before it nor any contract or obligation incurred shall abate or be discontinued because of the expiration of the term of office or the removal of any council members.

§ 3.5 *Election of mayor and members of council.*

The mayor and members of council shall be elected by the qualified voters of the town in the manner provided by law from the town at large. The council and mayor in office at the time of the adoption of this charter shall continue in office until the expiration of the terms for which they were elected or until their successors are elected and qualified. The term of office for members of the council shall be four years, and the term of office for the mayor shall be two years, or until their successors are elected and qualified. Thus an election for four council members and the mayor shall be held in 2000, and an election for the remaining three council members and the mayor shall be held in 2002. All elections of the mayor and council members shall take place on the Tuesday after the first Monday in November. Persons elected under this section shall take office on January 1 following their election. (Amended and reenacted, 1999, c. 300).

§ 3.6 *Vacancies.*

Vacancies on the council shall be filled for the unexpired term from among the qualified voters of the town by a majority vote of the remaining members of the council. A vacancy in the office of mayor shall be filled for the unexpired term from among the qualified voters of the town by a majority vote of the council.

§ 3.7 *Meetings of the council.*

The council shall fix the time of its regular meetings, which shall be at least once each month. Except as provided in this charter or the laws of the Commonwealth, the council shall follow Robert's Rules of Order, latest edition, for the rules of procedure necessary for the orderly conduction of its business. Its meetings shall be open to the public unless an executive session is called according to law. Special meetings may be called at any time by the mayor provided that all

council members are given reasonable notice. Any four members of the council may also call special meetings, provided that other members of the council and the mayor are given reasonable notice. No business shall be transacted at the special meeting except that for which it is called.

§ 3.8 *Committees.*

The Mayor shall establish committees consisting of members of the council, including a finance committee and such other committees as he shall deem appropriate. Following the qualification of council members and the mayor after the town's biennial elections, and at such other times as he deems appropriate, the Mayor shall assign the council members to the various committees and shall name the respective chairmen.

§ 3.9 *Compensation.*

Compensation for the mayor, council members and all appointed officers shall be set by the council subject to any limitations placed thereon by the laws of the Commonwealth of Virginia.

CHAPTER FOUR

Appointed Officers

§ 4.1 *Town superintendent.*

The council may appoint a town superintendent who shall be responsible to the council for the proper administration of all affairs of the town, for the control and supervision of all town departments, employees, and property, and for any other duties prescribed by the council.

§ 4.2 *Town treasurer.*

The council may appoint a town treasurer, whose duties shall be to receive all money belonging to the town, to keep correct accounts of all receipts from all sources and of all

expenditures, to be responsible for the collection of all license fees, taxes, levies, and charges due to the town, to disburse the funds of the town as council may direct, and other duties as prescribed by the council.

§ 4.3 *Town attorney.*

The council may appoint a town attorney, who shall be an attorney at law licensed to practice under the laws of the Commonwealth. The town attorney shall receive such compensation as provided by the council and shall have such duties as prescribed by the council.

§ 4.4 *Police chief.*

The council in its discretion may provide for a chief of police whose duties shall be as prescribed by the council.

§ 4.5 *Recorder.*

The council may appoint a recorder whose duties shall be prescribed by the council.
(Amended and reenacted, 1999, c. 300).

§ 4.6 *Other officers.*

The council may appoint any other officers as it deems necessary and proper.

§ 4.7 *Terms of office.*

Appointees under this charter shall serve at the pleasure of the council. The council may fill any vacancy in any appointive office.

CHAPTER FIVE

Financial Provisions

§ 5.1 *Fiscal year.*

The fiscal year of the town shall begin on July 1 of each year and end on June 30 of the following year.

CHAPTER SIX

Miscellaneous

§ 6.1 *Existing ordinances.*

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

§ 6.2 *Severability of provisions of this charter.*

If any clause, sentence, paragraph, or part of this charter shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of the charter, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

TITLE 1
TOWN OF DAYTON
GENERAL CRIMINAL CODE

*CHAPTER 1
Criminal Code*

*Part 1
Introduction and General Provisions*

Section

- 1-1. Authority.
- 1-2. Definitions.
- 1.2.1. Uniformity of Interpretation Between this Title and the Laws of the Commonwealth of Virginia.
- 1-3. General Penalty for Violation of this Chapter.
- 1-4. Punishments for Classes of Misdemeanors.
- 1-5. Injunctive Relief Against Continuing Violations of Ordinances.
- 1-5.1. Courthouse Surcharge on Warrants and Summonses.

*Part 2
Minors*

- 1-6. Minors in Pool Rooms.
- 1-7. Certain Sales to Minors.
- 1-8. Curfew.

*Part 3
Miscellaneous Conduct*

- 1-9. Assault and Battery.
- 1-10. Resisting an Officer, Employee, or Agent of the Town.
- 1-11. Prisoner Fleeing Custody of Officer.
- 1-12. Petit Larceny.
- 1-13. Shoplifting.
- 1-14. Peeping or Spying into the Structure Occupied as a Dwelling.
- 1-15. Defrauding Garage Keepers.
- 1-16. Defrauding Certain Business.
- 1-17. Trespassing.
- 1-18. False Entries or Destruction of Records by Officers.
- 1-19. Theft or Destruction of Public Records by Other Than Officer.
- 1-20. Destroying or Damaging Property.
- 1-21. Destruction of Trees, Shrubs, Etc.
- 1-22. Drinking in Public.

- 1-23. Wells and Pits.
- 1-24. Abandoned Refrigerators and Containers.
- 1-25. Littering Streets, Roads, Alleys, or Other Public Property.
- 1-26. False Reports to Police Officers.
- 1-27. False Fire Alarms.
- 1-28. Unfriendly Fires.
- 1-29. Interference with Fire Apparatus and Sewer Lines.
- 1-30. Interference with Public Services or Utilities.
- 1-31. Pulling Down Fences or Leaving Gates Open.
- 1-32. Masquerading.
- 1-33. Disorderly Conduct in Public Places.
- 1-34. Loitering or Loafing.
- 1-35. Unauthorized Fill Material.
- 1-36. Hand Bills.
- 1-37. Establishing Police Lines, Perimeters, or Barricades.
- 1-38. Removal, Repair, etc. of Buildings and Other Structures.
- 1-39. Fee for Passing Bad Check to Town.
- 1-40. Penalty and Interest for Failure to Pay Accounts When Due.
- 1-41. Indecent Exposure.
- 1-42. Profanity, Swearing, and Intoxication in Public, Etc.
- 1-43. Expectorating in Public Places.
- 1-43.1. Urination and Defecation in Public.
- 1-44. Illegal Gambling.
- 1-45. Illegal Gambling Devices.
- 1-46. Injuring Vehicles.
- 1-47. Entering or Setting Vehicles in Motion.

Part 4
Nuisances

- 1-48. Abatement or Removal of Nuisances.
- 1-48.1. Cutting of grass and weeds.
- 1-49. Abandoned or Immobile Vehicles Not on Owner's Property.
- 1-50. Restriction of Keeping of Inoperative Motor Vehicles, etc.; Removal of Such Vehicles.
- 1-50.1. Automobile Graveyards.
- 1-51. Public Dance Halls.
- 1-52. Declaration of Policy.
- 1-52.1. Definitions.
- 1-52.2. Violations.
- 1-52.3. Prohibited Conduct.
- 1-52.4. Exceptions.
- 1-53. Marshy Ground and Stagnant Water.
- 1-53.1. Allowing Junk and Certain Other Materials to Accumulate or Remain on Property.

Part 5
Summons

- 1-54. Summons.

Part 6
Weapons and Explosives

- 1-55. Discharging Firearms.
- 1-56. Airguns, Slingshots, and Other Instruments for Projecting Missiles.
- 1-57. Fireworks.

CHAPTER 2
Fire Prevention

- 1-58. Accumulation of Combustible Materials.
- 1-59. Defective Chimneys, Etc.
- 1-60. Carrying of Open Flames.
- 1-61. Open Fires.
- 1-62. Fires in Containers.
- 1-63. Deposit of Materials Likely to Cause Fires.
- 1-64. Flammable Decorations.
- 1-65. Penalties.

CHAPTER 3
Animals

- 1-66. Cruelty to Animals.
- 1-67. Fighting Cocks, Dogs or Other Animals.
- 1-68. Running at Large.
- 1-69. Enforcement by County Animal Warden.

CHAPTER 4
Fowl, Chickens and Other Domestic Birds

- 1-70. Legislative Intent.
- 1-71. Definitions.
- 1-72. Domesticated Fowl Unlawful Except as Specifically Provided.
- 1-73. Chickens Allowed with Permit Only and in Compliance with All Town Conditions.
- 1-74. Violations.

CHAPTER 1
Criminal Code

Part 1
Introduction and General Provisions

§ 1-1. Authority. This title is enacted pursuant to the authority vested in the town by §§ 15.2-101, 15.1-839 and 15.2-1102 of the Code of Virginia and § 1 of the Charter of the Town of Dayton. Sections of this title may have additional authority as well. (Amended April 5, 1999).

§ 1-2. Definitions. The word "person" as used in this title includes all individuals, corporations, firms, associations, and bodies politic. Other terms used shall be construed as defined in the Code of Virginia, particularly §§ 1-13.1 through 1-13.34. The use of the masculine gender includes the feminine gender as well.

§ 1-2.1. Uniformity of Interpretation Between This Title and the Laws of the Commonwealth of Virginia. It is the purpose of this title that its provisions should adopt and make applicable to this municipality the laws of the Commonwealth of Virginia relating to the subjects for which provision is made herein, in order that uniformity of application and interpretation may be attained. No application or interpretation of this title, regardless of the wording of any section of this title, shall deviate from that uniformity of application and interpretation between comparable provisions of this title and the laws of the Commonwealth of Virginia, except where such deviation is required by differing governmental or administrative requirements.

§ 1-3. General Penalty for Violation of This Chapter. Any person who violates any section of this chapter for which a punishment is not specifically provided shall be guilty of a class 1 misdemeanor; provided however, no punishment shall exceed the punishment established for the same offense in the Code of Virginia. (See generally Code of Virginia, § 18.2-12).

§ 1-4. Punishments for Classes of Misdemeanors. The authorized punishments for conviction of a violation of any provision of the town code are:

- (a) For class 1 misdemeanors, confinement in jail for not more than twelve months and a fine of not more than \$2,500, either or both.
- (b) For class 2 misdemeanors, confinement in jail for not more than six months and a fine of not more than \$1,000, either or both.
- (c) For class 3 misdemeanors, a fine of not more than \$500.
- (d) For class 4 misdemeanors, a fine of not more than \$250.

(See Code of Virginia, § 18.2-11). (Amended April 5, 1999).

§ 1-5. Injunctive Relief Against Continuing Violations of Ordinances. The town, in addition to the penalty imposed for the violation of any ordinance, may seek to enjoin the continuing violation thereof by proceedings for an injunction brought in the Circuit Court of Rockingham County, Virginia. (See Code of Virginia, § 15.2-1432). (Amended April 5, 1999).

§ 1-5.1. Courthouse Surcharge on Warrants and Summonses. There is hereby imposed and levied by the Town, under the authority of and subject to § 14.1-133.2 of the Code of Virginia, an additional fee of Two Dollars (\$2.00)

to be taxed as costs in any criminal or traffic warrant or summons involving an alleged violation of a town ordinance, in either the Circuit Court, General District court or the Juvenile and Domestic Relations Court. This additional assessment shall be paid by the appropriate clerk to the Town Treasurer, and it shall be held by the Treasurer, for the maintenance, construction or renovation of a courthouse, jail or court-related facilities and to defray increases in costs of cooling, heating, electricity, and ordinary maintenance. The funds held by the Treasurer for the aforementioned purposes shall be expended upon terms to be specified by the council. (Added September 10, 1990).

Part 2
Minors

§ 1-6. Minors in Pool Rooms. Any minor who frequents, plays in, or loiters in any public pool room or billiard room, or any proprietor or agent thereof who permits any minor to do the same in any such place within the town, shall be guilty of a class 3 misdemeanor. (See generally Code of Virginia, §§ 18.2-432 and 15.2-926).

§ 1-7. Certain Sales to Minors.

- (a) Any person who sells, barter, gives, furnishes, or causes to be sold, bartered, given, or furnished to any minor a rifle, shotgun, tear gas pin, pistol, dirk, switchblade knife, or bowie knife having good cause to believe him to be a minor shall be guilty of a class 1 misdemeanor. This subsection shall not apply to any transfer of firearms made between family members or for the purpose of engaging in a sporting event or activity. (See generally Code of Virginia, § 18.2-309).
- (b) Any person who sells, barter, gives, furnishes, or causes to be sold, bartered, given, or furnished to any other person under sixteen (16) years of age cigarettes or tobacco in any form, having good cause to believe him to be under 16 years of age shall be guilty of a class 4 misdemeanor.

(Amended April 5, 1999).

§ 1-8. Curfew. Any minor upon the streets or in any other public place in the town after 11:00 p.m., unless accompanied by a parent or a legal guardian or other person of majority age lawfully in charge of such minor, shall be guilty of a class 4 misdemeanor. Any parent, guardian, or other person having custody of a minor who allows the minor to violate this section, shall also be guilty of a class 4 misdemeanor. Nothing in this section shall be construed to prohibit an unaccompanied minor from attending meetings held in connection with religious exercises, schools, scouting or other similar organizations, nor shall this section be applied if such minor is involved in an emergency, legitimate employment, or an errand for his parents, guardian or other person having custody of him. (See Code of Virginia, § 15.2-926).

Part 3
Miscellaneous Conduct

§ 1-9. Assault and Battery. Any person who commits a simple assault or assault and battery shall be guilty of a class 1 misdemeanor. (See generally Code of Virginia, § 18.2-57).

§ 1-10. Resisting an Officer, Employee, or Agent of the Town. Any person who, by threats or force, attempts to intimidate or impede any officer or employee of the town in the discharge of his or her duty or any other person in the execution of work for the town, shall be guilty of a class 1 misdemeanor. (See generally Code of Virginia, §§ 15.2-1102 and 18.2-460).

§ 1-11. Prisoner Fleeing Custody of Officer. Any person lawfully confined in jail or lawfully in the custody of any court or officer thereof or of any law-enforcement officer on a charge or conviction of a criminal offense, who escapes therefrom, shall be guilty of a class 1 misdemeanor if such escape is by force or violence, (including setting fire to the jail) and a class 2 misdemeanor if such escape is otherwise than by force or violence. (See generally Code of Virginia, §§ 18.2-478 and 18.2-479).

§ 1-12. Petit Larceny. Any person who

- (a) commits larceny from the person of another of money or other thing of value of less than \$5.00, or
- (b) commits simple larceny not from the person of another of goods or chattels of value of less than \$200.00,

shall be guilty of a class 1 misdemeanor. (See Code of Virginia, § 18.2-96).

§ 1-13. Shoplifting. Any person who, without authority, with the intention of converting goods or merchandise to his or another's use without having paid the full purchase price thereof, or of defrauding the owner of the value of goods or merchandise,

- (a) willfully conceals or takes possession of the goods or other merchandise of any store or mercantile establishment, or
- (b) alters price tags or markings or other price or marking on such goods or merchandise, or transfers goods from one container to another, or
- (c) counsels, assists, aids, or abets another in the performance of the above acts shall be guilty of a class 1 misdemeanor.

The willful concealment of goods or merchandise of any store or other mercantile establishment while still on the premises thereof shall be prima facie evidence of an intent to convert and defraud the owner thereof out of the value of the goods or merchandise. (See Code of Virginia, §§ 18.2-103 and 18.2-104). (Amended April 5, 1999).

§ 1-14. Peeping or Spying into the Structure Occupied as a Dwelling. Any person who enters upon the property of another and secretly or furtively peeps through or attempts 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, being permanently situated or transportable, whether or not such occupancy be permanent or temporary, shall be guilty of a class 1 misdemeanor. (See Code of Virginia, § 18.2-130).

§ 1-15. Defrauding Garage Keepers. Any person who stores a motor vehicle with any person, firm, or corporation engaged in the business of conducting a garage for the:

- (a) Storage of motor vehicles;
- (b) Furnishing of supplies to motor vehicles; or
- (c) Alteration or repair of motor vehicles,

and obtains storage, supplies, alterations or repairs for such motor vehicle, without having an express agreement for credit, or procures storage, supplies, alterations or repairs on account of such motor vehicle so stored, without paying therefore, and with the intent to cheat or defraud the owner or keeper of such garage; or with such intent

obtains credit at such garage for such storage, supplies, alterations or repairs through misrepresentation or false statement; or with such intent removes or causes to be removed any such motor vehicle from any such garage while there is a lien existing thereon for the proper charges due from him for storage, supplies, alterations or repairs shall be guilty of a class 2 misdemeanor. (See Code of Virginia, § 18.2-189).

§ 1-16. Defrauding Certain Businesses. Any person who puts up at a hotel, motel, campground, or boarding house or gains entrance to an amusement park or obtains food from a restaurant or other eating house without paying therefore, without having an express agreement for credit, and with the intent to cheat or defraud the owner or keeper of such business out of pay for the same; or with the intent to cheat or defraud such owner or keeper out of pay therefore, obtains credit by means of any false show of baggage or effects or any other misrepresentation or false statement; or with such intent, causes to be removed or removes any baggage or effects from such place of business while there is a lien existing thereon for the proper charges due such owner or keeper, shall be guilty of a class 1 misdemeanor. (See Code of Virginia, § 18.2-188). (Amended April 5, 1999).

§ 1-17. Trespassing. Any person who, without authority, goes upon or remains upon the lands, buildings, or premises of another, or any portion or area thereof, after having been forbidden to do so, either orally or in writing, by the owner, lessee, custodian or other person lawfully in charge thereof, or after having been forbidden to do so by a sign or signs posted by such persons or by the holder of any easement or other right-of-way authorized by the instrument creating such interest to post such signs on such lands, structures, premises, or a portion or area thereof, at a place or places where it or they may be reasonably seen or if any person, whether he is the owner, tenant or otherwise entitled to the use of such land, building or premises, goes upon, or remains upon such land, building or premises after having been prohibited from doing so by a court of competent jurisdiction by an order issued pursuant to §§ 16.1-253, 16.1-253.1, 16.1-278.2, 16.1-278.6, 16.1-278.8, 16.1-278.14, 16.1-278.15 or 16.1-279.1 of the Code of Virginia or ex parte order issued pursuant to § 20-103 of the Code of Virginia, and after having been served with such an order, shall be guilty of a class 1 misdemeanor. (See Code of Virginia § 18.2-119). (Amended April 5, 1999).

§ 1-18. False Entries or Destruction of Records by Officers. (Repealed April 5, 1999).

§ 1-19. Theft or Destruction of Public Records by Other Than Officer. If any person steals, fraudulently secretes, or destroys a public record or part thereof, including a microphotographic copy thereof, he shall be guilty of a class 1 misdemeanor. (See Code of Virginia, § 18.2-107). (Amended April 5, 1999).

§ 1-20. Destroying or Damaging Property. Any person who unlawfully takes, carries away, defaces, disfigures, cuts, marks, breaks, or otherwise injures or destroys, in whole or in part, any property not his own (whether it be real or personal, public or private) shall be guilty of a class 1 misdemeanor provided, this section shall not apply to injuries to or the destruction of living plants. (See Code of Virginia, §§ 18.2-137, 18.2-138 and 18.2-138.1).

§ 1-21. 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 the land of another, or upon any land reserved, set aside, or maintained by the town as a public park or square, 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 the superintendent of the town or other delegated official to do so unless the same be done under the personal direction of such owner, his agent, tenant, or lessee, or the superintendent of the town or such other delegated official.

Any person violating this section shall be guilty of a class 3 misdemeanor; provided that the approval of the owner, his agent, tenant, or lessee, or 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. (See Code of Virginia, §§ 18.2-138.1, 18.2-139, 18.2-140). (Amended April 5, 1999).

§ 1-22. Drinking in Public. Any person who takes a drink or tenders a drink, whether accepted or not, of any alcoholic beverage, as defined in § 4.1-100 of the Code of Virginia in a public place, as defined in such Code in § 4.1-100, within the town, other than in an establishment licensed for on-premises consumption by the Virginia Alcoholic Beverage Control Commission, shall be guilty of a class 4 misdemeanor. (See Code of Virginia, § 4.1-308). (Amended April 5, 1999).

§ 1-23. Wells and Pits. Any person owning or occupying land on which there is a well or pit having a diameter greater than six (6) inches and a depth of more than ten (10) feet that is left uncovered in such a manner as to be dangerous to human beings, animals, or fowl shall be guilty of a class 3 misdemeanor. Any such condition existing on abandoned property shall be abated by the town Superintendent or other officer to whom such duty is delegated with all reasonable costs thereof charged and collected against such property in the same manner as local real estate taxes. Every day of continuance of such condition shall constitute a separate offense. (See Code of Virginia, §§ 15.2-1115 and 18.2-318).

§ 1-24. Abandoned Refrigerators and Containers. Any person, firm, or corporation who discards, abandons, leaves or allows to remain in any place any icebox, refrigerator, or other container with an airtight interior storage area of more than two cubic feet of clear space without first removing the doors or hinges, shall be guilty of a class 3 misdemeanor; however, this section does not apply to any icebox, refrigerator, or other container being used for the purpose for which it was originally designed, being used for display purposes by any retail or wholesale merchant, or having been crated, strapped, or locked to such an extent that it is impossible for a child to obtain access to any airtight compartment therein. (See Code of Virginia, § 18.2-319). (Amended April 5, 1999).

§ 1-25. Littering Streets, Roads, Alleys or Other Public Property. Any person who throws or deposits or causes to be thrown or deposited upon any public property, including a public street, road, or alley within the town any bottles, glass, nails, tacks, wire, cans, garbage, refuse (as defined in § 7-2 of this code) or other unsightly or dangerous material, shall be guilty of a class 1 misdemeanor unless such person shall immediately remove or cause to be removed all such materials. Any person removing a wrecked or damaged vehicle from any public property, or public street, road, or alley within the town shall remove any glass or other injurious material deposited upon such public way by such vehicle. (See Code of Virginia, §§ 33.1-346 and 33.1-346.1). (Amended April 5, 1999).

§ 1-26. False Reports to Police Officers. Any person who knowingly gives a false report as to the commission of any crime to any law-enforcement official with the intent to mislead, without just cause and with intent to interfere with the operations of any law enforcement official, to call or summon any law enforcement official by telephone or other means, including engagement or activation of an automatic emergency alarm shall be guilty of a class 1 misdemeanor. (See Code of Virginia, § 18.2-461). (Amended April 5, 1999).

§ 1-27. False Fire Alarms. 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 other public use, including, but not limited to, schools, theaters, stores, office buildings, shopping centers, malls, coliseums and arenas, regardless of whether fire apparatus responds or not, shall be guilty of a class 1 misdemeanor. (See Code of Virginia, § 18.2-212). (Amended April 5, 1999).

§ 1-28. Unfriendly Fires. Any person who sets or procures another to set fire to any woods, brush, leaves, grass, straw or any other inflammable substance capable of spreading fire and who allows the fire to escape to lands not his own, whereby the property of another is damaged or jeopardized shall be liable for the full amount of expenses incurred in fighting such fire. If such fire is set intentionally, such person shall be guilty of a class 1 misdemeanor. If such fire is set carelessly or negligently, such person shall be guilty of a class 4 misdemeanor. (See Code of Virginia, §§ 15.2-1118, 18.2-87, and 18.2-88). (Amended April 5, 1999).

§ 1-29. Interference with Fire Apparatus and Sewer Lines. Any person who interferes or tampers with fire-fighting equipment within the town (including, but not limited to willfully diverting or wasting a public water supply or tampering with a fire hydrant) shall be guilty of a class 2 misdemeanor. Any person who willfully and maliciously diverts any public waste water or sewer line shall also be guilty of a class 2 misdemeanor. (See Code of Virginia, § 18.2-162.1). (Amended April 5, 1999).

§ 1-30. Interference with Public Services or Utilities. Any person who intentionally interferes or tampers in any authority which is used to furnish oil, telegraph, telephone, electric, gas, sewer, waste water or water service to the public, shall be guilty of a class 3 misdemeanor. (See Code of Virginia, §§ 18.2-162 and 18.2-164). (Amended April 5, 1999).

§ 1-31. Pulling Down Fences or Leaving Gates Open. Any person, who without permission of the owner, pulls down the fence of another and leaves the same down, or, without permission, opens and leaves open the gate of another, or any gate across a public road established by order of court or if any person other than the owner or owners of the lands through which a line of railroad runs, who opens and leaves open a gate at a public or private crossing of the railroad right-of-way, shall be guilty of a class 4 misdemeanor. (See Code of Virginia, § 18.2-143). (Amended April 5, 1999).

§ 1-32. Masquerading. Any person over the age of 14 who publicly wears a mask or uses other means of disguise to conceal his or her identity at any time within the town, shall be guilty of a class 4 misdemeanor. However, this section does not apply to persons representing legitimate, charitable, social or patriotic organizations or to persons engaged in public entertainment.

§ 1-33. Disorderly Conduct in Public Places. A person is guilty of disorderly conduct if, with the intent to cause public inconvenience, annoyance, or alarm or recklessly creating a risk thereof, he:

- (a) in any streets, highways, public buildings, or while in or on a public conveyance, or public place engage in conduct having a direct tendency to cause acts of violence by the person or persons at whom, individually, such conduct is directed; or
- (b) willfully or being intoxicated, whether willfully or not, whether such intoxication results from self-administered alcohol, or other drugs of whatever nature, disrupts any meeting of the governing body of any political subdivision of the Commonwealth, or a division or agency thereof, or any school, literary society or place of worship, if the 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, the disruption is directed; or
- (c) willfully or while intoxicated, whether willfully or not, and whether such intoxication results from self-administered alcohol or other drugs of whatever nature, disrupts the operation of any school or any activity conducted or sponsored by any school, if the disruption (i) prevents or interferes with the orderly conduct of the operation or activity or (ii) has a direct tendency to cause acts of violence by the person or persons at whom, individually, the disruption is directed.

However, the conduct prohibited under sub-sections (a), (b), or (c) of this section shall not be deemed to include the utterance or display of any words or to include conduct otherwise made punishable under this title.

The person in charge of such place or meeting may eject therefrom any person who violates any provisions of the section with the aid, if necessary, of any persons called upon for such purpose. Such violators shall be guilty of a class 1 misdemeanor. (See Code of Virginia, §§ 15.2-925 and 18.2-415). (Amended April 5, 1999).

§ 1-34. Loitering or Loafing. Any person loitering or standing on any street, sidewalk, curb or upon or around any public place whether on public or private property who fails to move on after being requested to do so by a policeman, shall be guilty of a class 4 misdemeanor and shall cease to occupy such position on the street, sidewalk, or curb. (See Code of Virginia, § 15.2-926). (Amended April 5, 1999).

§ 1-35. Unauthorized Fill Material. Any person who uses materials such as tree stumps, brush, prunings, lumber, undecomposed organic matter, scrap metal, paper, or any other trash, garbage or undecomposed waste material for fill material in any place other than an officially designated sanitary fill, shall be guilty of a class 4 misdemeanor, shall be liable for the removal and disposal of the prohibited fill material, and shall be liable for proper refilling or the costs thereof which shall be charged and collected in the same manner as local real estate tax. The intent of this section is to prevent the improper use of such material in fills which may subsequently rot, decay, rust, or otherwise decompose and result in abnormal settling or cave-ins and prevent the timely use of lands thus filled, or result in an eventual hazard to health, life, limb, or property. (See Code of Virginia, §§ 15.2-927, 15.2-1113 and 15.2-1115).

§ 1-36. Hand Bills. Any person who:

- (a) distributes or causes to be distributed any hand bills in such a manner so as to interfere with the safe and orderly flow of traffic on any sidewalk or street;
- (b) places or causes to be placed any hand bill in or upon any automobile or other vehicle unless the owner thereof demonstrates his willingness to accept it;
- (c) distributes or causes to be distributed any hand bill in or upon any private premises which are then uninhabited and vacant;
- (d) distributes or causes to be distributed any hand bill, in or upon private premises which are inhabited in a manner other than by handing it directly to the owner, occupant, or other person then present in or upon such private premises; provided hand bills may be placed securely thereon so as to prevent being blown about such inhabited premises or elsewhere unless requested by anyone upon such premises not to do so or unless a sign is posted conspicuously upon such premises in any manner indicating the occupants do not desire to have hand bills left upon such premises;
- (e) affixes in any way a hand bill, poster, or advertisement to any public property, real or personal, including telegraph, telephone, electric transmissions poles and trees, except as may be authorized by law; or
- (f) throws, places, or distributes or causes to be thrown, placed, or distributed any commercial hand bill in or upon any place within the town,

shall be guilty of a class 4 misdemeanor.

Non commercial hand bills may be distributed in any public place to those persons willing to accept them.

§ 1-37. Establishing Police Lines, Perimeters, or Barricades. Whenever fires, accidents, wrecks, explosions, crimes, riots or other emergency situations where life, limb or property may be endangered, may cause persons to collect on the public streets, alleys, highways, parking lots or other public areas, the chief law enforcement officer of the town (or that officer's authorized representative who is responsible for the security of the scene) may establish such areas, zones or perimeters by the placement of police lines or barricades as are reasonably necessary to:

- (1) preserve the integrity of evidence at such scene,

- (2) facilitate the movement of vehicular and pedestrian traffic into, out of, and around the scene,
- (3) permit firefighters, police officers, and emergency service personnel to perform necessary operations unimpeded, and
- (4) protect persons and property.

Any police line or barricade erected for these purposes shall be clearly identified by wording such as "Police Line - DO NOT CROSS" or other similar wording. If material or equipment is not available for identifying the prohibited area, then a verbal warning by identifiable law-enforcement officials positioned to indicate a location of a police line or barricade shall be given to any person or persons attempting to cross police lines or barricades without proper authorization.

Such scene may be secured no longer than is reasonably necessary to effect the above-described purposes. Nothing in this section shall limit or otherwise affect the authority of, or be construed to deny access to such scene by, any person charged by law with the responsibility of rendering assistance at or investigating any such fires, accidents, wrecks, explosions, crimes, or riots.

Personnel from information services such as press, radio, and television, when gathering news, shall be exempt from the provisions of this section except that it shall be unlawful for such persons to obstruct the police, firemen, and rescue workers in the performance of their duties at such scene. Such personnel shall proceed at their own risk. (See Code of Virginia, § 15.2-1714). (Amended April 5, 1999).

§ 1-38. Removal, Repair, etc. of Buildings and Other Structures.

- (a) The owners of property located within this town shall, at such time or times as the Town Council may prescribe, remove, repair, or secure any building, wall, or any other structure which might endanger the public health or safety of other residents of the town;
- (b) The Town Council, through its own agents or employees may remove, repair, or secure any building, wall, tree or any other structure which might endanger the public health or safety of other residents of the town if the owner and lien holder of such property, after reasonable notice and a reasonable time to do so, has failed to remove, repair or secure the building, wall, or other structure. For purposes of this section, repair may include maintenance work to the exterior of a building to prevent deterioration of the building or adjacent buildings. For purposes of this section, reasonable notice includes a written notice (i) mailed by certified or registered mail, return receipt requested, sent to the last known address of the property owner and (ii) published once a week for two successive weeks in a newspaper having general circulation in the locality. No action shall be taken by the locality to remove, repair or secure any building, wall or other structure for at least thirty days following the latter of the return of the receipt or newspaper publication.
- (c) In the event the Town Council, 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 costs or expenses thereof shall be chargeable to and paid by the owners of such property and may be collected by the town as taxes and levies are collected;

- (d) Every change 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 taxes and enforceable in the same manner as provided in Article 3 (§ 58.1-3940 et seq. and § 58.1-3965 et seq.) of chapter 39 of Title 58.1 of the Code of Virginia.

(See Code of Virginia, § 15.2-906). (Amended April 5, 1999).

§ 1-39. Fee for Passing Bad Check to Town. Any person, firm, or corporation uttering, publishing, or passing any check or draft for payment of taxes or any other sums due to this town, which is subsequently returned for insufficient funds, or because there is no bank account or the account has been closed shall, in addition to any other penalties provided by law, pay a fee to the town of \$20.00. (See Code of Virginia, § 15.2-106).

§ 1-40. Penalty and Interest for Failure to Pay Accounts When Due. Any person failing to pay an account due the town on its due date (other than taxes which are provided for in Title 58.1) shall incur a penalty thereon of 10% or \$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 the Town Treasurer determines that such failure was not in any way the fault of the debtor. Interest at the rate of 10% annually from the first day following the day such account is due, may be collected upon the principal and penalty of all such accounts. (See Code of Virginia, § 15.2-105). (Amended April 5, 1999).

§ 1-41. Indecent Exposure. Every person who intentionally makes an obscene display or exposure of his person or the private parts thereof, in any public place, or in any place where others are present, or procures another to so expose himself, shall be guilty of a class 1 misdemeanor. No person shall be deemed to be in violation of this section for breast feeding a child in any public place or any place where others are present. (See Code of Virginia, § 18.2-387). (Amended April 5, 1999).

§ 1-42. Profanity, Swearing and Intoxication in Public, etc. Any person who profanely curses or swears or is intoxicated in public, whether such intoxication results from alcohol, narcotic drugs or other intoxicant or drugs of whatever nature shall be deemed guilty of a class 4 misdemeanor. If there is located within the area of this town or Rockingham County or the City of Harrisonburg, a court-approved detoxification center, a law-enforcement officer may authorize the transportation, by police or otherwise of public inebriates, to such detoxification center in lieu of arrest; however, no person shall be involuntarily detained in such center. (See Code of Virginia, § 18.2-388). (Amended April 5, 1999).

§ 1-43. Expecting in Public Places. No person shall spit, expectorate, or deposit any sputum, saliva, mucus, or any form of saliva or sputum upon the floor, stairways, or upon any part of any public building or place where the public assembles, or upon the floor of any part of any public conveyance or upon any sidewalk abutting on any public street, alley, or lane of this town. Any person violating any provision of this section shall be guilty of a class 4 misdemeanor. (See Code of Virginia, § 18.2-322).

§ 1-43.1 Urination and Defecation in Public.

- (a) No person shall urinate or defecate in any public building (except in an appropriate toilet facility); or upon any street, sidewalk, alley or other public property; or in any other place where such person is visible to public view.
- (b) Any person violating this section shall be guilty of a class 4 misdemeanor and shall be punished in accordance with § 1-4.

(Enacted April 5, 1999).

§ 1-44. *Illegal Gambling.* Any person making, placing, receiving or permitting any bet or wager within the town of money or other thing of value made in exchange for a chance to win a prize, stake or other consideration dependent upon the result of any game, contest or other event the outcome of which is uncertain or a matter of chance, shall be guilty of a class 3 misdemeanor.

This section does not apply to any volunteer fire department, rescue squad, corporation, trust, church, association, community chest, fund or foundation organized and operated exclusively for religious, charitable, scientific, literary, community service, educational purposes, or any post or association of war veterans or auxiliary units which shall engage in such activities in no part of the gross receipts of which shall inure to the benefit of any member thereof.

Nothing in this section shall be construed to make it unlawful to participate in a game of chance conducted in a private residence provided such residence is not commonly used for such games of chance, and there is no operator as defined in § 18.2-325(3) of the Code of Virginia, nor shall anything in this section be construed to prevent any contest of speed or skill between men, animals, fowl or vehicles where the participants (or their owners) may receive prizes depending upon whether they win or lose. (See Code of Virginia, §§ 18.2-326, 18.2-333 and 18.2-334).

§ 1-45. *Illegal Gambling Devices.* Any person maintaining or permitting the use of a gambling device within the town shall be guilty of a class 3 misdemeanor. A gambling device is any machine, apparatus, implement, instrument, contrivance, board or other thing (including, but not limited to those dependent upon the insertion of a coin or other object for their operation) which operates, either completely automatically or with the aid of some physical act by the player or operator, in such a manner that depending on elements of chance, it may eject something of value or determine the prize or other thing of value to which the player is entitled. However, the return to the user of nothing more than additional chances or the right to use the machine is not something of value, and machines that only sell different items of merchandise of equivalent value are not gambling devices. (See Code of Virginia, §§ 18.2-325 and 18.2-326).

§ 1-46. *Injuring Vehicles.* 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 motor vehicle, trailer, or semi-trailer for the purpose of injuring, defacing or destroying such motor vehicle, trailer or semi-trailer, or temporarily or permanently preventing its useful operation, or for any purpose against the will or without the consent of the owner of such motor vehicle, trailer or semi-trailer, or who shall in any other manner willfully or maliciously interfere with or prevent the running or operation of such motor vehicle, trailer or semi-trailer, shall be guilty of a class 1 misdemeanor. (See Code of Virginia, § 18.2-146).

§ 1-47. *Entering or Setting Vehicles in Motion.* Any person who shall, without the consent of the owner or person in charge of a vehicle, aircraft, boat, vessel, locomotive or other rolling stock of a railroad, climb into or upon such vehicle, aircraft, boat, vessel, locomotive or other rolling stock of a railroad, with intent to commit any crime, malicious mischief, or injury thereto, or who, while a vehicle, aircraft, boat, vessel, locomotive or other rolling stock of a railroad is at rest and unattended, shall attempt to manipulate any of the levers and starting crank or other device, brakes or mechanism thereof or to set into motion such vehicle, aircraft, boat, vessel, locomotive or other rolling stock of a railroad, with the intent to commit any crime, malicious mischief, or injury thereto, shall be guilty of a class 1 misdemeanor, except that the foregoing provision 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. (See Code of Virginia, § 18.2-147).

Part 4
Nuisances

48. Abatement or Removal of Nuisances. The Town Council, acting either as a body or through the Town Superintendent or other delegated officer, may compel the abatement or removal of all nuisances, including but not limited to:

- (a) the removal of weeds from private or public property and snow from sidewalks,
- (b) the covering or removal of offensive, unwholesome, unsanitary, or unhealthy substances allowed to accumulate in or on any place or premises,
- (c) the filling in to street level, fencing, or protection by other means of the portion of any lot adjacent to a street or alley where the difference in level between the lot and the street or alley constitutes a danger to life or limb,
- (d) the raising or draining of ground subject to being covered by stagnant water,
- (e) the razing or repair of all unsafe, dangerous, or unsanitary public or private buildings, walls or structures which constitute a menace to the health and safety of the occupant thereof or the public, and
- (f) the elimination or redirection of artificial light which creates an unreasonable burden on adjoining property. (Added February 7, 2000.)

If ten (10) days elapse after written notice from the Town Council or officer to whom the authority is delegated to the owner or occupants of such property without such condition being abated or removed, the town may abate it or remove it, charging the cost thereof to such owner or occupant and collecting such costs in the same manner as the local real estate tax. The maintenance of nuisances is unlawful. Persons maintaining nuisances shall be guilty of a class 3 misdemeanor, whether or not the Town seeks to abate the nuisance. (See Code of Virginia, § 15.2-1115). (Amended April 5, 1999).

48.1 Cutting of grass and weeds.

- (a) The owners of vacant property, whether developed or undeveloped, shall cut all grass, weeds and/or other foreign growth on the property whenever any significant portion of the grass, weeds and/or other foreign growth on the property exceed eight inches in height from their base to their most extended growth.
- (b) Upon the failure of the property owner to cut the grass, weeds, and/or other foreign growth as specified in paragraph (a) of this section, the town (through its agents or employees) may cut all of the grass, weeds, and/or other foreign growth on the property at the owner's expense, after written notice as provided in this paragraph. The notice shall contain the provisions of this section; it shall be mailed to the owner at the address shown in the town's tax records, and it shall state that the town will cut the grass, weeds, and/or foreign growth unless the property owner does so within seven days from the date the notice is mailed.
- (c) If the town (through its agents or employees) cuts the grass, weeds, and/or other foreign growth, costs and expenses in doing so shall be charged to the property owner. The costs and expenses shall be collected by the town in the same manner as are real property taxes, and they shall constitute a lien on the property.
- (d) No agricultural operation shall violate this section if such operations are conducted in accordance with the existing best management practices and comply with existing laws and regulations of the Commonwealth. The term "agricultural operation" as used in this sub-section is as defined in Code of Virginia § 3.1-22.29 (b).

- (e) For purposes of this section, "vacant" shall mean unoccupied.
- (f) Notwithstanding § 1-3 of this title, violations of this section shall not constitute a criminal offense. However, conduct which violates this section may also violate other provisions of law which constitute criminal offenses, and those other provisions shall be unaffected by this paragraph. (See Code of Virginia § 15.2-1115).

(Enacted April 5 1999).

§ 1-48.2. Slaughtering Animals

- (a) No Person shall slaughter Animals in a manner which can be seen, heard, or smelled from adjacent properties
- (b) For purposes of this section,
 - (1) "Animal" means a mammal or fowl;
 - (2) "Slaughter" means to intentionally kill an Animal, other than by hunting or euthanasia;
 - (3) "Person" means any natural person, corporation, partnership, firm, or other entity.
- (c) Nothing in this section shall apply to
 - (1) Bona fide farms,
 - (2) Educational institutions,
 - (3) Poultry processing plants, or
 - (4) Medical or veterinary professionals.
- (d) Nothing expressed or implied in this section authorizes the Slaughter of Animals in any manner contrary to any other ordinance, statute, regulation, or common law principle.
- (e) Violation of this section shall constitute a class 3 misdemeanor.

(Enacted October 4, 1999.)

§ 1-48.3. Deceased Animals; Animal Parts.

- (a) No Person shall cause or allow any deceased Animals or Animal parts to be placed or stored outdoors. No Person shall cause or allow any Animal blood to be spilled or stored outdoors.
- (b) The definitions of § 1-48.2 shall apply to this section as well.
- (c) Nothing in this section shall apply to
 - (1) Bona fide farms,
 - (2) Poultry processing plants, or

- (3) Medical or veterinary professionals.
- (4) Commercial meat-cutters or vendors, or
- (5) Taxidermists.

(d) Nothing expressed or implied in this section authorizes the disposal of deceased Animals, Animal parts, or Animal blood in any manner contrary to any other ordinance, statute, regulation, or common law principle.

(e) Violation of this section shall constitute a class 3 misdemeanor.
(Enacted October 4, 1999.)

§ 1-49. Removal and disposition of Unattended Vehicles; Taking Abandoned Vehicles into Custody. Any motor vehicle, trailer, semi-trailer or parts thereof which are (1) left unattended on a public highway or other public property and constitute a traffic hazard, or (2) illegally parked or (3) left unattended for more than 10 days either on public property or private property without the permission of the owner, lessee, or occupant or (4) immobilized on a public highway by weather conditions or other emergency situations, may be removed for safekeeping by the Town Police to a designated storage area; provided, however, no such vehicle shall be so removed from privately owned premises without the written request of the owner, lessee, or occupant thereof.

Such vehicle shall be presumed to be abandoned if

- (a) it lacks either
 - (1) a current license plate, or
 - (2) a current Town sticker, or
 - (3) a valid state inspection sticker; and
- (b) it has been in a specific location for four (4) days without being moved.

The person at whose request such vehicle is removed from privately owned property shall indemnify the Town against loss or expense incurred by reason of such removal, storage, or sale thereof and costs incurred in locating the owner. No motor vehicle, trailer, semi-trailer, or parts thereof will be removed from private property without the written request of the owner, lessee, or occupant of the premises.

Each removal shall be reported immediately to the office of the Town Superintendent who shall in turn cause written notice to be given to the owner of such vehicle as promptly as possible. The owner shall pay the Town all reasonable charges incidental to such removal and storage prior to re-obtaining possession of such vehicle. Should such owner fail or refuse to pay the cost or should the identity or whereabouts of such owner be unknown and unascertainable after a diligent search has been made, and after notice to him at his last known address and to the holder of any lien of record in the office of the Department of Motor Vehicles in Virginia against the motor vehicle, trailer, semi-trailer or parts thereof, the vehicle shall be treated as an abandoned vehicle under state law.

The Town may take into custody and dispose of abandoned vehicles, as defined by, and as provided for under, state law. The Town may employ its own personnel, equipment, and facilities, or hire persons, equipment, and facilities, or firms or corporations that may be independent contractors for removing, preserving, storing, and selling at public auction abandoned motor vehicles. (See Code of Virginia §§ 46.2-1200, 46.2-1201, and 46.2-1213).

This section shall not operate to deprive anyone of any lawful recourse against abandoned or improperly parked cars or their owners.

(Amended April 5, 1999, April 12, 2010).

§ 1-50. *Restriction of Keeping of Inoperable Motor Vehicles, etc.; Removal of Such Vehicles.*

- (a) *Definitions.* For purposes of this section, the following definitions shall apply:
- (1) "Inoperable Motor Vehicle" shall mean any motor vehicle (a) which is not in operating condition, or (b) which for a period of 60 days or longer has been partially or totally disassembled by the removal of tires and wheels, the engine, or other essential parts required for operation of the vehicle, or (c) for which there are displayed neither valid license plates nor a valid inspection decal.
 - (2) "Motor Vehicle" shall carry the meaning prescribed in section 46.2-100 of the Code of Virginia.
 - (3) "Police Chief" means the Dayton Police Chief as well as subordinates and independent contractors acting under his direction and authority.
 - (4) "Reasonable Notice" means a written notice either (i) mailed first class to a party's last known address at least seven days prior to an event or (ii) hand--delivered to a party at least five days prior to an event.
 - (5) "Semi-Trailer" shall carry the meaning prescribed in section 46.2-100 of the Code of Virginia.
 - (6) "Shielded Or Screened From View" means not visible by someone standing at ground level from outside of the property on which the subject vehicle is located.
 - (7) "Trailer" shall carry the meaning prescribed in section 46.2-100 of the Code of Virginia.
- (b) *Basic Prohibition.* It shall be unlawful for any Person to keep, except within a fully enclosed building or structure on any property any Inoperable Motor Vehicle, Trailer, or Semi-Trailer.
- (c) *Remediation by Town.* The owners of property shall, at such time or times as the Police Chief may prescribe by Reasonable Notice, remove therefrom any such Inoperable Motor Vehicles, Trailers, or Semi-Trailers that are not kept within a fully enclosed building or structure. The Police Chief may then remove the offending vehicles if the owner fails to do so in accordance with the notice. In the event the Police Chief removes any such vehicles, the Town may then dispose of such vehicles after giving additional Reasonable Notice to the owner of the vehicle. The cost of any such removal and disposal shall be chargeable to the owner of the vehicle or premises and may be collected by the Town however taxes and levies are collected; and 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 Town.
- (d) *Exception for Vehicles Shielded or Screened From View.* Notwithstanding the provisions of paragraphs (b) and (c), on any lot there may exist a single Inoperable Motor Vehicle, Trailer, or Semi-Trailer, which is not enclosed in a building or structure but is either

Shielded Or Screened From View, or covered by a commercial cover designed for such vehicle or trailer, which cover shall be in good condition.

(e) *Scope of Section; exceptions.*

- (1) This section shall apply to all property in Town which is zoned for residential, commercial, or agricultural purposes.
- (2) The provisions of this section shall not apply to a licensed business, which on June 26, 1970, was regularly engaged in business as an automobile dealer, salvage dealer, or scrap processor.
- (3) If an owner of an Inoperable Motor Vehicle, Trailer, or Semi-Trailer demonstrates that he is actively restoring or repairing the vehicle, and if it is either Shielded Or Screened From View, or covered by a commercial cover designed for such vehicle or trailer, which cover shall be in good condition, he may retain that vehicle, and one other Inoperable Motor Vehicle-also Shielded Or Screened From View and being used for restoration or repair-on the property. This paragraph (e)(3) can only be used to allow a single vehicle being repaired or restored and a single vehicle being used for repair or restoration.

(f) *Civil Penalties.* The violation of this section shall not constitute a criminal offense but shall give rise to civil penalties. The civil penalty for any violation of this section shall be \$200 for an initial violation with respect to a given Inoperable Motor Vehicle, Trailer, or Semi-Trailer (inclusively, an "Offending Vehicle"), and \$500 for each subsequent violation. Each day in which the violation continues shall constitute a separate offense, but the offender may not be charged more than once in any 10-day period for the same Offending Vehicle. Further, the maximum penalty for any single Offending Vehicle shall be \$5,000.

Nevertheless, if (i) there have been no previous citations issued in the preceding 12 months for the subject property, (ii) the Police Chief verifies that the violation has been rectified, and (iii) the violator pays the civil penalty to the Town Treasurer within three days of the issuance of the citation, then the civil penalty shall be \$25 instead of \$200.

For ease of reference, the foregoing is summarized in the following table, which is qualified by reference to the narrative above:

Violation	Penalty
Initial violation if no previous citation in preceding 12 months; violation has been rectified; and payment is made within three days of citation	\$25
Initial violation if above conditions are not met	\$200
Subsequent violations (may only be charged once in any 10-day period for the same Offending Vehicle)	\$500 (\$5,000 maximum)

(See Va. Code, § 15.2-904) (Amended April 5, 1999; February 15, 2010.)

§1-50.1 *Automobile Graveyards.*

- (a) No person, firm, corporation, or other entity shall operate or maintain an automobile graveyard in the town unless it is completely screened from public view at all times by a fence, structure, trees, or shrubbery. Any fence, structure, trees, or shrubbery used to screen an automobile graveyard shall be at least 50" high. (See Code of Virginia, §15.2-903).

- (b) For the purposes of this section, the term “automobile graveyard” shall mean any lot or place which is exposed to the weather and upon which more than five motor vehicles of any kind, incapable of being operated, and which it would not be economically practical to make operative, are placed, located, or found. (See Code of Virginia, §33.1-348).
- (c) This section shall not be construed as authorization for the establishment or maintenance of any automobile graveyard.

(Enacted April 5, 1999).

§ 1-51. Public Dance Halls. Any person who, without a permit, operates a public dance hall within the town shall be guilty of a class 3 misdemeanor. Such permit may be obtained from the Town Council or an official designated by it upon satisfactory evidence that the applicant is a proper person to receive the same. The Town Council may revoke such permit at any time for good cause. Such permit shall prohibit minors from entering or remaining in such dance halls while dancing is conducted, unless accompanied by a parent or legal guardian, brother or sister of majority age, or upon written permission of such parent or legal guardian. Dance halls shall close from 12:00 midnight to 6:00 a.m. Monday through Friday and from 12:00 midnight Saturday to 6:00 a.m. Monday. Any person violating the provisions of such permit shall be guilty of a class 3 misdemeanor and subject to permit revocation by Town Council.

A "dance hall" is any place open to the general public where dancing is permitted; however, this section does not apply to dances held for benevolent or charitable purposes or where the same are conducted under the auspices of religious, civil, military or educational organizations. (See Code of Virginia, § 18.2-433).

§ 1-52. Declaration of policy. At certain levels, noise can be detrimental to the health, welfare, safety, and quality of life of inhabitants of the town, and in the public interest noise should be restricted. It is the policy of the town to reduce, and eliminate where possible, excessive noise and related adverse conditions in the community, and to prohibit unnecessary, excessive, harmful, and annoying noises from all sources subject to its police power.

§ 1-52.1. Definitions. The following words, terms and phrases, when used in this chapter, shall have the following meanings ascribed to them, except where the context clearly indicates a different meaning:

“Daytime hours” means 7:00 a.m. through 9:00 p.m. each day of the week.

“Excessive noise” means any sound which annoys or disturbs humans or which causes or tends to cause an adverse psychological or physiological effect on humans. Specific examples of prohibited excessive noise are set forth in § 1-52.3 of this chapter.

“Motor vehicle” means a vehicle defined as a motor vehicle by Section 46.2-100, Code of Virginia (1950), as amended.

“Motorcycle” means every motor vehicle designed to travel on not more than three wheels in contact with the ground, other than farm tractors and mopeds.

“Nighttime hours” means 9:00 p.m. through 7:00 a.m. each day of the week.

“Owner” means the person owning, controlling, or possessing land, premises, or personalty.

“Person” means any individual, partnership, corporation, association, society, club, group of people acting in concert, or organization. This term shall not include the federal, state, county, town, or local government, or any agency or institution thereof.

“Public property” means any real property owned or controlled by the town or any other governmental entity or institution.

“Plainly audible” means any sound that can be heard clearly by a person using his or her unaided hearing facilities. When music is involved, the detection of rhythmic bass tones shall be considered plainly audible sound.

“Public right-of-way” means any street, avenue, boulevard, highway, sidewalk, or alley.

“Residential” refers to single-unit, two-unit, and multi-unit dwellings, and residential areas of planned residential zoning district classifications, as set out in the Town of Dayton zoning ordinance, as amended.

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

“Sound amplifying equipment” means any machine or device for the amplification of the human voice, music, or any other sound. This term shall not include warning devices on authorized emergency vehicles, or horns or other warning devices on other vehicles used only for traffic safety purposes.

“Town” means the Town of Dayton, Virginia.

“Town Manager” means the town superintendent or the chief of police, or their respective designees.

§ 1-52.2. Violations. Any person violating any of the provisions of this chapter shall be deemed guilty of a Class 4 misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than two hundred fifty dollars (\$250.00) for each offense. Each day the violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

The person operating or controlling a source of excessive noise shall be guilty of any violation of the provisions this chapter. If the person operating or controlling the source of excessive noise cannot be determined, any owner, tenant, resident or manager physically present on the property where the violation is occurring is rebuttably presumed to be operating or controlling the source of excessive noise.

§ 1-52.3. Prohibited Conduct. Subject to the exceptions provided in § 1-52.4, any of the following acts, or the causing or permitting thereof, is declared to be excessive noise, constituting a Class 4 misdemeanor and a public nuisance:

- (1) Animals. The owning, keeping, or possessing of any animal or animals which frequently or habitually howl, bark, squawk or make such other noise in such a manner as to permit sound to be plainly audible within fifty feet from the animal or through partitions common to two dwelling units within a building. This section shall not apply to any bona fide agricultural activity.
- (2) Commercial vehicle and trash collection vehicle operation. The operation of a commercial vehicle or trash collection vehicle during nighttime hours in such a manner as to be plainly audible at any residence one hundred or more feet away.
- (3) Construction. The erection, including excavation, demolition, alteration, or repair of any building or improvement during nighttime hours, except in the case of emergency under a permit granted by the town manager. In considering the granting, conditioning, or denial of the permit, the town manager shall be guided by the following standards: (i) nature of the emergency; (ii) proposed extended hours of operation; (iii) duration of period of requested extended hours; (iv) character of the area surrounding the construction site; and (v) the number of residential units which would be impacted by the extended hours of construction.

- (4) Explosives, fireworks and similar devices. Using or firing any explosives, fireworks or similar devices which create impulsive sound in such a manner as to permit sound to be plainly audible at a distance of fifty feet from the source of the sound or through partitions common to two dwelling units within a building, or on any public right-of-way or public property.
- (5) Horns, whistles, etc. Sounding or permitting the sounding of any horn, whistle or other auditory sounding device on or in any motor vehicle on any public right-of-way or public property, except as a warning of danger.
- (6) Loading and unloading. Operating, loading or unloading any vehicle, including but not limited to trucks, or the opening and destruction of bales, boxes, crates and containers outdoors within one hundred or less feet of an occupied dwelling during nighttime hours.
- (7) Loudspeakers, public address systems and sound trucks. Using, operating or permitting the operation of any loudspeaker, public address system, mobile sound vehicle or similar device amplifying sound for any purpose during nighttime hours in such a manner as to permit sound to be plainly audible at fifty feet from the source of the sound or in a manner that permits sound to be heard through partitions common to two dwelling units within a building.
- (8) Pneumatic hammer, chain saw, etc. The operation during nighttime hours of any chain saw, pile driver, steam shovel, pneumatic hammer, derrick, steam or electric hoist, or other appliance whose use is attended by sounds that are plainly audible within fifty feet of the device or through partitions common to two dwelling units within a building.
- (9) Radios, television sets, computers, musical instruments, and similar devices. Operating, playing or permitting the operation or playing of any radio, television, computer, record, tape or compact disc player, drum, music instrument, or similar device in such a manner as to permit sound to be plainly audible at fifty feet from the building in which it is located or in a manner that permits sound to be heard through partitions common to two dwelling units within a building.
- (10) Schools, public buildings, places of worship, hospitals, and clinics. The creation of any noise on the grounds of any school, court, public building, place of worship, hospital, or clinic in a manner that is plainly audible within such school, court, public building, place of worship, hospital, or clinic and interferes with the operation of the institution.
- (11) Vehicles.
 - (a) Operation of a motor vehicle or motorcycle within the town while not equipped with a muffler that is compliant with Section 46.2-1047, Code of Virginia (1950), as amended.
 - (b) Operation of a motor vehicle or motorcycle within the town equipped with an intake or exhaust system that permits the escape of noise in excess of that permitted by the standard factory equipment intake or exhaust system of motor vehicles or motorcycles of standard make.
 - (c) The spinning, squealing of tires or unnecessary revving of the motor of any motor vehicle or motorcycle when starting from a stopped position, when shifting gears, when moving, or when coming to a stop or slowing the speed of the motor vehicle.
 - (d) Operation of sound amplifying equipment in a motor vehicle at a volume sufficient to be plainly audible at a distance of seventy-five feet or more from the vehicle.
- (12) Yelling, shouting, etc. Yelling, shouting, whistling, or singing during nighttime hours in such a manner as to permit sound to be plainly audible within fifty feet of the source of the sound or through partitions common to two dwelling units within a building.

§ 1-52.4. Exceptions.

§§ 1-52.2 and 1-52.3 shall have no application to any sound generated by any of the following:

- (1) Activities on or in municipal, county, state, United States, or school athletic facilities, or on or in publicly owned property and facilities.
- (2) Agricultural activities.
- (3) Fire alarms and burglar alarms, including false alarms occurring less than once per owner per sixty days, prior to the giving of notice and a reasonable opportunity for the owner or person in possession of the premises served by any such alarm to turn off the alarm.
- (4) Household tools and other lawn care equipment with manufacturer's recommended mufflers installed that are operated during daytime hours.
- (5) Lawful discharge of firearms.
- (6) Locomotives and other railroad equipment, and aircraft.
- (7) Military activities of the Commonwealth of Virginia or of the United States of America.
- (8) Noises resulting from events sanctioned by the town council taking place during daytime hours.
- (9) Parades, fireworks displays, and other such public special events or public activities that are otherwise lawful.
- (10) Public speaking and public assembly activities conducted on any public right-of-way or public property in accordance with applicable law.
- (11) Radios, sirens, horns, and bells on police, fire, or other emergency response vehicles.
- (12) Religious services, religious events, or religious activities or expressions, including but not limited to music, singing, bells, chimes, and organs which are a part of such service, event, activity, or expression.
- (13) School band performances or practices, athletic contests or practices, and other school-related activities conducted on the grounds of public or private schools.
- (14) Sound which is necessary for the protection or preservation of property or the health, safety, life, or limb of any person.
- (15) The striking of clocks.
- (16) The use of a loudspeaker for making auction sales when used in the vicinity of the property being sold provided such use is limited strictly to the selling at auction of such property and occurs during daytime hours.

(Enacted July 8, 2013.)

§ 1-53. *Marshy Ground and Stagnant Water.* Any person owning real estate within the town upon which a drain or running water exists, must keep such real estate clean, free, and unobstructed from filth, garbage, vegetation, or other nuisance. Any person owning real estate within the town upon which exists a marshy place or stagnant water must drain or fill the same within thirty (30) days from receipt of written notice from the Town Council. If it is impractical to drain or fill such marshy place, effective petroleum treatment is required. If, after such reasonable notice, the owner or occupant of any such real estate fails to abate such nuisance, the town may do so and charge and collect the cost thereof in the same manner as local real estate tax. (See Code of Virginia, § 15.2-1115).

§ 1-53.1 Allowing Junk and Certain Other Materials to Accumulate or Remain on Property. It is hereby determined to be a nuisance and deleterious to the public welfare to allow to accumulate or to leave or allow to remain on lots or parcels of land within the town, junk, trash, rubbish, refuse, garbage, waste materials, tires, parts of motor vehicles, construction materials, wheels, metal, plumbing fixtures or debris. Provided, this section shall not apply to uses specifically permitted by zoning or special use permits.

Such nuisances may be abated or removed by the Town Council, the Town Superintendent or any other delegated officer or employee. Written notice of the nuisance with an order for its abatement or removal shall be given to the owner or occupant of the property on which the nuisance exists. If the nuisance has not been abated or removed within 30 days of the notice the town may go upon the property and abate or remove it charging the cost to the owner, occupant, or both. The costs shall be collected in the same manner as the local real estate tax. Mailing of the notice to the owner at the address shown on the town's records and to the occupant at the street address shall constitute compliance with the requirements of this ordinance. Enforcement of this ordinance shall not exclude the town's right to proceed under other civil or criminal remedies. (See Code of Virginia § 15.2-1115). (Enacted April 5, 1999).

Part 5
Summons

§ 1-54. Summons.

- (a) Whenever any person is detained by or is in the custody of an arresting officer for violation of a town ordinance punishable as a misdemeanor or traffic infraction, such officer shall, except as otherwise provided in this section, take the name and address of such person and the license number of his or her motor vehicle, if any, and issue a summons or otherwise notify him or her 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. Such officer shall release such person from custody upon the giving by such person of a written promise to appear at such time and place. Any person refusing to give such promise to appear shall be taken immediately by the arresting officer before the nearest or most accessible magistrate. Any person who willfully violates such written promise to appear, given in accordance with this section, shall be guilty of a class 1 misdemeanor.
- (b) Notwithstanding the provisions of paragraph (a), as to
- (1) any person charged with an offense causing or contributing to an accident resulting in the injury or death of any person,
 - (2) any person charged with reckless driving or driving under the influence of intoxicants,
 - (3) any person who the arresting officer has good cause to believe has committed a felony, or
 - (4) any person whom the officer has reason to believe may disregard a summons issued hereunder,

the arresting officer may, in his discretion, take such person forthwith before the nearest or most accessible magistrate.

(See Code of Virginia, §§ 19.2-74 and 19.2-82).

Part 6
Weapons and Explosives

§ 1-55. Discharging Firearms. If any person willfully discharges a firearm in any street or in any place of public business or public gathering within the town, he shall be guilty of a class 1 misdemeanor; provided, this section shall not apply to any law enforcement officer in the performance of his official duties nor to any other person whose said willful act is otherwise justifiable or excusable at law in the protection of his life or property or is otherwise specifically authorized by law. (See Code of Virginia, § 18.2-280). (Amended April 5, 1999).

§ 1-56. Airguns, Slingshots, and Other Instruments for Projecting Missiles. Any person using, within the town, any instrument for projecting missiles, including, but not limited to airguns, BB guns, slingshots, grit shooters, and bows and arrows shall be guilty of a class 4 misdemeanor; provided, this section shall not apply to archery ranges of colleges or schools. (See Code of Virginia, § 15.2-916).

§ 1-57. Fireworks. Any person who transports, manufactures, sells, or offers for sale, a firecracker, torpedo, skyrocket, or other substance or thing of whatever form or construction commonly known as fireworks, without a permit, shall be guilty of a class 1 misdemeanor, except that any person who purchases, stores, transports, ignites, or explodes such items as a part of a personal or family celebration, shall be guilty of a class 3 misdemeanor. This section shall not apply to members of the armed forces acting within the scope of their duties, to persons using such materials for emergency signaling, or to persons involved in the operation of a railroad. This section shall not apply to the use or sale of sparklers, fountains, pharaoh's serpents, caps for pistols, or to pinwheels or whirligigs so long as such fireworks are ignited or exploded on private property with consent of the owner thereof. The Town Superintendent or other delegated officer shall have authority to issue permits for lawful fireworks exhibitions to be held by benevolent or fraternal groups, clubs, associations or organizations. (See Code of Virginia, §§ 15.2-1113, 15.2-2029 and 59.1-142 et seq.).

CHAPTER 2
Fire Prevention

§ 1-58. Accumulation of Combustible Materials. No person shall permit any waste, paper, straw, litter, weeds, or any other combustible material to accumulate on property owned or occupied by him in such a manner as to create an unreasonable risk of fire. (See Code of Virginia, §§ 15.2-1113 and 15.2-1115).

§ 1-59. Defective Chimneys, Etc. No person shall permit a chimney, roof, or stove pipe to be in such condition as to create an unreasonable risk of fire. (See Code of Virginia, §§ 15.2-1113 and 15.2-1115).

§ 1-60. Carrying of Open Flames. No person shall ignite any open flame in or carry open flame into a building where combustible materials are stored openly. (See Code of Virginia, § 15.2-1118).

§ 1-61. Open Fires. No open fires shall be kindled within 50 feet of any building; nor shall any open fire be left unattended. This section shall not be construed as authorization for the starting of any fire. (See Code of Virginia, § 15.2-1118). (Amended December 9, 2013.)

§ 1-62. Fires in Containers. No fire in an approved container may be kindled or maintained within 25 feet of any structure or property line. This section shall not be construed as authorization for the starting of any fire. (See Code of Virginia, § 15.2-1118).

§ 1-63. Deposit of Materials Likely to Cause Fires. No person shall deposit hot ashes, smoldering coals, any flammable petroleum based material, or any other material likely to create or support a spontaneous ignition near

any combustible material so as to create an unreasonable risk of fire. (See Code of Virginia, §§ 15.2-1113 and 15.2-1115).

§ 1-64. Flammable Decorations. Cotton batting, straw, dry vines, leaves, trees, celluloid, paper, or other readily flammable materials shall not be used for decorative purposes in show windows, stores, or any place of assembly unless such materials shall have first been treated and rendered flame-proof; provided, however, that nothing in this section shall be held to prohibit the display of saleable goods permitted and offered for sale in stores. Electric light bulbs in stores and in any place of assembly shall not be decorated with paper or other combustible materials unless such papers or materials shall first have been rendered flame-proof. (See Code of Virginia, §§ 15.2-1113 and 15.2-1115).

§ 1-65. Penalties. Any violation of this chapter shall constitute a class 2 misdemeanor and be punished in accordance with Section 4 of this title.

CHAPTER 3 **Animals**

§ 1-66. Cruelty to Animals. Any person who

- (a) (1) overrides, overdrives, overloads, tortures, ill-treats, abandons, willfully inflicts inhumane injury or pain not connected with a bona fide scientific or medical experiment on any animal; or
- (2) cruelly or unnecessarily beats, maims or willfully deprives any animal of necessary substance, food, drink, or shelter; or
- (3) causes any of the above things, or being the owner of such animal permits such acts to be done by another, or
- (b) willfully instigates, engages in, or in any way furthers any act of cruelty to any animal; or
- (c) carries or causes to be carried in or upon any vehicle any animal in a cruel, brutal, or inhumane manner, so as to produce torture or unnecessary suffering

shall be guilty of a class 1 misdemeanor.

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

Nothing in this section shall be construed to prohibit the dehorning of cattle. (See Code of Virginia, § 3.1-796.122).

§ 1-67. Fighting Cocks, Dogs or Other Animals. Any person engaged in the fighting of cocks, dogs, or other animals, for money, prize, or anything of value, upon the result of which any money or other thing of value is bet or wagered or to which an admission fee is charged, directly or indirectly, for any championship, shall be guilty of a class 3 misdemeanor. Attendance at the fighting of cocks, dogs or other animals where an admission fee is charged, directly or indirectly, shall also constitute a class 3 misdemeanor. (See Code of Virginia, §§ 3.1-796.124 and 3.1-796.125). (Amended April 5, 1999).

§ 1-68. Running at Large.

- (a) No person shall permit any fowl or dog to be at large within the corporate limits of the town. For the purposes of this section, an animal may be deemed to be at large whenever it is off the property of its owner or custodian, and not under its owner's or custodian's immediate control.
- (b) Any owner or custodian violating paragraph (a) of this section shall be guilty of a class 3 misdemeanor and punished in accordance with § 1-4 of the town code.

(See Code of Virginia, § 3.1-796.93).

§ 1-69. Enforcement by County Animal Warden. The animal warden of Rockingham County is authorized to enforce all dog laws applicable within the town. (See Code of Virginia, § 3.1-796.104).

CHAPTER 4
Fowl, chickens and other domestic birds

§ 1-70. Legislative Intent. It is the purpose of this Chapter to regulate all fowl, chickens and other domestic birds within the corporate limits of the Town of Dayton to prevent the transmission of disease to the poultry industry and others, and to ensure that such uses do not disturb adjoining property owners.

§ 1-71. Definitions. Fowl is defined as any of various domestic birds by way of example but not limited to: chickens, roosters, ducks, geese, turkeys, guinea fowl, emus, rheas, ostriches, pigeons and pheasants.

§ 1-72. Domesticated Fowl Unlawful Except as Specifically Provided. It shall be unlawful for any person to keep, permit or allow any domesticated Fowl within the corporate limits of the Town, or to allow any domesticated Fowl to run at large within the corporate limits of the Town, except as specifically permitted below, and except as permitted by Chapter 11.1 of the A-1 Agricultural District and as permitted with special use permit in Chapter 12.1 of the A-2 Agricultural District. This Chapter shall not apply to indoor birds, such as, but not limited to, parrots or parakeets, or to the lawful transportation of Fowl through the corporate limits of the Town.

§ 1-73. Chickens Allowed with Permit Only and In Compliance with All Town Conditions. It shall only be lawful for a person to keep, permit or allow chickens within the corporate limits of the Town on residential property only, under the following terms and conditions:

- (1) No more than four chicken hens shall be allowed for each single-family dwelling. No chickens shall be allowed on townhouse, duplex, apartment or manufactured housing park properties. Chickens allowed under this section shall only be raised for domestic purposes and no commercial use such as selling eggs or selling chickens for meat shall be allowed. All such chickens shall be purchased from a licensed facility and proof thereof shall be provided to the Town upon request.
- (2) Each single-family dwelling shall contain at a minimum one-quarter acre of land.
- (3) No roosters shall be allowed.
- (4) There shall be no outside slaughtering of birds.
- (5) All chicken hens must be kept at all times in an enclosed secure movable or stationary pen that contains at a minimum four square feet per bird. Adequate shelter in a covered area shall be required.

- (6) All enclosed pens must be situated at least twenty-five feet from adjoining property lines and at least two hundred feet from any poultry processing and or related facilities and shall not be located in a storm drainage area that would allow fecal matter to enter any Town storm drainage system or stream.
- (7) All enclosed pens must be kept in a neat and sanitary condition at all times, and must be cleaned on a regular basis so as to prevent offensive odors. Once a permit is obtained pursuant to this section, the permittee agrees to semi-annual inspections by the Town, its agent, or the Virginia Department of Agriculture and Consumer Services veterinarians.
- (8) All feed for the chickens shall be kept in a secure container or location to prevent the attraction of rodents and other animals.
- (9) Chicken litter and waste shall not be deposited in any trash container that is collected by any public or private waste collector and shall be disposed of by composting either on site or at the county landfill in accordance with the applicable permit. Also any dead bird shall not be deposited in any trash container that is collected by any public or private waste collector but shall be taken to the county landfill.
- (10) Persons wishing to keep chicken hens pursuant to this subsection must file an application with the Town, which application shall include a sketch showing the area where the chickens will be housed and the types and size of enclosures in which the chickens shall be housed. The sketch must show all dimensions and setbacks. Once the site and enclosures have been inspected and approved by the Town Zoning Administrator, a permit shall be issued by the Town Zoning Administrator, which permit shall be valid for one year. Each existing permit must be renewed annually by filing a renewal application with the Town and by having the Town Zoning Administrator make another inspection of the site.

§ 1-74. Violations. Any person found guilty of violating this Chapter shall be guilty of a Class 3 misdemeanor and subsequent violations of this Chapter by the same person shall constitute a Class 2 misdemeanor.

TITLE 2

TOWN OF DAYTON

TRAFFIC AND STREETS; MOTOR VEHICLE LICENSES

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Section

- 2-1. Severability of Title.
- 2-2. Repeal.

CHAPTER 2 *Traffic* *Part 1* *Application and Effect of Chapter*

- 2-3. Authority.
- 2-4. Application of Title.
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Part 2 *Authority and Adoption of State Law*

- 2-6. Adoption of State Law.

Part 3 *Rules of the Road*

- 2-7. Vehicles Entering Through Street Intersection.
- 2-8. Limitations on Backing.
- 2-9. Opening Door of and Entering and Emerging from Vehicle.
- 2-10. Stop when Traffic Obstructed.
- 2-11. Slow Moving Traffic.
- 2-12. Driving on Left Side of Road.
- 2-13. Stop Before Entering Public Highway or Sidewalk from Priv. Road, Yielding Right-of-Way.
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CHAPTER 1
Enactment and General

§ 2-1. Severability of Title. If any part or parts of this title are, for any reason, held to be invalid or unconstitutional, such holding shall not affect the validity or constitutionality of the remaining portions of this title. The Council hereby declares that it would have passed this title and each part or parts hereof, irrespective of the fact that any one part or parts be declared invalid or unconstitutional.

§ 2-2. Repeal. All other former traffic, street and motor vehicle license ordinances of this municipality are hereby repealed and all ordinances or parts of ordinances in conflict with or inconsistent with the provisions of this title are hereby repealed, except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this title.

CHAPTER 2
Traffic

Part 1
Application and Effect of Title

§ 2-3. This title is enacted pursuant to the authority vested in the town by §§ 15.2-101, 15.1-839, 15.2-1102, 46.2-1300 through 46.2-1305 and 46.2-1306.1 through 46.2-1313 of the Code of Virginia, and § 1 of the Charter of the Town of Dayton. Sections of this title may have additional authority as well. (Amended April 5, 1999).

§ 2-4. Application of Title. This title applies to every street, alley, sidewalk, driveway, park area, and every other way, within the corporate limits of this municipality, the use of which the municipality has the authority to regulate. (Amended April 5, 1999).

§ 2-5. Uniformity of Interpretation Between This Title and the Laws of the Commonwealth of Virginia. It is the purpose of this title that its provisions should adopt and make applicable to this municipality the laws of the Commonwealth of Virginia relating to the subjects for which provision is made herein, in order that uniformity of application and interpretation may be attained. No application or interpretation of this title, regardless of the wording of any section of this title, shall deviate from that uniformity of application and interpretation between comparable provisions of this title and the laws of the Commonwealth of Virginia, except where such deviation is required by differing governmental or administrative requirements.

Part 2
Authority and Adoption of State Law

§ 2-6. Adoption of State Law. All of the provisions of Title 46.2, and of Article 9 of Chapter 11 of Title 16.1 (§ 16.1-278 *et seq.*), and of Article 2 of Chapter 7 of Title 18.2 (§ 18.2-266 *et seq.*) of the Code of Virginia, 1950, as amended, other than those provisions thereof which plainly have no application within the Town, are incorporated by reference into this Chapter. Reference therein to “highways of the state” shall be deemed to include streets, highways, public parking lots and alleys within the Town. The mention of specific state law provisions does not preclude the incorporation of unmentioned provisions. Nevertheless, to the extent that § 15.2-1429 of the Code of Virginia prohibits the Town from incorporating those provisions of § 18.2-270 which provide for penalties greater than those for a class one misdemeanor, such provisions are not incorporated. (See Code of Virginia, § 46.2-1313). (Amended February 4, 1991; amended April 5, 1999; amended August 2, 2010; amended July 11, 2011, readopted July 9, 2012; amended and readopted July 8, 2013).

Part 3
Rules of the Road
(See Generally Code of Virginia, § 46.2-1300.)

§ 2-7. **Vehicles Entering Through Street Intersection.** The driver of a vehicle shall stop at the entrance to a through street and shall yield the right-of-way to other vehicles which have entered the intersection from the through street or which are approaching so closely on the through street as to constitute a hazard.

§ 2-8. **Limitations on Backing.** The driver of a vehicle shall not back the vehicle unless such movement can be made with reasonable safety and without interfering with other traffic, and shall, in every case, yield the right-of-way to all moving traffic and also to pedestrians.

§ 2-9. **Opening Door of and Entering and Emerging From Vehicle.** No person shall open the door of, or enter or emerge from any vehicle in the path of any approaching vehicle unless such action be taken with due regard for safety of persons and property.

§ 2-10. **Stop When Traffic Obstructed.** No operator of a vehicle shall enter an intersection or a marked crosswalk unless there is sufficient space beyond the intersection or crosswalk in the direction in which the vehicle is proceeding to accommodate the vehicle without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic-control signal indication to proceed.

§ 2-11. **Slow Moving Traffic.** No person shall drive any vehicle upon a highway in this town at such speed as to unnecessarily block, hinder, or retard the orderly and safe use of the highway or so as to cause congestion on the highway, provided that such speed is less than the prescribed maximum speed limit.

§ 2-12. **Driving on Left Side of Road.** Except as otherwise provided by law, on all highways of sufficient width, the driver of the vehicle shall drive on the right half of the highway, unless it is impractical to drive on such side of the highway, except for overtaking and passing another vehicle, subject to the provisions applicable to overtaking and passing as set forth in § 46.2-837 et seq. of the Code of Virginia. (See Code of Virginia, § 46.2-802). (Amended April 5, 1999).

§ 2-13. **Stop Before Entering Public Highway or Sidewalk From Private Road, Yielding Right-of-Way.** The driver of a vehicle entering a public highway or sidewalk from a private road, driveway, alley, or building shall stop immediately before entering such highway or sidewalk and yield the right-of-way to vehicles approaching on such public highway and to pedestrians or vehicles approaching on such public sidewalk.

The provisions of this section shall not apply to an intersection of public and private roads controlled by a traffic signal. At any such intersection, all movement of traffic into and through the intersection shall be controlled by the traffic signal. (See Code of Virginia, § 46.2-826). (Amended April 5, 1999).

§ 2-14. **Left Turns.** No person shall make a left turn without passing to the right of the center of the intersection, except as otherwise provided. (See Code of Virginia, § 46.2-846).

§ 2-15. **Right Turns.** No person shall make a right turn without keeping as close to the curb as is reasonably and safely possible. (See Code of Virginia, § 46.2-846).

§ 2-16. **Lights.** No person shall fail or refuse to control the lights of a vehicle by shifting, depressing, tilting or dimming the headlight beams thereof so as not to project, into the eyes of the driver of any oncoming vehicle, a glaring or dazzling light. (See Code of Virginia, § 46.2-1034).

§ 2-17. **Fire Hoses.** No person shall drive over any unprotected hose of a fire department when laid down on any street, highway or private driveway, to be used at any fire, or fire drill, or practice drill, without the consent of

the Fire Department Officers in command.

§ 2-18. Following Fire Trucks. No person shall follow at closer than 500 feet of any fire apparatus traveling in response to a fire alarm or park closer than 500 feet to a fire apparatus answering an alarm, unless such following or parking is done in furtherance of official business.

§ 2-19. Supplemental Speed Limit. Those roadways under the jurisdiction of the Town of Dayton shall have the following maximum speed limits (except where an already lawfully established special limit differs from this section): (a) twenty-five miles an hour when passing a school during recess or while children are going to or leaving school; (b) thirty miles an hour in a business or residential district; (c) thirty-five miles an hour elsewhere in the town; provided, however, the Town Superintendent, on all highways or streets maintained by the town, may increase or decrease the speed limits within its boundaries, provided such areas or points are clearly indicated by markers or signs and such designated speed is based upon an engineering and traffic investigation. Additionally, the Town Superintendent may reduce speed limits, without an engineering and traffic investigation, for a period not to exceed 60 days, in areas where the street or highway is under construction. (See Code of Virginia, § 46.2-1300).

Part 4
Parking, Stopping and Standing Regulations
(See Generally Code of Virginia, § 46.2-1220)

§ 2-20. Angle-Parking Signs or Markings. Upon those streets which have been signed or marked by the Chief of Police or other designated officer for angle parking, no person shall stop or park a vehicle other than at the angle to the curb or edge of the roadway indicated by such signs or markings. (Amended April 5, 1999).

§ 2-21. Parking Vehicles With No State License. It shall be unlawful to park any vehicle having no state license on any street.

§ 2-22. Manner of Parking Generally. Except upon highways designated by the Chief of Police (or other officer designated by the council) as one-way streets, no vehicle shall be stopped except close to and parallel to the right hand curb or edge of the roadway unless otherwise provided by rules and regulations made and promulgated by such designated officer; and upon highways designated by such officer as one-way streets, no vehicle shall be stopped except close to and parallel to either curb unless otherwise provided by rules and regulations or made and promulgated by such officer. With respect to parallel parking, the front and rear wheels of the vehicle nearest the curb shall not be more than twelve (12) inches from the curb or edge of the roadway and the front and rear of the vehicle shall not be closer than two (2) feet to other parked vehicles. No person having control or charge of a motor vehicle shall allow such vehicle to stand on any highway unattended without first effectively setting the handbrake, cutting off and locking the ignition, and turning the front wheels into the curb or side of the highway.

§ 2-23. Parking Rules and Regulations Promulgated by Chief of Police or Other Designated Officer. The Chief of Police or other officer designated by the council is hereby authorized and directed to make, promulgate, and enforce rules and regulations for the parking or stopping of vehicles upon the highways; to classify vehicles with reference to parking or stopping; to designate the time, length of time, the place and the manner such vehicles may be allowed to park or stop on the highways; to designate areas for bus stops, taxicab stands, and loading zones; and to revoke, alter or amend such rules and regulations at any time when, in his opinion, traffic conditions and use of the highways require. It shall be unlawful for any person to fail, refuse or neglect to observe and comply with any such rule or regulation made and promulgated by such designated officer; provided, however, no such rule or regulation shall be deemed to have been violated unless appropriate and adequate signs, markers, or other devices are erected to inform ordinarily observant persons using the highway of such rule or regulation. Such signs, markers or other devices shall be so placed that they may be readily seen.

§ 2-24. Stopping or Parking Prohibited in Specified Places. No person shall stop, stand or 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:

- (a) On a sidewalk;
- (b) In front of a public or private driveway;
- (c) Within an intersection;
- (d) Within 15 feet of a fire hydrant; (See Code of Virginia, § 46.2-1306);
- (e) On a crosswalk;
- (f) Within 20 feet of a crosswalk at an intersection;
- (g) Within 30 feet of any flashing traffic beacon, stop sign, or traffic-control signal;
- (h) Within 15 feet of the driveway entrance to any fire or rescue squad station, and when so posted, on the side of a roadway opposite the entrance to any fire station, within 75 feet of the entrance; (See Code of Virginia, § 46.2-1239).
- (i) Along side or opposite any street or highway excavation or obstruction when such stopping or parking would obstruct traffic;
- (j) On the roadway side of any vehicle, stopped or parked, at the edge or curb of a street;
- (k) At any place where official signs prohibit stopping or parking.

§ 2-25. *Parking Not to Obstruct Traffic.* No person shall park any vehicle upon a street, in such a manner or under such conditions as to leave available less than 10 feet of the width of any roadway for free movement of vehicular traffic. (Amended April 5, 1999).

§ 2-26 *Stopping, Standing or Parking in Alleys.*

- (a) No person shall stop or park a vehicle within an alley in a business district except for the expeditious loading or unloading of materials.
- (b) No person shall stop, stand or park a vehicle within an alley in such position as to block the driveway or entrance to any abutting property.

(Amended April 5, 1999).

§ 2-27. *Parking for Certain Purposes Prohibited.* No person shall park a vehicle upon any street or within any municipal parking lot for the principal purpose of:

- (a) Displaying such vehicle for sale;
- (b) Washing, greasing, or repairing such vehicle, except repairs necessitated by an emergency;
- (c) Displaying advertising;
- (d) Selling merchandise from such vehicle except in a duly established marketplace, or when so authorized or licensed under the ordinances of this municipality;

- (e) Storage, or as junkage or dead storage, for more than 72 hours.

§ 2-28. Stopping or Parking in Loading Zones.

- (a) Except as specified in paragraph (b) of this section, no person shall stop or park a vehicle for any purpose or length of time other than for the expeditious unloading or loading of materials, in any place marked as a loading zone during hours when the provisions applicable to such zones are in effect.
- (b) The driver of a vehicle may stop temporarily at a place marked as a loading zone for the purpose of and while actually engaged in loading or unloading passengers, when such stopping does not interfere with any motor vehicle used for the transportation of materials which is waiting to enter or about to enter such zone.

§ 2-29. Stopping or Parking in Restricted Parking Zone. No person shall stop or park a vehicle, for any purpose or length of time, in any restricted parking zone other than for the purpose to which parking in such zone is restricted, except that a driver of a passenger vehicle may stop temporarily in such zone for the purpose of and while actually engaged in loading or unloading of passengers when such stopping does not interfere with any vehicle which is waiting to enter or about to enter the zone for the purpose of parking in accordance with the purpose to which parking is restricted.

§ 2-30. Parking of Commercial Vehicles Near Residences. It shall be unlawful for the owner, operator, or driver of any motor vehicle of over three-fourths-ton capacity to park such vehicle or to permit it to be parked on any street, alley, or other public way in the town for longer than 30 minutes in the following areas: (1) any areas zoned for residential use or (2) in front of or adjacent to any portion of any lot upon which any residence is constructed. The provisions of this section shall not apply to any vehicle while actually engaged in loading or unloading.

Part 5

Supplemental Traffic Control Regulations

§ 2-31. Obedience to Police and Fire Department Officials. No person shall willfully fail or refuse to comply with any lawful order or direction of any police officer, or member of the fire department at the scene of a fire, who is invested by law or ordinance with authority to direct, control, or regulate traffic. (See Code of Virginia, §§ 46.2-1220, 46.2-1300.)

§ 2-32. Obedience to Official Traffic-Control Devices. No driver of a vehicle shall disobey the instructions of any traffic-control device placed in accordance with the provisions of the ordinances of this municipality, unless at the time otherwise directed by a police officer. (See Code of Virginia, §§ 46.2-1220, 46.2-1300.)

§ 2-33. (Repealed April 5, 1999.)

§ 2-34. Traffic Control Signs and Regulations. The Chief of Police or other officer designated by the council is authorized to erect and maintain such appropriate signs, markers, semaphores, signals or other devices as may be deemed necessary by him to enforce any rules and regulations concerning vehicular traffic and travel upon highways by pedestrians, and to execute the provisions of this chapter.

§ 2-35. When Traffic Devices Required for Enforcement Purposes. No provision of this chapter for which signs or markings are required shall be enforced against an alleged violator, if, at the time and place of the alleged violation, an official sign or marking is not in proper position and sufficiently legible to be seen by an ordinarily observant person.

Part 6
Supplemental Bicycle Regulations
(See Generally Code of Virginia, § 46.2-1300.)

§ 2-36. Obedience to Traffic-Control Devices:

- (a) All persons operating a bicycle shall obey the instructions of official traffic-control signals, signs and other control devices applicable to vehicles, unless otherwise directed by a police officer.
- (b) Whenever authorized signs are erected indicating that no right, or left, or U turn is permitted, no persons operating a bicycle shall disobey the direction of any such signs, except where such persons dismount from the bicycle to make any such turn, in which event such person shall then obey the regulations applicable to pedestrians.

§ 2-37. Parking. Every person who shall stand or park a bicycle upon a street shall do so in such a manner as to afford the least obstruction to pedestrian traffic. (See Code of Virginia, § 46.2-1220).

§ 2-37.1. Unlawful to Operate Bicycle While Using Earphones. It shall be unlawful for any person to operate a bicycle while using earphones on or in both ears. For the purposes of this section, earphones shall mean any device worn on or in both ears which converts electrical energy to sound waves or which impairs or hinders the person's ability to hear, but shall not include any prosthetic device which aids the hard-of-hearing. Any person violating this section shall be guilty of a class 4 misdemeanor. (See Code of Virginia, § 46.2-1078). (Enacted April 5, 1999).

Part 7
Miscellaneous Regulations
(See Generally Code of Virginia, § 46.2-1300.)

§ 2-38. School Bus Stopping. Every school bus shall stop as far to the right off the street as possible before discharging or loading passengers and, when possible, shall not stop where the visibility is obscured for a distance of 200 feet either way from the bus. (See Code of Virginia, § 46.2-893).

§ 2-38.1. Passing Stopped School Buses; Penalty. The driver of a motor vehicle approaching from any direction of a clearly marked school bus which is stopped on any highway or school driveway for the purpose of taking on or discharging children, the elderly, or mentally or physically handicapped persons, who fails to stop and remain stopped until all such persons are clear of the highway or school highway, shall be subject to a civil penalty of \$250 and any such prosecution shall be instituted and conducted in the same manner as prosecutions for traffic infractions. A prosecution or proceeding under this section shall be a bar to a prosecution or proceeding for the same act under § 46.2-859 of the Code of Virginia and vice versa.

In any prosecution for which a summons charging a violation of this section was issued within 10 days of the alleged violation, proof that the motor vehicle described in the summons was operated in violation of this section, together with proof that the defendant was at the time of such violation the registered owner of the vehicle, as required by Chapter 6 (§ 46.2-600 et seq.) of the Code of Virginia, shall give rise to a rebuttable presumption that such registered owner of the vehicle was the person who operated the vehicle at the place where, and for the time during which, such violation occurred. (See Code of Virginia § 46.2-844). (Enacted April 5, 1999).

§ 2-39. Driving Through Funeral or Other Procession. No operator of a vehicle shall drive between the vehicles, persons, or animals comprising a funeral or other authorized procession when such procession vehicles

are properly identified by pennants or other authorized insignia and while such funeral or procession is in motion except when otherwise directed by a police officer.

§ 2-40. Drivers and Participants in a Procession. All vehicles comprising a funeral or other procession shall proceed as near to the right-hand edge of the roadway as practicable and shall follow the preceding vehicles in such procession as closely as is practicable and safe.

§ 2-41. When Permits Required for Parades, Processions, and Sound Trucks. No funeral or other procession or parade, excepting the forces of the United States Armed Services, the Military Forces of this State, and the forces of the police and fire departments, shall occupy, march, or proceed along any street or roadway except in accordance with a permit issued by the Chief of Police or other officer designated by the council and such other regulations as are set forth herein which may apply. No sound truck or other vehicle equipped with amplifier or loudspeaker shall be driven upon any street for the purpose of selling, offering for sale, or advertising in any fashion except in accordance with a permit issued by the Chief of Police or other designated officer. The Chief of Police shall issue all such permits unless the activity proposed would cause undue inconvenience or annoyance to the townspeople or would present a safety hazard.

§ 2-42. Clinging to Vehicles. No person riding upon any bicycle, moped, motorcycle, motor-driven cycle, coaster, sled, roller skates, or any toy vehicle shall attach the same or himself to any vehicle upon any street.

§ 2-43. Escape of Vehicle Contents. No vehicle shall be operated or moved on any highway unless such vehicle is so constructed as to prevent its contents from dropping, sifting, leaking or otherwise escaping therefrom. (See Code of Virginia, §§ 15.2-1102 and 46.2-1300).

§ 2-44. Depositing Glass or Other Harmful Substance on Highway. No person shall throw, place, or cause to be placed upon any highway any glass bottle, glass, nails, tacks, wire, cans, or any other substance likely to injure any person, animal or vehicle. Any person dropping such material on any highway shall immediately remove or cause the same to be removed, and any person removing a wrecked or damaged vehicle from a highway shall remove any glass or other injurious substance dropped upon the highway from such vehicle.

§ 2-45. Railroad Cars Obstructing Street or Road; Standing Vehicle on Railroad Track. It shall be unlawful for any railroad company, or any receiver or trustee operating a railroad, to obstruct, for a longer period than five 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. A passway shall be kept open to allow normal flow of traffic. Provided, however, that when a train has been uncoupled, so as to make a passway, the time necessarily required, not exceeding three 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; nor shall it be lawful to stand any wagon or other vehicle on the track of any railroad which will hinder or endanger moving trains. Any such railroad company, receiver or trustee, or driver of any such wagon or vehicle, violating any of the provisions of this section shall be fined not less than \$10.00 nor more than \$500.00.

§ 2-46. Filling of Motor Vehicle Tanks With Gasoline While Motors Are Running. No one shall fill any motor vehicle with gasoline or other fuel while the motor is running, and all operators of motor vehicles shall stop their motors while tanks are being filled with gasoline. (See Code of Virginia, § 15.2-1113).

§ 2-47. Offenses by Persons Owning or Controlling Vehicles. Neither the owner, nor any person employing or otherwise directing the driver of any vehicle, shall require or knowingly permit the operation of such vehicle upon a street of this municipality in any manner contrary to law.

Part 8
Penalties and Supplemental Arrest Procedures

§ 2-48. *Illegal Cancellation of Traffic Citations.* It shall be unlawful for any person to cancel or solicit the cancellation of any traffic citation in any manner other than as provided by this chapter.

§ 2-49. *Disposition of Traffic Fines and Forfeitures.* All fines or forfeitures collected upon a finding of violations of ordinance, or upon the forfeiture of bail of any person charged with violation of any of the provisions of this ordinance, shall be paid into the Municipal Treasury and deposited in the general fund. (See Code of Virginia, § 46.2-1308).

§ 2-50. *Enforcement of Part 4 of Chapter 2.*

(a) All uncontested parking fines shall be paid to and accounted for by the Town Treasurer within 72 hours after the issuance of the parking citation. If payment is not received by that time, a surcharge of five percent (5%) shall be added to the fine.

(b) When a fine is contested, the Chief of Police or other official shall certify the matter to the General District Court of Rockingham County.

(c) The Chief of Police or other official shall cause the appropriate complaints, warrants, or summons to be issued for delinquent parking citations.

(d) Unless otherwise provided in each individual ordinance, the fines for violations of Part 4 shall be five dollars (\$5.00) except for the violation or regulation regarding the maximum length of time which a car may be parked, which shall be one dollar (\$1.00).

(e) The fines for violations of Part 4 shall be as follows:

(1)	Parking in a no parking zone	\$ 5.00
(2)	Parking in a tow away zone	\$ 5.00
(3)	Blocking a private or public driveway	\$ 5.00
(4)	Parking on a yellow line	\$ 5.00
(5)	Parking within 15 feet of a fire hydrant	\$ 20.00
(6)	Parking on the wrong side of the street	\$ 5.00
(7)	Parking in a loading zone	\$ 5.00
(8)	Parking on a sidewalk	\$ 15.00
(9)	Overtime parking	\$ 5.00
(10)	Parking a vehicle with no state tags	\$ 20.00
(11)	Double Parking	\$ 5.00
(12)	Violation of official sign	\$ 10.00
(13)	Blocking traffic	\$ 10.00
(14)	Blocking an emergency entrance	\$ 20.00
(15)	Parking in a handicapped zone	\$ 50.00

(f) In any prosecution charging a violation of an ordinance in Part 3, proof that the vehicle described in the complaint, summons, parking ticket, citation, or warrant, was parked in violation of the ordinance or regulation, together with proof that the defendant was at the time the registered owner of the vehicle, shall constitute in evidence a prima facie presumption that the registered owner of the vehicle was the person who committed the violation. (See Code of Virginia, § 46.2-1220).

(Amended April 5, 1999).

§ 2-51. Violations of this Title: Penalties for Misdemeanors or Other Traffic Violations. Any person convicted of violating any provision of this title for which no other penalty is provided shall be guilty of a traffic infraction, punishable by a fine of not more than two hundred dollars (\$200.00).

If it is found by the judge of a court of proper jurisdiction that the violation of any provision of this title was a serious traffic violation and (i) that such violation was committed while operating a vehicle or combination of vehicles used to transport property that either:

- (a) has a gross vehicle weight rating of 26,001 or more pounds; or
- (b) has a gross combined weight rating of 26,001 or more pounds inclusive of a towed vehicle with a gross weight rating of more than 10,000 pounds, the judge may assess, in addition to any other fines he assessed, a further monetary amount not exceeding \$500.00.

For the purposes of this section, the following offenses, if committed in a commercial motor vehicle, are serious traffic violations:

- 1. driving at a speed of 15 or more miles per hour in excess of the posted speed limits; or
- 2. reckless driving; or
- 3. a violation of a town ordinance related to motor vehicle traffic control arising in connection with a fatal traffic accident; or
- 4. improper or erratic traffic lane change; or
- 5. following the vehicle ahead too closely.

For the purposes of this section, parking, vehicle weight, and vehicle defect violations shall not be considered traffic violations. (See Code of Virginia, §§ 46.2-113 and 46.2-341.20). (Amended April 5, 1999).

§ 2-52. Penalty for Driving Under the Influence of Alcohol. Any person convicted of driving under the influence of alcohol under § 2-6 (incorporating Article 2, Chapter 7 of Title 18.2 of the Code of Virginia) shall be punished in accordance with the analogous state law provision. (See Code of Virginia, § 18.2-270). (Amended April 5, 1999).

§ 2-53. Failure to Comply With Summons. Any person who willfully fails to appear when required to do so by summons issued for a violation of this title shall be fined not less than five dollars (\$5.00), nor more than twenty-five dollars (\$25.00) in addition to the punishment, if any, imposed for the charge for which the summons was issued.

§ 2-54. Separate Offense. Each day that a vehicle is permitted to stop, stand or park in a place, zone, or area in violation of parking regulations shall constitute a separate offense. (See Code of Virginia, § 46.2-1220).

§ 2-55. Overtime Parking, Separate Offenses. Whenever parking is limited to a specified length of time, it shall be a separate offense for each period in excess of that authorized that a vehicle is permitted to stand in the same parking space during the same day; provided, however, that no more than three violations for overtime parking shall be charged against the driver of a vehicle for permitting it to stand in the same parking place during the same day. (See Code of Virginia, § 46.2-1220).

Part 9
Definitions

§ 2-56. Generally. Words and phrases in Chapter 2 shall have the meanings ascribed to them by § 46.2-100 of the Code of Virginia, 1950, as amended, unless the context clearly requires a different meaning. (Amended April 5, 1999).

CHAPTER 3
Streets

§ 2-56.1. Limitation of Chapter. Unless expressly provided to the contrary, the provisions of this chapter shall not apply to any streets, sidewalks, or land within the confines of State Secondary System of highways. This chapter shall apply, however, to any streets, sidewalks, or land which lies beyond the the State Secondary System. Further, this chapter shall apply within the State Secondary System to the extent the Town acts with the concurrence of the Virginia Department of Transportation. (See 1982-1983 Op. Atty. Gen. Va. 272.)

§ 2-57. Paving of Streets. No streets are to be paved at the expense of the town unless agreed to by the council. It shall be unlawful to attempt to grade, pave, light, clean or otherwise improve at the expense of the town, any street hereafter dedicated to the public by the owner of private property, unless the same shall have been accepted by the council and under its direction, laid out by the Town Superintendent or other duly delegated authority.

§ 2-58. Sidewalks.

- (a) The owners of property, in front of which the sidewalks are not paved, shall whenever the Town Council, by ordinance, determines that such sidewalk be paved and upon notice to that effect by the Town Superintendent, pay 50% of the cost of paving to the Town Treasurer.
- (b) If such owner shall neglect, after 30 days notice to him from the Town Superintendent, to pay 1/2 the cost of paving, then 1/2 of the cost of the paving shall be certified by the Town Superintendent to the Town Treasurer, who shall record the same. The Treasurer shall record the name of the owner and street upon which his property abuts, and the frontage of the property on the street. The amount of the landowner's liability (1/2 of the total cost) shall be a lien on property and shall be collected by the Town Treasurer in the same manner that he collects taxes. The notice required by this section may be served on the owner in person, or if he be a non-resident, by mailing to him at his last known address, the notice by registered mail, or by publication in a local newspaper for two successive weeks.

§ 2-59. Notice of Paving. Before the council shall, in accordance with § 2-58, order landowners to pave a sidewalk, the council shall first publish for two weeks in a local newspaper weekly notices inviting all persons interested to appear before the council to be heard on the matter.

§ 2-60. When Permit for Paving Required. No person shall pave a sidewalk within the town without first obtaining a permit from the Town Superintendent. Any permit shall designate the material and foundation to be used, the width of the pavement, and such other matters as may be relevant. The actual paving shall be done under the supervision of the Town Superintendent. Violation of this section shall constitute a class 4 misdemeanor.

§ 2-61. Injury to Sidewalk - Penalty. Any person injuring any sidewalk, shall, when required by the Town Superintendent, pay the Town Treasurer such amount as is estimated by the Superintendent to be necessary to repair the injury. The Superintendent shall then have the sidewalk repaired. If the person causing the injury fails to pay repair costs to the Town Treasurer within 15 days, the costs shall be collected in accordance with § 2-58(b).

§2-62. Excavating in Streets and Sidewalks.

- (a) No person, firm or corporation shall dig up any street, lane, alley, or park for any purpose without

first obtaining written permission therefor from the Town Superintendent.

(b) Any person, firm, or corporation violating this section shall be guilty of a class 4 misdemeanor.

§ 2-63. Warning Lights on Street Obstructions. Any person, firm, or corporation who shall break or dig up any street or deposit any material thereon shall place as many lights as may be necessary to warn passers by of the obstruction in the streets, so long as such breach or obstruction shall remain in the streets. Violation of this section shall constitute a class 3 misdemeanor.

§ 2-64. Snow Removal from Sidewalks. All persons occupying, owning, or having charge of any property within the town shall be required to remove the snow from the entire sidewalk in front of such property, within six daylight hours after the snow has ceased to fall.

If any property owner or tenant fails to clean snow from his sidewalk after six daylight hours from the time snow ceases to fall, the Town Superintendent may have the snow cleaned off and the cost of that cleaning charged to the owner or tenant, such charge to be collected by the Treasurer in any manner provided by law for the collection of state or local taxes.

This section shall apply throughout the Town, within and without the State Secondary System, notwithstanding § 2-56.1. (See Code of Virginia, § 15.2-1115.)

§ 2-65. Removal of Vehicles From Streets During Snowfall. Whenever snow accumulates on any street to a depth of two or more inches, the owners or operators of motor vehicles parked on that street shall remove the vehicles no later than two hours after the snow has accumulated to two inches without waiting for the snow to cease. Any person violating this section shall pay a fine of \$5.00 for each offense.

CHAPTER 4

Motor Vehicle License Tax

§ 2-66. License Tax Imposed By Town. There is imposed by the council of the Town of Dayton, Virginia, a license tax upon every motor vehicle, trailer, and semi-trailer regularly garaged, stored, or parked in the Town of Dayton, and used or intended to be used upon the streets and highways of this town. The term "motor vehicle" includes but is not limited to automobiles, trucks and motorcycles. Any structure designed, used, or maintained primarily to be loaded on or affixed to a motor vehicle to provide a mobile dwelling, sleeping place, office or commercial space shall be considered a part of a motor vehicle. For the purposes of this section, neither a bicycle nor a moped shall be deemed to be a motor vehicle. Moped is defined in this section as it is defined in § 46.2-100 of the Code of Virginia. (See Code of Virginia §§ 46.2-100 and 46.2-752). (Amended April 5, 1999).

§ 2-67. Who Must Procure Town License. Every firm, corporation, partnership or any other business entity or combination thereof or person who owns a motor vehicle, trailer, or semi-trailer which is normally garaged, stored or parked in the Town of Dayton, shall make application for and procure a motor vehicle license from the town. If it cannot be determined where the motor vehicle, trailer, or semi-trailer is normally garaged, stored or parked, the situs shall be the domicile of its owner. In the event the owner of the motor vehicle is a full-time student attending an institution of higher education, the situs shall be the domicile of such student, provided the student has presented sufficient evidence that he has paid a personal property tax on the motor vehicle in his domicile. (See Code of Virginia § 46.2-752). (Amended April 5, 1999).

§2-68. Exceptions. This title shall not apply to:

(a) Motor vehicles, trailers, or semi-trailers owned by a nonresident and used exclusively for pleasure or personal transportation and not for hire or for the conduct of any business or occupation.

- (b) Motor vehicles, trailers, or semi-trailers owned by a nonresident and used for transporting into and within the town for sale in person or by his employees of wood, meats, poultry, fruits, flowers, vegetables, milk, butter, cream, or eggs produced or grown by him, and not purchased by him for sale.
- (c) Motor vehicles, trailers, or semi-trailers owned by an officer or employee of the Commonwealth of Virginia who is a nonresident of the town and who uses the vehicle in the performance of his duties for the Commonwealth under an agreement for such use.
- (d) Motor vehicles, trailers, or semi-trailers kept by a dealer or manufacturer for sale or for sales demonstration.
- (e) Motor vehicles, trailers, or semi-trailers operated by a common carrier of persons or property operating between cities and towns in the Commonwealth of Virginia and not in intra-city transportation or between cities and towns on the one hand and points and places outside cities and towns on the other and not in intra-city transportation. For purposes of this section, the term “common carrier” is defined as it is defined in § 46.2-755 of the Code of Virginia.
- (f) A maximum of one motor vehicle owned and used personally by any veteran who holds a current state motor vehicle registration card establishing that he has received a disabled veteran’s exemption from the Department of Motor Vehicles and has been issued a disabled veteran’s motor vehicle license plate.
- (g) Any daily rental passenger car (as defined in § 58.1-2401 of the Code of Virginia), the rental of which is subject to the tax imposed by § 58.1-2402 A 4 of the Code of Virginia.
- (h) Motor vehicles, trailers, or semi-trailers when a similar tax or fee is imposed by the county, city, or town wherein the vehicle is normally garaged, stored or parked.
- (i) The motor vehicle, trailer, or semitrailer is inoperable and unlicensed pursuant to Code of Virginia § 46.2-734.
- (j) The motor vehicle, tractor or semi trailer is mandatorily exempted from local motor vehicle license tax by state law, once the owner has submitted acceptable documentation that the exemption applies.

(See Code of Virginia, § 46.2-755). (Amended August 13, 2012).

§ 2-69. *Payment of Personal Property Taxes Required.* No motor vehicle, trailer or semi-trailer shall be licensed unless and until the applicant for such license produces before the town treasurer satisfactory evidence that all personal property taxes upon the motor vehicle, trailer or semi-trailer to be licensed have been paid which have been properly assessed or are assessable against the applicant by this town . (See Code of Virginia, § 46.2-752)

§ 2-70. *Record Date; Situs.*

- (a) The license fee is levied and shall be collected from every person owning a motor vehicle, trailer or semi-trailer (“Vehicle”) which is normally garaged, stored or parked within the Town as of the Record Date (excluding Vehicles which are not operated on Town streets during the license year).
- (b) The Record Date is January 1 of the license year.

- (c) 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 for the purpose of imposing this license fee shall be the domicile of the student, provided the student has presented sufficient evidence that he has paid a personal property tax on the Vehicle in his domicile. (Va. Code, § 46.2-752.)

(Enacted August 13, 2012.)

§ 2-71. (Repealed April 15, 2012.)

§ 2-72. *License Year.* The license year for the licensing of vehicles under this Chapter shall commence on January 1 of each year and shall expire on December 31 of the same calendar year. (Amended August 13, 2012.)

§ 2-73. *Amount of Tax.* The amount of such annual license tax shall be as established by the council from time to time.

§ 2-74. *Invoice for license fee; due date.* The Treasurer will charge the license fee prescribed by this chapter for each motor vehicle, trailer, or semi-trailer subject to the license fee. The fee will be due December 5 of the license year. Vehicle owners or lessees, who have served outside of the United States in the armed services of the United States shall have a 90-day grace period, beginning on the date they are no longer serving outside the United States, in which to pay the fee imposed by this Chapter. (Amended August 13, 2012.)

§ 2-75. (Repealed April 15, 2012.)

§ 2-76. *Penalties.*

- (a) If any license fee imposed by this chapter is not paid by the due date, there shall be added to such license fee a delinquent charge of \$10 per vehicle to be assessed and paid along with the license fee.
- (b) Any violation of this chapter—including the failure to obtain the license as required herein—shall be punishable as a Class 4 misdemeanor. (Code of Virginia § 46.2-752(G).)
- (c) The Treasurer is authorized to enter into an agreement with the Commissioner of the DMV under which the Commissioner will refuse to issue or renew any vehicle registration of any applicant who has not paid the license fee required by this section, tangible personal property tax or parking citations. Any fee charged by the Commissioner shall be added to the delinquent tax bill or the amount of the parking citation. (Code of Virginia § 46.2-752(J).)

(See Code of Virginia § 46.2-752.) (Amended August 13, 2012.)

CHAPTER 5

Operation of Golf Carts on Public Highways

§ 2-77 Authority to regulate. Pursuant to § 46.2-916.2 of the Code of Virginia, the Town of Dayton may by ordinance authorize the operation of golf carts on designated public highways within its boundaries, and impose limitations and restrictions on the operation of golf carts upon public highways within the Town of Dayton.

§ 2-78 Definitions. The following terms, wherever used herein, shall have the respective meanings assigned to them unless a different meaning clearly appears from the context:

GOLF CART

A self-propelled vehicle that is designed to transport persons playing golf and their equipment on a golf course.

PUBLIC HIGHWAY

The entire width between the boundary lines of every way or place open to the use of the public for purposes of vehicular travel in the Town of Dayton, including streets, roads, and alleys.

§ 2-79 Required safety equipment. All safety equipment required for inspection under § 2-82 must remain on golf carts at all times when operated on any public highway or town property.

§ 2-80 Golf cart operation. No person shall operate a golf cart on or over any public highway or town property in the Town of Dayton except as provided in this article.

§ 2-81 Designation of Town public highways for golf cart operation; posting of signs. Pursuant to § 46.2-916.2 of the Code of Virginia, the Dayton Town Council may authorize, by ordinance, the operation of golf carts on designated public highways within the Town after: i) considering the speed, volume and character of motor vehicle traffic using such street; and ii) determining that golf cart operation on particular Town public highways is compatible with state and local transportation plans and consistent with the Commonwealth's statewide pedestrian policy. No Town public highway shall be designated for use by golf carts if such golf cart operations will impede the safe and efficient flow of motor vehicle traffic, or if the public highway's speed limit is greater than 25 miles per hour. After considering such factors, the Dayton Town Council has determined that all public highways within the Town limits with a speed limit of 25 MPH or less shall be considered designated for golf cart use.

§ 2-82 Safety inspection.

A. Golf carts shall pass an annual safety inspection conducted by a reputable mechanic. Such safety inspection shall only cover the following items:

- (1) Headlights, tail lights, brake lights and turn signals.
- (2) Rubber or equivalent tires.
- (3) Speed limiter limiting vehicle speed to less than 20 miles per hour.
- (4) Adequate steering gear, brakes, emergency or parking brake, one mirror, adequately fixed driver's seat.
- (5) All other factory installed safety or mechanical systems, including checking for gasoline or propane leaks.

B. Once per year, the owner/operator of the golf cart shall be responsible for obtaining the completion of an inspection certification by a reputable mechanic on a form to be approved by the Town. The owner/operator shall be required to bring the completed inspection

certification, executed by the mechanic, to the Town, along with proof of insurance and proof of payment of the Town's vehicle license tax, and obtain a sticker to be placed in plain view on the driver's side front portion of the golf cart.

§ 2-83 Insurance required. Every golf cart and driver thereof shall be covered by an insurance policy. Such policy shall meet the minimum liability amounts contained in § 46.2-472 of the Code of Virginia, and provide coverage during the operation of the golf cart upon public highways.

§ 2-84 Operation on public highways. It is unlawful to operate a golf cart on a public highway within the Town of Dayton unless the following requirements are met:

- A. No person shall operate a golf cart on a Town public highway unless that public highway is designated for golf cart operations.
- B. No golf cart shall be driven across any public highway where the public highway being crossed has a posted speed limit of more than 25 miles per hour unless the public highway intersection is controlled by a traffic light and has a posted speed limit of no more than 35 miles per hour.
- C. Golf carts shall be operated on public highways only between sunrise and sunset unless equipped with such lights as required in Article 3 (§46.2-1010 *et seq.*) of Chapter 10 of Title 46.2 of the Code of Virginia, for different classes of vehicles.
- D. No person may operate a golf cart on public highways or Town property unless they have in their possession a valid driver's license and then, only in accordance with such driver's license.
- E. Golf carts must be operated in accordance with all applicable state and local laws and ordinances, including all laws, regulations and ordinances pertaining to the possession and use of alcoholic beverages.
- F. Only the number of people the golf cart is designed to seat may ride on a golf cart. Additionally, passengers shall not be carried on the part of a golf cart designed to carry golf bags.
- G. Golf carts shall not be operated on any bicycle trails or sidewalks within the Town limits.
- H. Golf carts shall not be operated on any walking trails and must remain on roadways or parking areas while operated within Town Parks.
- I. Golf carts shall not be operated during inclement weather, for example, snow, sleet, or ice-related conditions; nor when visibility is impaired by weather, smoke, fog or other conditions.
- J. Every golf cart, whenever operated on a public highway, shall display a slow-moving vehicle emblem in conformity with Virginia Code §46.2-1081.
- K. The Chief of Police, or his designee, may prohibit the operation of golf carts on any public highway if the Chief, or his designee, determines that the prohibition is necessary in the interest of safety.

§ 2-85 Exceptions. The limitations set forth in § 2-84 above shall not apply to golf carts being operated to the extent necessary for Town of Dayton employees, operating only upon public highways located within the Town of Dayton, to fulfill a governmental purpose, provided the golf cart is not operated on a public highway with a posted speed limit over 35 miles per hour in accordance with Virginia Code 46.2-916.3B.2.

§ 2-86 Local vehicle license. No golf cart shall be operated on public highways or Town property until the owner has:

- A. Obtained a vehicle license. No vehicle license shall be issued to the owner of the golf cart until the vehicle license fee has been paid to the Town of Dayton.
- B. Presented evidence that the golf cart is insured in accordance with the requirements of § 2-83.
- C. Received and passed an annual safety inspection of the golf cart as required by § 2-82.

§ 2-87 Liability disclaimer. This chapter is adopted to address the interest of public safety. Golf carts are not designed or manufactured to be used on the public highways and the Town of Dayton in no way advocates or endorses their operation on public highways. The Town of Dayton, by regulating such operation, is merely trying to address obvious safety issues, and adoption of this chapter is not to be relied upon as a determination that operation on public highways is safe or advisable if done in accordance with this chapter. All persons who operate or ride upon golf carts on public highways do so at their own risk and peril, and must be observant of, and attentive to, the safety of themselves and others, including their passengers, other motorists, bicyclists, and pedestrians. The Town of Dayton has no liability under any theory of liability and the Town assumes no liability for permitting golf carts to be operated on the public highways under the special legislation granted by the Virginia General Assembly. Any person who operates a golf cart is responsible for procuring liability insurance sufficient to cover the risk involved in using a golf cart on the public highway.

§ 2-88 Violations. Any person convicted of violating any provision of this chapter shall be guilty of a traffic infraction, punishable by a fine of not more than two hundred dollars.

TITLE 3

(Repealed by the passage of superseding provisions, November 4, 1996)

TITLE 3.1

(Enacted November 4, 1996)

LICENSE TAXES

- § 3.1-1. Overriding Conflicting Ordinances.
- § 3.1-2. Definitions.
- § 3.1-3. License Requirement.
- § 3.1-4. Due Dates and Penalties.
- § 3.1-5. Situs of Gross Receipts.
- § 3.1-6. Limitations and Extensions.
- § 3.1-7. Appeals and Rulings.
- § 3.1-8. Recordkeeping and Audits.
- § 3.1-9. Exclusions and Deductions from "Gross Receipts."
- § 3.1-10. License Fee and Tax.

§ 3.1-1. Overriding Conflicting Ordinances. Except as may be otherwise provided by the law of the Commonwealth of Virginia, and notwithstanding any other current ordinances or resolutions enacted by this council, whether or not compiled in the Town Code, to the extent of any conflict, the following provisions shall be applicable to the levy, Assessment, and collection of licenses required and taxes imposed on businesses, trades, professions and callings and upon the persons, firms and corporations engaged therein within the Town.

§ 3.1-2. Definitions. For the purposes of this ordinance, unless otherwise required by the context:

"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:
 - (A) Stock possessing at least eighty percent of the voting power of all classes of stock and at least eighty 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
 - (B) The common parent corporation directly owns stock possessing at least eighty percent of the voting power of all classes of stock and at least eighty 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 or more corporations if five or fewer persons who are individuals, estates or trusts own stock possessing:
 - (A) At least eighty percent of the total combined voting power of all classes

of stock entitled to vote or at least eighty percent of the total value of shares of all classes of the stock of each corporation, and

- (B) More than fifty percent of the total combined voting power of all classes of stock entitled to vote or more than fifty 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.

(Va. Code, § 58.1-3700.1)

- (b) "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 assessing official 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 an assessing official when a written notice of Assessment is delivered to the taxpayer by the assessing official or an employee of the assessing official, 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 ordinance 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. (Va. Code, § 58.1-3700.1)
- (c) "Assessor" or "Assessing Official" means the Town Treasurer.
- (d) "Base Year" means the calendar year preceding the License Year, subject to the provisions of § 3.1- 10(c). (Va. Code, § 58.1-3700.1)
- (e) "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. (Va. Code, § 58.1-3700.1)
- (f) "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.
- (g) "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.

- (h) "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 ordinance.
- (1) "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.
- (2) "Commodity" shall mean staples such as wool, cotton, etc. which are traded on a commodity exchange and on which there is trading in futures.
- (3) "Dealer" for purposes of this ordinance 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.
- (4) "Security" for purposes of this ordinance 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.

Those engaged in rendering Financial Services include, but without limitation, the following:

Buying installment receivables,
Chattel mortgage financing,
Consumer financing,
Credit card Services,
Credit Unions,
Factors,
Financing accounts receivable,
Industrial loan companies,
Installment financing,
Inventory financing,
Loan or mortgage brokers,
Loan or mortgage companies,
Safety deposit box companies,
Security and commodity brokers and Services,
Stockbroker, and
Working capital financing.

(Va. Code, § 58.1-3700.1)

- (i) "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. (Va. Code, § 58.1-3700.1)
- (j) "License Year" means the calendar year for which a license is issued for the privilege of engaging in Business. (Va. Code, § 58.1-3700.1)
- (k) "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 ordinance, or rendered in any other Business or occupation not specifically classified in this ordinance unless exempted from local license tax by Title 58.1 of the Code of Virginia.

- (l) “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 “professional” implies attainments in professional knowledge as distinguished from mere skill, and the application of knowledge to uses for others rather than for personal profit. (Va. Code, § 58,1-3700.1)
- (m) “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 a 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. (Va. Code, § 58.1-3700.1)
- (n) “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 ordinance, and such Services include, but are not limited to, the following:
- Appraisers of real estate,
 - Escrow agents, real estate,
 - Fiduciaries, real estate,
 - Real estate agents, brokers and managers,
 - Real estate selling agents, and
 - Rental agents for real estate,
- (Va. Code, § 58.1-3700.1) (Effective January 1, 2014)
- (o) “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.
- (p) “Services” shall mean things purchased by a customer which do not have physical characteristics, or which are not goods, wares, or merchandise.
- (q) “Wholesale” 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.

§ 3.1-3. License Requirement.

- (a) Every person engaging in the Town in any Business, trade, profession, occupation or calling (collectively hereinafter “a Business”) as defined in this ordinance, unless otherwise exempted by law, shall apply for a license for each such Business if (i) such person maintains a Definite Place of Business in this Town, (ii) such person does not maintain a definite office anywhere but does maintain an abode in this Town, which abode for the purposes of this ordinance shall be deemed a Definite Place of Business, or (iii) 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.
- (b) A separate license shall be required for each Definite Place of Business.
- (c) 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: (i) 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 Town; (ii) 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 (iii) the taxpayer agrees to supply such information as the assessor may require concerning the nature of the several businesses and their Gross Receipts.
- (d) No license shall be required for authorized participants in the Dayton Autumn Celebration, the Dayton Redbud Festival, and the Dayton Fun Day, who have paid any requisite fees to the town. These exceptions apply only to activities directly connected with the celebrations. (Amended September 8, 1997. Amended October 14, 2013.)

(Virginia Code, § 58.1-3703.1(A)(1))

§ 3.1-4. Due Dates and Penalties.

- (a) 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 Town 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 assessing official, (Virginia Code, § 58.1- 3703.1(A)(2)(a))
- (b) 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, or in the case of new businesses, not later than 30 days after beginning business. (Virginia Code, § 58.1-3703.1(A)(2)(b))
- (c) The assessing official 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. (Virginia Code, § 58.1- 3703.1 (A)(2)(c))
- (d) A penalty of ten percent of the tax may be imposed upon the failure to file an application or the failure to pay the tax by the appropriate due date. Only the late filing penalty shall be imposed by the assessing official if both the application and payment are late; however, both penalties may be assessed if the assessing official determines that the

taxpayer has a history of noncompliance. In the case of an Assessment of additional tax made by the assessing official, if the application and, if applicable, the return were made in good faith and the understatement of the tax was not due to any fraud, 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 assessing official is not paid within thirty days the treasurer may impose a ten percent late payment penalty. The penalties shall not be imposed, or if imposed, shall be abated by the official who assessed them, 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.

“Acted responsibly” means that; (i) 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 (ii) 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.

“Events beyond the taxpayers 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 assessing official, who was aware of the relevant facts relating to the taxpayer’s Business when he provided the erroneous information.

(Virginia Code, § 58.1-3703.1 (A)(2)(d))

- (c) Interest 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 assessing official 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 ordinance 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 annual rate of ten percent, or such higher rate as is allowed under Virginia Code, § 58.1-3916.

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 days from (i) the date of the payment that created the refund, or (ii) the due date of the tax, whichever is later.

(Virginia Code, § 58.1-3703.1(A)(2)(a))

§ 3.1-5. *Situs of Gross Receipts.*

- (a) *General rule.* Whenever the tax imposed by this ordinance 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 Town. 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 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, 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 Town 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. (Virginia Code, § 58.1-3703. 1(A)(3)(b))
- (c) *Agreements.* The assessor 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 100% of its Gross Receipts from all locations in the affected jurisdictions, the assessor shall make a good faith effort to reach an apportionment agreement with the other political subdivisions

involved. (Virginia Code, § 58.1-3703.1(A)(3)(c))

§ 3.1-6. Limitations and Extensions.

- (a) Where, before the expiration of the time prescribed for the Assessment of any license tax imposed pursuant to this ordinance, both the assessing official 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. (Virginia Code, § 58.1-3703.1(A)(4)(b), 58.1-3903.1)
- (b) Notwithstanding § 58.1-3903 of the Code of Virginia, the assessing official shall assess the local license tax omitted because of fraud or failure to apply for a license for the current License Year and the six preceding years, provided that no tax shall be assessed for the 1993 License Year or earlier years. (Virginia Code, § 58.1-3703.1(A)(4)(b), 58.1-3703.1 (B)(2)).
- (c) 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 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 § 3.1-7(b) or (d), or two 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. (Virginia Code, § 58, 1- 3703.1 (A)(4)(c))

§ 3.1-7. Appeals and Rulings.

- (a) Definitions. For purposes of this section:

"Amount in dispute," when used with respect to taxes due or assessed, means the amount specifically identified in the administrative appeal or application for judicial review as disputed by the party filing such appeal or application.

"Appealable event" means an increase in the assessment of a local license tax payable by a taxpayer, the denial of a refund, or the assessment of a local license tax where none previously was assessed, arising out of the local assessing official's (i) examination of records, financial statements, books of account, or other information for the purpose of determining the correctness of an assessment; (ii) determination regarding the rate or classification applicable to the licensable business; (iii) assessment of a local license tax when no return has been filed by the taxpayer; or (iv) denial of an application for correction of erroneous assessment attendant to the filing of an amended application for license.

"Frivolous" means a finding, based on specific facts, that the party asserting the appeal is unlikely to prevail upon the merits because the appeal is (i) not well grounded in fact; (ii) not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (iii) interposed for an improper purpose, such as to harass, to cause unnecessary delay in the payment of tax or a refund, or to create needless cost from the litigation; or (iv) otherwise frivolous.

"Jeopardize by delay" means a finding, based on specific facts, that a taxpayer desires to (i) depart quickly from the locality; (ii) remove his property therefrom; (iii) conceal himself or his property; or (iv) do any other act tending to prejudice, or to render wholly or partially ineffectual, proceedings to collect the tax for the period in question.

- (b) Administrative appeals to Treasurer.

- (1) Filing and contents of administrative appeal. Any person assessed with a local license tax as a result of an appealable event as defined in this section may file an administrative appeal of the assessment within one year from the last day of the tax year for which such assessment is made, or within one year from the date of the appealable event, whichever is later, with the Treasurer. The appeal must be filed in good faith and sufficiently identify the taxpayer, the tax periods covered by the challenged assessments, the amount in dispute, the 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 Treasurer may hold a conference with the taxpayer if requested by the taxpayer, or require submission of additional information and documents, an audit or further audit, or other evidence deemed necessary for a proper and equitable determination of the appeal. The assessment placed at issue in the appeal shall be deemed *prima facie* correct. The Treasurer shall undertake a full review of the taxpayer's claims and issue a written determination to the taxpayer setting forth the facts and arguments in support of his decision.
 - (2) Notice of right of appeal and procedures. Every assessment made by the Treasurer pursuant to an appealable event shall include or be accompanied by a written explanation of the taxpayer's right to file an administrative appeal and the specific procedures to be followed in the jurisdiction, the name and address to which the appeal should be directed, an explanation of the required content of the appeal, and the deadline for filing the appeal.
 - (3) Suspension of collection activity during appeal. Provided a timely and complete administrative appeal is filed, collection activity with respect to the amount in dispute shall be suspended until a final determination is issued by the Treasurer, unless (i) the Treasurer determines that collection would be jeopardized by delay as defined in this section; (ii) the taxpayer has not responded to a request for relevant information after a reasonable time; or (iii) the appeal is frivolous as defined in this section. Interest shall accrue in accordance with the provisions of § 3.1-4(e), but no further penalty shall be imposed while collection action is suspended.
 - (4) Procedure in event of nondecision. Any taxpayer whose administrative appeal to the Treasurer has been pending for more than one year without the issuance of a final determination may, upon not less than 30 days' written notice to the Treasurer, elect to treat the appeal as denied and appeal the assessment to the Tax Commissioner in accordance with the provisions of paragraph (c) below. The Tax Commissioner shall not consider an appeal filed pursuant to the provisions of this paragraph (b)(4) if he finds that the absence of a final determination on the part of the Treasurer was caused by the willful failure or refusal of the taxpayer to provide information requested and reasonably needed by the Treasurer to make his determination.
- (c) Administrative appeal to the Tax Commissioner.
- (1) Any person assessed with a local license tax as a result of a determination, upon an administrative appeal to the Treasurer pursuant to paragraph (b), that is adverse to the position asserted by the taxpayer in such appeal may appeal such assessment to the Tax Commissioner within 90 days of the date of the

determination by the Treasurer. The appeal shall be in such form as the Tax Commissioner may prescribe and the taxpayer shall serve a copy of the appeal upon the Treasurer. The Tax Commissioner shall permit the Treasurer to participate in the proceedings, and shall issue a determination to the taxpayer within 90 days of receipt of the taxpayer's application, unless the taxpayer and the Treasurer are notified that a longer period will be required. The appeal shall proceed in the same manner as an application pursuant to Va. Code § 58.1-1821, and the Tax Commissioner may issue an order correcting such assessment pursuant to Va. Code § 58.1-1822.

- (2) Suspension of collection activity during appeal. On receipt of a notice of intent to file an appeal to the Tax Commissioner paragraph under (c)(1) above, collection activity with respect to the amount in dispute shall be suspended until a final determination is issued by the Tax Commissioner, unless the Treasurer (i) determines that collection would be jeopardized by delay as defined in this section; (ii) determines—or is advised by the Tax Commissioner—that the taxpayer has not responded to a request for relevant information after a reasonable time; or (iii) determines that the appeal is frivolous as defined in this section. Interest shall accrue in accordance with the provisions of § 3.1-4(e), but no further penalty shall be imposed while collection action is suspended. The requirement that collection activity be suspended shall cease unless an appeal pursuant to paragraph (c)(1) is filed and served on the necessary parties within 30 days of the service of notice of intent to file such appeal.
- (3) Implementation of determination of Tax Commissioner. Promptly upon receipt of the final determination of the Tax Commissioner with respect to an appeal pursuant to paragraph (c)(1), the Treasurer shall take those steps necessary to calculate the amount of tax owed by or refund due to the taxpayer consistent with the Tax Commissioner's determination and shall provide that information to the taxpayer in accordance with the provisions of this subdivision.
 - (A) If the determination of the Tax Commissioner sets forth a specific amount of tax due, the Treasurer shall issue a bill to the taxpayer for such amount due, together with interest accrued and penalty, if any is authorized by this section, within 30 days of the date of the determination of the Tax Commissioner.
 - (B) If the determination of the Tax Commissioner sets forth a specific amount of refund due, the Treasurer shall issue a payment to the taxpayer for such amount due, together with interest accrued pursuant to this section, within 30 days of the date of the determination of the Tax Commissioner.
 - (C) If the determination of the Tax Commissioner does not set forth a specific amount of tax due, or otherwise requires the Treasurer to undertake a new or revised assessment that will result in an obligation to pay a tax that has not previously been paid in full, the Treasurer shall promptly commence the steps necessary to undertake such new or revised assessment, and provide the same to the taxpayer within 60 days of the date of the determination of the Tax Commissioner, or within 60 days after receipt from the taxpayer of any additional

information requested or reasonably required under the determination of the Tax Commissioner, whichever is later. The Treasurer shall issue a bill to the taxpayer for the amount due, together with interest accrued and penalty, if any is authorized by this section, within 30 days of the date of the new assessment.

- (D) If the determination of the Tax Commissioner does not set forth a specific amount of refund due, or otherwise requires the Treasurer to undertake a new or revised assessment that will result in an obligation on the part of the locality to make a refund of taxes previously paid, the Treasurer shall promptly commence the steps necessary to undertake such new or revised assessment, and provide the same to the taxpayer within 60 days of the date of the determination of the Tax Commissioner, or within 60 days after receipt from the taxpayer of any additional information requested or reasonably required under the determination of the Tax Commissioner, whichever is later. The Treasurer shall issue a refund to the taxpayer for the amount of tax due, together with interest accrued, within 30 days of the date of the new assessment.

(d) Judicial review of determination of Tax Commissioner.

- (1) Judicial review. Following the issuance of a final determination of the Tax Commissioner pursuant to (c), the taxpayer or Treasurer may apply to the appropriate circuit court for judicial review of the determination, or any part thereof, pursuant to Va. Code, § 58.1-3984. In any such proceeding for judicial review of a determination of the Tax Commissioner, the burden shall be on the party challenging the determination of the Tax Commissioner, or any part thereof, to show that the ruling of the Tax Commissioner is erroneous with respect to the part challenged. 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.
- (2) Suspension of payment of disputed amount of tax due upon taxpayer's notice of intent to initiate judicial review.
- (A) On receipt of a notice of intent to file an application for judicial review, pursuant to § 58.1-3984, of a determination of the Tax Commissioner pursuant to paragraph (c), and upon payment of the amount of the tax that is not in dispute together with any penalty and interest then due with respect to such undisputed portion of the tax, the Treasurer shall further suspend collection activity while the court retains jurisdiction unless the court, upon appropriate motion after notice and an opportunity to be heard, determines that (i) the taxpayer's application for judicial review is frivolous, as defined in this section; (ii) collection would be jeopardized by delay, as defined in this section; or (iii) suspension of collection would cause substantial economic hardship to the locality. For purposes of determining whether substantial economic hardship to the locality would arise from a suspension of collection activity, the court shall consider the cumulative effect of then-pending appeals filed within the locality by different taxpayers that allege

common claims or theories of relief.

- (B) Upon a determination that the appeal is frivolous, that collection may be jeopardized by delay, or that suspension of collection would result in substantial economic hardship to the locality, the court may require the taxpayer to pay the amount in dispute or a portion thereof, or to provide surety for payment of the amount in dispute in a form acceptable to the court.
 - (C) No suspension of collection activity shall be required if the application for judicial review fails to identify with particularity the amount in dispute.
 - (D) The requirement that collection activity be suspended shall cease unless an application for judicial review pursuant to Va. Code, § 58.1-3984 is filed and served on the necessary parties within 30 days of the service of the notice of intent to file such application.
 - (E) The suspension of collection activity authorized by this paragraph (d)(2) shall not be applicable to any appeal of a local license tax that is initiated by the direct filing of an action pursuant to § 58.1-3984 without prior exhaustion of the appeals provided by paragraphs (b) and (c).
- (3) Suspension of payment of disputed amount of refund due upon locality's notice of intent to initiate judicial review.
- (A) Payment of any refund determined to be due pursuant to the determination of the Tax Commissioner of an appeal pursuant paragraph (c) shall be suspended if the locality assessing the tax serves upon the taxpayer, within 60 days of the date of the determination of the Tax Commissioner, a notice of intent to file an application for judicial review of the Tax Commissioner's determination pursuant to § 58.1-3984 and pays the amount of the refund not in dispute, including tax and accrued interest. Payment of such refund shall remain suspended while the court retains jurisdiction unless the court, upon appropriate motion after notice and an opportunity to be heard, determines that the locality's application for judicial review is frivolous, as defined in this section.
 - (B) No suspension of refund activity shall be permitted if the locality's application for judicial review fails to identify with particularity the amount in dispute.
 - (C) The suspension of the obligation to make a refund shall cease unless an application for judicial review pursuant to Va. Code § 58.1-3984 is filed and served on the necessary parties within 30 days of the service of the notice of intent to file such application.

(4) *Accrual of interest on unpaid amount of tax.* Interest shall accrue in accordance with the provisions of § 3.1-4(e), but no further penalty shall be imposed while collection action is suspended.

(e) *Rulings.* Any taxpayer or authorized representative of a taxpayer may request a written ruling regarding the application of a local license tax to a specific situation from the Treasurer. Any person requesting such a ruling must provide all facts relevant to the situation placed at issue and may present a rationale for the basis of an interpretation of the law most favorable to the taxpayer. Any misrepresentation or change in the applicable law or the factual situation as presented in the ruling request shall invalidate any such ruling issued. A written ruling may be revoked or amended prospectively if (i) there is a change in the law, a court decision, or the guidelines issued by the Department of Taxation upon which the ruling was based or (ii) the assessor notifies the taxpayer of a change in the policy or interpretation upon which the ruling was based. However, any person who acts on a written ruling which later becomes invalid shall be deemed to have acted in good faith during the period in which such ruling was in effect.

(4/9/2007.)

§ 3.1-8. Recordkeeping and Audits. Every person who is assessable with a license tax shall keep sufficient records to enable the assessor to verify the correctness of the tax paid for the license years assessable and to enable the assessor 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 assessor in order to allow the assessor to establish whether a particular receipt is directly attributable to the taxable privilege exercised within this Town. The assessor 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 Town, copies of the appropriate books and records shall be sent to the assessor's office upon demand. (Virginia Code, § 58.1-3703.1(A)(6))

§ 3.1-9. 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 exercise 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 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 and 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.

§ 3.1-10. License Fee and Tax. Every person or Business subject to licensure under the ordinance shall be assessed and required to pay annually:

- (a) A fee for the issuance of such license in the amount of \$20; and
- (b) Except as may be otherwise provided in § 58.1-3712, 58.1-3712.1 and 58.1-3713 of the Code of Virginia, every such person or Business shall be assessed and required to pay annually a license tax on all the Gross Receipts of such persons includable as provided in this ordinance at a rate set forth below for the class of enterprise listed. However, the fee imposed by paragraph (a) above shall be credited against the tax imposed by this paragraph, so if the fee is greater than the tax, no tax is due.

- (1) For contractors and persons constructing for this own account for sale, \$0.12 per \$100 of Gross Receipts; (See Va. Code, § 58.1-3706)
- (2) For retailers, \$0.15 per \$100 of Gross Receipts; (See Va. Code, § 58.1-3706)
- (3) Lessors of real property are not required to pay license tax because of the act of leasing real property to another. For other providers of financial, real estate and Professional Services, \$0.30 per \$100 of Gross Receipts; (See Va. Code, § 58.1-3706)
- (4) For repair, personal and business Services and all other businesses and occupations not specifically listed or exempted in this ordinance or otherwise by law, \$0.20 per \$100 of Gross Receipts;
- (5) For wholesalers, \$0.05 per \$100 of Purchases;
- (6) For carnivals, circuses and speedways, \$100 for each performance held in this Town;
- (7) For fortune tellers, clairvoyants and practitioners of palmistry, \$1,000 per year;
- (8) For itinerant merchants or peddlers, the greater of \$20 or \$0.15 per \$100 of Gross Receipts with a cap of \$200 per year;
- (9) For savings and loan associations and credit unions, \$50 per year; and
- (10) For persons having no regularly established place of business in this state and who provide photography services consisting of the taking of pictures or the making of pictorial reproductions in the Commonwealth (and every agent or canvasser for such photographer), \$30 per year. (See Va. Code, § 58.1-3728)
- (11) *Alcoholic Beverages.* For persons engaging in the business of manufacturing, bottling, wholesaling, or retailing alcoholic beverages, the following tax schedule applies:
 - (A) For each distiller's license, \$1,000 per year. [No license shall be required of any person distilling not more than 5,000 gallons of spirits in the License Year.];
 - (B) For each winery license, \$1,000 per year;
 - (C) For each brewery license, \$1,000 per year;
 - (D) For each bottler's license, \$500 per year;
 - (E) For each wholesale beer license, \$75 per year;
 - (F) For each wholesale wine distributor's license, \$50 per year;
 - (G) For each wholesale druggist's license, \$10 per year;
 - (H) For each retail on-premises wine and beer license for a hotel, restaurant, or club, \$37.50 per year;
 - (I) For each retail off-premises wine and beer license, \$37.50 per year;
 - (J) For each retail on-premises beer license for a hotel, restaurant or club,

\$25 per year;

(K) For each retail off-premises beer license, \$25 per year;

(L) For each fruit distiller's license, \$1,500 per year;

(M) For each hospital license, \$10 per year;

(N) For each banquet license, \$5 per year;

(See Code of Virginia, § 4-38).

(12) *Coin Operated Amusement and Other Machines.*

(A) For the operators of coin amusement machines, \$200 per year or \$20 per year for each such machine operated within the Town, whichever is less, provided, however, that no tax shall be owed by a person owning fewer than three coin-operated machines and operating such machines on property owned or leased by that person.

(B) In addition to any tax owed under paragraph (b)(12)(A) above, Gross Receipts from machines vending merchandise shall be taxed under paragraph (b)(2) above. Gross Receipts from coin-operated amusement machines shall be taxed under paragraph (b)(4) above.

(13) *Heat, Light, Power and Gas Companies.* For persons furnishing heat, light, power, or gas for domestic, commercial and industrial consumption in the town, the annual license tax shall equal to one half of one percent of the Gross Receipts of such business derived from within the town during the preceding calendar or fiscal year. (See Code of Virginia, § 58.1-3731).

(14) *Telephone Companies.* For persons engaged in the business of providing telephonic communications in the town, the annual license tax shall equal one half of one percent of the Gross Receipts during the preceding year from local telephone exchange service, including flat rate service and message rate service, but excluding long distance telephone calls. (See Code of Virginia, § 58.1-3731).

(c) For purposes of this section, Gross Receipts shall be calculated as of the Base Year, except in the following cases:

(1) *New Businesses.* New businesses shall estimate their Gross Receipts for the License Year, and their tax shall be based on the estimate. On or before March 1 of the following year, they shall correct their estimate. If they underestimated, they shall pay the additional tax owed, without interest, If they overestimated, the Town will credit or refund the overpayment, without interest.

(2) *Businesses in operation for only a portion of the Base Year.* Businesses which were in operation for only a portion of the Base Year shall estimate their Gross Receipts for the License Year, according the same procedures set forth in paragraph (c)(1) above.

(3) *Contractors taxed under § 58.1-3715.* The tax for contractors without a Definite Place of Business in the Town shall be based on Gross Receipts for the License Year.

- (4) *Public Service Corporations.* Corporations taxed under paragraphs (b)(13) or (b)(14) above may elect to pay a license tax based on the preceding fiscal year.

TITLE 4

TOWN OF DAYTON

BANK FRANCHISE TAX

Section

- 4-1. Definitions.
- 4-2. Imposition of Town Bank Franchise Tax.
- 4-3. Filing of Return and Payment of Tax.
- 4-4. Effective Date of Ordinance.
- 4-5. Penalty Upon Bank for Failure to Comply with Ordinance.

§ 4-1. Definitions. For the purpose of this ordinance, the following words shall have the meanings ascribed to them by this section:

- (a) "*Bank*" shall be as defined in Section 58-485.1 of the Code of Virginia.
- (b) "*Net Capital*" shall mean a bank's net capital computed pursuant to Section 58-485.7 of the Code of Virginia.

(Editor's note: § 58-485.1 has been recodified as § 58.1-1201; § 58-485-7 has been recodified as § 58.1-1205)

§ 4-2. Imposition of Town Bank Franchise Tax.

- (a) Pursuant to the provisions of Chapter 10.01 of Title 58 of the Code of Virginia, there is hereby imposed upon each bank located within the boundaries of this town a tax on net capital equalling eighty percentum of the state rate of franchise tax set forth in § 58-485.6 of the Code of Virginia.
- (b) In the event that any bank located within the boundaries of this town is not the principal office but is a branch extension or affiliate of the principal office, the tax upon such branch shall be apportioned as provided by § 58-485.11 of the Code of Virginia.

(Editor's note: Chapter 10.01 of Title 58 has been recodified as Chapter 12 of Title 58.1; § 58-485.6 is now § 58.1-1204; § 58-485.11 is now § 58.1-1211)

§ 4-3. Filing of Return and Payment of Tax.

- (a) On or after the first day of January of each year, but not later than March 1 of any such year, all banks whose principal offices are located within this town shall prepare and file with the Town Treasurer a return as provided by law in duplicate which shall set forth the tax on net capital computed pursuant to Chapter 10.01 of Title 58 of the Code of Virginia. The Town Treasurer shall certify a copy of such filing of the bank's return and schedule and shall forthwith transmit such certified copy to the State Department of Taxation.
- (b) In the event that the principal office of a bank is located outside the boundaries of this town and such bank has branch offices located within this town, in addition to the filing requirements set forth in Section A hereof, any bank conducting such branch business shall file with the Town Treasurer or appropriate assessing officer of this town a copy of the real estate deduction schedule, apportionment and other items which are required by §§ 58-485.12, 58-485.13, and 58-485.14 of the Code of Virginia.
- (c) Each bank, on or before the first day of June of each year, shall pay into the Treasurer's office (or other appropriate official) of this town all taxes imposed pursuant to this ordinance.

(Editor's note: Chapter 10.01 of Title 58 has been recodified as Chapter 12 of Title 58.1; § 58-485.12 is now § 58.1-1211; § 58-485.13 is now § 58.1-1207; § 58-485.14 is now § 58.1-1212)

§ 4-4. Effective Date of Ordinance. The provisions of this ordinance shall be effective for the year beginning January 1, 1980.

§ 4-5. Penalty Upon Bank for Failure to Comply with Ordinance. Any bank which shall fail or neglect to comply with any provision of this ordinance shall be fined not less than one hundred nor more than five hundred dollars, which fine shall be recovered upon motion, after five days' notice in the circuit court of this town. The motion shall be in the name of the Commonwealth and shall be presented by the attorney for the Commonwealth of this locality.

TITLE 5

TOWN OF DAYTON

CONSUMER UTILITY TAX

Article One—Local Telephone Service Consumer Tax

- § 5-1. Repealed October 2, 2000.
- § 5-2. Levy.
- § 5-3. Repealed October 2, 2000.
- § 5-4. Repealed October 2, 2000.
- § 5-5. Exemptions.
- § 5-6. Repealed October 2, 2000.
- § 5-7. Repealed October 2, 2000.

Article Two—Electric Utility Consumer Tax

- § 5-8. Levy.
- § 5-9. Exemptions.
- § 5-10. Computation of bills not on monthly basis.
- § 5-11. Effective Date; Transition.

Article Three—Natural Gas Utility Consumer Tax

- § 5-12. Levy.
- § 5-13. Exemptions.
- § 5-14. Computation of bills not on monthly basis.
- § 5-15. Effective Date; Transition.

Article Four—General and Administrative Provisions

- § 5-16. Definitions.
- § 5-17. Billing, collection and remittance of tax.
- § 5-18. Violations.
- § 5-19. Records of Service Providers.

Article One—Local Telephone Service Consumer Tax

§ 5-1. (Repealed October 2, 2000.) (Note: Only § 5-1 as set out in Chapter 2 of this Title was repealed. Chapter 1 was not affected.)

§ 5-2. *Levy.* In accordance with Virginia Code § 58.1-3812, the Town hereby imposes and levies, at the rates set forth below, a tax upon every Consumer of Local Telephone Service having a service address in the Town, a tax calculated as follows

- (a) Residential Consumers. For Residential Consumers, such tax shall be 15% of the first \$10 of any monthly bill for Local Telephone Service.
- (b) Non-Residential Consumers. For Non-Residential Consumers, such tax shall be 15% of the first \$100 of any monthly bill for Local Telephone Service.

In any case where bills are submitted for 2 months' service, Residential Consumers shall pay a tax equal to 15% of the first \$20 of their bi-monthly bills; non-Residential Consumers shall pay a tax equal to 15% of first \$200 of their bi-monthly bills. (Amended October 2, 2000.)

§ 5-3. (Repealed October 2, 2000.)

§ 5-4. (Repealed October 2, 2000.)

§ 5-5. *Exemptions.* The following consumers of electricity are exempt from the tax imposed by § 5-2 above: The United States of America, the Commonwealth and the political subdivisions thereof, including the Town. (Amended October 2, 2000.) [Note: The tax imposed by § 5-2 deals with telephone service, and these exceptions should apply thereto.]

§ 5-6. (Repealed October 2, 2000.)

§ 5-7. (Repealed October 2, 2000.)

Article Two—Electric Utility Consumer Tax

§ 5-8. *Levy.* In accordance with Virginia Code § 58.1-3814, effective January 1, 2001, there is hereby imposed and levied a monthly tax on each purchase of electricity delivered to consumers by a service provider, classified as determined by such provider, as follows:

- (a) *Residential consumers:* For Residential Consumers, such tax shall be \$0.0373 on each kWh delivered monthly by a Service Provider, not to exceed \$1.50 monthly.
- (b) *Non-Residential Consumers:* For non-Residential-Consumers, such tax on shall be \$0.0251 per kWh for the first 625 kWh delivered monthly by a Service Provider and (ii) \$0.0027 per kWh for all kWh in excess of 625 delivered monthly by a Service Provider.

(Added October 2, 2000.)

§ 5-9. *Exemptions.* The following consumers of electricity are exempt from the tax imposed by § 5-8 above:

- (I) The United States of America, the Commonwealth and the political subdivisions thereof, including the Town.

(Added October 2, 2000.)

§ 5-10. *Computation of bills not on monthly basis.* Bills shall be considered as monthly bills for the purposes of this ordinance if submitted 12 times per year of approximately one month each. Accordingly, the tax for a bi-monthly bill (approximately 60 days) shall be determined as follows: (i) the kWh will be divided by 2; (ii) a monthly tax will be calculated using the rates set forth above; (iii) the tax determined by (ii) shall be multiplied by 2; (iv) the tax in (iii) may not exceed twice the monthly "maximum tax." (Added October 2, 2000.)

§ 5-11. *Effective Date; Transition.* This Article shall take effect on December 31, 2000, but the rates set forth herein shall not be effective before a Consumer's first meter reading after December 31, 2000. Until such meter reading for each Consumer, the Town's previous consumer tax on electricity shall apply to that Consumer. (Added October 2, 2000.)

Article Three—Natural Gas Utility Consumer Tax

§ 5-12. *Levy.* In accordance with Virginia Code § 58.1-3814, there is hereby imposed and levied a monthly tax on each purchase of natural gas delivered to consumers by pipeline distribution companies and gas utilities classified by "class of consumers" as such term is defined in Virginia Code §58.1-3814(J), as follows:

- (a) Residential Consumers: Such tax on Residential Consumers of natural gas shall be at the rate of \$0.0240 per CCF delivered monthly by a Service Provider to residential consumers, not to exceed \$1.50 per month.
- (b) Non-Residential Consumers: Such tax on non-Residential Consumers shall be at the rate of \$0.0170 per CCF delivered monthly by a Service Provider, not to exceed \$15.00 per month.

(Added October 2, 2000.)

§ 5-13. *Exemptions.* The following consumers of natural gas shall be exempt from the tax imposed by § 5-12 above:

- (1) The United States of America, the Commonwealth and the political subdivisions thereof, including this jurisdiction.

(Added October 2, 2000.)

§ 5-14. *Computation of bills not on monthly basis.* Bills shall be considered as monthly bills for the purposes of this ordinance if submitted 12 times per year of approximately one month each. Accordingly, the tax for a bi-monthly bill (approximately 60 days) shall be determined as follows: (i) the CCF will be divided by 2; (ii) a monthly tax will be calculated using the rates set forth above; (iii) the tax determined by (ii) shall be multiplied by 2; (iv) the tax in (iii) may not exceed twice the monthly "maximum tax." (Added October 2, 2000.)

§ 5-15. *Effective Date; Transition.* This Article shall take effect on December 31, 2000, but the rates set forth herein shall not be effective before a Consumer's first meter reading after December 31, 2000. Until such meter reading for each Consumer, the Town's previous consumer tax on natural gas shall apply to that Consumer. (Added October 2, 2000.)

Article 4—General and Administrative Provisions

§ 5-16 *Definitions.* For purposes of this Chapter, the following definitions shall apply, unless the context clearly indicates the Council intended otherwise:

- (a) *Consumer.* Every person who, individually or through agents, employees, officers, representatives or permittees, makes a taxable purchase of electricity, natural gas, or Local Telephone Services in the Town.
- (b) *Gas utility.* A public utility authorized to furnish natural gas service in Virginia.
- (c) *CCF.* The volume of gas at standard pressure and temperature in units of 100 cubic feet.

- (d) *Kilowatt hours (kWh) delivered.* 1000 watts of electricity delivered in a one-hour period by an electric provider to an actual consumer, except that in the case of eligible customer-generators (sometimes called cogenerators) as defined in Virginia Code § 56-594, it means kWh supplied from the electric grid to such customer-generators, minus the kWh generated and fed back to the electric grid by such customer-generators.
- (e) *Local Telephone Service.* The two-way local transmission of messages or data through use of switched local telephone services; telegraph services; teletypewriter; provided, however, for purposes of this title, the term does not include cellular telephone service or similar wireless services. (Cf. Va. Code, § 58.1-3812.)
- (f) *Person.* Any individual, corporation, company or other entity.
- (g) *Pipeline distribution company.* A person, other than a pipeline transmission company which transmits, by means of a pipeline, natural gas, manufactured gas or crude petroleum and the products or byproducts thereof to a purchaser for purposes of furnishing heat or light.
- (h) *Residential Consumer.* The owner or tenant of property used primarily for residential purposes, including but not limited to, apartment houses and other multiple-family dwellings. With respect to Local Telephone Services, however, the term shall not include Consumers of mobile local telecommunications service, as that term is defined in § 58.1-3812 of the Code of Virginia.
- (i) *Service Provider.* A provider of local telephone service to Consumers or a Person who delivers (i) electricity to a consumer or a gas utility or pipeline distribution company which delivers natural gas to a consumer.
- (j) *Used primarily.* This term relates to the larger portion of the use for which electric or natural gas utility service is furnished.

(Added October 2, 2000.)

§ 5-17. Billing, collection and remittance of tax. On a monthly basis, the Service Provider shall bill the consumer tax to all users who are subject to the tax and to whom it delivers services subject to this Chapter. Such taxes shall be paid by the service provider to the Town in accordance with Virginia Code §§ 58.1-2901, 58.1-3812, and 58.1-3814(F) & (G). If any Consumer receives and pays for such services but refuses to pay the tax imposed by this section, the Service Provider shall notify this jurisdiction of the name and address of such Consumer. If any Consumer fails to pay a bill issued by a Service Provider, including the tax imposed by this section, the Service Provider must follow its normal collection procedures and upon collection of the bill or any part thereof must apportion the net amount collected between the charge for service and the tax and remit the tax portion to the Town.

Any tax paid by the Consumer to the service provider shall be deemed to be held in trust by such provider until remitted to the Town. (Added October 2, 2000.)

§ 5-18. *Violations.* Any Consumer of electricity or natural gas failing, refusing or neglecting to pay the tax imposed and levied under this ordinance, and any officer, agent or employee of any service provider violating the provisions of this Chapter shall, upon conviction thereof, be punished by a fine of not less than \$100 nor more than \$1000, or by imprisonment in jail for not more than 30 days, or by both such fine and imprisonment. Each such failure, refusal, neglect or violation shall constitute a separate offense. Such conviction shall not relieve any Person from the payment, collection and remittance of the tax as provided in this Chapter. (Added October 2, 2000.)

§ 5-19. *Records of Service Providers.* Every Service Provider shall keep complete records showing any purchases of electricity, natural gas, or Local Telephone Service by Consumers in the Town. The records shall show the sum charged to each Consumer with respect to each purchase, the date thereof, the date of payment therefore, and the amount of tax imposed hereunder. Upon reasonable notice from the Town Treasurer or his designee, such records will be made available for inspection and copying at the office of the Town Treasurer or other reasonable location. (Added October 2, 2000.)

TITLE 6
WATER AND SEWER
(Enacted July 6, 1987)

CHAPTER 1
Water

Section

- 6-1. Water Connections to be Made by the Town.
- 6-2. Alteration of Connections.
- 6-3. Opening of Water Valve.
- 6-4. Service Inside of Property.
- 6-5. Fire Hydrants.
- 6-6. Water to be Metered.
- 6-7. Tampering with Waterworks.
- 6-8. Connection Charges.
- 6-8.1. Mandatory Water Connection.

CHAPTER 2
Cross-Connection

- 6-9. Incorporation of Waterworks Regulations.
- 6-10. Discontinuance of Service.
- 6-11. Protection of Potable Water Supplies.

CHAPTER 3
Model Sewer Ordinance
(Repealed April 1, 1991)

CHAPTER 3.1
Model Sewer Ordinance
(Adopted April 1, 1991)

ARTICLE 1

- 6-78.1. Definitions.

ARTICLE 2

- 6-78.28. Use of Public Sewers Required.

ARTICLE 3

- 6-78.32. Private Sewage Disposal.

ARTICLE 4

- 6-78.39. Building Sewers and Connections.

ARTICLE 5

- 6-78.51. Use of the Public Sewers.

ARTICLE 6

6-78.69. Protection from Damage.

ARTICLE 7

6-78.70. Powers and Authority of Inspectors.

ARTICLE 8

6-78.72. Enforcement of Chapter.

ARTICLE 9

6-78.82. Validity.

CHAPTER 3.2
Other Sewer Provisions
(Adopted April 1, 1991)

6-78.84. Connection Fees.
6-78.85. Maintenance of Building Sewers.
6-78.86. Exemptions to Mandatory Connections.

CHAPTER 4
Bills and Penalties

6-79. Water and Sewer Bills and Rates.
6-80. Deposits.
6-81. Payment of Bills; Penalties; Disconnection.
6-82. Adjustments to Bills.
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CHAPTER 5
General Provisions

6-84. Building Codes and Other Standards.
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CHAPTER 6
Drought Management

6-87. Title.
6-88. Purpose.
6-89. Scope.
6-90. Drought Response Plan.
6-91. Drought Indicators.
6-92. Drought Stage.
6-93. Declaration.
6-94. Drought Stage Response.
6-95. Waiver of Restriction.
6-96. Penalties.

CHAPTER 1
Water

§ 6-1. Water Connections to be Made by the Town. The town superintendent or other authorized officer of the town shall be responsible for:

- (a) connecting water pipes to the town water system,
- (b) extending service lines from the individual property boundaries to the town water system, and
- (c) installing water meters and meter boxes.

§ 6-2. Alteration of Connections. No person shall make any alteration of or addition to a connection to the town water system without first obtaining the written permission of the town superintendent or other authorized official. (See Code of Virginia, §§ 15.1-854, 15.1-875.)

§ 6-3. Opening of Water Valve. The town will open the valve to allow water on a lot when requested by the occupant, contractor, or developer, provided that all required fees have been paid. Except for licensed plumbers, who may turn on water valves for testing purposes, no other person may turn on valves to allow water onto a lot.

§ 6-4. Service Inside of Property Lines. Town employees will do no work inside of property lines except for the installation of a water meter where the town superintendent has authorized its installation within the landowner's property lines.

§ 6-5. Fire Hydrants. Members of fire departments, in the course of their official duties, may use and manipulate fire hydrants. Otherwise, no one may use or manipulate fire hydrants located within the town unless authorized to do so by the town superintendent or an official of the police or fire departments. (See Code of Virginia, §§ 15.1-839, 15.1-875.)

§ 6-6. Water to be Metered. Wherever practicable, all water furnished by the town shall be measured by meters furnished and installed by the town. The water meters shall be the property of the town, and unless otherwise authorized by the town superintendent, they shall be placed as near to the curb line as possible on property owned by the town. Each individual residence or property shall be required to have a separate connection and meter unless otherwise authorized by the town superintendent. (See Code of Virginia, §§ 15.1-854, 15.1-875.)

§ 6-7. Tampering with Waterworks. No person, except a duly authorized official of the town, may remove, injure, or tamper with any part of the town's water system. (See Code of Virginia, §§ 15.1-854, 15.1-875.)

§ 6-8. Connection Charges. Before any person shall be allowed to connect to the Town's water system, he shall pay a connection fee as established by the town council from time to time. (Persons seeking connections out of town shall pay 150% of the applicable connection fee.) Additionally, persons seeking connection to the water system shall pay all of the town's costs for labor and material (including the meter) plus a surcharge of 10%.

§ 6-8.1. Mandatory Water Connection.

- (a) For purposes of this section,
 - (1) A "Person" is any natural person, corporation, firm, partnership, company, association, or other entity.
 - (2) A "Facility" is any dwelling, business, office, or other improvement of property. The term also includes agricultural uses of unimproved property.
- (b) All Facilities using water shall connect to the Town's water distribution system if and when the Town's system is within 100 feet of the lot on which the Facility sits.
- (c) It shall be unlawful for a Person to allow a Facility to make use of water from a well or other

source not part of the Town's water distribution system, except bottled water may be used for human consumption and similar purposes.

- (d) The provisions of paragraph (c) shall not apply where (and to the extent that) the Town Superintendent has certified in writing that the Town cannot provide water of the type or quantity reasonably required by the Facility. For example, in appropriate cases the Town Superintendent could find that
 - (i) an agricultural user reasonably requires untreated water for economic reasons, or
 - (ii) an industry could require more water than the Town can reasonably deliver.

Even where this exemption is invoked, the Facility shall be required to obtain its water from the Town distribution system to the extent the Town can meet its requirements. Further, this exemption shall expire when the Town Superintendent certifies that the Town can materially meet the Facility's reasonable requirements.

- (e) When a Facility makes use of an alternative water source at the time it is annexed into Town, the Town Superintendent may suspend the provisions of paragraphs (b) and (c) for a fixed period of time, depending upon the owner's investment in the alternative water source, the expected life of the alternative water source, the health risk imposed by the alternative water source, any potential injury to the Town's water source caused by the alternative source, and whether the Town can economically forego connection.

(Enacted July 13, 1998.)

CHAPTER 2 ***Cross-Connection***

§ 6-9. *Incorporation of Waterworks Regulations.* Article 3 of 12 VAC 5-590 enacted by the State Board of Health pursuant to § 32.1-170 of the Code of Virginia is hereby incorporated into this title. (See Code of Virginia, § 15.1-854.) (Amended Month Day, 2007)

§ 6-9.1 *Cross-Connection Control Program.* The Town Superintendent shall adopt and implement a cross-connection control and backflow prevention program in accordance with § 12 VAC-5-590-600 (B.) (Added Month, Day, 2007.)

§ 6-10. *Discontinuance of Service.* (a) The town may deny or discontinue the water service to a consumer if a backflow prevention device is not installed. If it is found that any such device has been removed or bypassed or if a cross-connection exists on the premises, or if the pressure in the waterworks is lowered below 10 psi gauge, the town shall take positive action to insure that the waterworks is adequately protected at all times. Water service to such premises shall not be restored until the deficiencies have been corrected or eliminated in accordance with Commonwealth of Virginia Waterworks Regulations and to the satisfaction of the town. (See Code of Virginia, § 15.1-854.)

§ 6-11. *Protection of Potable Water Supplies.* The potable water made available on the properties served by the waterworks shall be protected from possible contamination or pollution by enforcement of this title. Any water outlet which could be used for potable or domestic purposes and is not supplied by the potable system must be labeled as "Water Unsafe for Drinking" in a conspicuous manner. (See Code of Virginia, § 15.1-854.)

CHAPTER 3

Model Sewer Ordinance
(Repealed April 1, 1991)

CHAPTER 3.1
Revised Model Sewer Ordinance
(Adopted April 1, 1991)

ARTICLE 1
Definitions

Unless the context specifically indicates otherwise, the meaning of terms in this ordinance shall be as follows:

§ 6-78.1. **"Authority"** shall mean the Harrisonburg-Rockingham Regional Sewer Authority, a public body politic and corporate, created pursuant to the Virginia Water and Sewer Authorities Act or its duly authorized representative.

§ 6-78.2. **"BOD"** (denoting Biochemical Oxygen Demand) shall mean the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20 degrees Celsius, expressed in milligrams per liter.

§ 6-78.3 **"Building Drain"** shall mean that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the Building Sewer, beginning five feet (1.5 meters) outside the inner face of the building wall.

§ 6-78.4. **"Building Sewer"** shall mean the extension from the Building Drain to the Public Sewer or other place of disposal.

§ 6-78.5. **"Combined Sewer"** shall mean a sewer receiving both surface runoff and sewage.

§ 6-78.6. **"Federal Categorical Pretreatment Standards"** shall mean any regulation containing pollutant discharge limits promulgated by the U.S. Environmental Protection Agency in accordance with § 307(b) and (c) of the Clean Water Act (33 U.S.C. 1251, et seq.).

§ 6-78.7 **"Garbage"** shall mean solid wastes from the domestic and commercial preparation, cooking, and dispensing of food, and from the handling, storage, and sale of produce.

§ 6-78.8 **"Industrial Wastes"** shall mean the liquid wastes from industrial manufacturing processes, trade, or business excluding water carried human wastes.

§ 6-78.9. **"Interference"** shall mean the inhibition or disruption of the Authority's treatment processes or operations. The term includes prevention of sewage sludge use or disposal by the Authority in accordance with § 405 of the Clean Water Act (33 U.S.C. 1345), or any criteria, guidelines, or regulations developed pursuant to the Solid Waste Disposal Act (SWDA), the Clear Air Act, the Toxic Substances Control Act, or more stringent state criteria (including those contained in any state sludge management plan prepared pursuant to Title IV of SWDA) applicable to the method of disposal or use employed by the Authority.

§ 6-78.10. **"Natural Outlet"** shall mean any outlet into a watercourse, pond, ditch, lake, or other body of surface or groundwater.

§ 6-78.11. **"Pass Through"** shall mean a discharge which exits the Sewage Works into State waters in quantities or concentrations which are a cause of or significantly contribute to a violation of any requirement of the Authority's NPDES Permit (including an increase in the magnitude or duration of a violation). An industrial user significantly contributes to such permit violation where it: (a) discharges a daily pollutant loading in excess of that allowed by the Authority or by Federal, State or local law; (b) discharges Sewage which substantially differs in nature and constituents from the user's average discharge; (c) knows or has reason to know that its discharge, alone or in conjunction with discharges from other sources, would result in a permit violation; or (d) knows or has reason to

know that the Authority is, for any reason, violating its final effluent limitations in its permit and that such industrial user's discharge either alone or in conjunction with discharges from other sources, increases the magnitude or duration of the Authority's violations.

§ 6-78.12. **"Person"** shall mean any individual, firm, company, association, society, corporation, or group.

§ 6-78.13. **"pH"** shall mean the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

§ 6-78.14. **"Properly Shredded Garbage"** shall mean the wastes from the preparation, cooking, and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in Public Sewers, with no particle greater than one-half inch (1.27 centimeters) in any dimension.

§ 6-78.15. **"Public Sewer"** shall mean a sewer in which all owners of abutting properties have equal rights, and is controlled by public authority.

§ 6-78.16. **"Sanitary Sewer"** shall mean a sewer which carries sewage and to which storm, surface, and groundwaters are not intentionally admitted.

§ 6-78.17. **"Sewage"** shall mean a combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments, together with such ground, surface, and stormwaters as may be present.

§ 6-78.18. **"Sewage Treatment Plant"** shall mean any arrangement of devices and structures used for treating sewage.

§ 6-78.19. **"Sewage Works"** shall mean all facilities for collecting, pumping, treating, and disposing of sewage.

§ 6-78.20. **"Sewer"** shall mean a pipe or conduit for carrying sewage.

§ 6-78.21. **"Shall"** is mandatory, **"may"** is permissive.

§ 6-78.22. **"Significant Industrial User"** shall mean any industrial user which:

- (a) Has an average discharge flow of 25,000 gallons or more per day, or
- (b) Discharges Sewage which makes up five percent (5%) or more of the average dry weather hydraulic or organic capacity of the Authority's wastewater treatment system, or
- (c) Has in its wastes toxic pollutants as defined by § 307 of the Clean Water Act or by state statutes and rules, or
- (d) Is subject to Federal Categorical Pretreatment Standards, or
- (e) Is found by the town or the Authority to have significant impact, either singly or in combination with other contributing industries, on the Sewage Works, the quality of sludge, the system's effluent quality or air emissions generated by the system, or
- (f) Is designated as such by the Authority on the basis that the industrial user has a reasonable potential for adversely affecting the Sewage Works or for violating any Federal Categorical Pretreatment Standard.

§ 6-78.23. **"Slug"** shall mean any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge.

§ 6-78.24. **"Storm Drain"** (sometimes termed "storm sewer") shall mean a sewer which carries storm and surface waters and drainage, but excludes sewage and Industrial Wastes, other than unpolluted cooling water.

§ 6-78.25. *"Superintendent"* shall mean the Town Superintendent of the Town of Dayton, or his authorized deputy, agent, or representative.

§ 6-78.26. *"Suspended Solids"* shall mean solids that either float on the surface of, or are in suspension in water, sewage, or other liquids, and which are removable by laboratory filtering.

§ 6-78.27. *"Watercourse"* shall mean a channel in which a flow of water occurs, either continuously or intermittently.

[Editor's Note: Throughout this chapter, defined terms are typically capitalized for the convenience of the reader. Capitalization or lack thereof is not intended to have any substantive effect.]

ARTICLE 2

Use of Public Sewers Required

§ 6-78.28. It shall be unlawful for any Person to place, deposit or permit to be deposited in any unsanitary manner on public or private property within the town or in any area under the jurisdiction of said town, any human excrement, Garbage, or other objectable waste.

§ 6-78.29. It shall be unlawful to discharge to any natural outlet within the town, or in any area under the jurisdiction of said town, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this ordinance.

§ 6-78.30. Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of sewage.

§ 6-78.31. The owner of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes, situated within the town and abutting on any street, alley, or right-of-way in which there is now located or may in the future be located a public sanitary or combined sewer of the town is hereby required at his expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper Public Sewer in accordance with the provisions of this ordinance, within 90 days after date of official notice to do so, provided that said Public Sewer is within 100 feet of the property line.

ARTICLE 3

Private Sewage Disposal

§ 6-78.32. Where a public sanitary or combined sewer is not available under the provisions of Article 2, § 6-78.31, the Building Sewer shall be connected to a private sewage disposal system complying with the provisions of this article.

§ 6-78.33. Before commencement of construction of a private sewage disposal system, the owner shall first obtain a written permit signed by the Superintendent. The application for such permit shall be made on a form furnished by the town, which the applicant shall supplement by any plans, specifications, and other information as are deemed necessary by the Superintendent. A permit and inspection fee of ten dollars shall be paid to the town at the time the application is filed.

§ 6-78.34. A permit for a private sewage disposal system shall not become effective until the installation is completed to the satisfaction of the Superintendent. He shall be allowed to inspect the work at any state of construction and, in any event, the applicant for the permit shall notify the Superintendent when the work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within 48 hours of the receipt of notice by the Superintendent.

§ 6-78.35. The type, capacities, location, and layout of a private sewage disposal system shall comply with all recommendations of the Department of Public Health of the State of Virginia. No permit shall be issued for any

private sewage disposal system employing subsurface soil absorption facilities where the area of the lot is less than 15,000 square feet. No septic tank or cesspool shall be permitted to discharge to any natural outlet.

§ 6-78.36. At such time as a Public Sewer becomes available as provided in Article 2, § 6-78.31 to a property serviced by a private sewage disposal system, a direct connection shall be made to the Public Sewer in compliance with this ordinance, and any septic tanks, cesspools, and similar private sewage disposal facilities shall be abandoned, cleaned of sludge and filled with suitable material.

§ 6-78.37. The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at no expense to the town.

§ 6-78.38. No statement contained in this article shall be construed to interfere with any additional requirements that may be imposed by any health officer.

ARTICLE 4 ***Building Sewers and Connections***

§ 6-78.39. No unauthorized Person shall uncover, make any connections with or opening into, use, alter, or disturb any Public Sewer or appurtenance thereof without first obtaining a written permit. All permits except for those issued to Significant Industrial Users shall be issued by the town. Permits for Significant Industrial Users shall be issued by the Authority.

§ 6-78.40. There shall be two classes of Building Sewer permits:

- (a) For residential and commercial service, and
- (b) For service to establishments producing Industrial Wastes.

The owner or his agent shall make application on a special form furnished by the Authority in the case of Significant Industrial Users and by the town for other Persons. The permit application shall be supplemented by any plans, specifications, or other information considered pertinent in the judgment of the Superintendent or the Authority.

§ 6-78.41. Permits for Significant Industrial Users shall be issued for a period not to exceed five (5) years as determined by the Authority. The user shall apply for permit reissuance at least 180 days prior to the expiration of the user's existing permit. The terms and conditions of the new permit may be subject to modification. The user shall be informed of any proposed changes in its permit at least 30 days prior to the effective date of change. Any changes or new conditions in the permit shall include a reasonable time schedule for compliance.

§ 6-78.42. All costs and expense incident to the installation and connection of the Building Sewer shall be borne by the owner. The owner shall indemnify the town from any loss or damage that directly or indirectly may be occasioned by the installation of the Building Sewer.

§ 6-78.43. A separate and independent Building Sewer shall be provided for every building; except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court, yard, or driveway, the Building Sewer from the front building may be extended to the rear building and the whole considered as one Building Sewer.

§ 6-78.44. Old Building Sewers may be used in connection with new buildings only when they are found, on examination and test by the Superintendent, to meet all requirements of this ordinance.

§ 6-78.45. The size, slope, alignment, materials of construction of a Building Sewer, and the methods to be used in excavation, placing of the pipe, jointing, testing, and backfilling the trench, shall all conform to the requirements of the building and plumbing code or other applicable rules and regulations of the town.

§ 6-78.46. Whenever possible, the Building Sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any Building Drain is too low to permit gravity flow to the Public Sewer, sanitary sewage carried by such Building Drain shall be lifted by an approved means and discharged to the Building

Sewer.

§ 6-78.47. No Person shall make connection of roof downspouts, exterior foundation drains, areaway drains, or other sources of surface runoff or groundwater to a Building Sewer or Building Drain which in turn is connected directly or indirectly to a public Sanitary Sewer.

§ 6-78.48. The connection of the Building Sewer into the Public Sewer shall conform to the requirements of the building and plumbing code or other applicable rules and regulations of the town. All such connections shall be made gastight and watertight. Any deviation from the prescribed procedures and materials must be approved by the Superintendent before installation.

§ 6-78.49. The applicant for the Building Sewer permit shall notify the Superintendent when the Building Sewer is ready for inspection and connection to the Public Sewer. The connection shall be made under the supervision of the Superintendent or his representative.

§ 6-78.50. All excavations for Building Sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the town.

ARTICLE 5 ***Use of the Public Sewers***

§ 6-78.51. No Person shall discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, subsurface drainage, uncontaminated cooling water, or unpolluted industrial process waters to any Sanitary Sewer.

§ 6-78.52. Stormwater and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or storm sewer, or to a natural outlet approved by the Superintendent. Uncontaminated industrial cooling water or unpolluted process waters may be discharged, on approval of the Superintendent, to a storm sewer, combined sewer, or natural outlet.

§ 6-78.53. No Person shall discharge or cause to be discharged, either directly or indirectly, to any Public Sewer any of the following described waters, sewage or wastes:

- (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 Sewage Works including, but not limited to, wastestreams, with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Centigrade using the test methods specified in 40 CFR 261.21. Prohibited materials include, but are not limited to, gasoline, kerosene, fuel oil, naphtha, benzene, toluene, xylene, ethers, alcohols, ketones, aldehydes, peroxides, chlorates, perchlorates, bromates, carbides, hydrides and sulfides.
- (b) Unusual concentrations of suspended solids (such as, but not limited to, Fullers earth, lime slurries and lime residue) not to exceed 300 mg/l of total suspended solids.
- (c) Any sewage or other substance having a pH less than 5.5 or greater than 9.5, or having any other corrosive property capable of causing damage or creating a hazard to the Sewage Works or personnel of the Authority or town.
- (d) Any sewage or other substance containing toxic pollutants or gases, vapors or fumes in sufficient quantity, either alone or by interaction with other substances, which injures any wastewater treatment process, may cause acute worker health or safety problems, creates a toxic effect in the receiving waters of the Authority, or exceeds the limitation set forth in a Federal Categorical Pretreatment Standard. A toxic pollutant shall include, but not be limited to, any pollutant identified pursuant to Section 307(a) of the Clean Water Act.

- (e) Any noxious or malodorous liquids, gases or solids which either alone or by interaction with other wastes are sufficient to create a public nuisance or hazard to life or are sufficient to prevent personnel of the Authority or town from entering into the sewers for maintenance and repair.
- (f) Any substance which may cause the Authority's effluent or any other product of the Authority 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 Sewage Works cause the Authority to violate any sludge use or disposal criteria, guidelines or regulations developed under the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or State criteria applicable to the sludge management method being used.
- (g) Any substance which will cause the Authority to violate its NPDES Permit or the quality standards of the receiving water.
- (h) Any sewage or other substance with objectionable color which cannot be removed by the Sewage Treatment Plant, such as, but not limited to, dye wastes and vegetable tanning solutions.
- (i) Any sewage or other substance having a temperature which will inhibit biological activity in the Sewage Treatment Plant resulting in Interference, but in no case wastewater with a temperature that causes the temperature of the combined wastewater of all users at the Sewage Treatment Plant to exceed 40° Centigrade (104° Fahrenheit).
- (j) Any Slug loading.
- (k) Any sewage or other substance containing any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the town or Authority in compliance with applicable state or federal regulations.
- (l) Any sewage or other substance containing fats, wax, grease or oils, whether emulsified or not, in excess of one hundred (100) mg/l or containing substances which may solidify or become viscous at temperatures between thirty-two (32) and one hundred fifty (150) degrees Fahrenheit.
- (m) Any sewage or other substance, which exceeds the following limits for the listed parameters:

Parameter	Limit (mg/l)
Cadmium	0.089
Chromium	4.391
Copper	1.716
Cyanide	2.178
Lead	1.181
Mercury	0.002
Nickel	1.518
Silver	2.837
Zinc	5.035

(Amended April 5, 1993.)
- (n) Any trucked or hauled pollutants except at discharge points designated by the town or Authority.
- (o) Petroleum oil, nonbiodegradable cutting oil, or products of mineral oil origin in amounts that will cause Interference or Pass Through.
- (p) Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or an Interference such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground Garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc., either whole or ground by Garbage grinders.

- (q) Any waters or wastes containing quantities of pollutants which exceed the applicable limitations set forth in a Federal Categorical Pretreatment Standard as such standards may be revised from time to time.
- (r) Any sewage or other substance containing unusual concentrations of biochemical oxygen demand which shall not exceed 300 mg/l.

§ 6-78.54. No Person shall discharge or cause to be discharged either directly or indirectly any waters, sewage or wastes to any Public Sewer which will cause a Pass Through or an Interference with the operation or performance of the Sewage Works or the following described substances, materials, waters, or wastes if it appears likely in the opinion of the Superintendent or the Authority that such wastes can harm either the sewers, sewage treatment process, or equipment, have an adverse effect on the receiving stream, or can otherwise endanger life, limb, public property, or constitute a nuisance. Consideration will be given to such factors as the quantities of subject wastes in relation to flows and velocities in the sewers, materials of construction of the sewers, nature of the sewage treatment process, capacity of the Sewage Treatment Plant, degree of treatability of wastes in the Sewage Treatment Plant, and other pertinent factors. The substances prohibited are:

- (a) Any liquid or vapor having a temperature higher than 150 degrees Fahrenheit (65 degrees Celsius).
- (b) Any Garbage that has not been properly shredded. The installation and operation of any Garbage grinder equipped with a motor of three-fourths horsepower (0.76 hp metric) or greater shall be subject to the review and approval of the Superintendent.
- (c) Any waters or wastes containing strong acid iron pickling wastes, or concentrated plating solutions whether neutralized or not.
- (d) Any waters or wastes containing iron, chromium, copper, zinc, and similar objectionable or toxic substances; or wastes exerting an excessive chlorine requirement, to such degree that any such material received in the composite sewage at the sewage treatment plant exceeds the limits established by the Superintendent or Authority for such materials.
- (e) Any waters or wastes containing phenols or other taste or odor producing substances, in such concentrations exceeding limits which may be established by the Superintendent as necessary, after treatment of the composite sewage, to meet the requirements of the State, Federal, or other public agencies of jurisdiction for such discharge to the receiving waters.
- (f) Materials which exert or cause unusual concentrations of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate), not to exceed 300 milligrams per liter.

§ 6-78.55. Upon the promulgation of Federal Categorical Pretreatment Standards for a particular industrial subcategory, such standards, if more stringent than limitations imposed under this ordinance, shall immediately supersede the limitations imposed under this ordinance. The Superintendent or Authority shall notify all affected users of the applicable reporting requirements under 40 CFR, Section 403.12.

§ 6-78.56. The town and Authority reserve the right to set specific numerical limitations on the quantity of pollutants discharged by any user to the Sewage Works. Any specific limitation will affect all users and will be set at such limits which will further the objectives of this ordinance. The limitations will be determined in accordance with the regulations and procedures established by EPA, the town or the Authority.

§ 6-78.57. State requirements and limitations on discharges shall apply in any case where they are more stringent than federal requirements and limitations or those in this ordinance.

§ 6-78.58. 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 this ordinance, the Federal Categorical Pretreatment Standards or any other federal, state or local law or regulation.

§ 6-78.59. *Accidental Discharge.*

- (a) Each user shall provide protection from accidental discharge of prohibited pollutants or other substances regulated by this ordinance. In case of an accidental discharge, it is the responsibility of the user to immediately telephone and notify the town and Authority of the incident. The notification shall include the location of the discharge, type of waste, concentration, volume, and corrective actions.
- (b) Within five (5) days following an accidental discharge; the user shall submit to the Superintendent and Authority a detailed written report describing the cause of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage or other liability which may be incurred as a result of damage to the Sewage Works, fish kills, or any other damage to Persons or property; nor shall such notification relieve the user of any fines, civil penalties or other liability which may be imposed by this ordinance or other applicable law.
- (c) A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees whom to call in the event of a dangerous or accidental discharge.

§ 6-78.60. The town or Authority may deny or condition new or increased contributions of pollutants, or changes in the nature of pollutants, to the Sewage Works by any user where such contributions do not meet applicable pretreatment standards or requirements or where such contributions would cause a Pass Through or Interference. All industrial users shall promptly notify the town and the Authority in advance of any substantial change in the volume or character of pollutants in their discharge including the listed or characteristic hazardous wastes for which the industrial user has submitted initial notification.

§ 6-78.61. All industrial users shall notify the town and Authority immediately of all discharges that could cause problems to the Sewage Works, including but not limited to any Slug loadings by such users. This notification shall be followed up within five days by written notification as provided in § 6-78.59.

§ 6-78.62. *Notification of Hazardous Waste.*

- (a) All industrial users shall notify the town, Authority, EPA Regional Waste Management Division Director, and State hazardous waste authorities in writing of any discharge into the Sewage Works of a substance, which, if otherwise disposed of, would be a hazardous waste under 40 CFR part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the industrial user discharges more than 100 kilograms of such waste per calendar month to the system, the notification shall also contain the following information to the extent such information is known and readily available to the industrial user: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the wastestream discharged during that calendar month, and an estimation of the mass of constituents in the wastestream expected to be discharged during the following twelve months. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed discharges must be submitted under 40 CFR 403.12(j). The notification requirement in this section does not apply to pollutants already reported under the self-monitoring requirements of 40 CFR 403.12(b), (d), and (e).
- (b) Industrial users are exempt from the above requirements during a calendar month in which they discharge no more than fifteen kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than fifteen kilograms of non-acute hazardous wastes in a calendar month, or any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33 (e), requires a one-time notification. Subsequent months during which the industrial user discharges additional quantities of such hazardous waste do not require additional notification.
- (c) In the case of new regulations under section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the industrial user must notify the town, Authority, EPA Regional Waste Management Division

Director, and State hazardous waste authorities of the discharge of such substance within 90 days of the effective date of such regulations.

- (d) In the case of any notification made under this section, the industrial user shall certify that it has a program in place to reduce the volume or toxicity of hazardous wastes generated to the degree it has determined to be economically practical.
- (e) Industrial users who commence discharging hazardous wastes after the effective date of the Hazardous Waste Notification Requirement 40 CFR 403.12 (p) (August 23, 1990), shall provide notification no later than 180 days after the discharge of the hazardous waste.

§ 6-78.63. Reporting Requirements.

- (a) Within 90 days following the date for final compliance with applicable pretreatment standards or requirements or in the case of a new source following commencement of the introduction of Sewage into the Sewage Works, any user subject to pretreatment standards or requirements shall submit to the town and Authority a report indicating the nature and concentration of all pollutants in the discharge from the regulated process which are limited by pretreatment standards or requirements and the average and maximum daily flow for these process units. The report shall state whether the applicable pretreatment standards or requirements are being met on a consistent basis and, if not, what additional operation and maintenance and/or pretreatment is necessary to bring the user into compliance with the applicable pretreatment standards or requirements.
- (b) After the compliance date of such pretreatment standard or requirement or, in the case of a new source, after commencement of the discharge into the Sewage Works, any user subject to a pretreatment standard or requirement, shall submit to the town and Authority at least once every six months, unless required more frequently in the pretreatment standard or requirement or by the town or Authority, a report indicating the nature and concentration of pollutants in the effluent which are limited by such pretreatment standards or requirements. In addition, this report shall include a record of measured or estimated average and maximum daily flows for the reporting period. At the discretion of the Superintendent or Authority and in consideration of such factors as local high or low flow rates, holidays, budget cycles, etc., the Superintendent or Authority may alter the months during which the above reports are to be submitted.
- (c) Reports and applications submitted by any industrial user must be signed by "a responsible corporate officer" or a duly authorized representative of that individual. A responsible corporate officer is defined as the president, secretary, treasurer or vice president of the corporation in charge of the principal business function. In addition, the manager of one or more manufacturing, production or operating facility(ies) of the corporation, if the facility employs more than 250 Persons or has gross national sales or expenditures exceeding \$25 million, may also sign the reports as long as the manager has been authorized to sign reports in accordance with proper corporate procedures. The responsible corporate officer may also authorize a representative to sign the reports provided the officer forwards a written notice to the town and Authority stating that the representative has been authorized to sign the reports. A duly authorized representative might be an individual or position responsible for the overall operations of the facility (eg. plant manager) or an individual in charge of all environmental affairs for the facility.

The following statement shall be used on all reports, applications and notices requiring certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the Person or Persons who manage the system, or those Persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information,

including the possibility of fines and imprisonment for knowing violations.

- (d) The Superintendent or Authority may impose mass limitations on users which are using dilution to meet applicable pretreatment standards or requirements, or in other cases where the imposition of mass limitations are appropriate. In such cases, the report required by subparagraph (b) above shall indicate the mass of pollutants regulated by pretreatment standards or requirements in the effluent of the user. These reports shall contain the results of sampling and analysis of the discharge, including the flow and the nature and concentration, or production and mass where requested by the Superintendent or Authority, of pollutants contained therein which are limited by the applicable pretreatment standards or requirements. The frequency of monitoring shall be prescribed in the applicable pretreatment standard, requirement and discharge permit.
- (e) All analyses shall be performed in accordance with procedures established by the EPA pursuant to section 304(g) of the Clean Water Act and contained in 40 CFR, Part 136 and amendments thereto or with any other test procedures approved by the EPA. Sampling shall be performed in accordance with the techniques approved by the EPA. Where 40 CFR, Part 136 does not include a sampling or analytical technique for the pollutant in question, sampling and analysis shall be performed in accordance with the procedures set forth in the EPA publication, Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants, April, 1977, and amendments thereto, or with any other sampling and analytical procedures approved by the Administrator of EPA.
- (f) Any industrial user subject to the reporting requirement established in this section shall maintain records of all information resulting from any monitoring activities required by this section. Such records shall include for all samples: (i) the date, exact place, method, and time of sampling and the names of the Person or Persons taking the samples; (ii) the dates analyses were performed; (iii) who performed the analyses; (iv) the analytical techniques/methods used; and (v) the results of such analyses.
- (g) Any industrial user subject to the reporting requirements established in this section shall retain for a minimum of 3 years any records of monitoring activities and results (whether or not such monitoring activities are required by this section) and shall make such records available for inspection and copying by the town or Authority. This period of retention shall be extended during the course of any unresolved litigation regarding the industrial user or when requested by the Superintendent or Authority.

§ 6-78.64. Users shall provide necessary pretreatment as required to comply with this ordinance and shall achieve compliance with all pretreatment standards or requirements within the time limitations as specified by this ordinance, the discharge permit, any order or Federal Categorical Pretreatment Standards, whichever is more stringent. Any facilities required to pretreat wastewater to a level acceptable to the town or Authority shall be provided, operated and maintained at the user's expense. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the town and Authority for review, and shall be acceptable to the town and Authority before construction of the facility. The review of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to produce an effluent acceptable to the town and Authority under the provisions of this ordinance. Any subsequent changes in the pretreatment facilities or method of operation shall be reported to and be acceptable to the town and Authority prior to the user's initiation of the changes.

§ 6-78.65. Grease, oil, and sand interceptors shall be provided when, in the opinion of the Superintendent or Authority, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand, or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the Superintendent or Authority, and shall be located as to be readily and easily accessible for cleaning and inspection.

§ 6-78.66. When required by the Superintendent or Authority, the owner of any property serviced by a Building Sewer carrying Industrial Wastes shall install a suitable control manhole together with such necessary meters and other appurtenances in the Building Sewer to facilitate observation, sampling, and measurement of the wastes. Such

manhole, when required, shall be accessibly and safely located, and shall be constructed in accordance with plans approved by the Superintendent or Authority. The manhole shall be installed by the owner at his expense, and shall be maintained by him so as to be safe and accessible at all times.

§ 6-78.67. All measurements, tests, and analyses of the characteristics of waters and wastes to which reference is made in this ordinance shall be determined at the control manhole provided, or upon suitable samples taken at said control manhole. In the event that no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the Public Sewer to the point at which the Building Sewer is connected. Sampling shall be carried out by customarily accepted methods to reflect the effect of constituents upon the sewage works and to determine the existence of hazards to life, limb, and property. (The particular analyses involved will determine whether a 24-hour composite of all outfalls of a premise is appropriate or whether a grab sample or samples should be taken. Normally, but not always, BOD and suspended solids analyses are obtained from 24-hour composites of all outfalls whereas pH's are determined from periodic grab samples.)

§ 6-78.68. No statement contained in this article shall be construed as preventing any special agreement or arrangement between the town and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the town for treatment, subject to payment therefore, by the industrial concern. No such agreement or arrangement shall permit the industry to exceed applicable Federal Categorical Pretreatment Standards.

ARTICLE 6 ***Protection from Damage***

§ 6-78.69. No unauthorized Person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is a part of the sewage works. Any Person violating this provision shall be subject to immediate arrest under charge of disorderly conduct.

ARTICLE 7 ***Powers and Authority of Inspectors***

§ 6-78.70. The Superintendent or other duly authorized employees of the town and the Authority shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this ordinance. The Superintendent and the Authority and their representatives shall have no authority to inquire into any processes including metallurgical, chemical, oil, refining, ceramic, paper, or other industries beyond that point having a direct bearing on the kind and source of discharge to the sewers or waterways or facilities for waste treatment. The town and Authority may exam and copy the records of any user pertaining to any monitoring activities.

§ 6-78.71. The Superintendent or other duly authorized employees of the town and the Authority and its representatives bearing proper credentials and identification shall be permitted to enter all private properties through which the town holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the sewage works lying within said easement. All entry and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

ARTICLE 8 ***Enforcement of Chapter***

§ 6-78.72. *Harmful Contributions.*

- (a) The Authority or the town may suspend the wastewater treatment service or a discharge permit or cut off the sewer connection when such suspension or cut-off is necessary, in the opinion of

the Authority or town in order to stop an actual or threatened discharge which:

- (1) presents or may present an imminent or substantial endangerment to the health or welfare of Persons;
 - (2) presents or may present an imminent or substantial endangerment to the environment;
 - (3) may cause or actually causes an Interference or Pass Through; or
 - (4) causes the Authority to violate any condition of its NPDES Permit.
- (b) The Authority or town may reinstate the discharge permit or the wastewater treatment service upon proof of the elimination of the noncomplying discharge.
- (c) In the event of a suspension or cut-off under this section, within 15 days the user shall submit to the town and Authority a written report describing the event that caused the suspension and the measures taken to prevent any recurrence.

§ 6-78.73. The Authority or the town may revoke any discharge permit or cut off the sewer connection if either finds:

- (a) A user has falsified information or records submitted or retained in accordance with this ordinance or in connection with any permit issued pursuant to this ordinance;
- (b) A user has violated the conditions of its discharge permit;
- (c) A user has refused right of entry guaranteed by this ordinance;
- (d) A user has failed to re-apply for a permit or request a required permit modification;
- (e) A user has discharged in violation of this ordinance; or
- (f) Changed circumstance(s) require a temporary or permanent reduction or elimination of the permitted discharge.

§ 6-78.74. *Complaint (Notice of Violation).*

- (a) The Authority or town may issue a written complaint if there are reasonable grounds to believe that the Person to whom the complaint is directed has violated:
 - (1) This ordinance;
 - (2) Any rule or regulation adopted under this ordinance; or
 - (3) Any order or permit issued under this ordinance.
- (b) A complaint issued under this section shall:
 - (1) Specify the provision that allegedly has been violated; and
 - (2) State the alleged facts that constitute the violation.

§ 6-78.75. *Issuance of Notice or Order.*

- (a) After or concurrently with the issuance of a complaint under this ordinance, the Authority or town may:
 - (1) Issue an order that requires the Person to whom the order is directed to take corrective action within a time set in the order;

- (2) Send a written notice that requires the Person to whom the notice is directed to file a written report about the alleged violation; or
- (3) Send a written notice that requires the Person to whom the notice is directed:
 - (i) To appear at a hearing at a time and place scheduled in order to answer the charges in the complaint; or
 - (ii) To file a written report and also appear at a hearing at a time and place set to answer the charges in the complaint.
- (b) Any order issued under this ordinance is effective immediately, according to its terms, when it is mailed by certified or registered mail return receipt requested, through the U. S. Postal Service.

§ 6-78.76. Hearings.

- (a) Within 10 days after the effective date of an order, the Person to whom the order is directed may request a hearing by written request to the Superintendent if the order was issued by the town, or, to the Authority if the order was issued by the Authority.
- (b) In connection with any hearing under this subtitle, the Authority or town may:
 - (i) Subpoena any Person or evidence; and
 - (ii) Order a witness to give evidence.

§ 6-78.77. Final Corrective Orders.

- (a) Unless the Person served with an order makes a timely request for a hearing, the order is a final order. If the Person to whom an order is directed makes a timely request for a hearing, the order becomes a final corrective order when the town or Authority renders its decision following the hearing.
- (b) This section does not prevent the town or Authority or others from taking action against a violator before the expiration of the time limitations or schedules in the order.

§ 6-78.78. Injunctive Relief.

- (a) The Authority or town may bring an action for an injunction against any Person who violates any provision of this ordinance or any rule, regulation, order or permit adopted or issued under this ordinance.
- (b) In any action for an injunction under this section, any finding of the town or Authority after hearing is prima facie evidence of such fact.
- (c) On a showing that any Person is violating or is about to violate this ordinance or any rule, regulation, order, or permit adopted or issued by the Authority or town, the court shall grant an injunction without requiring a showing of lack of an adequate remedy at law.
- (d) If any emergency arises due to imminent danger to the public health or welfare, or imminent danger to the environment, the Authority or town may sue for an immediate injunction to stop any pollution or other activity that is causing the danger.

§ 6-78.79. Any Person found to have violated any provision of this chapter or any permit issued under this chapter shall be liable for a civil penalty not exceeding \$25,000 for each offense. Each day on which a violation shall occur or continue shall be deemed a separate and distinct offense. In addition, such Person shall pay all reasonable costs of the town and the Authority including reasonable attorney's fees, fines, repair of damage, injury to

personnel, degradation of sludge quality and violations of water, air and sludge standards caused by the violation.

§ 6-78.80. Any Person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained pursuant to this chapter or the discharge permit, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device required under this chapter shall, upon conviction, be punished by a fine not exceeding \$2,500 per violation or confinement in jail not exceeding 12 months, either or both.

§ 6-78.81. Any Person who violates any provision of or fails to perform any duty imposed by this chapter or of any permit issued under this chapter, shall be guilty of a misdemeanor and upon conviction be punished by a fine not exceeding \$2,500 per violation per day or confinement in jail not exceeding 12 months, either or both.

ARTICLE 9

Validity

§ 6-78.82. All ordinances or parts of ordinances in conflict herewith are hereby repealed.

§ 6-78.83. The invalidity of any section, clause, sentence, or provision of this ordinance shall not affect the validity of any other part of this ordinance which can be given effect without such invalid part or parts.

CHAPTER 3.2

Other Sewer Provisions

(Adopted April 1, 1991)

§ 6-78.84. Connection Fees. Before any Person shall be allowed to connect to the town's sewer system, he shall pay a connection fee as established by the town council from time to time. (Persons seeking connections out-of-town shall pay 150% of the applicable connection fee, but this section is not authorization for any out-of-town connections.) Additionally, Persons seeking connection to the sewer system shall pay all of the town's costs for labor and materials (including any meter required by the council) plus a surcharge of 10%. To the extent the requirements of this section are greater than those imposed by § 6-78.42, this section shall control.

§ 6-78.85. Maintenance of Building Sewers. The maintenance of Building Drains and Building Sewers as defined in §§ 6-78.3 and 6-78.4, respectively, shall be the responsibility of property owners or occupants.

§ 6-78.86 Exemptions to Mandatory Connection. In cases of unusual hardship and where alternate waste disposal mechanisms are in place, the Town Superintendent may exempt residence from the provisions of § 6-78.31; provided that the town may require connection at any time thereafter.

CHAPTER 4
Bills and Penalties

§ 6-79. Water and Sewer Bills and Rates. The town treasurer or other designated official shall mail water and sewer bills to each customer as near as possible to the first day of every month. Water and sewer customers shall pay rates determined by the council. (See Code of Virginia, § 15.1-875.)

§ 6-80. Deposits. The Town Treasurer shall require any prospective water customer not holding title to the property in which water and sewer are to be used to pay a deposit to secure the payment of water and sewer bills. The amount of the deposit shall be set by the council from time to time. The deposit is refundable upon termination of the service and payment of all water and sewer charges. However, this section shall not require a deposit from a person who presents written authorization from the property owner to procure water and sewer services, and attaches to the authorization documentation showing the person to be a recipient of need-based local, state, or federal rental assistance. (Amended August 11, 1987 and August 13, 2012)

§ 6-81. Payment of Bills; Penalties; Disconnection. Water and sewer bills must be paid on or before the twentieth day following the day the bill was issued. If the Treasurer does not receive payment by the twentieth day, he shall add a penalty to the bill equal to \$2.50 for water service and \$2.50 for sewer service or 10% of the amount of the bill, whichever is greater. If the bill or penalty shall remain unpaid on the fiftieth day following the day the bill was issued, the Town Treasurer shall issue a disconnection notice to the customer. The notice shall itemize the full amount due, including penalties and it shall state:

- (1) That the customer's water and/or sewer service will be disconnected in 30 days if the bill and penalty are not paid;
- (2) That any disputes or complaints should be brought to the attention of the Town Superintendent who will listen to the inquiry, dispute, or complaint;
- (3) The telephone number at which the Town Treasurer can be reached. (The Treasurer will answer routine questions and refer appropriate cases to the Superintendent.)

If either the bill or penalty remains unpaid 30 days after the disconnection notice is issued and if the customer has not convinced the Town Superintendent that he does not owe the bill or penalty, the Town Superintendent shall have the customer's water and/or sewer service disconnected. Service shall be reinstated upon full payment of the account plus a surcharge for turning the water and/or sewer service back on set by Council from time to time. The Town bills refuse, water, and sewer services together. The Town will allocate payments received to refuse services first and water and sewer services last.

(Amended March 1, 2001, August 13, 2012, and June 10, 2013.)

§ 6-82. Adjustments to Bills. Adjustments to water bills due to excessive water use shall only be made where the malfunction causing excessive water use can be traced to the town's side of the water meter. Liability of the town for delivery and usage of water shall in no case extend past the metering point.

§ 6-83. Violation. Except where otherwise provided, the violation of any of the provisions of this title shall constitute a class four misdemeanor and shall be punished in accordance with § 1-4 of the Code of the Town of Dayton. Each day the violation continues shall constitute a separate offense. (Amended April 1, 1991.)

CHAPTER 5
General Provisions

§ 6-84. Building Code and Other Standards. All water pipes, sewer pipes, fixtures, and other apparatus shall comply with all applicable building codes and standards set by the town.

§ 6-85. **Repealer.** All ordinances or parts of ordinances in conflict herewith are hereby repealed.

§ 6-86. **Saving Clause.** The invalidity of any section, clause, sentence, or provision of this ordinance shall not affect the validity of any other part of this ordinance which can be given effect without such invalid part or parts.

CHAPTER 6 **Drought Management**

§ 6-87. **Title.** This Chapter shall be known and may be cited as the Drought Management Ordinance.

§6-88. **Purpose** The purpose of this Chapter is to provide for the voluntary and mandatory restriction of use of the Town of Dayton public water supply system during declared water shortages or water emergencies.

§6-89. **Scope.** This Chapter shall apply to all Town of Dayton residents and businesses which are served by the public water supply.

§6-90. **Drought Response Plan.** The Town Council has adopted by resolution the Upper Shenandoah River Basin Regional Water Supply Plan.

§6-91. **Drought Indicators.** The indicators used to indicate drought severity shall be determined by watching well levels in the Town. Upon determination that indicator(s) exceed the threshold of a drought stage, as set forth in Appendices A and B of the Upper Shenandoah River Basin Regional Water Supply Plan, the Town may declare a specific drought stage.

§6-92. **Drought Stage.** The drought stages shall be Drought Watch, Drought Warning, and Drought Emergency, as determined by the Town pursuant to the Upper Shenandoah River Basin Regional Water Supply Plan and State Water Control Board Regulation 9 VAC 25-120.

§6-93. **Declaration.** Upon the finding by the Town Council that a drought stage exists, as defined in § 6-92 of this Chapter, the Town may issue a declaration of a drought stage. The Town may declare a drought stage in the absence of a declaration by the Commonwealth of Virginia. The Town must declare a drought stage upon declaration by the Commonwealth of Virginia that such a drought stage exists in Dayton.

§6-94. **Drought Stage Response.** Upon notification to the Town Superintendent of a Drought Watch or Drought Warning, voluntary conservation measures will be requested of residents and businesses as set forth in the Upper Shenandoah River Basin Regional Water Supply Plan (the "Plan"). Upon declaration of a Drought Emergency, mandatory restrictions shall apply as set forth in the Plan and in this Chapter.

§6-95. **Waiver of Restriction.** Upon prior written request by an individual, business, or other water user, the Dayton Town Council, or its designee, the Town Superintendent may permit less than full compliance with any drought restrictions if good cause can be shown, including evidence that the applicant is affected in a substantial manner not common to other businesses or persons generally. No waiver shall be granted by the Dayton Town Council or its designee unless the Dayton Town Council or its designee determines that the public health, safety, and welfare will not be affected by the waiver. All waivers granted by the Dayton Town Council or its designee shall be reported at the Town Council's next regular or special meeting.

§6-96. **Penalties.** First offense violations of this section shall constitute a class four misdemeanor payable by a fine of \$100. Second and subsequent violations of this section occurring during the continuance of the same Drought Emergency shall be a class four misdemeanor payable by a fine of \$250.

TITLE 7 REFUSE

Section

- 7-1. Authority.
- 7-2. Definitions.
- 7-3. Type of Refuse Collected.
- 7-4. Refuse not Acceptable for Disposal.
- 7-5. Placement of Containers for Collection.
- 7-6. Time of Placement.
- 7-7. Regulations Concerning Containers.
- 7-8. Allowing Refuse to be Scattered.
- 7-9. Town Superintendent to Promulgate Rules and Regulations, Etc.
- 7-10. Scheduled Collections.
- 7-11. Rates and Charges.
- 7-12. Collection of Refuse Produced Outside of the Town Limits.
- 7-13. Delegation of Powers by Superintendent.
- 7-14. Special Collection of Large Items.
- 7-15. Failure to Comply, Penalties.

§ 7-1. Authority. This title is enacted pursuant to the authority vested in the town by § 15.1-857 of the Code of Virginia. Sections of this title may have additional authority as well.

§ 7-2. Definitions. For the purposes of this ordinance, the following terms, phrases, words, and their derivations shall have the meaning given by this section. When not inconsistent with the context in which used, words that are used in the present tense include the future, if used in the plural number they include the singular, and if used in the singular include the plural. The word “shall” is always mandatory and not merely directory.

- (a) “Ashes” is the residue from the burning of wood, coal, or other combustible materials.
- (b) “Garbage” is animal and vegetable waste capable of rotting or decaying and which results from the handling, preparation, cooking, or consumption of food.
- (c) “Person” means in addition to any person, also a firm, partnership, association, corporation, or organization of any kind.
- (d) “Refuse” is all solid wastes (except body wastes) whether capable of rotting or decaying or not, including but not limited to garbage, rubbish, ashes, soot cleanings, dead animals, feathers, abandoned automobiles, and solid market and industrial wastes.
- (e) “Rubbish” is solid wastes (excluding ashes) not capable of decaying or rotting, and consisting of both combustible and non-combustible wastes, such as paper, cardboard, tin cans, yard clippings, wood, glass, bedding, crockery, and similar materials.
- (f) “Superintendent” or “town superintendent” means the superintendent for the town of Dayton, Virginia.
- (g) “Town” means the town of Dayton, Virginia.

§ 7-3. Type of Refuse Collected. This town will collect all garbage, rubbish, and acceptable categories of refuse from residences within town; provided that the superintendent shall have a right to determine what refuse is acceptable depending upon its quantity and type, and may also decline to accept what he considers to be an unreasonable accumulation of garbage and rubbish during a collection period without imposing a charge calculated to cover the actual costs of the collection of the excess material. The town shall have the right but not the obligation to collect commercial refuse for a fee to be negotiated according to the type of waste and quantity thereof.

§ 7-4. Refuse not Acceptable for Disposal. The following categories of refuse shall not be acceptable for disposal:

- (a) Dangerous materials or substances such as poisons, acids, caustics, infected materials and explosives;
- (b) Materials resulting from the construction or demolition of buildings and structures or from the clearance of vacant or improved property in preparation for construction or occupancy. The superintendent shall have the right to accept this refuse upon negotiating a fee for the collection for the same with the user;
- (c) All large and bulky materials, such as motor vehicles or parts of motor vehicles, tree trunks and stumps, that may require special preparation and processing for disposal; and
- (d) Any materials which create an unusually bad odor such as manure or rotten and unhatched eggs;
- (e) The bodies of dead animals.

§ 7-5. Placement of Containers for Collection. Containers are to be placed at the property line for collection and shall not be placed in the street or on the sidewalk in a manner whereby they will interfere with vehicular or pedestrian traffic.

§ 7-6. Time of Placement. Containers shall be placed no earlier than 5:00 p.m. on the afternoon preceding the collection day and must be removed to a point at the side or rear of the structure not later than 8:00 a.m. of the day following collection.

§ 7-7. Regulations Concerning Containers.

- (a) All garbage must be placed in metal or plastic cans of not more than 30 gallon capacity and having a tight fitting cover, or in plastic trash bags of adequate strength to contain the contents. Metal or plastic cans, if used, must be maintained in good condition, free from holes or other potential sources of injury to the persons handling the garbage. The town will not be responsible for collection of materials in plastic bags if such bags are torn or overloaded so as to prevent normal handling.
- (b) All other materials set out for collection must be in containers that are appropriate for the purpose given the type and weight of the contents, and must be either tightly closed or otherwise covered to prevent scattering of the contents prior to collection or during loading of the material.
- (c) Weeds, brush, or trimmings will be collected only if tied in bundles not exceeding five feet in length and reasonable size to allow convenient handling. Paper or cardboard cartons must be flattened and tied.
- (d) The town shall have the right to decline to collect any material set out for regular collection which weighs in excess of 75 pounds.
- (e) No liquid shall be placed in the receptacle for collection.
- (f) Hot ashes shall not be placed in any combustible container, or any container which also contains combustible materials.
- (g) Underground garbage containers are prohibited from use in the town.
- (h) The container shall not contain any inside structures such as bands or reinforcing angles or anything with the container to prevent free discharge of contents. Containers that have deteriorated or have become damaged to the extent that the covers will not fit securely or that they have jagged or sharp edges capable of causing injury to employees or other persons whose duty it is to handle such containers shall not be used and if such containers are not replaced after notice to the owner or user, such containers will be removed along with the contents and disposed of by the town.
- (i) The lid shall be close-fitting and shall remain in place covering the container or receptacle at all times when there is any material in the container. Containers which have the lids directly attached to them constitute a hazard to employees engaged in the collection of solid waste and if such attachments are not removed after notice to the owner or user, such containers will be removed by the town along with the contents.

§ 7-8. Allowing Refuse to be Scattered. No person shall leave or deposit refuse in such a location and in such amount that it may be carried by the elements upon any street, sidewalk, alley, or other public place, or into any occupied premises within the town. Violation of this section shall constitute a class 3 misdemeanor and be punishable in accordance with § 1-4 of the Town Code. Each day this section is violated shall constitute a separate offense.

§ 7-9. Town Superintendent to Promulgate Rules and Regulations, Etc. The town superintendent is empowered to adopt and put into force such rules and regulations governing refuse collection and refuse disposal as he may deem necessary. These rules and regulations, after approval by the town council, shall have the force and effect of an ordinance.

§ 7-10. Scheduled Collections. The collection dates for refuse, recycling, and lawn waste collection shall be as fixed from time to time by the council and maintained on file in the office of the town superintendent. When any

regularly scheduled collection day falls on a holiday observed by the town, the collection will be cancelled and the refuse, recycling, and lawn waste collection will be collected on the next day which is not a Sunday or a holiday.

(Amended June 10, 2013.)

§ 7-11. Rates and Charges. The rates charged for the collection of refuse, recycling, and lawn waste by the town shall be as fixed from time to time by the council and maintained on file in the office of the town superintendent. Such fees are mandatory for all residents in the Town, irrespective of the actual use of the services provided. Exceptions include residential developments and businesses that utilize a commercial refuse container and have prior approval from the Town. The Town bills refuse, water, and sewer services together. The Town will allocate payments received to refuse services first and water and sewer services last.

(See Code of Virginia § 15.2-105 and 15.2-927.) (Amended June 10, 2013.)

§ 7-12. Collection of Refuse Produced Outside of the Town Limits. The refuse collection program is operated by the town for the disposal of refuse produced within its corporate limits. No person shall deposit any refuse produced outside the town at any point within the town for collection and disposal, without first obtaining the express permission of the town superintendent.

§ 7-13. Delegation of Powers by Superintendent. Wherever certain rights, obligations, or powers are delegated to the town superintendent, council reserves the right to delegate the same duties, powers, rights, or obligations to another officer.

§ 7-14. Special Collection of Large Items. The collections of large amounts of brush, appliances, furniture, or materials in containers which exceed the 75 pound limit may take place at such time or times as designated by the town superintendent with the approval of the town council.

§ 7-15. Failure to Comply, Penalties. Any rates and charges which remain unpaid twenty days after the due date on the bill shall be subject to a penalty of the greater of \$5 or 10% of the amount outstanding, which shall be added to the next regular billing. All unpaid costs and fees shall then constitute a lien against the real estate at issue and shall be collected as other taxes and liens are collected.

(Enacted June 10, 2013.)

v. 2.2.1

EXHIBIT A

TITLE 8

TOWN OF DAYTON

LAND SUBDIVISION

CHAPTER 1

General Provisions

Section

- 8-1. Title
- 8-2. Policy
- 8-3. Definitions
- 8-4. Prohibition Against Subdividing Without Complying With Ordinance
- 8-4.1 Subdivision Exceptions
- 8-5. Payment of Share of Certain Costs
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Plats

- 8-9. Preliminary Plat
- 8-10. Preliminary Plat—Contents
- 8-11. Preliminary Plat—Filing for Approval
- 8-12. Final Plat—Requirements and Contents
- 8-13. Additional Filings With Final Plat
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- 8-16. Alleys for Commercial and Industrial Use
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- 8-18.1. Connection of Streets
- 8-18.2. Standards for Street Construction.
- 8-18.3. Standards for Water and Sewer Facilities

- 8-18.4 Standards for Other Utilities.
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- 8-19. Length, Width and Shape of Blocks
- 8-20. Approval of Design of Irregularly Shaped Blocks, etc.
- 8-21. Size, etc. of Lots
- 8-22. Prohibition Against Peculiarly Shaped Elongations
- 8-22.1 Prohibition of Alleys on Residential Lots
- 8-22.2 Prohibition of Reserved Strips
- 8-22.3 Names of Streets
- 8-23 (Repealed May 6, 2002. Recodified as 18-18.6.)

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- 8-24. (Repealed May 6, 2002. Recodified as 18-18.7.)
- 8-25. Utility Easements; Other Easements
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- 8-27. Construction of Improvements; Guaranty by Subdivider
- 8-28. Standards for Improvements
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Fees and miscellaneous

- 8-29 Fees
- 8-30 Vacation

Chapter 1
General Provisions

§ 8-1. Title. This ordinance is known and may be cited as the "Subdivision Code of Dayton, Virginia."

§ 8-2. Policy. It is declared to be the policy of the Town of Dayton to consider land subdivisions as part of a plan for the orderly, efficient and economical development of the Town. Such subdivisions shall be guided and regulated in such a manner as to meet the requirements set out in this ordinance for orderly and harmonious growth.

§ 8-3. Definitions. For the purposes of this Title, the following words and phrases shall have the meanings ascribed to them by this section, except where the context clearly dictates otherwise:

(a)	"Agent"	The Person designated by the Council of the Town of Dayton, Virginia, to act on its behalf on Subdivision matters.
(b)	"Alley"	A passageway open to public travel affording a secondary means of vehicular access to abutting lots and not intended for general traffic circulation.
(b1)	"Clerk's Office."	The Clerk's Office of the Circuit Court of Rockingham County, Virginia. (Added May 6, 2002.)
(c)	"Commission"	The Planning Commission of the Town of Dayton, Virginia.

(d)	"Council"	The Council of the Town of Dayton, Virginia.
(e)	"Cul de sac"	A Street with only one outlet and having an appropriate turn-around for safe and convenient reverse traffic movement.
(f)	"Person"	A natural Person or a partnership, corporation, or any other form of legal entity.
(g)	"Plat"	A map or drawing on which the proposed subdivision of land is presented for approval and, when in final form, for recording.
(h)	"Plat of Subdivision"	The schematic representation of land divided or to be divided.
(i)	"Street"	Any way for vehicular traffic other than alleys, including Streets, lanes, boulevards, expressways, roads, highways, thoroughfares, or however otherwise designated.
(i1)	"Subdivide."	To divide a lot or parcel of land into two or more parcels. The term also includes the reduction of one parcel to increase the size of an adjoining parcel. (Added May 6, 2002.)
(j)	"Subdivider"	An individual, corporation, or other entity owning a parcel of land to be subdivided, whether or not represented by an attorney or agent.
(j1)	"Subdivision"	Land which has been—or which is proposed to be—subdivided.

§ 8-4. Prohibition Against Subdividing Without Complying With Ordinance.

- (a) No Person shall Subdivide land without making and recording a Plat of such subdivision and without fully complying with the provisions of this ordinance.
- (b) No such Plat of any subdivision shall be recorded unless and until it shall have been submitted to and approved by the Agent.
- (c) No Person shall sell or transfer any land of a Subdivision before such Plat has been duly approved and recorded as provided herein, provided that nothing in this ordinance shall be construed as preventing the recordation of the instrument by which such land is transferred or the passage of title as between the parties to the instrument.
- (d) It shall be unlawful for any Person, corporation, partnership, or other entity to Subdivide or improve property in a manner which deviates from the preliminary or final Plats as approved.
- (e) Any Person violating the foregoing provisions shall be subject to a fine of not more than \$500 for each lot or parcel of land so Subdivided or transferred or sold; and the description of such lot or parcel by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties or from the remedies provided herein.

(See Virginia Code, § 15.2-2254.)

§ 8-4.1 Subdivision Exceptions

- (a) Abbreviated Procedures.
 - (1) Finding. The Council finds that requiring Subdividers to comply with this title in its entirety could create substantial injustice or hardship with respect to the classes of subdivisions defined in paragraph (a)(2) of this section.
 - (2) Qualification. This subsection (§ 8-4.1(a)) shall apply to the following classes of subdivisions:
 - (A) Divisions of property into two pieces, with one being retained by the Subdivider and the other being conveyed to the owner of an adjoining lot;

- (B) Subdivisions in which no water, sewer, drainage, Street or other improvements are required, and in which no such improvements will be dedicated to public use or otherwise transferred to the Town.
- (3) Procedures. With respect to subdivisions identified in paragraph (a)(2) of this section, the Agent may permit the Subdivider to submit his proposal under the abbreviated procedures of this subsection (§ 8-4.1(a)), if the Agent is satisfied that doing so will not undermine the Council's intent expressed in § 8-2. The abbreviated procedures consist of the following:
- (A) The Subdivider shall submit a written summary describing the salient features of the Subdivision;
 - (B) He shall also submit a final Plat complying with § 8-12;
 - (C) If the subdivision is an adjoining-lot transfer under paragraph (a)(2)(A) of this section, the final Plat shall also indicate—by broken lines—the preexisting boundary between the portion of the divided lot being conveyed and the adjoining lot. The broken line shall be labeled with the following language: "Property line hereby vacated." Recordation of the final Plat shall operate to vacate the common property line.
 - (D) The Agent shall review the materials submitted, and approve the final Plat if the Subdivision complies with the terms of this Title.
 - (E) If the Agent rejects the proposal, the Subdivider may resubmit his materials to the Agent under this section or invoke the full subdivision procedures set out in this Title.
- (b) Variance from Standards. The Council further recognizes that in rare instances, compliance with Chapter 3, Article I—dealing with certain subdivision improvement standards—could cause substantial injustice. Upon the petition of a Subdivider and a finding of clear and substantial injustice, the Council may relax the standards imposed by Chapter 3, Article I.
- (c) Multi-Family Housing. Divisions of property made in accordance with § 9-38.1 or § 9-52.1 of the Town Code shall be exempt from the provisions of this Title.

(Added May 6, 2002.) (See Code of Virginia, § 15.2-2242(1).)

§ 8-5. Payment of Share of Certain Costs. Every Subdivider or developer of land shall be obligated to pay the pro-rata share of the cost of providing reasonable and necessary sewerage, water, and drainage facilities, located outside the property limits of the land owned or controlled by the Subdivider or developer, but necessitated or required, at least in part, by the construction or improvement of such subdivision or development; provided, however, no such payment shall be required until such time as the Town of Dayton or a designated department or agency thereof shall have established a general sewer, water and drainage improvement program for an area having related and common sewer, water, and drainage conditions and within which the land owned or controlled by the Subdivider or developer is located. The Subdivider's pro-rata share of these expenditures shall be calculated in accordance with § 15.2-2243 of the Code of Virginia.

In lieu of such payment, a Subdivider or developer may post a personal, corporate or property bond, cash escrow or other method of performance guarantee satisfactory to the Agent, conditioned on payment at commencement of such studies or construction.

Each such payment received shall be expended only for necessary engineering and related studies and the construction of those facilities identified in the established sewer, water, and drainage program. The payments received shall be kept in a separate account for each of the individual improvement programs until such time as they are expended for the improvement program. All bonds, payments, cash escrows or other performance guarantees hereunder shall be released

and used, with any interest earned, as a tax credit on the real estate taxes on the property if construction of the facilities identified in the established water, sewer and drainage programs is not commenced within twelve years from the date of the posting of the bond, payment, cash escrow or other performance guarantee.

(See Va. Code, § 15.2-2243.)

§ 8-6. Building or Zoning Permits. Until this Title is complied with, the Town will issue no building or zoning permits for any improvement or activity on property which has been Subdivided. (Amended May 6, 2002)

§ 8-7. Proceeding to Restrain or Abate Violations. In case of any violation or attempted violation of the provisions of this Title, the Agent or the Town Council, in addition to other remedies, may institute any appropriate action or proceeding to prevent such violation, or attempted violation, to restrain, correct, or abate such violation, or attempted violation, or to prevent any act which would constitute such a violation. (Amended May 6, 2002.)

§ 8-8. Administrative Procedures; Right of Agent to Establish. In addition to the provisions of this ordinance the Agent may, from time to time, establish reasonable additional administrative procedures deemed necessary for the proper administration of this Title, but such procedures shall be subject to disapproval by the Council. The Agent may establish reasonable fees for the review of Plats and the inspection of facilities required to be installed.

CHAPTER 2

Plats

§ 8-9. Preliminary Plat. The first step in the approval of a subdivision shall be the filing of a preliminary Plat with the Agent.

§ 8-10. Preliminary Plat—Contents. The preliminary Plat shall be drawn to scale and shall include supporting data showing the following:

- (a) The proposed subdivision name and acreage;
- (b) Date, north point, and graphic scale;
- (c) Names and addresses of the owners of the property, including any existing mortgagees, and the designer of the layout;
- (d) Location and names of adjoining developments or names of the owners of adjoining lands;
- (e) Existing and proposed Streets, easements and other rights of way within and adjoining the subdivision, including right of way and roadway widths, approximate grades, and proposed Street names;
- (f) Location of existing and proposed utilities adjacent to the tract to be Subdivided, including size and elevation;
- (g) Location of building setback lines and zoning district lines;
- (h) Lot lines, lot and block numbers, and approximate dimensions;
- (i) Proposed method of water supply, drainage provisions, sanitary sewer layout or other accepted sanitary plan, methods of flood control where applicable, and all other public utilities. Connections with existing facilities, sizes of proposed facilities, and any accessory structure shall also be shown;
- (j) The location of existing water courses and other geographic features;
- (k) Any requirements for property development set out elsewhere in this code, including any Tree Canopy

Plan required by Title 8.1. (Amended May 6, 2002.)

§ 8-11. Preliminary Plat--Approval. The Agent shall review the preliminary Plat with the Commission, which shall approve or disapprove of it. In not more than sixty (60) days from the time of submission, the Agent shall advise the Subdivider of approval or disapproval of the preliminary Plat and other required exhibits as submitted or modified and, if approved, the same shall be expressed on the Plat stating the conditions of approval, if any, or if disapproved shall express such disapproval and the reasons therefor. Approval of the preliminary Plat does not constitute approval of the final Plat.

§ 8-12. Final Plat--Requirements and Contents.

- (a) The final Plat shall be prepared in all cases and filed with the Agent. The final Plat shall be prepared by a surveyor or civil engineer duly licensed by the Commonwealth of Virginia. The Subdivider shall submit to the agent a reasonable number of copies, as required by the Agent, clearly and legibly drawn to scale and of a size compatible with size requirements of the Clerk of the Circuit Court of Rockingham County, Virginia, for recordation purposes. When more than one sheet is necessary an index sheet of the same size may be required showing the entire subdivision.
- (b) The final Plat shall show:
 - (1) Bearings and distances to nearest existing Street lines or other permanent monuments and shall be accurately described on the Plat.
 - (2) Exact boundary lines of the tract.
 - (3) Name of subdivision, acreage, exact location, width and names of all Streets and alleys within and immediately adjoining the Plat.
 - (4) Streets and lines showing angles of deflection, angles of intersection, radii and lengths of tangents.
 - (5) Lot lines with dimensions to the nearest one-hundredth (1/100) foot and bearings to the nearest 10 seconds.
 - (6) Numbered lots and blocks.
 - (7) Location, dimensions, and purposes of any easements and any areas to be reserved or dedicated for public use. Easements shall be labeled specifically as to type, e.g. "15 foot stormwater drainage easement."
 - (8) Accurate location and description of monuments and markers, and the type of material used for the monuments or markers.
 - (9) The following certificate, in addition to any professional engineer's or land surveyor's certificate:

"The platting or dedication of the following described land (here insert a correct description of the land subdivided) is with the free consent and in accordance with the desire of the undersigned owners, proprietors, and trustees, if any."

This statement shall be signed by the necessary parties, including trustees, and acknowledged before a notary public or other officer authorized to take acknowledgements.

- (c) The final Plat shall
 - (1) Comply with the Minimum Standards and Procedures for Land Boundary Surveying Practice and all other regulations adopted by the Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects of the Commonwealth of Virginia.
 - (2) Be oriented so that north is shown at the top of the page, wherever practicable.
 - (3) Comply with the standards adopted under § 42.1-82 of the Virginia Public Records Act. (See Code of Virginia, § 15.2-2241(1))

§ 8-13. Additional Filings With Final Plat. At the time of filing the final Plat with the agent, the Subdivider shall also submit the following:

- (a) A certificate as to adequacy of the proposed water supply and sewage system, if not connected to the Town's system (but this provision does not constitute authorization for alternative or private water or sewer systems);
- (b) A certificate by a professional engineer that any required improvements constructed by the Subdivider have been designed to meet the minimum standards of these regulations or as otherwise required by law;
- (c) The performance bond or other instrument described under § 8-27.

§ 8-14. Approval of Final Plat; Recordation in Clerk's Office.

- (a) Approval. The Agent shall act on the final Plat, without review by the Commission or Council, in the same manner and within the same time restraints as is required on the preliminary Plat under § 8-11. It shall be approved if it is consistent with the preliminary Plat and otherwise complies with this ordinance. If the final Plat is approved, such fact shall be endorsed on the Plat itself, executed by the Agent. No approval shall be granted until the provisions of § 8-27 pertaining to the construction of improvements have been complied with.
- (b) Recordation—Generally. After approval the Plat shall then, subject to all of the provisions of this title, be filed and recorded in the Clerk's Office, and indexed in the general index to deeds under the names of the owners of land signing the statement set forth under § 8-12(b)(9) and under the name of the subdivision.
- (c) Timing of Recordation. Subject to paragraphs (d)(1) and (d)(2) of this section, unless the approved final Plat is filed for recordation within six (6) months after final approval, or such longer period as may be approved by the Council in writing, the approval previously given shall be deemed withdrawn and the Subdivider shall return the Plat marked "void" to the Agent. (Code of Virginia, § 15.2-2241(8).)
- (d) Extensions of Recordation Deadline.
 - (1) Incremental Recordation. If a Subdivider records a final Plat comprising a section of a development as shown on an approved preliminary Plat and furnishes the guaranty required by § 8-27 for that section, the Subdivider shall have the right to record the remaining sections shown on the preliminary Plat for a period of five years from the recordation date of the first section or for such longer period as the Agent may determine to be reasonable. (Code of Virginia, § 15.2-2241(5).)
 - (2) Improvements underway. In any case where construction of facilities to be dedicated for public use has commenced pursuant to an approved plan or permit (and with a guaranty approved under § 8-27) the time for such Plat recordation shall be extended to one year after final approval or the

time limit specified in the surety agreement approved by the governing body, whichever is greater. (Code of Virginia, § 15.2-2241(8).)

(Amended May 6, 2002) (See Code of Virginia, § 15.2-2241)

CHAPTER 3
Design Standards

Article I
Public Improvements

§ 8-15. Names of Streets. (Recodified as § 8-22.3. May 6, 2002.)

§ 8-15.1. Administrative Procedures. The Agent's authority to establish administrative procedures under § 8-8 of the Town Code extends to the standards for public improvements expressed in this article. Subject to disapproval by the Council, the Agent may interpret or define the general standards expressed herein. (Added May 6, 2002.)

§ 8-16. Alleys for Commercial and Industrial Use. Alleys at least twenty (20) feet in width shall be provided at the rear of all lots designated for commercial and industrial use. Intersecting alleys, where unavoidable, shall be provided with at least a fifteen (15) foot radius at each corner. Dead-end alleys are prohibited.

§ 8-17. Prohibition of Alleys on Residential Lots. (Recodified as § 8-22.1, May 6, 2002.)

§ 8-18. Prohibition of Reserved Strips. (Recodified as § 8-22.2, May 6, 2002.)

§ 8-18.1. Connection of Streets. Wherever deemed feasible by the Town, Streets shall extend to the edge of the subdivision in designated locations so that they may be connected to Streets in present or future adjacent or contiguous to adjacent subdivisions. Such Streets shall be coordinated acceptably to not only in location, but also in width, grade, and drainage. (Code of Virginia, § 15.2-2241(2).)

§ 8-18.2. Standards for Street Construction.

- (a) **Design.** All Streets must be designed to meet the specifications in the latest edition of the Virginia Department of Transportation's Subdivision Street Requirements, except the Town requires curb and guttering on all subdivision Streets. On Streets with speed limits less than or equal to 40 miles per hour, the curb and guttering shall be of type CG-6, as specified in the Department of Transportation requirements. On Streets with speed limits greater than 40 miles per hour, the curb and guttering shall be of the type specified as CG-7. The subdivision Street requirements make use of certain categories of Streets, traffic volume, and terrain. The Town shall determine which categories apply.
- (b) **Installation.** Subdividers shall be required to install all Streets in the subdivision. Installation of all required Street signs shall also be the responsibility of the Subdivider.

§ 8-18.3. Standards for Water and Sewer Facilities.

- (a) **General Requirement.** If water and sewer lines do not already serve the property to be subdivided, the Town, subject to § 8-5 of the Town Code, will extend its lines to the boundary of the developer's property (if such property boundary is within the Town), but the developer must extend the lines throughout the subdivision in easements to be dedicated to the Town. Once installed—and accepted by the Town—the lines become part of the Town's utility system, and they become Town property. All fees for connection to the Town's water and sewer systems through the new lines shall accrue to the Town.
- (b) **Subdivision Water Mains.** Subdivision water mains shall be designed (i) to supply reasonable quantities of water at reasonable pressure within the Subdivision, (ii) to be durable and reasonably maintenance-

free, (iii) to interconnect with—and cause no harm to—the Town's water supply and distribution system, and (iv) to provide adequate fire hydrants. Additionally, all such water mains shall comply with all requirements of the Virginia Department of Health and any other applicable governmental requirements.

Without limiting the foregoing, the Town imposes the following general requirements:

- (1) All water mains shall be constructed of class 52 ductile iron (or equivalent, in the judgment of the Agent) and shall be at least eight inches in diameter. (This requirement applies to residential subdivisions. In other contexts, larger lines may be required.)
 - (2) Unless clearly impracticable, the water system shall employ looped lines. Where allowed, dead-end lines shall be equipped with fire hydrants, flush valves, or blow-offs to allow flushing.
- (c) Subdivision Sanitary Sewer Mains. All wastewater mains shall be constructed so as (i) to be of adequate capacity for the maximum expected flow of wastewater, (ii) to be durable and maintenance free and to withstand leakage to the maximum extent practicable, (iii) to interconnect with—and cause no harm to—the Town's sewer collection system. Additionally, all such wastewater mains shall comply with all requirements of the Virginia Department of Health and any other applicable governmental requirements.

Without limiting the foregoing, the Town imposes the following general requirements:

- (1) Wastewater lines shall be a minimum of minimum of eight (8) inches in diameter, and shall be composed of schedule 35 PVC (or equivalent, in the judgment of the Agent). (This requirement applies to residential subdivisions. In other contexts, larger lines may be required.)
 - (2) Manholes shall be provided at all intersections with other mains, points of change in alignment or grade, change or pipe size, and at the end of a line that will be extended at a later date. The length of line between manholes shall not exceed 500 feet. Manholes for sewer lines up to 24 inches in diameter shall not be less than four feet inside diameter with an opening of 24 inches. Steps shall be provided. Service laterals shall be installed to the property line of the lot and properly marked as to their location.
- (d) Service Lines. Water and Sewer service lines shall be installed from the main to the property line. Water meter boxes and yolks shall be set in place. The depth shall be sufficient to prevent freezing but not so deep as to require extensions and make it difficult to maintain or read the meters.

(Added May 6, 2002.)

§ 8-18.4. Standards for other utilities. All electric, telephone, and television cable distribution lines and connections must be underground.

§ 8-18.5. Standards for drainage.

- (a) General Requirement. Subdivisions shall be designed so as not to cause or permit unreasonable drainage of surface water onto adjoining properties, whether public or private. For purposes of this section, "unreasonable drainage" is drainage which (i) could potentially cause harm or significant inconvenience and (ii) is materially greater than would occur if the subdivided property were left in its undeveloped state. This section applies in addition to any other applicable law concerning surface water drainage. (Added May 6, 2002.) (See Va. Code, § 15.2-2241(3).)
- (b) Regional Drainage Systems; Designation of Land for Drainage Facilities. Unless an area-wide storm sewer system has been established under § 8-5, the Subdivider may be required to designate certain areas of the Subdivision or other land for detention ponds of other drainage facilities. The Town will not approve any such drainage facilities unless adequate provisions are made for the maintenance thereof.

- (c) **General Standards.** All drainage facilities shall be designed (i) to drain foreseeable quantities of water from the Streets and Lots of the Subdivision, and (ii) to be durable and reasonably maintenance-free.

§ 8-18.6 Installation of Permanent Monuments. Permanent reference monuments shall be installed marking subdivision boundaries, Street corners, intersections of Street lines, and angle points. Additionally, each lot in any new Subdivision must contain at least one permanent monument.

Permanent monuments shall be granite or concrete and of such reasonable length and width as are required by the Agent. In implementing this requirement, the Agent shall be guided by the council's intent that permanent monuments be of sufficient size and strength to withstand activities which should be considered normal within the subdivision. Permanent monuments must be set to approved finished grades.

§ 8-18.7 Installation of Street Signs. Uniform Street name signs—of a design approved by the Agent—shall be installed at all Street intersections at the cost of the Subdivider.

§ 8-18.8 Lighting. Subdividers shall be required to install Street lights throughout the subdivision at their expense.

Article II Layout and Design

§ 8-19. Length, Width and Shape of Blocks. The length, width and shape of blocks shall be determined with due regard to:

- (i) Provision of adequate building sites suitable to the special needs of the type of use contemplated;
- (ii) Zoning requirements as to lot sizes and dimensions;
- (iii) Need for convenient access, circulation and control and safety of Street traffic, and
- (iv) Limitations and opportunities of topography.

§ 8-20. Approval of Design of Irregularly Shaped Blocks, etc. Irregularly shaped blocks or oversized blocks indented by cul de sacs, parking courts, or loop Streets and containing interior block parks or playgrounds will be acceptable when the design is approved by the agent.

§ 8-21. Size, etc. of Lots. The lot size, width, depth, and shape of lots shall be appropriate for the location of the subdivision and for the type of development and use proposed and shall comply with the requirements of the zoning ordinance.

§ 8-22. Prohibition Against Peculiarly Shaped Elongations. Peculiarly shaped elongations unusable for normal purposes may not be used to satisfy area, setback, or other dimensional regulations.

§ 8-22.1. Prohibition of Alleys on Residential Lots. Alleys are prohibited at the rear or side of residential lots. (Recodified May 6, 2002.)

§ 8-22.2. Prohibition of Reserved Strips. Reserved strips controlling access to Streets are prohibited. (Recodified May 6, 2002.)

§ 8-22.3. Names of Streets. Proposed Streets that are in alignment with existing Streets already named shall bear their existing names. No new Streets shall duplicate names of existing Streets, irrespective of any suffix. All Street names shall be subject to approval by the Town Council and names of existing Streets shall not be changed except by approval of the Council. (Recodified May 6, 2002.)

§ 8-23. (Repealed May 6, 2002. Recodified as 18-18.6.)

CHAPTER 4
Easements, Maintenance of Streets by Town

§ 8-24. (Repealed May 6, 2002. Recodified as 18-18.7.)

§ 8-25. *Utility Easements; Other Easements.* Easements at least ten (10) feet wide, centered on side or rear lot lines, shall be provided for utilities. Title to such easements shall be held by the Town, subject to the use of public service corporations and other entities by applicable franchises or agreements. Easements may also be required in, along, or adjacent to natural water courses as drains for sanitary sewers. In appropriate cases approved by the Town, utility easements may be conveyed directly to public service corporations furnishing cable television, gas, telephone and electric service to the proposed subdivision by reference on the final Plat to a declaration of terms and conditions of such common easements and recorded in the land records of Rockingham County.

§ 8-25.1. *Drainage System and Easements.* If, in creating a drainage system under § 8-18.5 above, the Subdivider relies on easements traversing lots in the Subdivision, the Subdivider must provide for the integrity of the drainage system by attaching a covenant running with the lots in the subdivision, in substantially the following form:

“Some lots in the subdivision are encumbered by a stormwater drainage easement, and no lot owner shall interfere with the drainage system within that easement--by grading, filling, landscaping, or otherwise--without the written permission of the Town of Dayton. The Town may enter any lot on which such stormwater drainage system lies for the purpose of inspecting, modifying, or repairing the system. If such repairs are necessitated because of interference with the system by the lot owner, the Town shall be entitled to effect such repairs at the lot owner's expense. Further, the Town shall be entitled to its attorneys' fees in any judicial action to enforce this covenant. This covenant creates no obligation on the part of the Town.”

§ 8-26. *Maintenance of Improvements.* The Town has no obligation to improve, maintain, or take any action with respect to Streets or other improvements not constructed, inspected, and accepted in accordance with this Title.

§ 8-27. *Construction of Improvements; Guaranty by Subdivider.*

- (a) ***Basic Requirement.*** All of the improvements required of the Subdivider shall be installed by the Subdivider at its cost. Unless the Planning Commission determines otherwise when approving the preliminary Plat, all required improvements shall be completed within 24 months after recordation of the final Plat.
- (b) ***Guaranty.*** Prior to approval of the final Plat, the Subdivider shall guarantee construction of the improvements required by this title. For purposes of the guarantee, the Agent shall estimate the cost of the improvements and may also require an additional 25% guarantee in order to allow for inflation, administrative costs, and damage to existing roads and utilities.
- (c) ***Form of Guaranty.*** The Subdivider may guarantee construction of the improvements by prepaying the Person or Persons who will construct them and certifying to the Agent that he has done so. In lieu of making such advance payment, the developer may furnish instruments of guaranty in appropriate legal form and consisting of
 - (1) A certified check or cash escrow, or
 - (2) A personal, corporate, or property bond with surety or security satisfactory to the Council, or
 - (3) An irrevocable letter of credit from a banking or savings and loan institution, or

(4) A contract for the construction of such facilities guaranteed by contractor's bond with satisfactory surety.

(d) *Release of Guaranties.* Subject to § 8-28.1, all guaranties shall be released by the Agent in the manner provided by § 15.2-2245 of the Code of Virginia.

(Code of Virginia, §§ 15.2-2241(5) & 15.2-2245) (Amended Month Day, 1997.)

§ 8-28.1. Inspection of Improvements. No improvements shall be deemed accepted (and no bond released) until the improvements have been inspected by the agent or his designee and found to be in compliance with all applicable law and the Plats and other documents filed with the Town. Prior to inspection, the Subdivider shall prepay the Town's estimate of reasonable inspection cost, including the retention of an engineer if deemed desirable by the Agent.

A certificate of partial or final completion of improvements from either a duly licensed professional engineer or land surveyor, as defined in and limited to § 54.1-400 of the Code of Virginia may be accepted in lieu of an inspection, in the discretion of the agent. Any such certificate must make reference to all applicable Town standards and all Plats and other documents submitted by the Subdivider.

(Code of Virginia, § 15.2-2245.)

CHAPTER 5 ***Fees and Miscellaneous***

§ 8-29. Fees. A Subdivider shall pay to the treasurer of the Town a fee for review of Plats and plans as the Council from time to time deems appropriate.

§ 8-30. Vacation; alteration. Subdivision Plats may be vacated in accordance with §§ 15.2-2271 and 15.2-2272 of the Code of Virginia. Additionally, Subdivision Plats may be vacated or altered in the manner prescribed by Va. Code, § 15.2-2275.

TITLE 8.1
Landscape Standards

Section

- § 8.1-1. Intent.
- § 8.1-2. Definitions
- § 8.1-3. Requirements.
- § 8.1-4. Exemptions and Exceptions.
- § 8.1-5. Standards.
- § 8.1-6. Administrative Process.
- § 8.1-7. Maintenance.

Chapter 1
Tree Canopies

(Adopted February 7, 2000)

§ 8.1-1. Intent. The Town Council has found that the preservation of existing trees and the planting of new trees improve the quality of life in the Town by mitigating the effects of growth, increasing property values, making Town more desirable to shoppers and visitors, and providing positive environmental effects. This chapter is intended to further these goals, while still preserving landowners' flexibility in the development of their property.

§ 8.1-2. Definitions. For purposes of this Chapter,

- (a) "Caliper at Planting," or "CAP" means the diameter of a tree, at ground level, at the time of planting.
- (b) "Development" means any residential subdivision, commercial subdivision, planned unit development, commercial planned unit development, or other commercial improvement of property.
- (c) "Major Trees" means tree species identified as such in section IV(B) of the VDOT Guidelines.
- (d) "TSVL" means *Trees and Shrubs for Virginia Landscapes, Appendix A, Tree Canopy Spread After 10 or 20 Years*, as published by the Virginia Nursery and Landscape Association, Inc., attached as Appendix 1, and incorporated herein, *mutatis mutandis*.
- (e) "VDOT Guidelines" means the Virginia Department of Transportation's *Guidelines for Planting Along Virginia's Roadways*, attached as Appendix 2, and incorporated herein, *mutatis mutandis*.

§ 8.1-3. Requirements.

- (a) **Applicability.** The general requirements of paragraph (b) of this section apply only to property zoned B-1, B-2, HB-1, or M-1. The street-planting requirements of paragraph (c) apply in all zoning classifications.
- (b) **Tree Canopy Generally.** All new Developments shall be accompanied by the planting or retention of trees on the site to the extent that, after twenty years, there will be a tree canopy of at least 10% of the Development.

In calculating the "tree canopy," the following rules apply:

- (1) The tree canopy includes all areas of coverage by plant material exceeding five feet in height.
- (2) The extent of 20-year tree canopy shall be based on the *TSVL* handbook. If the tree species or CAP is not listed in the *TSVL* handbook, the landowner or developer may

submit another treatise for approval. Where *TVSL* (or other reference) lists a range for the 20-year canopy, the midpoint of the range shall be the applicable standard.

- (3) When existing trees are to be counted as part of the required tree canopy, the developer shall estimate the 20-year canopy, supplying any supporting documentation.
 - (4) The tree canopy shall be calculated by dividing the total 20-year canopy for all trees to be planted or retained by the gross area of the Development (including all buildings and streets).
- (c) *Along new streets.* Whenever a Development includes the creation of a new street,
- (1) A Major Tree of at least two inches CAD shall be planted at approximately fifty-foot intervals, along the street, in the area dedicated for public use.
 - (2) All such plantings shall be in accordance with the VDOT Guidelines.
 - (3) Trees planted under this paragraph (c) may be included in the overall tree canopy requirements of paragraph (b) above, even if the trees are beyond the boundary of the Development.

§ 8.1-4. Exemptions and Exceptions.

- (a) With respect to the development of farmland and other areas devoid of woody materials, or where necessary to prevent unreasonable hardship to the developer, the Town Superintendent may reduce the Tree Canopy requirements by up to one-half if necessary for the reasonable development of the property.
- (b) Nothing in this chapter shall require the planting of trees which would endanger the continued existence of any wetlands.
- (c) This chapter shall not apply to dedicated school sites, playing fields, non-wooded recreational areas, and other facilities and uses of a similar nature.

§ 8.1-5. Standards. All trees to be planted shall meet the specifications of the American Association of Nurserymen's *American Standard for Nursery Stock*. The planting of trees shall be done in accordance with the VDOT Guidelines.

§ 8.1-6. Administrative Process. No Development shall be approved--and no zoning permit issued for any construction--until the Town Superintendent approves a tree canopy plan submitted by the developer. The plan shall include:

- (1) The area and dimensions of the development;
- (2) The location, CAP, and species of trees to be planted (or retained) in order to meet the requirements of this chapter;
- (3) For any species (or CAP) of trees not listed in *TSVL*, authoritative data showing the 20-year canopy for that species and CAP;
- (4) Where relevant, the manner in which the trees will be planted, and
- (5) Approval from the Virginia Department of Transportation for plantings within dedicated streets, or certification that no such approval is required.

The Town Superintendent shall approve the plan if he finds (i) the trees to be planted meet the requirements of this chapter and (ii) the trees are laid out so that they are unlikely to interfere with the use of the property (e.g. buildings, sidewalks, utilities) or with each other.

§ 8.1-7. Maintenance.

- (a) As a condition of approval of any Development, the developer must agree—on a bond form supplied by the Town—to maintain all trees required by this chapter for a period of two years. At its own expense, the Developer will replace any trees which die in this two-year period.
- (b) No trees required by this chapter shall be removed without the written approval of the Town Superintendent. The Town Superintendent shall grant such approval if he is satisfied that (i) removal of the tree will not undermine the intent of this ordinance and (ii) the landowner has made adequate alternative provisions for satisfying this chapter.

TITLE 9

TOWN OF DAYTON

ZONING

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(Repealed July 13, 1998)

CHAPTER 11.1
A-1 Agricultural District
(Enacted July 13, 1998)

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(Repealed July 13, 1998)

CHAPTER 12.1
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(Enacted July 13, 1998)

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CHAPTER 1
Title and Purposes

§ 9-1. ***Title.*** A Code to provide for the establishment of zoning districts within which the proper use of land and natural resources shall be encouraged and regulated; to establish minimum standards for open space, building and population density; to regulate the occupancy and use of dwellings, buildings and structures, that may hereafter be erected, altered, or moved; to provide for the administration hereof; to provide for a method of amending; to provide for conflicts with other acts, codes, or regulations; to provide for the collection of fees for the furtherance of the purpose of this Code; to provide for petitions and public hearings, to provide for appeals; and to provide for penalties for the violation of this Code.

§ 9-2. ***Short Title.*** These regulations shall be known and may be cited as “THE ZONING CODE OF DAYTON.”

§ 9-3. ***Purposes.*** It is the purpose of this Zoning Code to promote the safety, health, morals, convenience, and general welfare; to encourage the use of lands and natural resources in the town in accordance with their character, adaptability, and suitability for particular purposes; to preserve social and economic stability, property values, and the general character and trend of community development; to prevent excessive concentration of population; to lessen congestion on the public streets and highways; to facilitate adequate provision of streets and highways, sewerage and drainage, water supply and distribution, educational, and other public resources, by establishing herein standards for community development in accordance with these objectives and by providing for the enforcement of such standards.

THE TOWN COUNCIL DOES ORDAIN AND ENACT INTO LAW THE FOLLOWING ARTICLES AND SECTIONS.

CHAPTER 2
Zoning Districts and Map

§ 9-4. ***Establishment of Zoning Districts.*** For the purpose of promoting the public health, safety, morals, convenience, and the general welfare of the community, the Town of Dayton is hereby divided into districts of 10 different classifications, each district being of such number, shape, kind, and area, and such common unity of purpose, and adaptability of use that is deemed most suitable to carry out the purpose of this Code.

DISTRICT CLASSIFICATION

R-1	Residential District
R-2	Residential District
R-3	Residential District
B-1	Business District
B-2	Business District
A-1	Agricultural District
A-2	Agricultural District
M-1	Industrial District
HB-1	Highway Business District
	Flood Plain Districts

(Amended December 10, 2007.)

§ 9-5. ***Zoning Map.*** The location and boundaries of the zoning districts established by this Code are denoted and defined as shown on the map entitled “Zoning Districts of Dayton, Virginia,” and certified by the Town Recorder.

The said map, together with everything shown thereon, is hereby incorporated into this Code as if fully set forth and described herein.

The Zoning Map shall be kept and maintained by the Zoning Administrator and shall be available for inspection and examination by the public at all reasonable times as any other public record.

§ 9-6. Scope of Regulations. The regulations applying to each district include specific limitation on the use of land and structure, height and bulk of structures, density of population, lot area, yard dimension, and area of lot that can be covered by structures.

§ 9-7. Rules for Interpretation of District Boundaries. Where uncertainty exists with respect to the precise location of any of the aforesaid districts shown on the Zoning Map, the following rules shall apply:

- (a) Boundaries shown as following or approximately following streets, highways, or alleys shall be construed to follow the center lines of such streets, highways or alleys.
- (b) Boundaries shown as following or approximately following platted lot lines or other property lines, such lines shall be construed to be said boundary lines.
- (c) Boundaries shown as following or approximately following the center line of streams, rivers, or other continuously flowing water courses shall be construed as following the channel center line of such water courses.
- (d) Boundaries shown as following or closely following the limits of the Town of Dayton shall be construed as following such limits.
- (e) Where the application of the aforesaid rules leaves a reasonable doubt as to the boundaries between two districts, the regulations of the more restrictive district shall govern the entire parcel in question, unless otherwise determined by the Board of Zoning Appeals.
- (f) Whenever any street, alley, or other public easement is vacated, the district classification of the property to which the vacated portions of land accrued shall become the classification of the vacated land.

§ 9-8. Annexed Territory. Any territory hereafter annexed to the Town shall continue to be subject to the county zoning classifications and regulations as such territory was subject at the time of annexation until otherwise changed by rezoning.

CHAPTER 3 **Administration and Enforcement**

§ 9-9. Administrative Officer. The provisions of this Code shall be administered by the Zoning Administrator or his designated assistant who shall:

- (a) Issue all zoning permits and make and maintain records thereof.
- (b) (Repealed May 1, 1995.)
- (c) Maintain and keep current Zoning maps, and records of amendments thereto.
- (d) Conduct inspections as prescribed by this Code and such other inspections as are necessary to ensure compliance with the various provisions of this Code.
- (e) The Zoning Administrator is hereby authorized to grant a modification from any provision contained in the Town of Dayton's zoning ordinances with respect to physical requirements on a lot or parcel of land, including but not limited to size, height, location or features of or related to any building, structure, or improvements, if the Zoning Administrator finds in writing that: (i) the strict application of the ordinance would produce undue hardship; (ii) such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and (iii) the authorization of the modification will not be of substantial detriment to adjacent property and the character of the zoning district will not be changed by the granting of the modification. Prior to the granting of a modification, the Zoning Administrator shall give, or require the applicant to give, all adjoining property owners written notice of the request for modification, and an opportunity to respond to the request within 21 days of the date of the notice. The Zoning Administrator shall make a decision on the application for modification and issue a written decision with a copy provided to the applicant and any adjoining landowner who responded in writing to the notice sent pursuant to this paragraph. The decision of the Zoning Administrator shall constitute a decision within the purview of § [15.2-2311](#) of the Code of Virginia, and may be appealed to the Zoning Board of Appeals as provided by that section. Decisions of the Zoning Board of Appeals may be appealed to the circuit court as provided by § [15.2-2314](#) of the Code of Virginia. The Zoning

Administrator shall respond within 90 days of a request for a decision or determination on zoning matters within the scope of his or her authority unless the requester has agreed to a longer period. Code of Virginia § 15.2-2286.

(Amended May 1, 1995. Amended November 11, 2013.)

§ 9-10. *Permits Required.* (Repealed May 1, 1995.)

§ 9-11. *Zoning Permit.* No person shall erect, construct, enlarge, alter, repair, or improve any building or structure—if said activities require a building permit under the Uniform Statewide Building Code—without first obtaining a zoning permit for each such building or structure. Such zoning permits shall be issued by the Town Superintendent or other official designated by the council. (Amended May 1, 1995.)

§ 9-12. *Forms for Zoning Permits.* The applications for zoning permits shall be on such form as from time to time approved by the Council and shall indicate the location of the proposed construction, alteration, repair or improvement and shall show the dimension, height of the building and proposed use. The cost of such zoning permits shall be as established by the Council from time to time.

§ 9-13. *Building Permit.* (Repealed May 1, 1995.)

§ 9-14. **Certificate of Occupancy.** (Repealed May 1, 1995.)

§ 9-15. **Amendments.** The regulations, restrictions, boundaries, and options set forth in this Code may be amended, supplemented, revised, or repealed from time to time as conditions warrant, subject to the following conditions:

- (a) **Application:** An application for a proposed amendment shall be filed with the Administrator on behalf of the Council. An application may be instituted by a property owner (with respect to his own property) or his designated representative or upon motion of the Planning Commission or by resolution of the Council. The application shall contain such information and sketches as the Administrator determines are required to fully describe the proposed change; no application shall be deemed complete until all such materials have been supplied. (Amended September 16, 1996.)
- (b) **Public Hearing:** Public hearings shall be held as required by state law.
- (c) **Report to the Town Council:** The Planning Commission shall make a recommendation to the Town Council upon all such applications and no amendment shall be passed except by a majority vote of the councilmen present and voting.
- (d) (Repealed December 10, 2007.)

§ 9-16. **Fees.** Fees shall be established by the Town Council.

§ 9-17. **Penalties.** It shall be unlawful to erect, construct, reconstruct, alter, maintain, or use any building or structure, or to use any land in violation of any regulation in this Code. Any person, firm, association, or corporation who violates, disobeys, omits, neglects, or refuses to comply with, or resists the enforcement of any of the provisions of this Code shall, upon conviction thereof, be subject to a fine of not less than Ten Dollars (\$10) nor more than One Thousand Dollars (\$1,000) together with the cost of the action; every day of violation shall constitute a separate offense. Compliance therewith may also be enforced by injunctive order.

§ 9-18. **Validity.** Should any section, clause or provision of this Code be declared by the Court to be unconstitutional or invalid, this judgment shall not affect the validity of the Code as a whole or any part thereof than the part judged invalid.

§ 9-19. **Conflicts With Other Laws.** In the interpretation and application of the provisions of this Code, these provisions shall be held to be minimum requirements, adopted for the promotion of the public health, morals, safety, and the general welfare. Whenever the requirements of this Code are at variance with the requirements of other lawfully adopted rules, regulations, or codes, the most restrictive, or that imposing the higher standards, shall govern.

§ 9-20. **Repealer.** Any ordinance or code now in effect that conflicts with any provisions of this Code is hereby repealed, held to be invalid, and to no effect.

§ 9-21. **Effective Date.** This Code shall take effect and be in full force after its passage and publication according to law.

CHAPTER 4 **Definitions**

§ 9-22 **Definitions.** For the purpose of this ordinance, certain words and terms are defined as follows: (Words used in the present tense include the future. Words in the singular include the plural, and the plural includes the singular.)

- (1) **Abattoir:** (Repealed May 1, 1995.)
- (2) **Accessory use of Structure:** (Repealed May 1, 1995.)
- (3) **Acreage:** A parcel of land, regardless of area, described by metes and bounds which is not a numbered lot on any recorded subdivision plat.

- (4) *Administrator, The:* The official charged with the enforcement of the zoning ordinance. He may be any appointed or elected official who is by formal resolution designated to the position by the governing body. He may serve with or without compensation as determined by the governing body.
- (5) *Agriculture:* The tilling of the soil, the raising of crops, and horticulture, but not including fruit packing plants or greenhouses. The term also includes the production, for commercial purposes, of animals such as cattle, sheep, goats, llamas, ducks, geese, and horses. Nevertheless, the term does not include poultry houses or hog farms. (Amended July 13, 1998.)
- (6) *Alteration:* Any change in the total floor area, use, adaptability, or external appearance of any existing structure.
- (6.1) *Amusement Center* Any building or portion of a building in which four or more video games or other amusement machines or devices are operated for money or other consideration. (Added May 1, 1995.)
- (7) *Automobile Graveyard:* Any lot or place which is exposed to the weather upon which more than five (5) motor vehicles of any kind, incapable of being operated, and which it would not be economically practical to make operative, are placed, located or found.
- (8) *Basement:* A story having part but not more than one-half (1/2) of its height below grade. A basement shall be counted as a story for the purpose of height regulations, if it is used for business purposes, or for dwelling purposes by other than a janitor employed on the premises.
- (9) *Boarding House:* A building where, for compensation, lodging and meals are provided for at least five (5) and up to fourteen (14) persons.
- (10) *Building:* Any structure having a roof supported by columns or walls, for the housing or enclosure of persons, animals, or chattels.
- (11) *Building, Accessory:* A subordinate structure customarily incidental to and located upon the same lot occupied by the main structure. No such accessory structure shall be used for housekeeping purposes.
- (12) *Building, Height of:* The vertical distance measured from the level of the curb or the established curb grade opposite the middle of the front of the structure to the highest point of the roof, if a flat roof; to the deck line of a mansard roof; or to the mean height level between the eaves and ridge of a gable or gambrel roof. For buildings set back from the street line, the height shall be measured from the average elevation of the ground surface along the front of the building. (Amended February 7, 2000.)
- (13) *Building, Main:* The principal structure or one of the principal buildings on a lot, or the building or one of the principal buildings housing the principal use on the lot.
- (14) *Cellar:* A story having more than one-half (1/2) of its height below grade and which may not be occupied for dwelling purposes.
- (15) *Child Care Center:* Any facility operated for the purpose of providing care, protection and guidance for a fee to two or more children during a part of the day only. (Added December 3, 1990)
- (16) *Commission, The:* The Planning Commission of the Town.
- (17) *Dairy:* A commercial establishment for the manufacture and sale of dairy products.

- (18) *Dwelling:* Any structure which is designated for use for residential purposes except hotels, boarding houses, lodging houses, tourist cabins, apartments, and automobile trailers.
- (19) *Dwelling, Multiple-Family:* A structure arranged or designed to be occupied by more than one (1) family.
- (20) *Dwelling, Two-Family:* A structure arranged or designed to be occupied by two families, the structure having only two (2) dwelling units.
- (21) *Dwelling, Single Family:* A structure arranged or designed to be occupied by one (1) family, the structure having only one (1) dwelling unit.
- (22) *Dwelling Unit:* One or more rooms in a dwelling designed for living or sleeping purposes, and having at least one (1) kitchen.
- (23) *Family:* One or more persons occupying a premises and living in a single dwelling unit as distinguished from an unrelated group occupying a boarding house, lodging house, tourist home, or hotel.
- (24) *Front:* An open space on the same lot as a building between the front line of the building (excluding steps) and the front lot or street line, and extending across the full width of the lot.
- (25) *Garage, Private:* (Repealed May 1, 1995.)
- (26) *Garage, Public:* A building or portion thereof, other than a private garage, designed or used for servicing, repairing, equipping, renting, selling, or storing motor-driven vehicles.
- (27) *Governing Body:* The Council of the Town of Dayton, Virginia.
- (28) *Guest Room:* A room which is intended, arranged, or designed to be occupied, or which is occupied, by one or more guests paying direct compensation therefore, but in which no provision is made for cooking. Dormitories are excluded.
- (29) *Hog Farm:* (Repealed May 1, 1995.)
- (30) *Home Care Facility:* A dwelling in which children are cared for or otherwise supervised for a fee. The proprietor must reside in the dwelling and must hire no employees to assist in the care and/or supervision of the children. At any one time, a home care facility may not care for and/or supervise more than five minor children not related to the proprietor by blood or marriage, nor may it care for and/or supervise more than seven minor children in total. No children may be cared for and/or supervised between the hours of 11:00 p.m. and 6:00 a.m. The facility shall bear no signs indicating the presence of a home care facility. (Added December 3, 1990)
- (31) *Home Garden:* A garden in a residential district for the production of vegetables, fruits and flowers generally for use and/or consumption by the occupants of the premises.
- (31.1) *Home Occupation, Level One* Any commercial endeavor which is undertaken in a structure used as a residence and meeting the following criteria:
- The person conducting the home occupation must be a resident of the Dwelling in which the home occupation is to be located.
 - The home occupation shall be operated only by persons residing in the Dwelling, with no other employees permitted.
 - The home occupation shall be clearly secondary to the use of the Dwelling as a residence and shall not occupy more than 25% of the living area of the Dwelling.

- The home occupation shall not generate significantly more traffic than is typically generated by residential uses in the neighborhood.
- The exterior of the dwelling shall show no evidence of the attendant home occupation. There shall be no outside display of products, goods, or commodities in conjunction with the home occupation. The use of a sign shall also be prohibited.

(Added December 10, 2007)

(31.2) *Home Occupation, Level Two*

A commercial endeavor undertaken in a structure used as a residence which does not qualify as a Level One Home Occupation but does meet the following criteria:

- The proprietor of a home occupation must reside in the Dwelling, and either (i) have a direct or indirect, legal, equitable, or beneficial interest in the Dwelling or (ii) have the written approval of a person with such an interest for the conduct of the home occupation.
- The home occupation shall be operated by persons residing in the Dwelling but may employ up to two other persons.
- The home occupation shall not occupy more than 25% of the living area of the Dwelling.
- Except for the daily commute of employees, the home occupation shall not generate significantly more traffic than is typically generated by residential uses in the neighborhood.
- The exterior of the Dwelling shall show no evidence of the attendant home occupation. There shall be no outside display of products, goods or commodities in conjunction with the home occupation. The use of a sign shall also be prohibited.

(Added December 10, 2007)

(32) *Hospital:*

An institution rendering medical, surgical, obstetrical, or convalescent care, including nursing homes, homes for the aged and sanatoriums, but in all cases excluding institutions primarily for mental patients, epileptics, alcoholics, or drug addicts. (Amended May 1, 1995.)

(33) *Hospital, Special Care:*

An institution rendering care primarily for mental patients, epileptics, alcoholics, or drug addicts. (Amended May 1, 1995.)

(34) *Hotel:*

A building designed or occupied as the more or less temporary abiding place for fourteen (14) or more individuals who are, for compensation, lodged with or without meals, and in which provision is not generally made for cooking in individual rooms or suites.

(35) *Kennel:*

A place prepared to house, board, breed, handle or otherwise keep or care for dogs for sale or in return for compensation.

(36) *Livestock Market:*

A commercial establishment wherein livestock is collected for sale and auctioned off.

(37) *Lot:*

A parcel of land occupied or to be occupied by a main structure or group of main structures, either shown on a plat of record or considered as a unit of property and described by metes and bounds. (Amended May 1, 1995.)

(38) *Lot, Corner:*

A lot abutting on two or more streets at their intersection. Of the two sides of a corner lot the front shall be deemed to be the shortest of the sides fronting on streets. (Amended May 1, 1995.)

- (39) *Lot, Depth of:* The distance between the front and rear lot lines. (Amended May 1, 1995.)
- (40) *Lot, Interior:* Any lot other than a corner lot.
- (41) *Lot, Width of:* The distance between side lot lines. (Amended May 1, 1995.)
- (42) *Lot of Record:* A lot which has been recorded in the Clerk's Office of the Circuit Court of Rockingham County, Virginia.
- (43) *Manufacturer and/or Manufacturing:* The processing and/or converting of raw, unfinished materials or products, or either of them, into articles or substances of different character, or for use for a different purpose.
- (44) *Mobile Home:* A Mobile Home is anything (i) designed for human habitation, (ii) designed for transportation, after fabrication, on streets and highways on its own wheels or on flatbed or other trailers, and (iii) arriving at the site where it is to be occupied as a dwelling complete and ready for occupancy, except for minor and incidental unpacking and assembly operation, location on jacks or permanent foundations, connection to utilities and the like. A Mobile Home retains its character as such—and remains subject to the same regulations and restrictions—even if not used for residential purposes. (Amended February 7, 2000.)
- (45) *Mobile Home Park or Subdivision:* Any area designed to accommodate two or more mobile homes intended for residential use where residence is in mobile homes exclusively.
- (45.1) *Neighborhood Public Utility* Facilities which are (i) related to utility services such as electricity, telephone, cable television, natural gas, water or sewer and (ii) of a type generally used to provide service to the immediate vicinity of the facility. The term does not include Telecommunications Antennas or Towers. The term also does not include any utility poles which (i) exceed 65 feet in height, (ii) have cross arms exceeding six feet in length, or (iii) have a diameter in excess of 36 inches. Finally, the term does not include anything included within the definition of 'Wide-Area Public Utility' below. (Added November 6, 2000.)
- (46) *Nonconforming Lot:* (Repealed May 1, 1995.)
- (47) *Nonconforming Activity:* (Repealed May 1, 1995.)
- (48) *Nonconforming Structure:* (Repealed May 1, 1995.)
- (49) *Off Street Parking Area:* Space provided for vehicular parking outside the dedicated street right-of-way.
- (49.1) *Pool Hall* A building or a portion of a building in which four or more pool or billiard tables are operated for money or other consideration. (Added May 1, 1995.)
- (50) *Public Utility:* Electricity, water, sewer, gas and other utilities served to a dwelling or structure, including all distribution lines.
- (51) *Public Water and Sewer Systems:* A water or sewer system owned and operated by a municipality or county, or owned and operated by a private individual or a corporation approved by the governing body and properly licensed by the State Corporation Commission, and subject to special regulations as herein set forth.
- (52) *Rear:* An open, unoccupied space on the same lot as a building between the rear line of the building (excluding steps) and the rear line of the lot and extending the full width of the lot.
- (53) *Required Open Space:* Any space required in any front, side, or rear yard.

- (54) *Restaurant:* Any building in which for compensation food or beverages are dispensed for consumption on the premises including, among other establishments, cafes, tea rooms, confectionery shops, or refreshment stands.
- (55) *Retail Stores and Shops:* Buildings for display and sale of merchandise at retail or for the rendering of personal services (but specifically exclusive of coal, wood, and lumber yards), such as the following which will serve as illustration: drug store, newsstand, wood store, candy shop, milk dispensary, drygoods and notions store, antique shop and gift shop, hardware store, household appliance store, furniture store, florist, optician, music and radio store, tailor shop, barber shop, and beauty shop.
- (56) *School:* A place for systematic instruction in any branch or branches of knowledge.
- (57) *Setback:* The minimum distance by which any building or structure must be separated from the front lot line.
- (58) *Side:* An open, unoccupied space on the same lot as a building between the side line of the building (excluding steps) and the side line of the lot, and extending from the front yard line to the rear yard line.
- (59) *Story:* That portion of a building, other than the basement, included between the surface of the floor and the surface of the floor next above it. If there be no floor above it, the space between the floor and the ceiling next above it.
- (60) *Story, Half:* A space under a sloping roof which has the line intersection of roof decking and wall face not more than three (3) feet above the top floor level, and in which space not more than two-thirds (2/3) of the floor area is finished off for use.
- (61) *Structure:* Anything constructed or erected the use of which requires permanent location on the ground or attachment to something having a permanent location on the ground. This includes, among other things, dwellings, buildings, signs, etc.
- (61.1) *Telecommunications Antennas* When used anywhere in this Code, the term Telecommunications Antenna shall have the meaning set forth in § 9-228. (Added November 6, 2000.)
- (61.2) *Telecommunications Towers* When used anywhere in this Code, the term Telecommunications Tower shall have the meaning set forth in § 9-228. (Added November 6, 2000.)
- (62) *Tourist Court, Auto Court, Motel Cabins, or Motor Lodge:* One or more buildings containing individual sleeping rooms designed for or used temporarily by automobile tourists or transients, with garage or parking space conveniently located to each unit. Cooking facilities may be provided for each unit.
- (63) *Tourist Home:* A dwelling where only lodging is provided for compensation for up to fourteen (14) persons (in contradiction to hotels and boarding houses) and open to transients.
- (64) *Town House:* A single-family unit being one of a group of three or more such units attached to the adjacent dwelling or dwellings by party walls with lots, utilities and other improvements being designed to permit individual and separate ownership of such lots and dwelling units.
- (65) *Travel Trailer:* A mobile unit less than 29 feet in length and less than 4,500 pounds in weight which is designed for human habitation.
- (66) *Use, Accessory:* A subordinate use, customarily incidental to and located upon the same lot occupied by the main use.

- (67) *Wayside Stand, Roadside Stand, Wayside Market:* Any structure or land used for the sale of agricultural or horticultural produce, livestock, or merchandise produced by the owner or his family on their farm.
- (67.1) *Wide-Area Public Utility* Facilities which are (i) related to utility services such as electricity, telephone, cable television, natural gas, water or sewer and (ii) used to provide service beyond the immediate vicinity of the facilities. The term includes electrical substations, telephone switching facilities, and similar equipment. The term does not include Telecommunications Antennas or Towers. (Added November 6, 2000.)
- (68) *Yard:* An open space on a lot other than a court unoccupied and unobstructed from the ground upward, except as otherwise provided herein.

§ 9-22.1. Supplemental Definitions—Adult Businesses. Notwithstanding any contrary provision in this title, Adult Businesses are distinct from and mutually exclusive of all other uses defined or referenced in this code. Accordingly, if a use falls within the definition of an Adult Business, it cannot qualify as a “retail store,” “restaurant,” or other use.

For purposes of this Title, the following definitions apply:

- (1) *Adult Business:* An Adult Business is (i) an Adult Theatre, (ii) Adult Store, (iii) any business providing Adult Entertainment, or (iv) any other establishment that regularly emphasizes materials or demonstrations relating to Specified Sexual Activities or Specified Anatomical Areas or is intended for the sexual stimulation or titillation of patrons.
- (2) *Adult Theatre:* An Adult Theatre is an establishment which presents for the viewing or listening of patrons materials characterized by (i) their emphasis on Specified Sexual Activities or Specified Anatomical Areas or (ii) the intent to provide sexual stimulation or titillation of patrons.
- (3) *Adult Store:* An Adult Store is an establishment which sells or rents
- a) Materials (whether printed or in electronic, optical, magnetic, or other media) characterized by
 - i) Their emphasis on Specified Sexual Activities or Specified Anatomical Areas or
 - ii) Their predominant purpose being to provide sexual stimulation or titillation of patrons, or
 - b) Toys, novelties, instruments, devices or paraphernalia which represent human genital organs or female breasts, or designed or marketed primarily for use to stimulate human genital organs.
- Nevertheless, if the aforementioned items constitute only an insubstantial portion of an establishment’s stock-in-trade, the establishment shall not be considered an Adult Store.
- (4) *Adult Entertainment:* Adult Entertainment is dancing, modeling, or other live performances in which the performance (i) is characterized by an emphasis on Specified Anatomical Areas or Specified Sexual Activities, or (ii) is intended for the sexual stimulation or titillation of patrons. Adult Entertainment also includes the presentation of materials or images (irrespective of the media) characterized by their emphasis on Specified Sexual Activities or Specified Anatomical Areas or the intent to provide sexual stimulation or titillation of patrons.
- (5) *Specified Anatomical Areas:* Specified Anatomical Areas are as follows:

- a) If less than completely and opaquely covered: human genitals, pubic region, buttock; and the female breast below a point immediately above the top of the areola, and
- b) Irrespective of coverage: human male genitals in a discernibly turgid state.

(6) *Specified Sexual Activities:*

Specified Sexual Activities are as follows:

- a) The display of—or the reference to—human genitals in a state of sexual stimulation or arousal;
- b) Acts of human masturbation, sadomasochistic abuse, sexual penetration with an inanimate object, sexual intercourse or sodomy, or
- c) Fondling or other erotic touching of human genitals, pubic region, buttock or female breast.

(Added July 11, 2005.)

CHAPTER 5
R-1 Residential District

§ 9-23. *Legislative Intent.* This district is intended to be used for low density single family residential development with accessory uses necessary or compatible with residential surroundings. The additional permitted uses, by review of the Town Council, includes facilities sometimes required to provide the basic elements of a basic and attractive residential area.

§ 9-24. *Uses Permitted as a Matter of Right.*

- (a) One single family dwelling, occupied by a family or not more than two unrelated persons.
- (b) Temporary buildings for uses incidental to construction work, which buildings shall be immediately adjacent to the construction work and which shall be removed upon completion or abandonment of the work.
- (c) Neighborhood Public Utilities. (Amended November 6, 2000.)
- (c1) Home Care Facilities, as defined. (Added December 3, 1990)
- (d) Accessory uses and buildings, provided such uses are incidental to the principal use and do not include any activity commonly conducted as a business. Any accessory building shall be located on the same lot with the principal building. Level One Home Occupations, as defined in § 9-22(33.1). (Added December 10, 2007.)

§ 9-25. *Uses Permitted with Special Use Permit.* The following uses may be permitted in accordance with provisions contained in Chapter 22.

- (a) Schools, as defined.
- (b) Churches or similar places of worship, with accessory structures but not including missions or revival tents.
- (c) Public parks, playgrounds and playfields, golf courses (but not miniature courses or driving tees operated for commercial purposes), swimming pools and tennis courts.
- (d) Wide-Area Public Utilities. (Amended November 6, 2000.)
- (e) Child care centers, as defined, in conformity with the character of the neighborhood. (Added December 3, 1990)
- (f) Telecommunications Towers and Telecommunications Antennas, in accordance with Chapter 25. (Added November 6, 2000.)

**AREA REGULATIONS
(For Dwellings Only)**

§ 9-26. **Minimum Lot Area.** The minimum lot area shall be 10,000 square feet if public water and sewer is available, if only one of such services is available the minimum lot area shall be 15,000 square feet and if neither is available the minimum lot area shall be 20,000 square feet. There shall be no more than one dwelling unit on each lot.

§ 9-27. **Front Yard.** For all uses permitted as a matter of right the minimum depth of the front yard shall be 30 feet from the street right-of-way if the street is 50 feet or greater in width and if the street is less than 50 feet in width then the minimum front yard shall be 60 feet from the center of the street. In no case shall an accessory building be located or extend into the front yard. (Amended November 11, 2013.)

§ 9-28. **Frontage.** The minimum lot width at the setback line shall be 80 feet. Lots must abut on a public street—not an alley—for a distance of not less than 30 feet. (Amended May 1, 1995.)

§ 9-29. **Minimum Depth.** The minimum depth of each lot shall be 100 feet.

§ 9-30. **Side Yard.** For a single story dwelling located on interior lots a side yard shall not be less than 10 feet in width and the sum of the two side yards shall be not less than 20 feet. For dwellings of more than one story there shall be side yards of not less than 15 feet each. Additionally, for dwellings located on corner lots, the side yard abutting the street shall be at least as wide as the minimum front yard depth specified in § 9-27. For unattached buildings of accessory use there shall be a side yard of not less than 10 feet; provided, that unattached one story buildings of accessory use shall not be required to set back more than 5 feet from an interior side lot line when all parts of the accessory building are located more than 10 feet behind the main building. (Amended May 1, 1995. Amended November 11, 2013.)

§ 9-31. **Rear Yard.** For dwellings there shall be a rear yard of not less than 30 feet. Unattached buildings of accessory use shall not be located closer to any rear lot line than 5 feet.

§ 9-32. **Height Regulations.** No dwelling shall exceed 2-1/2 stories or 35 feet in height whichever is less. Accessory buildings shall not exceed 15 feet in height; provided, however, that the Council may allow an accessory building to be as tall as 20 feet, upon the issuance of a special use permit. (Amended February 9, 2004.)

§ 9-33. **Maximum Lot Coverage.** Dwellings and accessory buildings shall cover not more than 40% of the lot area.

§ 9-34. **Off Street Parking.** As regulated in Chapter 20.

§ 9-35. **Signs.** As provided in Chapter 21.1.

**CHAPTER 6
R-2 Residential District**

§ 9-36. **Legislative Intent.** This district is intended to be used for low to moderate density residential development for single family, two, three, or four family dwellings and town house units, as well as other compatible uses.

§ 9-37. **Uses Permitted as a Matter of Right.**

- (a) Any use permitted as a matter of right in the R-1 residential district.
- (b) Temporary buildings for uses incidental to construction work, which buildings shall be immediately adjacent to the construction work and which shall be removed upon completion or abandonment of the work.
- (c) Neighborhood Public Utilities. (Amended November 6, 2000.)
- (d) Two, three, or four family dwellings and/or town houses. All dwelling units must be occupied by families and/or not more than four unrelated persons.
- (e) (Repealed December 10, 2007.)

- (f) Accessory uses and buildings provided such uses are incidental to the principal use and do not include any activities commonly conducted as a business. Any accessory buildings shall be located on the same lot with the principal building.

§ 9-38. Uses Permitted with Special Use Permit. The following uses may be permitted in accordance with provisions contained in Chapter 22.

- (a) Schools, as defined.
- (b) Churches or similar places of worship with accessory structures but not including missions or revival tents.
- (c) Public parks, playgrounds and playfields, golf courses (but not miniature courses or driving tees operated for commercial purposes), swimming pools and tennis courts.
- (d) Wide-Area Public Utilities. (Amended November 6, 2000.)
- (e) Agencies and offices rendering specialized services in the professions, finance, insurance, real estate, chiropractors, optometrists, osteopaths, dental laboratories, architects and engineers; also service agencies not involving on premises retail or wholesale trade nor maintenance of a stock of goods for display or sale.
- (f) Child care centers, as defined, in conformity with the character of the neighborhood. (Added December 3, 1990)
- (g) Telecommunications Towers and Telecommunications Antennas, in accordance with Chapter 25. (Added November 6, 2000.)
- (h) Level Two Home Occupations, as defined in § 9-22(33.2), upon a finding by the council that the use would have no adverse effects upon the health, safety, or welfare of the neighborhood; provided, however, that any special use permit issued for a Level Two Home Occupation shall be personal to proprietor to whom the permit is issued and shall not inure to the benefit of his successors in interest. (Added December 10, 2007.)

AREA REGULATIONS (For Dwellings Only)

§ 9-38.1. Division of Multiple Family Dwellings. Wherever a multiple family dwelling is constructed in accordance with the regulations of this classification and the structure as a whole meets the requirements of this classification, individual units may be sold without regard to area requirements. No such sale of individual units of a multiple family dwelling shall be deemed a subdivision. This section is subject to the provisions of Chapter 16. (Added October 29, 1990.)

§ 9-39. Minimum Lot Area. The minimum lot area where public water and sewer is available shall be 9,000 square feet for a one family dwelling, 12,500 square feet for a two family dwelling, 15,000 square feet for a three family dwelling and 17,500 square feet for a four family dwelling. If only one of such services is available the minimum lot area shall be 150% of the foregoing areas and if neither water nor sewer service is available the minimum lot area shall be 200% of that specified where both services are available.

§ 9-40. Front Yard. If the dwelling unit fronts on a street of at least 50 feet in width then the minimum depth of the front yard shall be 30 feet. If the street is less than 50 feet in width then the setback shall be 60 feet from the center of the street. In no case shall an accessory building be located or extend into the front yard. (Amended November 11, 2013.)

§ 9-41. Frontage. The minimum lot width at the setback line shall be 75 feet for a one family dwelling, 100 feet for a two or three family dwelling and 120 feet for a four family dwelling. Lots must abut on a public street—not an alley—for a distance of not less than 30 feet. (Amended May 1, 1995.)

§ 9-42. Minimum Depth. The minimum depth for a one family dwelling shall be 100 feet, for a two family dwelling 125 feet, and for a three or four family dwelling 150 feet.

§ 9-43. Side Yard. Dwellings located on interior lots will require the following side yards:

For a one family dwelling the sum of the two side yards shall be not less than 20 feet, each side yard to be not less than 10 feet in width; for two or three family dwellings each side yard shall be not less than 15 feet in width but the sum of the two side yards shall be not less than 35 feet; for a four family dwelling each side yard shall not be less than 20 feet in width but the sum of the

two side yards shall not be less than 45 feet. Additionally, for dwellings located on corner lots, the side yard abutting the street shall be at least as wide as the minimum front yard depth specified in § 9-40. For unattached buildings of accessory use there shall be a side yard of not less than 10 feet; provided that unattached one story buildings of accessory use shall not be required to set back more than 5 feet from an interior side lot line when all parts of the accessory buildings are located more than 10 feet behind the main building. (Amended May 1, 1995. Amended November 11, 2013.)

§ 9-44. Rear Yard. All dwellings shall have a minimum rear yard of 30 feet. Unattached buildings of accessory use shall not be located closer to any rear lot line than 5 feet.

§ 9-45. Height Regulations. No dwelling shall exceed three stories or 35 feet in height, whichever is less. Accessory buildings shall not exceed 15 feet in height; provided, however, that the Council may allow an accessory building to be as tall as 20 feet, upon the issuance of a special use permit. (Amended February 9, 2004.)

§ 9-46. Maximum Lot Coverage. For one, two, and three family dwellings the total coverage including dwellings and accessory buildings shall not exceed 40% of the lot area and for four family dwellings the total coverage shall not exceed 35% of the lot area.

§ 9-47. Town Houses. See Chapter 16 for regulations.

§ 9-48. Off Street Parking. As regulated in Chapter 20.

§ 9-49. Signs. As provided in Chapter 21.1.

CHAPTER 7

R-3 Residential District

§ 9-50. Legislative Intent. This district is intended to be used for medium to high density development, residential and institutional use with necessary or compatible accessory uses.

§ 9-51. Uses Permitted as a Matter of Right.

- (a) Any use permitted as a matter of right in the R-1 or R-2 residential districts.
- (b) Temporary buildings for uses incidental to construction work, which buildings shall be immediately adjacent to the construction work and which shall be removed upon completion or abandonment of the work.
- (c) Multiple family dwellings, condominiums, and town houses. All dwelling units, single family or otherwise, must be occupied by families and/or not more than five unrelated persons.
- (d) Neighborhood Public Utilities. (Amended November 6, 2000.)
- (e) Accessory uses and buildings, provided such uses are incidental to the principal use and do not include any activity commonly conducted as a business. Any accessory building shall be located on the same lot with the principal building.

§ 9-52. Uses Permitted with Special Use Permit. The following uses may be permitted in accordance with provisions contained in Chapter 22:

- (a) Schools, as defined.
- (b) Churches or similar places of worship with accessory structures but not including missions or revival tents.
- (c) Public parks, playgrounds and playfields, golf courses (but not miniature courses or driving tees operated for commercial purposes), swimming pools and tennis courts.
- (d) Wide-Area Public Utilities. (Amended November 6, 2000.)
- (e) Agencies and offices rendering specialized services in the professions, finance, insurance, real estate, chiropractors, optometrists, osteopaths, dental laboratories, architects and engineers; also service agencies not involving on premises retail or wholesale trade nor maintenance of a stock of goods for display or sale.

- (f) Hospitals, but not an animal hospital.
- (g) Funeral homes.
- (h) University and college buildings and functions.
- (i) (Repealed May 1, 1995.)
- (j) Fraternities, sororities, and denominational student headquarters.
- (k) Residential human care facility, including family care homes, foster homes, or group homes serving mentally retarded or other developmentally disabled persons not related by blood or marriage. No conditions may be imposed on this use as a prerequisite for authorization except those conditions imposed to assure compatibility with other permitted uses and these conditions shall not be more restrictive than those imposed on other dwellings in the same district unless such additional conditions are necessary to protect the health and safety of the residents of such facilities. [Ed.: *But see* Va. Code, § 15.2-2291.]
- (l) Clubs, fraternities, lodges, meeting places and other organizations not including any use that is customarily conducted as a gainful business.
- (m) Police, fire, and rescue squad stations.
- (n) Post offices.
- (o) Governmental, non-profit, and charitable agencies, providing services to the public. (Amended May 1, 1995.)
- (p) Nursing homes and dwelling units for retirement developments.
- (q) A planned unit development as regulated in Chapter 15.
- (r) Child care centers, as defined, in conformity with the character of the neighborhood. (Added December 3, 1990)
- (s) Telecommunications Towers and Telecommunications Antennas, in accordance with Chapter 25. (Added November 6, 2000.)
- (t) Level Two Home Occupations, as defined in § 9-22(33.2), upon a finding by the council that the use would have no adverse effects upon the health, safety, or welfare of the neighborhood; provided, however, that any special use permit issued for a Level Two Home Occupation shall be personal to proprietor to whom the permit is issued and shall not inure to the benefit of his successors in interest. (Added December 10, 2007.)

AREA REGULATIONS
(For Dwellings Only)

§ 9-52.1. Division of Multiple Family Dwellings. Wherever a multiple family dwelling is constructed in accordance with the regulations of this classification and the structure as a whole meets the requirements of this classification, individual units may be sold without regard to area requirements. No such sale of individual units of a multiple family dwelling shall be deemed a subdivision. This section is subject to the provisions of Chapter 16. (Added October 29, 1990.)

§ 9-53. Minimum Lot Area. The lot area requirements for a single, two family, three family, or four family dwelling shall be in accordance with the R-2 district; for other multiple family structures the lot area requirements shall be not less than 17,500 square feet plus an additional 2,000 square feet for each additional dwelling unit.

§ 9-54. Front Yard. If the street on which the dwelling fronts is 50 feet or more in width then all dwelling units shall be at least 35 feet from the street right-of-way. If the street is less than 50 feet in width then the setback shall be 60 feet from the center of the street. In no case shall an accessory building be located or extend into the front yard.

§ 9-55. Frontage. Minimum lot width at the setback line shall be 75 feet for a one family dwelling, 100 feet for a two or three family dwelling and 120 feet for all other multiple family dwellings. Lots must abut on a public street—not an alley—for a distance of not less than 30 feet. (Amended May 1, 1995.)

§ 9-56. Minimum Depth. The minimum depth for a one family dwelling shall be 100 feet; for a two family dwelling 125 feet and for other multiple family dwellings 150 feet.

§ 9-57. **Side Yard.** Dwellings located on interior lots will require the following side yards: For a one family dwelling the sum of the two side yards shall be not less than 25 feet, each side yard to be not less than 10 feet in width; for two or three family dwellings each side yard shall be not less than 15 feet in width but the sum of the two side yards shall be not less than 35 feet; for a four family and other multiple family dwellings each side yard shall be not less than 20 feet in width but the sum of the two side yards shall be not less than 45 feet. Additionally, for dwellings located on corner lots, the side yard abutting the street shall be at least as wide as the minimum front yard depth specified in § 9-54. For unattached buildings of accessory use there shall be a side yard of not less than 10 feet; provided, that unattached one story buildings of accessory use shall not be required to set back more than 5 feet from an interior side lot line when all parts of the accessory buildings are located more than 10 feet behind the main building. (Amended May 1, 1995.)

§ 9-58. **Rear Yard.** All dwellings shall have a minimum rear yard of 30 feet. Unattached buildings of accessory use shall not be located closer to any rear lot line than 5 feet.

§ 9-59. **Height Regulations.** Dwellings shall not exceed 3 stories or 40 feet in height, whichever is less. Accessory buildings shall not exceed 15 feet in height; provided, however, that the Council may allow an accessory building to be as tall as 20 feet, upon the issuance of a special use permit. (Amended February 9, 2004.)

§ 9-60. **Maximum Lot Coverage.** For one, two, and three family dwellings the total coverage including dwellings and accessory buildings shall not exceed 40% of the lot area and for all other multiple family dwellings the total coverage shall not exceed 35% of the lot area.

§ 9-61. **Town Houses.** See Chapter 16 for regulations.

§ 9-62. **Off Street Parking.** As regulated in Chapter 20.

§ 9-63. **Signs.** As provided in Chapter 21.1.

§ 9-64. **Condominiums.** See Chapter 17 for regulation.

CHAPTER 8 **B-1 Business District**

§ 9-65. **Legislative Intent.** This district is intended to be used for general business to which the public requires direct and frequent access.

§ 9-66. **Uses Permitted as a Matter of Right.**

- (a) (Repealed December 10, 2007.) (*Note:* With respect to property being used for residential purposes as of December 10, 2007, this repeal shall take effect only upon the transfer (by deed, devise, intestacy, or otherwise) of the property. The previous text read as follows: “Any use permitted as a matter of right in the R-1, R-2, or R-3 Residential Districts but those uses permitted in these residential districts shall be subject to the area regulations, parking, sign, and height regulations of the district in which such use is permitted and if permitted in more than one district then the regulations of the less restrictive district shall prevail. Town houses shall be subject to Chapter 16 of this ordinance. Condominiums are subject to Chapter 17.”)
- (b) The following uses which are permitted with a Special Use Permit in R-3 Residential District: those set out in §9-52 (a), (b), (c), (g), (h), (j), (l), (m), (n), (o), and (p). (Amended December 10, 2007.)
- (c) Retail stores of less than 20,000 square feet in which substantially all stock is kept indoors. (Amended May 1, 1995.)
- (c1) Restaurants. (Added May 1, 1995.)
- (d) (Repealed May 1, 1995.)
- (e) (Repealed May 1, 1995.)
- (f) (Repealed May 1, 1995.)
- (g) (Repealed May 1, 1995.)

- (h) Veterinary establishments provided that all animals shall be kept inside soundproofed, air conditioned buildings.
- (i) Banks.
- (j) Barber shops, beauty parlors, chiropody, or similar personal service shops.
- (k) Garden centers, greenhouses, and nurseries.
- (l) Pet shops.
- (m) Accessory uses and buildings, provided such uses are incidental to the principal use and do not include any activity commonly conducted as a business. Any accessory building shall be located on the same lot with the principal building.
- (n) Temporary buildings for uses incidental to construction work, which buildings shall be immediately adjacent to the construction work and which shall be removed upon completion or abandonment of the work.
- (o) Agencies and offices rendering specialized services in the professions, finance, insurance, real estate, chiropractors, optometrists, osteopaths, dental laboratories, architects and engineers; also service agencies not involving on premises retail or wholesale trade nor maintenance of a stock of goods for display or sale.
- (p) (Repealed May 1, 1995.)
- (q) (Repealed November 6, 2000.)
- (r) Neighborhood Public Utilities. (Added November 6, 2000.)

§ 9-67. *Uses Permitted with Special Use Permit.* The following uses may be permitted in accordance with provisions contained in Chapter 22:

- (a) Residential human care facility, including family care homes, foster homes, or group homes serving mentally retarded or other developmentally disabled persons not related by blood or marriage. No conditions may be imposed on this use as a prerequisite for authorization except those conditions imposed to assure compatibility with other permitted uses and these conditions shall not be more restrictive than those imposed on other dwellings in the same district unless such additional conditions are necessary to protect the health and safety of the residents of such facilities.
- (a1) Residential uses located above a business use, in the same Building. With respect to property currently (Added December 10, 2007.)
- (a2) Upon a clear and convincing showing that the Town's interests in promoting a thriving business district will not be infringed, any residential use permitted as a matter-of-right in the R-1, R-2, or R-3 Residential Districts. Notwithstanding the remaining provisions of this Chapter, such uses shall be subject to the area regulations, parking, sign, and height regulations of the district in which such use is permitted (and if permitted in more than one district, then the regulations of the more restrictive district shall prevail). (Added December 10, 2007.)
- (b) Pool Halls, bowling alleys, dance halls, and amusement centers.
- (c) Mobile home parks in accordance with Chapter 18.
- (c1) Child Care Centers, as defined, in conformity with the character of the neighborhood. (Added December 3, 1990)
- (c2) Hotels and motels. (Added May 1, 1995.)
- (c3) Service stations but major repairs shall be under cover, and all tires shall be stored inside. (Added May 1, 1995.)
- (c4) General service, automobile repair, other repair shops provided not more than 10 persons are employed on the premises in a single shift (not including persons whose principal duties are off premises) and provided that all storage and activities are conducted within a building. Examples of repair shops other than automobile repair shops are: cleaning and dyeing establishments, laundries, painting, printing and plumbing jobs, dressmaking, millinery and tailoring shops, radio and television repair shops, upholstery and furniture repair shops. (Added May 1, 1995.)
- (c5) Auction houses. (Added May 1, 1995.)

- (c6) Hospitals. (Added May 1, 1995.)
- (c7) Warehouses and commercial storage facilities. (Added September 16, 1996.)
- (d) Other neighborhood retail business uses upon a finding by governing body that such uses are of the same general character as those permitted and which will not be detrimental to other uses within the district or to adjoining land uses.
- (e) Wide-Area Public Utilities. (Added November 6, 2000.)
- (f) Telecommunications Towers and Telecommunications Antennas, in accordance with Chapter 25. (Added November 6, 2000.)

AREA REGULATIONS

§ 9-68. Minimum Lot Area. None required except where individual water or sewage disposal systems, as opposed to public systems, are required, then regulations of the State Health Department and other regulatory bodies must be complied with.

§ 9-69. Front Yards. If the street on which the building fronts is 50 feet or more in width then all buildings shall be at least 25 feet from the street right-of-way. If the street is less than 50 feet in width then the minimum front yard shall be 50 feet from the center of the street.

§ 9-70. Frontage. No minimum required but building must front on public street, but not an alley. (Amended May 1, 1995.)

§ 9-71. Minimum Depth. None required.

§ 9-72. Side Yard. On the side of a lot adjoining a residential district or a dwelling there shall be a side yard of not less than 25 feet. There shall be a side yard setback from an intersecting street of not less than 25 feet. In all other cases the side yard for commercial buildings shall not be required.

§ 9-73. Rear Yard. None except on the rear of a lot adjoining either a residential district or a dwelling and then a minimum of 20 feet.

§ 9-74. Height Regulations. Buildings shall not exceed three stories or 40 feet in height, whichever is less. Accessory buildings shall not exceed 15 feet in height.

§ 9-75. Maximum Lot Coverage. The total coverage, including main and accessory buildings, shall not exceed 40% of the lot area.

§ 9-76. Off Street Parking. As regulated in Chapter 20.

§ 9-77. Signs. As provided in Chapter 21.1.

CHAPTER 9 B-2 Business District

§ 9-78. Legislative Intent. This district is intended to be composed of land and structured use to furnish a wider range of retail goods and services to satisfy the household and personal needs of the neighborhood.

§ 9-79. Uses Permitted as a Matter of Right.

- (a) All of the uses permitted as a matter of right or with a special use permit in the B-1 Business District except the uses permitted under §§ 9-67(a), 9-67(a1), 9-67(a2), 9-67(e), or 9-67(f). (Amended May 1, 1995; amended November 6, 2000; amended December 10, 2007.) (Note: Those uses permitted under §9-66(a) are included within this paragraph for properties for which § 9-66(a) remains in effect. See the note regarding that section.)
- (b) General service, automobile repair, or other repair shops as permitted under § 9-67(c4) but without the limitation as to the number of employees.

- (b1) Retail stores permitted under § 9-66(c) but without the limitations as to size and outdoor stock. This paragraph permits but is not limited to automobile dealerships, lumber yards, and manufactured housing lots. (Added May 1, 1995.)
- (c) Radio or television broadcasting stations, studios, or offices, except transmission towers.
- (d) Accessory uses and buildings, provided such uses are incidental to the principal use and do not include any activity commonly conducted as a business. Any accessory building shall be located on the same lot with the principal building.
- (e) Temporary buildings for uses incidental to construction work, which buildings shall be immediately adjacent to the construction work and which shall be removed upon completion or abandonment of the work.
- (f) (Repealed May 1, 1995.)
- (g) (Repealed May 1, 1995.)
- (h) (Repealed May 1, 1995.)
- (i) Neighborhood Public Utilities. (Added November 6, 2000.)

§ 9-80. *Uses Permitted with Special Use Permit.* The following uses may be permitted in accordance with provisions contained in Chapter 22.

- (a) (Repealed May 1, 1995.)
- (b) Processing and manufacturing establishments that are not objectionable because of smoke, odor, dust or noise but only when such processing and manufacturing is incidental to a retail business conducted on the premises and where not more than 10 persons are employed on the premises in the processing or manufacturing activities.
- (c) (Repealed May 1, 1995.)
- (d) Tire recapping and vulcanizing within a completely enclosed building and with no outdoor storage of tires, discarded rubber or similar material.
- (d1) (Repealed May 1, 1995.)
- (e) Other retail business uses upon finding by the governing body that such uses are of the same character as those permitted and which will not be detrimental to other uses within the district or to adjoining land uses.
- (f) Wide-Area Public Utilities. (Added November 6, 2000.)
- (g) Telecommunications Towers and Telecommunications Antennas, in accordance with Chapter 25. (Added November 6, 2000.)
- (h) Adult Businesses (Added July 11, 2005)

AREA REGULATIONS

§ 9-81. *Minimum Lot Area.* None required except where individual water or sewage disposal systems, as opposed to public systems, are required, then regulations of the State Health Department and other regulatory bodies must be complied with.

§ 9-82. *Front Yards.* If the street on which the building fronts is 50 feet or more in width then all buildings shall be at least 25 feet from the street right-of-way. If the street is less than 50 feet in width then the minimum front yard shall be 50 feet from the center of the street.

§ 9-83. *Frontage.* No minimum required but building must front on public street, but not an alley. (Amended May 1, 1995.)

§ 9-84. *Minimum Depth.* None required.

§ 9-85. *Side Yard.* On the side of a lot adjoining a residential district or a dwelling there shall be a side yard of not less than 20 feet. There shall be a side yard setback from an intersecting street of not less than 20 feet. In all other cases, the side yard for commercial buildings shall not be required.

§ 9-86. **Rear Yard.** None except on the rear of a lot adjoining either a residential district or a dwelling and then a minimum of 20 feet.

§ 9-87. **Height Regulations.** Buildings shall not exceed three stories or 45 feet in height, whichever is less. Accessory buildings shall not exceed 15 feet in height.

§ 9-88. **Maximum Lot Coverage.** The total coverage, including main and accessory buildings, shall not exceed 75% of the lot area.

§ 9-89. **Off Street Parking.** As regulated in Chapter 20.

§ 9-90. **Signs.** As provided in Chapter 21.1.

CHAPTER 10
M-1 Industrial District

§ 9-91. **Legislative Intent.** This district is intended primarily for manufacturing, processing, storage, wholesaling, and distribution activities.

§ 9-92. **Uses Permitted as a Matter of Right.**

- (a) Any use permitted in the B-2 Business District as a matter of right or by special use permit except the uses permitted under § 9-80(h). (Amended July 11, 2005.)
- (b) Building material sales or storage yards except materials shall not be extracted from the premises.
- (c) Contractors' equipment storage yards or plants.
- (d) Cold storage, frozen food, and bottling plants.
- (e) Grain and feed manufacturing and storage.
- (f) Veterinary hospitals.
- (g) Other than the uses prohibited under this chapter, all industrial or manufacturing operations, compounding, processing, packaging, or treatment of products.
- (h) Accessory uses and buildings, provided such uses are incidental to the principal use and do not include any activity commonly conducted as a business. Any accessory building shall be located on the same lot with the principal building.
- (i) (Repealed May 1, 1995.)
- (j) (Repealed May 1, 1995.)
- (k) (Repealed May 1, 1995.)
- (l) Water treatment facilities.
- (m) Sewage treatment facilities.
- (n) Neighborhood Public Utilities. (Added November 6, 2000.)

§ 9-93. **Uses Prohibited.** The following uses are prohibited:

- (a) Slaughter houses, but this paragraph does not prohibit the killing or processing of poultry. (Amended May 1, 1995.)
- (b) Acid manufacturers.
- (c) Ammonia, bleaching powder or chlorine manufacturers.
- (d) Asphalt manufacturers or refining.
- (e) Blast furnaces.
- (f) Boiler works.

- (g) Brick, tile or terra-cotta manufacturers not requiring ovens.
- (h) Coke ovens.
- (i) Creosote treatment or manufacturers.
- (j) Distillation of bones.
- (k) Fat rendering.
- (l) Dyestuff manufacturers.
- (m) Fertilizer manufacturers.
- (n) Forge plants.
- (o) Fuel manufacturing.
- (p) Gas manufacturers or storage in excess of one thousand cubic feet.
- (q) Gelatin or glue manufacturers or any process involving recovery from fish or animal material.
- (r) Glass manufacturers.
- (s) Gunpowder manufacturers or storage.
- (t) Incineration or reduction of garbage, dead animals, outfall, or refuse other than by an authorized public agency.
- (u) Iron, steel, brass or copper works or foundry.
- (v) Lime, gypsum or plaster of paris manufacturers.
- (w) Oil, paint, turpentine or varnish manufacturers.
- (x) Pulp mills.
- (y) Petroleum products.
- (z) Printing ink manufacturers.
- (aa) Rendering plant or other comparable processing of fish or animal material.
- (bb) Sawmills.
- (cc) Melting or refining of metals.
- (dd) Soap manufacturing.
- (ee) Stockyards.
- (ff) Tanning, curing or storage of raw hides or skins or leather dressing or coloring.
- (gg) Tar distillation or manufacturers.
- (hh) Any use reasonably deemed harmful to health, safety or welfare because of undue noise, vibration, smoke, dust, odor, heat or glare.

§ 9-93.1. *Uses Permitted with Special Use Permit.* The following uses may be permitted in accordance with the provisions contained in Chapter 22:

- (a) Wide-Area Public Utilities
- (b) Telecommunications Towers and Telecommunications Antennas, in accordance with Chapter 25.
- (c) Any other use which the Council determines is consistent with the character of the M-1 zoning classification and which is not unreasonably offensive to owners and occupants of adjacent lands.
- (d) Adult Businesses. (Added July 11, 2005.)

(Amended November 6, 2000; amended July 11, 2005.)

AREA REGULATIONS

- § 9-94. **Minimum Lot Area.** None required except where individual water or sewage disposal systems, as opposed to public systems, are required, then regulations of the State Health Department and other regulatory bodies must be complied with.
- § 9-95. **Front Yards.** If the street on which the building fronts is 50 feet or more in width then all buildings shall be at least 25 feet from the street right-of-way. If the street is less than 50 feet in width then the minimum front yard shall be 50 feet from the center of the street.
- § 9-96. **Frontage.** No minimum required but building must front on a public street, but not an alley. (Amended May 1, 1995.)
- § 9-97. **Minimum Depth.** None required.
- § 9-98. **Side Yard.** On the side of a lot adjoining a residential district or a dwelling there shall be a side yard of not less than 15 feet. There shall be a side yard setback from an intersecting street of not less than 15 feet. In all other cases the side yard for commercial buildings shall not be required.
- § 9-99. **Rear Yard.** None except on the rear of a lot adjoining either a residential district or a dwelling and then a minimum of 15 feet.
- § 9-100. **Height Regulations.** Buildings shall not exceed 3 stories or 45 feet in height, whichever is less. Accessory buildings shall not exceed 15 feet in height.
- § 9-101. **Maximum Lot Coverage.** The total coverage including main and accessory buildings shall not exceed 85% of the lot area.
- § 9-102. **Off Street Parking.** As regulated in Chapter 20.
- § 9-103. **Signs.** As provided in Chapter 21.1.

CHAPTER 11
A-1 Agricultural District
(Repealed July 13, 1998)

CHAPTER 11.1
A-1 Agricultural District
(Enacted July 13, 1998)

[Ed.: The Town's former A-2 classification was amended and redesignated as A-1 on July 13, 1998.]

- § 9-128.1. **Legislative Intent.** This classification is intended to allow Agriculture and closely related activities. (Amended July 13, 1998.)
- § 9-128.2. **Uses Permitted as a Matter of Right.**
- (a) Agriculture; general farm use (including the current employment of land and buildings supporting accepted farming practice) for the purpose of raising, harvesting and selling crops or for the feeding, breeding, management and sale of, or the produce of, livestock, fur-bearing animals or honey bees or for dairying and the sale of dairy products or any other agricultural use of animal husbandry or horticultural use or any combination thereof. Farm use shall include the preparation and storage of the products raised on such land for man's use and animal use. Nothing in this paragraph, however, shall authorize poultry houses or hog farms. (Amended July 13, 1998.)
 - (b) The growing and harvesting of timber and the maintenance of structures needed for the execution of those activities. This shall not include either uses or structures related to the production, manufacture or storage of wood products.
 - (c) Public and private conservation areas and structures for the retention of water, soil, open space, forest or wildlife resources.

- (d) Public and private parks, playgrounds, recreational grounds and grounds for games and sports except those the chief activity of which is carried on, or is customarily carried on as a business.
- (e) Single family dwelling if incidental to the above listed uses.
- (f) Accessory uses and buildings, provided such uses are incidental to the principal use and do not include any activity commonly conducted as a business. Any accessory building shall be located on the same lot with the principal building.
- (g) (Repealed November 6, 2000.)
- (h) Water treatment facilities.
- (i) Sewage treatment facilities.
- (j) Neighborhood Public Utilities. (Amended November 6, 2000.)(k)
- (k) Level One Home Occupations, as defined in § 9-22(33.1). (Added December 10, 2007.)

§ 9-128.3 Uses Permitted with Special Use Permit. The following uses may be permitted in accordance with provisions contained in Chapter 22:

- (a) Any use permitted Rockingham County's A-1 or A-2 zoning classification by right or as a special use. The primary intent of this paragraph (a) is to reduce any hardship on farmers occurring as a result of annexation, by giving them the right to petition the council and be heard, should the county zoning code allow uses not permitted herein. (Added July 13, 1998.)
- (b) Wide-Area Public Utilities. (Added November 6, 2000.)
- (c) Telecommunications Towers and Telecommunications Antennas, in accordance with Chapter 25. (Added November 6, 2000.)
- (d) Level Two Home Occupations, as defined in § 9-22(33.2), upon a finding by the council that the use would have no adverse effects upon the health, safety, or welfare of the neighborhood; provided, however, that any special use permit issued for a Level Two Home Occupation shall be personal to proprietor to whom the permit is issued and shall not inure to the benefit of his successors in interest. (Added December 10, 2007.)

AREA REGULATIONS

§ 9-128.4 Application of Area Regulations. Notwithstanding any other provision of this title, (a) the area and dimensional regulations in this chapter apply to dwellings only, (b) area and dimensional regulations for farm uses shall be established by the Board of Zoning Appeals upon application of the landowner, and (c) other uses shall be controlled by the area and dimensional regulations of the least restrictive zoning classification which allows the use and provides area and dimensional regulations. (Added May 1, 1995.)

§ 9-128.5. Minimum Lot Area. Minimum lot area shall be 20,000 square feet. There shall be no more than one single family dwelling unit on each lot.

§ 9-128.6. Front Yards. The minimum depth of the front yard shall be 35 feet from the street right-of-way if the street is 50 feet or greater in width and if the street is less than 50 feet in width then the minimum front yard shall be 60 feet from the center of the street. In no case shall an accessory building be located or extend into the front yard.

§ 9-128.7. Frontage. The minimum lot width at setback line shall be 100 feet. Lots must abut on a public street—not an alley—for a distance of not less than 30 feet. (Amended May 1, 1995.)

§ 9-128.8. Minimum Depth. Minimum depth of each lot shall be 150 feet.

§ 9-128.9. Side Yard. For a single story dwelling the side yard shall be not less than 10 feet in width; however, the sum of the two side yards shall be not less than 25 feet. For a dwelling of more than one story there shall be side yards of not less than 15 feet each. For unattached buildings of accessory use there shall be a side yard of not less than 10 feet, provided, that unattached one story buildings of accessory use shall not be required to set back more than 5 feet from an interior side lot line when all parts of the accessory buildings are located more than 10 feet behind the main building.

§ 9-128.10. **Rear Yard.** For dwellings there shall be a rear yard of not less than 35 feet. Unattached buildings of accessory use shall not be located closer to any rear lot line than 5 feet.

§ 9-128.11. **Height Regulations.** No dwelling shall exceed two and one-half stories or 35 feet in height, whichever is less. Accessory buildings shall not exceed 15 feet in height.

§ 9-128.12. **Maximum Lot Coverage.** Dwellings and accessory buildings shall cover not more than 40% of the lot area.

§ 9-128.13. **Off Street Parking.** As regulated in Chapter 20.

§ 9-128.14. **Signs.** As provided in Chapter 21.1.

CHAPTER 12
A-2 Agricultural District
(Repealed July 13, 1998)

CHAPTER 12.1
A-2 Agricultural District
(Enacted July 13, 1998)

[Ed.: The Town's former A-1 classification was amended and redesignated as A-2 on July 13, 1998.]

§ 9-128.15. **Legislative Intent.** This district is designed primarily to accommodate farming and kindred rural activities, permitting the development of other uses by special use permit.

§ 9-128.16. **Uses Permitted as a Matter of Right.**

- (a) Agriculture, general farming, including dairying.
- (b) Orchards.
- (c) Nurseries.
- (d) Churches or similar places of worship, with accessory structures.
- (e) Golf courses, miniature golf courses and golf driving tees.
- (f) Public Parks, playgrounds, and playfields.
- (g) Swimming pools and tennis courts.
- (h) Grain storage bins as a primary use.
- (i) Greenhouses.
- (j) Tree farms.
- (k) Wildlife areas, game refuges and forest preserves.
- (l) Single family dwellings but not including residential subdivisions.
- (m) Accessory uses and buildings, provided such uses are incidental to the principal use and do not include any activity commonly conducted as a business. Any accessory building shall be located on the same lot with the principal building.
- (n) Agencies and offices rendering specialized services in the professions, finance, insurance, real estate, chiropractors, optometrists, osteopaths, dental laboratories, architects and engineers; also service agencies not involving on premises retail or wholesale trade nor maintenance of a stock of goods for display or sale.
- (o) Hospitals, but not an animal hospital.
- (p) (Repealed November 6, 2000).
- (q) Neighborhood Public Utilities. (Added November 6, 2000.)
- (r) Level One Home Occupations, as defined in § 9-22(33.1). (Added December 10, 2007.)

§ 9-128.17. *Uses Permitted with Special Use Permit.* The following uses may be permitted in accordance with provisions contained in Chapter 22:

- (a) Cemeteries and memorial gardens.
- (b) Clubs, fraternities, lodges and meeting places of other organizations not including any use that is customarily conducted as a gainful business.
- (c) Family campgrounds.
- (d) (Repealed July 13, 1998.)
- (e) Home occupations as regulated under Chapter 19.
- (f) Police, fire and rescue squad stations.
- (g) (Repealed July 13, 1998.)
- (h) Raising fur-bearing animals and pelt processing.
- (i) Schools, as defined.
- (j) Funeral homes.
- (k) Gravel pits and quarries.
- (l) Convalescent, nursing and rest homes.
- (m) Machine shops with equipment and materials under cover.
- (n) Manufacture and sale of feed and other farm supplies.
- (o) Radio or television transmitting stations and towers.
- (p) Riding academies and stables.
- (q) Dumps and sanitary landfill operations.
- (r) Shooting range or galleries.
- (s) Farm, lawn and garden machinery and equipment sales and service.
- (t) Airports.
- (u) Roadside stands or markets.
- (v) Blacksmith shops.
- (w) Wineries.
- (x) Water treatment facilities.
- (y) Sewage treatment facilities.
- (z) Mobile home parks in accordance with Chapter 18.
- (aa) Any use permitted Rockingham County's A-1 or A-2 zoning classification by right or as a special use. The primary intent of this paragraph (aa) is to reduce any hardship on farmers occurring as a result of annexation, by giving them the right to petition the council and be heard should the county zoning code allow uses not permitted herein. (Added July 13, 1998.)
- (bb) Wide-Area Public Utilities. (Added November 6, 2000.)
- (cc) Telecommunications Towers and Telecommunications Antennas, in accordance with Chapter 25. (Added November 6, 2000.)
- (dd) Level Two Home Occupations, as defined in § 9-22(33.2), upon a finding by the council that the use would have no adverse effects upon the health, safety, or welfare of the neighborhood; provided, however, that any special use permit issued for a Level Two Home Occupation shall be personal to proprietor to whom the permit is issued and shall not inure to the benefit of his successors in interest. (Added December 10, 2007.)

AREA REGULATIONS

§ 9-128.18 **Application of Area Regulations.** Notwithstanding any other provision of this title, (a) the area and dimensional regulations in this chapter apply to dwellings only, (b) area and dimensional regulations for farm uses shall be established by the Board of Zoning Appeals upon application of the landowner, and (c) other uses shall be controlled by the area and dimensional regulations of the most restrictive zoning classification which allows the use and provides area and dimensional regulations. (Added May 1, 1995.)

§ 9-128.19. **Minimum Lot Area.** Minimum lot area shall be 20,000 square feet. There shall no more than one single family dwelling unit on each lot.

§ 9-128.20. **Front Yards.** The minimum depth of the front yard shall be 35 feet from the street right-of-way if the street is 50 feet or greater in width and if the street is less than 50 feet in width then the minimum front yard shall be 60 feet from the center of the street. In no case shall an accessory building be located or extend into the front yard.

§ 9-128.21. **Frontage.** The minimum lot width at setback line shall be 100 feet. Lots must abut on a public street—not an alley—for a distance of not less than 30 feet. (Amended May 1, 1995.)

§ 9-128.22. **Minimum Depth.** Minimum depth of each lot shall be 150 feet.

§ 9-128.23. **Side Yard.** For a single story dwelling the side yard shall be not less than 10 feet in width; however, the sum of the two side yards shall be not less than 25 feet. For a dwelling of more than one story there shall be side yards of not less than 15 feet each. For unattached buildings of accessory use there shall be a side yard of not less than 10 feet, provided, that unattached one story buildings of accessory use shall not be required to set back more than 5 feet from an interior side lot line when all parts of the accessory building are located more than 10 feet behind the main building.

§ 9-128.24. **Rear Yard.** For dwellings there shall be a rear yard of not less than 35 feet. Unattached buildings of accessory use shall not be located closer to any rear lot line than 5 feet.

§ 9-128.25. **Height Regulations.** No dwelling shall exceed two and one-half stories or 35 feet in height, whichever is less. Accessory buildings shall not exceed 15 feet in height.

§ 9-128.26. **Maximum Lot Coverage.** Dwellings and accessory buildings shall cover not more than 40% of the lot area.

§ 9-128.27. **Off Street Parking.** As regulated in Chapter 20.

§ 9-128.28. **Signs.** As provided in Chapter 21.1.

CHAPTER 12.2

HB-1 Highway Business District

(Enacted November 1, 1999.)

§ 9-128.50. **Legislative Intent.** This district is intended to allow a complimentary mix of uses along John Wayland Highway and Mason Street. Low density, low traffic uses are allowed near the highway. Compatible higher density uses are also allowed, provided they are set back from the highway and are organized into developments designed to minimize the burden on the public infrastructure. (Enacted November 1, 1999.)

Article One

Land within a Commercial Planned Unit Development

§ 9-128.51. **Application** The provisions of this Article shall apply only to property which is within a Commercial Planned Unit Development ("CPUD"). (Enacted November 1, 1999.)

§ 9-128.52. **CPUD's Generally.** CPUD's are intended to provide optional methods of land development which encourage imaginative solutions to design problems and minimize the burden on public infrastructure. Developments thus established are to be largely self-contained, with as few entrances onto existing streets and highways as possible. (Enacted November 1, 1999.)

§ 9-128.53. Permitted Uses. Within a CPUD, the following uses are permitted in accordance with an approved master plan:

- (a) Professional, administrative, and clerical offices.
This provision, in conjunction with paragraph (q) below, allows certain goods or equipment to be stored in connection with an administrative office. All goods shall be stored indoors and all equipment shall be fully screened from view from public highways and other properties. Such screening shall be accomplished through fencing or landscaping.
- (b) Retail stores of less than 25,000 square feet in which substantially all stock is kept indoors.
This provision allows gasoline stations, provided that the buildings shall be less than 25,000 square feet and substantially all products for sale are stored indoors *or* underground.
- (c) Retail stores of any size, without any limitations as to outdoor stock.
This paragraph permits but is not limited to automobile dealerships, lumber yards, and manufactured housing sellers.
- (d) Restaurants.
- (e) Banks and similar financial institutions.
- (f) Hotels and motels.
- (g) General service, automobile repair, other repair shops provided not more than 10 persons are employed on the premises in a single shift (not including persons whose principal duties are off premises) and provided that all storage and activities are conducted within a building. Examples of repair shops other than automobile repair shops are: cleaning and dyeing establishments, laundries, painting, printing and plumbing jobs, dressmaking, millinery and tailoring shops, radio and television repair shops, upholstery and furniture repair shops.
- (h) Radio or television broadcasting stations, studios, or offices, but not transmission towers.
- (i) Nursing homes and retirement home projects.
- (j) Hospitals, but not an animal hospital.
- (k) Personal service establishments, including barber shops, beauty parlors, and similar enterprises.
- (l) Greenhouses and nurseries.
- (m) Recreational uses including community centers, golf courses, swimming pools, parks, playgrounds or any other public recreational uses.
- (n) Community facilities such as churches and other religious institutions.
- (o) Child Care Centers, as defined, in conformity with the character of the neighborhood.
- (p) Bowling alleys.
- (q) Accessory uses and buildings incidental to the principal use.
- (r) Neighborhood Public Utilities. (Amended November 6, 2000.)
- (s) Other neighborhood business uses upon a finding by governing body that such uses are of the same general character as those permitted and which will not be detrimental to other uses within the district or to adjoining land uses.

(Enacted November 1, 1999.)

§ 9-128.54. Minimum Size. The minimum size of any CPUD shall be five acres of contiguous land. There is no minimum size for individual lots within a CPUD. (Enacted November 1, 1999.)

§ 9-128.55. Setbacks. No building within a CPUD may be located or maintained within 75 feet of John Wayland Highway or Mason Street.

Additionally, all buildings within a CPUD shall set back from the perimeter of the CPUD by at least 50 feet. This 50 foot setback can be reduced to 30 feet, if the area is planted with dense landscaping sufficient to block sightlines, pedestrian traffic, and

vehicular traffic within 15 years. This landscaping must be maintained and replanted as necessary for the buffer reduction to remain in force.

(Enacted November 1, 1999.)

§ 9-128.56. Height Restrictions. No structure shall exceed three stories or 45 feet in height whichever is less. Accessory structures shall not exceed 15 feet in height. (Enacted November 1, 1999.)

§ 9-128.57. Standards for Improvements. The town's standards and policies concerning streets, utilities, drainage, and monuments as expressed in Title 8 of this code and related addenda shall apply to improvements within CPUD's. (Enacted November 1, 1999.)

§ 9-128.58. Entrances onto Major Highways; Traffic. CPUD's shall be designed so as to minimize entrances onto John Wayland Highway or Mason Street. In no event shall a CPUD have more than one entrance within any 500 linear foot segment of John Wayland Highway or Mason Street. Entrance standards and procedures are controlled by the Virginia Department of Transportation.

Streets and parking areas within a CPUD shall be designed to allow for smooth and efficient traffic flow.

(Enacted November 1, 1999.)

§ 9-128.59. Protection of Agricultural Uses. All CPUD's shall be designed so as to maintain an appropriate separation between the uses within the CPUD and any adjoining agricultural uses. (Enacted November 1, 1999.)

§ 9-128.60. Off Street Parking. Off street parking shall be as regulated in Chapter 20, provided that all parking required for any use within a CPUD shall be located within the CPUD, notwithstanding any provisions to the contrary in Chapter 20. (Enacted November 1, 1999.)

§ 9-128.61. Signs. As provided in Chapter 21.1. (Enacted November 1, 1999.)

§ 9-128.62. Administrative Procedure for a CPUD.

- (a) With respect to land zoned HB-1, a CPUD may be established upon the submission of a master plan, which may consist of one or more sheets, and shall show
 - (1) The boundaries of the proposed CPUD.
 - (2) The overall scheme of development including the general location of the various types of uses to which the property will be put, and the provision of this chapter which allows the use. (For example, "Bank: § 9-128.53(e)")
 - (3) The general location of all streets and easements of right-of-way, and the location of and specifications for all proposed entrances onto John Wayland Highway, Mason Street, or other existing public streets.
 - (4) The general location of all parking areas, and a notation as to the number of parking spaces in each.
 - (5) The proposed general location of all buildings and other improvements.
 - (6) Reasonably detailed plans for water, sanitary sewer, storm sewer, and other utilities.
 - (7) Proposed agreements, rules, or covenants which will govern the use of any property within the development.
 - (8) Proposed building types, height, and approximate floor areas.
 - (9) Any landscaping required by law.
- (b) The Planning Commission shall review the master plan and other documents filed and shall issue to the Council a recommendation for approval, disapproval, or approval with modification of the layout, scheme of development, deed restrictions, or other matters concerning the development.
- (c) In reviewing the application and the Planning Commission's recommendation, the Council will be guided by the standards and intent expressed in this Article. If the Council approves the application for the CPUD, the owner or developer may proceed to develop any section of the project upon the submission and approval of a final plan for that section. The final plan shall comply in all respects with the requirements for final plats set forth in

§ 8-12 of this code. The final plan need be approved only by the Planning Commission, which shall issue approval if it complies with this section and it is in substantial compliance with the master plan. Such approval shall be contingent upon the guaranty requirement of paragraph (d) of this section.

- (d) Before a final plan is approved, the installation of all improvements required by Title 8 or any other provision of law shall be guaranteed as provided in § 8-27 of this code.

(Enacted November 1, 1999.)

§ 9-128.63. *Amendment of Plans.*

- (a) Except as provided in paragraph (b) of this section, the procedures governing the issuance of new master plans shall govern amendments to existing plans. A master plan is amended through the approval of a superseding plan.
- (b) In existing CPUD's, the owner or owners of a portion of the property in the development may apply for the amendment of the master plan as it relates to their property only. Such application will be approved only if the amendment would not materially change the character of the development, all other requirements are met, and the council determines that the amendment is appropriate.
- (c) Any amendments to final plans shall be made in accordance with law pertaining to the amendment of subdivision plats. If a final plan amendment does not entail a master plan amendment, no additional procedures need be followed. If the final plan as amended would deviate from the master plan, the master plan must be amended also.

(Enacted November 1, 1999.)

§ 9-128.64. *Abandonment of Project.* Upon the abandonment of a project authorized under this section or upon the expiration of two years from the authorization of the CPUD which has not by then been commenced, the authorization shall expire and the land and structures thereon may be used without such approval for any other lawful purpose permissible in the HB-1 District. (Enacted November 1, 1999.)

Article Two

Land Not within a Commercial Planned Unit Development

§ 9-128.65. *Application.* The provisions of this Article shall apply only to property not within a Commercial Planned Unit Development established under Article One of this Chapter. (Enacted November 1, 1999.)

§ 9-128.66. *Permitted Uses.* The following uses are permitted as a matter of right within the HB-1 District:

- (a) Single family dwellings, occupied by families or not more than two unrelated persons.
- (b) Professional, administrative, and clerical offices.

This provision, in conjunction with paragraph (e) below, allows certain goods or equipment to be stored in connection with an administrative office. All goods shall be stored indoors and all equipment shall be fully screened from view from public highways and other properties. Such screening shall be accomplished through fencing or landscaping.
- (c) Temporary buildings for uses incidental to construction work, which buildings shall be immediately adjacent to the construction work and which shall be removed upon completion or abandonment of the work.
- (d) Neighborhood Public Utilities. (Amended November 6, 2000.)
- (e) Accessory uses and buildings, provided such uses are incidental to the principal use. Any accessory building shall be located on the same lot with the principal building.
- (f) Level One Home Occupations, as defined in § 9-22(33.1). (Added December 10, 2007.)

(Enacted November 1, 1999.)

§ 9-128.66A. *Uses allowed with Special Use Permit.* The following uses may be permitted in accordance with the provisions contained in Chapter 22:

- (a) Wide-Area Public Utilities.

- (b) Telecommunications Towers and Telecommunications Antennas, in accordance with Chapter 25.
- (c) Level Two Home Occupations, as defined in § 9-22(33.2), upon a finding by the council that the use would have no adverse effects upon the health, safety, or welfare of the neighborhood; provided, however, that any special use permit issued for a Level Two Home Occupation shall be personal to proprietor to whom the permit is issued and shall not inure to the benefit of his successors in interest. (Added December 10, 2007.)

(Enacted November 6, 2000.)

§ 9-128.67. Minimum Lot Area. Except for farming and agricultural uses--whose area and dimensional requirements shall be established on application to the Board of Zoning Appeals--the minimum lot area shall be 20,000 square feet. (Enacted November 1, 1999.)

§ 9-128.68. Dwelling Units Per Lot. There shall be no more than one dwelling unit on any lot. (Enacted November 1, 1999.)

§ 9-128.69. Front Yard. Except for farming and agricultural uses--whose area and dimensional requirements shall be established on application to the Board of Zoning Appeals—

- (a) The minimum depth of the front yard shall be 40 feet from the street right-of-way if the street is 50 feet or greater in width, and if the street is less than 50 feet in width, then the minimum front yard shall be 35 feet from the center of the street.
- (b) In no case shall an accessory building be located or extend into the front yard.

(Enacted November 1, 1999.)

§ 9-128.70. Frontage. Except for farming and agricultural uses--whose area and dimensional requirements shall be established on application to the Board of Zoning Appeals—

- (a) The minimum lot width at the setback line shall be 100 feet.
- (b) Lots must abut on a public street--not an alley--for a distance of not less than 50 feet.

(Enacted November 1, 1999.)

§ 9-128.71. Minimum Depth. Except for farming and agricultural uses--whose area and dimensional requirements shall be established on application to the Board of Zoning Appeals--the minimum depth of each lot shall be 100 feet. (Enacted November 1, 1999.)

§ 9-128.72. Side Yard. Except for farming and agricultural uses--whose area and dimensional requirements shall be established on application to the Board of Zoning Appeals—

- (a) One story buildings located on interior lots must have side yards of at least 15 feet in width; however, the sum of the two side yards shall be not less than 35 feet.
- (b) Buildings of more than one story shall have side yards of not less than 20 feet each.
- (c) Additionally, for buildings located on corner lots, the side yard abutting the street shall be at least as wide as the minimum front yard depth specified in § 9-128.69.
- (d) For unattached buildings of accessory use there shall be a side yard of not less than 10 feet; provided, that unattached one story buildings of accessory use shall not be required to set back more than 5 feet from an interior side lot line when all parts of the accessory building are located more than 10 feet behind the main building.

(Enacted November 1, 1999.)

§ 9-128.73. Rear Yard. Except for farming and agricultural uses--whose area and dimensional requirements shall be established on application to the Board of Zoning Appeals--

- (a) Principal structures must have a rear yard of not less than 30 feet.
- (b) Unattached buildings of accessory use shall not be located closer to any rear lot line than 5 feet.

(Enacted November 1, 1999.)

§ 9-128.74. Height Regulations. Except for farming and agricultural uses—whose area and dimensional requirements shall be established on application to the Board of Zoning Appeals—

- (a) No dwelling shall exceed 2-1/2 stories or 35 feet in height whichever is less.
- (b) Accessory buildings shall not exceed 15 feet in height.

(Enacted November 1, 1999.)

§ 9-128.75. Maximum Lot Coverage. Except for farming and agricultural uses--whose area and dimensional requirements shall be established on application to the Board of Zoning Appeals--buildings shall cover not more than 40% of the lot area. (Enacted November 1, 1999.)

§ 9-128.76. Off Street Parking. As regulated in Chapter 20. (Enacted November 1, 1999.)

§ 9-128.77. Signs. As provided in Chapter 21.1. (Enacted November 1, 1999.)

CHAPTER 13
Flood Plain Districts and Regulations
(Repealed August 6, 1990)

CHAPTER 13.1
Flood Plain Districts and Regulations
(Enacted August 6, 1990)

§ 9-135.1. Purpose. The purpose of these provisions of this chapter is to prevent the loss of life and property, the creation of health and safety hazards, the disruption of commerce and governmental services, the extraordinary and unnecessary expenditure of public funds for flood protection and relief, and the impairment of the tax base by:

- (a) Regulating activities, and development which, alone or in combination with other existing or future uses, activities, and development, will cause unacceptable increases in flood heights, velocities, and frequencies.
- (b) Restricting or prohibiting certain uses, activities, and development from locating within areas subject to flooding.
- (c) Requiring all those uses, activities, and developments that do occur in flood-prone areas to be protected and/or floodproofed against flooding and flood damage.
- (d) Protecting individuals from buying land and structures which are unsuited for intended purposes because of flood hazards.

§ 9-135.2. Applicability. These provisions shall apply to all lands within the jurisdiction of the Town of Dayton, Virginia, and identified as being in the 100-year floodplain by the Federal Insurance Administration.

§ 9-135.3. Compliance and Liability.

- (a) No land shall hereafter be developed and no structure shall be located, relocated, constructed, reconstructed, enlarged, or structurally altered except in full compliance with the terms and provisions of this chapter and any other applicable ordinances and regulations which apply to uses within the jurisdiction of this chapter.
- (b) The degree of flood protection sought by the provisions of this chapter is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study. Larger floods may occur on rare occasions. Flood heights may be increased by man-made or natural causes, such as ice jams and bridge openings restricted by debris. This chapter does not imply that areas outside the floodplain area, or that land uses permitted within such area will be free from flooding or flood damages.
- (c) This chapter shall not create liability on the part of the town or any officer or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision thereunder.

§ 9-135.4. Abrogation and Greater Restrictions. This chapter supersedes any ordinance currently in effect in flood-prone areas. However, any underlying ordinance shall remain in full force and effect to the extent that its provisions are more restrictive than this chapter.

§ 9-135.5. Severability. If any section, subsection, paragraph, sentence, clause, or phase of this chapter shall be declared invalid for any reason whatever, such decision shall not affect the remaining portions of this chapter. The remaining portions shall remain in full force and effect; and for this purpose, the provisions of this chapter are hereby declared to be severable.

§ 9-135.6. Definitions. The following definitions shall apply within this chapter:

- (a) *Base Flood/ One-Hundred Year Flood*..... The flood having a one percent chance of being equaled or exceeded in any given year. (Amended January 28, 2008.)
- (a1) *Base Flood Elevation*: The elevation shown on the Flood Insurance Rate Map (FIRM) described in § 9-135.7 below that indicates the water surface elevation resulting from a flood that has a 1 percent chance of equaling or exceeding that level in any given year. (Added January 28, 2008.)
- (a2) *Basement*: Any area of a building having its floor subgrade (below ground level) on all sides. (Added January 28, 2008.)
- (b) *Board of Zoning Appeals*..... The board appointed to review appeals made by individuals with regard to decisions of the Zoning Administrator in the interpretation of this chapter.
- (c) *Development*..... Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, the placement of manufactured homes, paving, filling, grading, excavation, mining, dredging, drilling operations, or storage of equipment or materials. (Amended January 28, 2008.)
- (c1) *Elevated Building*. A non-basement building built to have the lowest floor elevated above the ground level by means of fill, solid foundation perimeter walls, pilings, or columns (posts and piers). (Added January 28, 2008.)
- (c2) *Encroachment*..... The advance or infringement of uses, plant growth, fill excavation, Buildings, permanent Structures or development into a Floodplain, which may impede or alter the flow capacity of a Floodplain. (Added January 28, 2008.)
- (d) *Existing Manufactured Home Park/Subdivision* A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the initial effective date of these regulations.
- (e) *Expansion to an Existing Manufactured Home Park or Subdivision* The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads.)
- (f) *Flood or Flooding*
 1. A general or temporary condition of partial or complete inundation of normally dry land area from
 - a. The overflow of inland or tidal waters; or
 - b. The unusual and rapid accumulation or runoff of surface waters from any source.
 2. The collapse or subsistence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water

exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by some similarly unusual and unforeseeable event with results as defined in paragraph 1(a) of this definition.

- (f) *Flood or Flooding* 1. A general or temporary condition of partial or complete inundation of normally dry land area from
- a. The overflow of inland or tidal waters; or
 - b. The unusual and rapid accumulation or runoff of surface waters from any source.
2. The collapse or subsistence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by some similarly unusual and unforeseeable event with results as defined in paragraph 1(a) of this definition.

(Amended January 28, 2008.)

- (g) *Floodplain or Flood-Prone Area* Any land area susceptible to being inundated by water from any source. (Amended January 28, 2008.)

- (h) *Floodplain* (Deleted January 28, 2008.)

- (i) *Floodway* The channel of a river or other Watercourse and the adjacent land areas that must be reserved in order to discharge the Base Flood without cumulatively increasing the water surface elevation more than a designated height. (Added January 28, 2008.)

- (i1) *Freeboard* A factor of safety usually expressed in feet above a Flood level for purposes of Floodplain management. “Freeboard” tends to compensate for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and hydrological effect of urbanization in the watershed. (Added January 28, 2008.)

- (j) *Historic Structure* Any structure that is:

(1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district;

(3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or

(4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

(i) By an approved state program as determined by the Secretary of the Interior or

(ii) Directly by the Secretary of the Interior in states without approved programs.

(Amended January 28, 2008.)

- (j1) *Lowest Floor* The lowest floor of the lowest enclosed areas (including basement). An unfinished or flood-resistant enclosure, usable solely for parking vehicles, building access or storage in an area other than a basement area is not considered a building’s lowest floor; provided, that such enclosure is not built so as to render the structure in

violation of the applicable non-elevation design requirements of Federal Code 44 CFR § 60.3. (Added January 28, 2008.)

- (k) *Manufactured Home* A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. For floodplain management purposes the term “Manufactured Home” also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. (Amended January 28, 2008.)
- (l) *Manufactured Home Park/ Subdivision* A parcel (or contiguous parcels) of land divided into two or more lots for rent or sale.
- (m) *New Construction* For the purposes of determining insurance rates, structures for which the “start of construction” commenced on or after the effective date of an initial Flood Insurance Rate Map or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, “new construction” means structures for which the “start of construction” commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures. (Amended January 28, 2008.)
- (n) *New Manufactured Home Park/Subdivision* A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the initial effective date of these regulations.
- (o) *Recreational Vehicle* A vehicle which is:
 - (a) built on a single chassis;
 - (b) 400 square feet or less when measured at the largest horizontal projection;
 - (c) designed to be self-propelled or permanently towable by a light duty truck; and
 - (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational camping, travel, or seasonal use.
- (o1) *Shallow Flooding Area* A special flood hazard area with Base Flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow. (Added January 28, 2008.)
- (o2) *Special Flood Hazard Area* ... The land in the Floodplain subject to one percent (1%) or greater chance of being Flooded in any given year as determined as determined under § 6-135.7 below. (Added January 28, 2008.)
- (p) *Start of Construction* The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, substantial improvement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not

occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not the alteration affects the external dimensions of the building. (Amended January 28, 2008.)

- (q) *Substantial Damage*..... Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.
- (r) *Substantial Improvement* Any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage” regardless of the actual repair work performed. The term does not, however, include either: (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or (2) any alteration of a “historic structure,” provided that the alteration will not preclude the structures continued designation as a “historic structure.”
- (s) *Watercourse*..... A lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourses include specifically designated areas in which substantial Flood damage may occur. (Added January 28, 2008.)

§ 9-135.7. Description of District.

(a) *Basis of District:* The floodplain district shall include areas to one percent (1%) or greater chance of being Flooded in any given year. The basis for the delineation of the district shall be the one hundred (100) year flood elevations or profiles contained in the Flood Insurance Study for the Town of Dayton, Virginia, prepared by the Federal Emergency Management Agency, Federal Insurance Administration, dated February 6, 2008, as amended. (Amended January 28, 2008, effective February 6, 2008.)

- (1) The Approximated Floodplain District shall be that floodplain area for which no detailed flood profiles or elevations are provided, but where a one hundred (100) year floodplain boundary has been approximated. Such areas are shown as Zone A on the Flood Insurance Rate Map dated February 6, 2008. For these areas, the one hundred (100) year flood elevations and floodway information from federal, state, and other acceptable sources shall be used, when available. Where the specific one hundred (100) - year flood elevation cannot be determined for this area using other sources of data, such as the U. S. Army Corps of Engineers Floodplain Information Reports, U. S. Geological Survey Flood-Prone Quadrangles, etc., then the applicant for the proposed use, development and/or activity shall determine this elevation in accordance with hydrologic and hydraulic engineering techniques. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently-accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough review by the town.
- (2) The Special Floodplain District shall be those areas identified as either an AE Zone or A1-30 zone on the maps accompanying the Flood Insurance Study for which one hundred (100)-year flood elevations have been provided but for which no floodway has been delineated. (Added January 28, 2008.)

(b) *Overlay Concept:*

- (1) The Floodplain District described above shall be overlays to the existing underlying area as shown on the Official Zoning Map, and as such, the provisions for the floodplain district shall serve as a supplement to the underlying district provisions.
- (2) In case of any conflict between the provisions or requirements of the Floodplain District and those of any underlying district the more restrictive provisions and/or those pertaining to the floodplain district shall apply.

- (3) In the event any provision concerning a Floodplain District declared inapplicable as a result of any legislative or administrative actions or judicial decision, the basic underlying provisions shall remain applicable.

§ 9-135.8. Official Zoning Map. The boundaries of the Floodplain District are established as shown on the Flood Insurance Rate Map which is declared to be a part of this chapter and which shall be kept on file in the office of the town superintendent.

§ 9-135.9. District Boundary Changes. The delineation of any of the Floodplain District may be revised by the town council where natural or man-made changes have occurred or where more detailed studies have been conducted or undertaken by the U. S. Army Corps of Engineers or other qualified agency, or an individual documents the need for such change. However, prior to any such change, approval must be obtained from the Federal Insurance Administration.

§ 9-135.10. Interpretation of District Boundaries. Initial interpretations of the boundaries of the Floodplain District shall be made by the Zoning Officer. Should a dispute arise concerning the boundaries of any of the District, the Board of Zoning Appeals shall make the necessary determination. The person questioning or contesting the location of the District boundary shall be given a reasonable opportunity to present his case to the Board and to submit his own technical evidence if he so desires.

§ 9-135.11. General Provisions Concerning Floodplain District.

- (a) *Permit Requirement:* All uses, activities, and development occurring within any Floodplain District shall be undertaken only upon the issuance of a zoning permit. Such development shall be undertaken only in strict compliance with the provisions of the ordinance and with all other applicable codes and ordinances, such as the Virginia Uniform Statewide Building Code and the subdivision regulations in Title 8 of this Code. Prior to the issuance of any such permit, the zoning officer shall require all applications to include compliance with all applicable state and federal laws. Under no circumstance shall any use, activity, and/or development adversely affect the capacity of the channels or floodways of any watercourse, drainage ditch, or any other drainage facility or system.
- (b) *Alteration or Relocation of Watercourse:* Prior to any proposed alteration or relocation of any channels or of any watercourse, stream, etc., within this jurisdiction a permit shall be obtained from the U. S. Corps of Engineers, the Virginia Marine Resources Commission, the Virginia State Water Control Board (a joint permit application is available from anyone of these organizations.) Notification of the proposal shall be given to all adjacent jurisdictions, the Division of Dam Safety and Floodplain Management (Department of Conservation and Recreation), and the Federal Insurance Administration. (Amended January 28, 2008.)
- (c) *Site Plans and Permit Applications:* All applications for development in the floodplain district and all building permits issued for the floodplain shall incorporate the following information:
 - (1) For structures to be elevated, the elevation of the lowest floor (including basement).
 - (2) For structures to be floodproofed (non-residential only), the elevation to which the structure will be floodproofed.
 - (3) The elevation of the one hundred (100) year flood.
 - (4) Topographic information showing existing and proposed ground elevations.
- (d) *Encroachment Provisions:*
 - (1) No new construction or development shall be permitted within the floodplain district unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the elevation of the one hundred (100) year flood more than one foot at any point.
 - (2) Within any floodway area, no encroachments, including fill, new construction, substantial improvements, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in the one hundred (100) year flood elevation.
- (e) *Manufactured Homes:*
 - (1) Manufactured homes that are placed or substantially improved on sites:
 - (i) Outside of a manufactured home park or subdivision,

- (ii) In a new manufactured home park or subdivision,
- (iii) In an expansion to an existing manufactured home park or subdivision,
- (iv) In an existing manufactured home park or subdivision on which a manufactured home has incurred “substantial damage” as the result of a flood,

Shall be elevated on a permanent foundation such that the lowest referenced elevation of the manufactured home is elevated to a minimum of one foot above the base flood elevation and is securely anchored to an adequately anchored foundation system to resist floatation collapse and lateral movement. (Amended January 28, 2008.)

- (2) Manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision that are not subject to the provisions of paragraph one above of this section shall be elevated so that either:

- (i) The lowest floor of the manufactured home is at or above the base flood elevation, or
- (ii) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist floatation, collapse, and lateral movement.

- (f) Recreational Vehicles: Recreational vehicles shall either:

- (i) Be on the site for fewer than 180 consecutive days, and
- (ii) Be fully licensed and ready for highway use, or
- (iii) Meet the permit requirements for placement and the elevation and anchoring requirements for manufactured homes in paragraph § 9-135.11(e) above. (Amended January 28, 2008.)

A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

§ 9-135.12. *Design Criteria for Utilities and Facilities.*

- (a) Sanitary Sewer Facilities: All new or replacement sanitary sewer facilities and private package sewage treatment plants (including all pumping stations and collector systems) shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into the flood waters. In addition, they should be located and constructed to minimize or eliminate flood damage and impairment.
- (b) Water Facilities: All new or replacement water facilities shall be designed to minimize or eliminate infiltration of flood waters into the system and be located and constructed to minimize or eliminate flood damages.
- (c) Drainage Facilities: All storm drainage facilities shall be designed to convey the flow of surface waters without damage to persons or property. The systems shall ensure drainage away from buildings and onsite waste disposal sites. The town may require a primarily underground system to accommodate frequent floods and a secondary surface system to accommodate larger, less frequent floods. Drainage plans shall be consistent with local and regional drainage plans. The facilities shall be designed to prevent the discharge of excess runoff onto adjacent properties.
- (d) Utilities: All utilities, such as gas lines, electrical and telephone systems being placed in flood-prone areas should be located, elevated (where possible), and constructed to minimize the chance of impairment during a flooding occurrence.
- (e) Streets and Sidewalks: Streets and sidewalks should be designed to minimize their potential for increasing and aggravating the levels of flood flow. Drainage openings shall be required to sufficiently discharge flood flows without unduly increasing flood heights.

§ 9-135.13. *Variances.* In passing upon applications for variances, the Board of Zoning Appeals shall satisfy all relevant factors and procedures specified in other sections of the zoning ordinance and consider the following additional factors:

- (a) The danger to life and property due to increased flood heights or velocities caused by encroachments. No variance shall be granted for any proposed use, development, or activity within any floodway area that will cause any increase in the one hundred (100) year flood elevation.
- (b) The danger that materials may be swept on to other lands or downstream to the injury of others.
- (c) The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
- (d) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
- (e) The importance of the services provided by the proposed facility to the community.
- (f) The requirements of the facility for a waterfront location.
- (g) The availability of alternative locations not subject to flooding for the proposed use.
- (h) The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
- (i) The relationship of the proposed use to the comprehensive plan and floodplain management program for the area.
- (j) The safety of access by ordinary and emergency vehicles to the property in time of flood.
- (k) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.
- (l) The repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- (m) Such other factors which are relevant to the purposes of this chapter.

The Board of Zoning Appeals may refer any application and accompanying documentation pertaining to any request for a variance to any engineer or other qualified person or agency for technical assistance in evaluating the proposed project in relation to flood heights and velocities, and the adequacy of the plans for flood protection and other related matters.

Variances shall be issued only after the Board of Zoning Appeals has determined that the granting of such will not result in (a) unacceptable or prohibited increases in flood heights, (b) additional threats to public safety, (c) extraordinary public expense, and will not (d) create nuisances, (e) cause fraud or victimization of the public, or (f) conflict with local laws or ordinances.

Variances shall be issued only after the Board of Zoning Appeals has determined that variance will be the minimum required to provide relief from exceptional hardship to the applicant.

The Board of Zoning Appeals shall notify the applicant for a variance, in writing, that the issuance of a variance to construct a structure below the one hundred (100) year flood elevation (a) increases the risks to life and property and (b) will result in increased premium rates for flood insurance.

A record shall be maintained of the above notification as well as all variance actions, including justification for the issuance of the variances. Any variances which are issued shall be noted in the annual or biennial report submitted to the Federal Insurance Administrator.

§ 9-135.14. Existing Structures in Floodplain Districts. The Substantial Damage or Substantial Improvement of any Structure shall require the entire Structure to be brought into full compliance with the provisions of this Chapter. (Amended January 28, 2008.)

CHAPTER 14
Conditional Zoning

§ 9-136. *Legislative Intent.* The intent of this chapter is to provide a more flexible and adaptable zoning method to cope with situations found in zoning districts whereby zoning reclassification may be allowed subject to certain conditions proffered by the zoning applicant for the protection of the community that are not generally applicable to land similarly zoned. This chapter is authorized by § 15.2-2298 of the Code of Virginia. (Amended December 10, 2007.)

§ 9-137. *Proffer of Conditions.* An owner may proffer reasonable conditions, in addition to the regulations established elsewhere in the ordinance, as part of an amendment to zoning district regulations or the zoning district map.

§ 9-138. *Requirements as to Conditions.* The proffered conditions shall be in writing and shall be made prior to the public hearing before the Town Council. The Council may also accept amended proffers once the public hearing has begun if the amended proffers do not materially affect the overall proposal. (Amended December 10, 2007.)

§ 9-139. *Limitations on Conditions.* The following conditions and limitations apply as to the proffered conditions:

- (a) The rezoning itself must give rise to the need for the conditions.
- (b) The conditions proffered shall have a reasonable relation to the rezoning.
- (c) (Repealed December 10, 2007)
- (d) (Repealed December 10, 2007)
- (e) All conditions must be conformity with the Town's comprehensive plan. (Added December 10, 2007)
- (f) All conditions must comply with § 15.2-2298 of the Code of Virginia. (Added December 10, 2007)

§ 9-140. *Enforcement and Guarantees of Conditions.* The Zoning Administrator shall be vested with all necessary authority on behalf of the Town Council to administer and enforce conditions attached to a rezoning or amendments to the zoning map including:

- (a) The ordering in writing of the remedy of any noncompliance with such conditions.
- (b) The bringing of legal action to insure compliance with such conditions, including an injunction, abatement, or other appropriate action or proceeding; and
- (c) Requiring a guarantee, satisfactory to the Town Council in an amount sufficient for and conditioned upon the construction of any physical improvements required by the conditions, or contract for the construction of such improvements and the contractor's guarantee, in like amount and so conditioned, which guarantee may be reduced or released by the Town Council, or agent thereof, upon the submission of satisfactory evidence that construction of such improvements has been completed in whole or in part.
- (d) Failure to meet all conditions shall constitute cause to deny the issuance of any of the required use, occupancy, or building permits, as may be appropriate.

§ 9-141. *Records.* The zoning map shall show by appropriate symbol on the map the existence of conditions attaching to the zoning on the map. The Zoning Administrator shall keep in his office and make available for public inspection a Conditional Zoning Index. The Index shall provide ready access to the ordinance creating conditions in addition to the regulations provided for in a particular zoning district or zone.

§ 9-142. *Petition for Review of Decision.* Any zoning applicant who is aggrieved by the decision of the Zoning Administrator pursuant to the provisions of § 9-140 may petition the Town Council for the review of the decision of the Zoning Administrator.

§ 9-143. *Amendments and Variations of Conditions.* There shall be no amendment or variation of conditions created pursuant to the provisions of § 9-139 until after a public hearing before the governing body advertised pursuant to the applicable provisions of state law.

CHAPTER 15
Planned Unit Residential Development

§ 9-144. **General Description.** The regulations established in this chapter are intended to provide optional methods of land development which encourage more imaginative solutions to design problems. Residential areas thus established would be characterized by unified building and site development program, open space for recreation, and the provision for promotional religious, educational and cultural facilities which are integrated with the total project. The planned unit residential development is permitted in an R-3 District and must have a minimum of 5 acres or more.

§ 9-145. **Permitted Principal and Accessory Uses and Structures.** The following uses are permitted:

- (a) Single family detached dwellings.
- (b) Two family dwellings.
- (c) Town houses in accordance with Chapter 16.
- (d) Condominiums, in accordance with Chapter 17.
- (e) Multiple family dwellings.
- (f) Nursing homes and retirement home projects.
- (g) Retail stores, convenience shops, personal service type establishments, restaurants, food and drug stores.
- (h) General service facilities.
- (i) Banks.
- (j) Barbershops, beauty parlors, chiropody, or similar personal service shops.
- (k) Greenhouses and nurseries.
- (l) Recreational uses including community centers, golf courses, swimming pools, parks, playgrounds or any other public recreational uses.
- (m) Community facilities such as churches and other religious institutions.
- (n) Physicians offices.
- (o) Public utilities, as defined.
- (p) Accessory uses and buildings incidental to the principal use.

§ 9-146. **Business and Commercial Uses.** No more than 10% of the gross development area may be set aside and used for commercial purposes.

§ 9-147. **Density Requirements.** The overall density shall not exceed 10 dwelling units per net development acre. Net development acreage is determined by subtracting the area set aside for churches, schools, commercial uses and streets right-of-way from the gross development area. Any land set aside for common open space or recreational use shall be included in determining the number of dwelling units permitted.

§ 9-148. **Minimum Size of Planned Unit Development.** The minimum size of any planned unit development shall be 5 acres.

§ 9-149. **Area Regulations.** There shall no no minimum lot size, no frontage requirements, no minimum depth, front setbacks, side or rear yard requirements nor coverage maximums.

§ 9-150. **Off Street Parking.** Off street parking shall be as regulated in Chapter 20.

§ 9-151. **Streets.** Lots are not required to front on dedicated streets and private streets may be utilized provided that each lot shall have vehicular and pedestrian access to a dedicated street through a prescribed easement or common area. Where private streets are used there shall be no responsibility on the part of the Town for any maintenance or snow removal.

§ 9-152. Administrative Procedure for a Planned Unit Residential Development. Within the R-3 District the planned residential development shall not be permitted until the following conditions have been complied with:

- (a) Special use permit must be obtained pursuant to the provisions of Chapter 22. When a special use application is applied for it shall be accompanied by a master plan and the master plan must show the overall development scheme including the use or uses, dimensions and locations of proposed sites and other open spaces with such pertinent information as may be necessary to determine the contemplated arrangement or use. The master plan must also be accompanied by the proposed agreement, provisions or covenants governing the use, maintenance and continued protection of the planned development, prescribed easements and any common areas that are not to be dedicated to and accepted by the Town of Dayton.

All easements must be recorded with or prior to the first lot conveyance. The proposed master plan shall be prepared by and have the seal of an architect or engineer duly registered to practice in the State of Virginia.

- (b) If all the land and all of the buildings within the planned residential development are to be kept in one ownership and operated by such owner through lease or other arrangements with other persons, then the master plan need not contain the prescribed easements or covenants or agreements for the use, maintenance and continued protection of the development. In the event of transfer of title of any lot or building within the planned residential area, however, prior to delivery of the deed such matters must be filed and approved.
- (c) After the application is filed the Planning Commission shall review the conformity of the proposed development and may recommend conditions regarding layout, and performance of the development, requiring appropriate deed restrictions, which recommendations shall be made to the Town Council for action.
- (d) The tract or parcel of land involved must either be in one ownership or the subject of an application filed jointly by the owners of all the property included.
- (e) The proposed development must be designed to produce an environment of stable and desired character and not out of harmony with its surrounding neighborhood.
- (f) If the Town Council approves the special use permit and the proposed master plan, the owner or developer may then proceed to develop the project but before doing so he shall prepare a final plan of each section of the project before it is developed. The final plan shall be subject to approval by the Planning Commission only and must conform with the master plan previously filed and approved. The final plan shall be in such form as to be recorded, show building lines common land and street easements and other applicable features. No building permit shall be issued until a final plan of the proposed development, together with protective covenants, restrictions and easements is approved by the Planning Commission and recorded by the owner-developer. Final plans may be prepared by engineers, architects, or surveyors licensed in Virginia.
- (g) Ownership of the streets and common areas shall be vested in either the owner-developer or in a nonprofit corporation of property owners made up of all of the lot owners within the development and the articles of incorporation and bylaws of such association shall be subject to approval by the Planning Commission.

§ 9-153. Abandonment of Project. Upon the abandonment of a project authorized under this chapter or upon the expiration of two years from the authorization of the planned development which has not by then been commenced, the authorization shall expire and the land and structures thereon may be used without such approval for any other lawful purpose permissible within the use-area district in which the planned development is located.

CHAPTER 16

Town House Regulations

Town Houses shall be subject to the following special zoning regulations:

§ 9-154. Zoning Districts Allowing Town Houses. Town houses are permitted in residential zoning districts R-2 and R-3 and in B-1 Business District. In the R-2 zone town houses must comply with all the provisions set forth in that district as well as the provisions of this chapter. In the R-3 and B-1 zones clusters of up to 10 town house units may be constructed.

§ 9-155. Height Regulations. Town houses may be erected up to 40 feet in height from the average level of the ground adjacent to the front exterior wall.

§ 9-156. *Area Regulations.* Minimum lot area for any town house project or development shall be calculated at 1,600 square feet per town house but individual town houses within the project or development may have less square footage than this amount if approved by the governing body. The maximum number of units per gross acre of the development shall not exceed 10 units per acre.

§ 9-157. *Width Regulations.* Wherever a structure containing townhouses is constructed in accordance with the regulations of this chapter and the structure as a whole meets the requirements of this chapter, individual units may be sold without regard to the area requirements of the underlying zoning classification. No such sale of individual townhouses shall be deemed a subdivision.

§ 9-158. *Yard Regulations.*

- (a) *Side.* Each town house group shall have minimum side yards of 15 feet. In the case of town house projects of 2 or more groups the minimum distance between groups of structures shall be 30 feet.
- (b) *Front.* Front setback shall be as established in the various zones where town houses are permitted.
- (c) *Rear.* The rear yard requirements shall be as set forth in the various zones where town houses are permitted.
- (d) *Corner.* Corner lots shall provide a yard equal to the front yard on each street.

§ 9-159. *Special Regulations.*

- (a) *Common Areas.* If a town house development includes common areas in addition to the town house lots, the common areas shall be maintained by and be the sole responsibility of the developer-owner of the town house development until such time as the developer-owner conveys such common area to a non-profit corporate owner whose members shall be all of the owners of the town houses in the town house development. This land shall be conveyed to and be held by said nonprofit corporate owner solely for recreational and parking purposes of the owners of the individual town house lots in the development. In the event of such conveyance by the developer-owner to a nonprofit corporate owner, deed restrictions and covenants, shall provide, among other things, that any assessments or charges for cost of maintenance of such common areas shall constitute a pro-rata lien upon the individual town house lots. Maintenance of town house exteriors, lawns, special lighting and drainage shall be provided in a manner so as to discharge any responsibility of the Town.
- (b) *Parking.* Required off-street parking spaces of at least two spaces per town house shall be provided on the individual lots or within a common area maintained by the nonprofit corporate association, or by the developer, as provided in subsection (a) of this section. Front yard parking areas are prohibited unless waived in writing by the Planning Commission. Reference is made to chapter 20 for further details as to parking.
- (c) *Common Wall Architectural Treatment.* Common walls enclosing attached town house units shall be of noncombustible construction or other approved assembly of materials giving a minimum fire resistance as required by the statewide building code or if no such requirement is in such code then of not less than two hours duration.
- (d) *Exterior Facades.* (Repealed May 1, 1995.)

CHAPTER 17 **Condominiums**

§ 9-160. Condominiums shall be governed by the Condominium Act, Title 55, Chapter 4.2, Code of Virginia, 1950, as amended.

§ 9-161. *Conversion of Condominiums.* Proposed conversions, condominiums, and the use thereof which do not conform to this zoning outline must secure a special use permit prior to conversion, pursuant to Chapter 22.

CHAPTER 18
Mobile Home Parks

§ 9-161.1. Mobile Homes Must Be In Parks. Notwithstanding any other provision of this title, but subject to § 15.2-2290 of the Code of Virginia, no Mobile Home may be placed in the Town of Dayton except in a mobile home park. (Added May 1, 1995; amended February 7, 2000.)

§ 9-162. Any mobile home placed in the Town of Dayton after the date of enactment or amendment of this ordinance shall meet the following requirements:

- (a) All mobile homes shall meet the plumbing requirements and the electrical wiring and connection, construction, blocking, and anchoring requirements of the Virginia State Building Code and shall display the seal of a testing laboratory approved by the State of Virginia.
- (b) All mobile homes shall be completely skirted; such that no part of the undercarriage shall be visible to a casual observer, in accordance with methods and materials approved by the Zoning Administrator.
- (c) All mobile homes shall be supplied with public water and wastewater disposal or such individual service evidenced by permits from the Health Department.

§ 9-163. Mobile Home Park and Setback Requirements. All mobile home parks shall meet the following minimum area and setback requirements:

- (a) All mobile home parks shall have a minimum area of at least five (5) acres. A minimum of ten (10) spaces shall be completed and ready for occupancy before the first occupancy is permitted.
- (b) The overall density of any mobile home development shall not exceed seven (7) units per net acre. The density of any particular acre within such park shall not exceed eight (8) units per net acre. For density purposes, net acreage shall be defined as all land within the development except land in the one hundred (100) year flood plain, land needed for the right-of-way width of ninety (90) feet or more, and land dedicated for other non-street public uses.
- (c) No main or accessory building shall be located closer than twenty-five (25) feet to any property line of a mobile home park.

§ 9-164. Mobile Home Park Lot Requirements. All mobile home lots shall meet the following requirements:

- (a) The area of any mobile home lot shall not be less than 3,400 square feet. Lot coverage, herein defined as the percentage of the mobile home lot area covered by the mobile home stand and any mobile home accessory structure, driveway, and parking area, excluding patios, shall not exceed thirty-five percent (35%) as an average, nor forty percent (40%) for a given lot; the minimum area of any site devoted to common open space shall be five thousand (5,000) square feet.
- (b) No mobile home or permanent building shall be closer than twenty (20) feet to any mobile home.
- (c) The minimum length of a mobile home lot shall be eighty-five (85) feet; the minimum width shall be forty (40) feet. On all lots larger than the minimum, the ratio of length to width shall not exceed 2.2 to 1.0.
- (d) Where laundry facilities are not made available, the rear yard of each mobile home lot shall be provided with a clothesline which shall be exempt from setback and other requirements of mobile home accessory structures.
- (e) A patio of two hundred (200) square feet in area shall be provided adjoining each mobile home stand.

§ 9-165. Mobile Home Accessory Structures. All mobile home accessory structures erected or constructed after the date of enactment or amendment of this ordinance must meet the following requirements:

- (a) All mobile home accessory structures must meet the plumbing, electrical connection wiring, construction, and other applicable requirements of the Building Code.
- (b) Except in the case of an awning, ramada, or other shade structure, where a mobile home accessory structure is attached to the mobile home unit a substantial part of one wall of the accessory structure shall be flush with part of the mobile home unit, or such accessory structure shall be attached to the mobile home unit in a substantial manner of means of a roof. All mobile home accessory structures, whether attached or detached, shall be

designed and constructed as free standing structures. No detached mobile home accessory structure, except ramadas, shall be erected closer than twenty (20) feet to a mobile home.

- (c) Mobile home accessory structures, except ramadas, shall not exceed the height of the mobile home.
- (d) No mobile home accessory structure shall be erected or constructed on any mobile home lot except as an accessory to a mobile home.
- (e) Every room in a cabana, herein defined as any habitable mobile home accessory structure, shall have access to at least one exterior door opening without requiring passage through the mobile home; shall be ventilated either by windows capable of opening to the outside with an area five percent (5%) of the floor areas, or by a ventilation system capable of producing a change of air in the room every thirty (30) minutes, with at least twenty percent (20%) of the air supply taken from the outside; shall have a total glazed area not less than ten percent (10%) of the floor area of the cabana; and in the case of attached structures, shall not be constructed adjacent to more than one (1) exterior door in the mobile home, nor to more than one (1) side of the mobile home.
- (f) Awnings and other shade structures, except ramadas, shall conform to the requirements of applicable sections of the Building Code.
- (g) Where a ramada extends over a mobile home, it shall exceed the height of the mobile home by no more than thirty-six (36) inches nor less than eighteen (18) inches and shall have a clearance of not less than six (6) inches in a horizontal direction from each side of a mobile home. Cross braces, structural ties, or other architectural appurtenances shall not obstruct movement of any mobile home.
- (h) A ramada shall be enclosed or partly enclosed on any side, except that one side may be enclosed when the ramada roof is continuous with the roof of the cabana.
- (i) A ventilation opening of at least twenty-eight (28) square inches in area shall be provided at the highest point in the ramada roof; all chimneys or vents shall extend through the ramada roof and terminate a safe distance above the ramada.
- (j) Porches may be placed adjacent to mobile homes, provided they are constructed in accordance with the provisions of the Building Code.

§ 9-166. Mobile Home Park Application and Site Plan. Applicants for mobile home parks shall meet the following special requirements:

- (a) Site plans may be on one (1) or more numbered sheets of eighteen (18) by twenty-four (24) inches in size, and shall be legibly drawn at a scale consistent with its purpose.
- (b) The following information shall be required of site plans:
 - (i) The date of the site plan, the name of the surveyor or engineer preparing it, and the number of sheets comprising the site plan.
 - (ii) The scale and the north meridian, designated “true” or “magnetic.”
 - (iii) The name and signature of the owner, and the name of the proposed park; said name shall not closely approximate that of any existing mobile home park or subdivision in the Town of Dayton.
 - (iv) A vicinity map showing the location and area of the proposed park.
 - (v) The boundary lines, area, and dimensions of the proposed park, with the locations of property line monuments shown.
 - (vi) The names of all adjoining property owners, the location of each of their common boundaries, and the approximate area of each of their properties.
 - (vii) The location and dimensions of all existing streets and street right-of-way, easements, water, sewerage, drainage facilities, and other community facilities and utilities on and adjacent to the proposed park.
 - (viii) All existing significant natural and historical features on or adjacent to the proposed park, including, but not limited to, significant vegetation; lakes, streams, swamps, land subject to flooding, and other waterways; views from the property, and views from adjoining properties that might be affected the proposed park; existing structures; and topographic features shown by contour lines.

- (ix) Proposed layout, including interior streets with dimensions and such typical street cross sections and center lines profiles as may be required in evaluating the street layout; water, sewer, drainage, and utility lines, facilities and connections, with dimensions shown; location and types of solid waste collection facilities; interior monuments and lot lines, dimensions, and areas of mobile home lots, common open space and recreation areas, common parking areas, and other common areas; locations and dimensions of mobile home stands and parking spaces, management offices, laundry facilities, recreation buildings, and other permanent structures; location and nature of firefighting facilities, including hydrants, fire extinguishers, and other fire fighting equipment; location of fuel storage facilities and structure of high flammability; and location and dimensions of landscaping amenities, including street lights, sidewalks, planted areas, significant natural features to be retained, and fencing and screening.
- (c) The site plan shall be accompanied by a narrative statement describing how the standards and requirements set forth herein are to be met; a statement from the Health Official certifying approval of the proposed site plan; and where appropriate, statements from the Town Council and the Highway Engineer certifying approval of the streets and drainage, water and sewer, or utility system layouts by owners.

§ 9-167. Streets. An internal street system shall be provided to furnish convenient access to mobile home stands and other facilities in the park, shall be designed such that connection to existing drainage and utility systems is convenient, and shall meet the following requirements, in addition to such other reasonable standards and requirements as may be established by the Town Council.

- (a) All internal streets shall be permanently paved with a durable dust proof, hard surface. Minimum pavement widths shall be twenty-four (24) feet for streets providing access to forty (40) or more mobile home stands, and eighteen (18) feet for streets providing access to less than forty (40) mobile home stands. Widths shall be measured from curbface to curbface.
- (b) Dead end streets shall be limited in length to 400 feet, shall be provided with cul-de-sacs with turning areas of not less than forty (40) feet in radius, or with “T” or “Y” turning areas, and shall provide access to no more than twenty (20) mobile home stands.
- (c) Streets shall be adapted to the topography, shall follow the contours of the land as nearly as possible, and shall have safe grade and alignments. No grade shall exceed twelve percent (12%) or no curve shall have an outside radius of less than eighty (80) feet.
- (d) Driveway entrances to mobile home parks from any public street or road shall conform to the current construction standards of the Department of Highways and Transportation.

§ 9-168. Vehicle Parking. Off-street parking shall be provided for the use of occupants at the minimum ration of 2.0 car spaces (each space containing a minimum of one hundred eighty (180) square feet) for each mobile home. Each off-street parking area shall be paved or gravelled and have unobstructed access to either a public or private street. Each mobile home lot shall be equipped with at least one (1) paved or gravelled parking space; the remainder of the required spaces may be located not more than one hundred fifty (150) feet from the mobile home lot which it serves via the most direct common pedestrian route. However, in the case of a detailed development plan in which it is demonstrated that the purposes of this ordinance and the Comprehensive Plan will be equally well or better served by clusters or similar groupings utilizing open spaces of unusual topographical conditions, the requirements of parking may be varied so as to eliminate the requirement of having an individual parking space with each mobile home lot; provided, however, that in no case will parking be more than one hundred and fifty (150) feet from the mobile home lot. On street parking is prohibited unless the paved street on which the mobile fronts is expanded to accommodate additional parking lanes or parking bays.

§ 9-169. Lighting. All streets, walkways, and parking bays within the mobile home development shall be lightened by a system which consists of:

- (a) A one hundred seventy-five (175) watt mercury light for every three hundred (300) linear feet of roadway, or
- (b) A lighting system which supplies at least one-tenth (1/10) lumen per square foot of roadway, walkway, and parking bay.

§ 9-170. Utilities. After a five (5) year period, all utilities shall be underground, except control instrumentation and substations which must be screened by planted or ornamental walls. After five (5) years, no overhead wires for distribution purposes shall be permitted within the development.

§ 9-171. Disposition of Garbage and Rubbish. It shall be the responsibility of the mobile home park to collect or cause to be collected, and to dispose of garbage and rubbish as frequently as may be necessary. Dumpsters may be used with the approval of the Health Department, but shall be so located as to not be more than one hundred fifty (150) feet from any mobile home.

§ 9-172. Installation of Storage Tanks. Gasoline, liquified petroleum, gas or oil storage tanks shall be so installed as to comply with all Town, County, State and Federal fire prevention and protection regulations.

§ 9-173. Individual Walks. Paved common walks of a width of at least three (3) feet shall be provided on at least one (1) side of all streets, and wherever concentrations of pedestrian traffic can be expected, as between recreational facilities; walks may be incorporated into the street curb. Walk grades shall not exceed ten percent (10%); lights shall be provided sufficient to illuminate steps to a level of at least 0.3 footcandles. Paved individual walks of at least two (2) feet in width shall be provided to connect all mobile home stands with parking spaces or driveways and common walks.

§ 9-174. Open Spaces. Where mobile home lot sizes are relied on primarily to provide for open space, lots and stands shall be so grouped as to maximize the amount of usable space, while meeting the minimum yard requirements set forth in § 9-164 of this ordinance.

§ 9-175. Record of Tenants for Mobile Home Parks. The operator of a mobile home park shall keep an accurate register of all tenants occupying mobile homes located in the park. The register shall show the name and permanent residence address of the owner and occupants of any mobile home located in the park; the make and registration of any mobile home; the time and date of arrival and departure; and such other information as might be necessary to provide information about the occupants of the mobile home. These records shall be open to the law enforcement officers and public health officials whose duties necessitate acquisition of the information contained in the register. The register record for each occupant registered shall not be destroyed for a period of three (3) years following the date of departure of the registrant from the park.

§ 9-176. Certificate of Use and Occupancy Required. (Repealed May 1, 1995.)

CHAPTER 19
Home Occupations
(Repealed December 10, 2007)

CHAPTER 20
Minimum Off Street Parking Requirement

§ 9-180. (Repealed February 7, 2000.)

§ 9-181. (Repealed February 7, 2000.)

§ 9-181.1. (Repealed February 7, 2000.)

§ 9-182. (Repealed February 7, 2000.)

§ 9-183. (Repealed February 7, 2000.)

§ 9-184. (Repealed February 7, 2000.)

§ 9-184.1. General Requirement.

- (a) Subject to paragraph (b) below every use of property shall subject the property and its owners and occupants to the parking regulations of this chapter.
- (b) Upon the issuance of a special use permit under [Chapter 22](#), an owner or occupant may use property without meeting some or all of the regulations of this chapter.

Such special use permits will seldom be granted. In judging applications, the Council will consider all factors relevant to the application, including without limitation:

- (1) The impact on the neighborhood of allowing the use with relaxed parking standards;
- (2) The impact on traffic and parking in the Town of allowing the use with relaxed parking standards;

- (3) The degree to which the applicant seeks to relax the parking regulations;
- (4) Whether full compliance with this chapter is practicable for the property and use in question, and
- (5) The degree to which appropriate conditions in a special use permit could mitigate long-term or short-term difficulties created by the relaxation of standards.

(Added February 7, 2000; amended February 5, 2001)

§ 9-184.2. *Parking Classification; Spaces Required.* The number of parking spaces required by this Chapter shall be determined by the “Parking Classification” of the property usage, as established in this section.

If the Parking Classification of a property changes—whether due to transfer, lease, change of use, or otherwise—the property must comply with the parking requirements of the new classification. For example, a furniture store would be within the “Major Goods Retail Classification” described in paragraph (c). The premises could not be converted to the “General Retail Classification” unless the parking requirements of paragraph (b) are satisfied.

In applying these Parking Classifications, the rules of construction in § 9-184.3 shall control.

- (a) *General Residential Classification.* The General Residential Classification includes residential and accessory uses.
 - (1) Uses within this classification must have two parking spaces per Dwelling Unit.
 - (2) Even if the spaces required by paragraph (a)(1) above are available, all uses within this classification must also maintain sufficient parking to accommodate all residents and guests of the structure without parking on the public streets, except on an occasional basis.
- (b) *General Retail Classification.* The General Retail Classification includes all retail uses not expressly included elsewhere in this section. Without limitation, this classification includes supermarkets, convenience stores, department stores, hardware stores, agricultural supply stores, jewelry stores, clothing stores, florist shops, pharmacies, and auto parts stores. Uses within this classification must have two parking spaces, plus one space per 200 square feet of floor space.
- (c) *Major Goods Retail Classification.* The Major Goods Retail Classification includes retail uses specializing in the sale of durable goods which are physically large and of significant cost, except as expressly included elsewhere in this section. This classification includes furniture stores, appliances stores, dealers of farm tractors and implements, large machinery, [and automobiles]. Uses within this classification must have two parking spaces, plus one space per 300 square feet of floor space.
- (d) *Office, Business & Information Service Classification.* The Office, Business & Information Service Classification includes general offices and information service businesses, such as (i) professional establishments, such as doctors’, lawyers’, and accountants’ offices, (ii) personal service establishments such as barbers and beauty salons, (iii) banks, insurance, and real estate offices, and (iv) corporate management offices. Uses within this classification must have two parking spaces, plus one space per 250 square feet of floor space.
- (e) *Restaurants.* The Restaurants Classification includes businesses which supply prepared food or drink to the public. Uses within this classification must have two parking spaces, plus one space per 100 square feet of floor space.
- (f) *Automobile Repair Classification.* The Automobile Repair Classification includes entities which repair motor vehicles, including those which sell and install tires, mufflers, or batteries. Uses within this classification must have two parking spaces, plus one space per 200 square feet of floor space.
- (g) *General Service Classification.* The General Service Classification includes entities which (i) repair items other than motor vehicles, (ii) clean clothing (or allow customers to clean their own clothing), (iii) perform services such as house building, cleaning, plumbing, carpentry, landscaping or pest-control, or (iv) operate a printing or copying business. Uses within this classification must have two parking spaces, plus one space per 385 square feet of floor space.
- (h) *Industrial Classification.* The Industrial Classification includes those activities which are permitted only within the Town’s M-1 zoning classification. Uses within this classification must have two parking spaces, plus one space per 160 square feet of floor space.

- (i) *Primary & Middle School Classification.* The Primary & Middle School Classification includes day care facilities (except Home Care Facilities), preschools, elementary schools, and middle schools. Uses within this classification must have two spaces, plus 1.1 parking spaces per classroom.
- (j) *Secondary Education Classification.* The Secondary and Higher Education Classification includes high schools, colleges, and vocational schools. Uses within this classification must have six parking spaces per classroom.
- (k) *Inpatient Care Classification.* The Inpatient Care Classification includes hospitals, nursing homes, and homes for adults. Uses within this classification must have two parking spaces, plus one space per three beds.
- (l) *Cultural Facility Classification.* The Cultural Facility Classification includes libraries, art galleries, and museums. Uses within this classification must have two parking spaces, plus one space per 500 square feet of floor space.
- (m) *Hotel Classification.* The Hotel Classification includes hotels, motels, and boarding houses, but it does not include restaurants affiliated with hotels, which shall be treated separately under paragraph (e) of this section. Uses within this classification must have two parking spaces, plus one space per guest room.
- (n) *Assembly Classification.* The Assembly Classification includes theatres, stadiums, auditoriums, churches and other places of worship. It does not include places of assembly associated with schools, which are treated as part of the schools under paragraphs (i) or (j) of this section. Uses within this classification must have two parking spaces, plus one space per four seats in the main seating area.
- (o) *Civic Group Classification.* The Civic Group Classification includes fraternities and sororities (not providing living accommodations), civic and service organizations, and country clubs. Uses within this classification must have two parking spaces, plus one space for each five members.
- (p) *Bowling Alley Classification.* The Bowling Alley Classification includes Bowling Alleys. Uses within this classification must have two parking spaces, plus 3.6 spaces for each lane.
- (q) *Amusement Classification.* The Amusement Classification includes businesses which provide amusement or recreational services, such as video arcades, batting cages, miniature golf courses, and billiard parlors. Uses within this classification must have two parking spaces, plus one space per 220 square feet of floor space.
- (r) *Wholesalers Classification.* The Wholesalers Classification includes businesses within the definition set forth in § 3.1-2(q) of the Town Code. Uses within this classification must have two parking spaces, plus one space per 165 square feet of floor space.
- (s) *Home Occupation Classification.* Level One Home Occupations, as defined in § 9-22(33.1) of the Town Code require no parking other than that provided for the Dwelling. For Level Two Home Occupations, as defined in § 9-22(33.2) of the Town Code, the Dwelling and home occupation together must have two parking spaces, plus one space for each employee not residing in the facility. (Added December 10, 2007.)

(Enacted February 7, 2000.)

§ 9-184.3 Rules of Construction. For purposes of § 9-184.2,

- (a) If a single enterprise engages in property usage falling into multiple parking classifications, the classification providing the greatest parking requirements shall apply. Nevertheless, the business may make application for each classification to be treated separately under the appropriate paragraph of § 9-184.2. If the enterprise can reasonably apportion its business (through the use of gross receipts or otherwise) the Administrator shall approve the request.
(b) If multiple enterprises are conducted on the same Lot, each shall be treated separately under § 9-184.2.
- (c) Floor space shall mean gross floor area. The term shall also include outdoor space devoted to the activity conducted on the property.
- (d) Where fractional space results, the parking spaces required shall be construed to be the next whole number.
- (e) For uses not identified in this chapter, the parking requirements shall be based on the most analogous use listed herein, as determined by the Town Superintendent.

(Added February 7, 2000.)

§ 9-184.4. *Parking Standards.*

- (a) All parking spaces required by this chapter shall be located on the same lot with the building or use served; provided that required parking may be located on another lot if (i) the parking spaces are not more than 500 feet from the building served (measured along lines of public access) and (ii) the parking spaces are dedicated to the use of the business served through a lease, license, or easement requiring that the Town be notified at least 30 days prior to termination. Upon the termination of any lease, license, or easement for required parking spaces, the entity served by the parking must either cease doing business or obtain alternative parking conforming to this chapter.
- (b) Unenclosed parking spaces may be located within the required yard around buildings as herein specified.
- (c) Parking spaces must be at least 9 feet wide and 18 feet in length. In addition, there shall be sufficient area for maneuvering.
- (d) All parking spaces shall be designed to prevent parked vehicles from extending beyond the limits of the parking area and to prevent damaging effects to adjoining or nearby properties from surface drainage from the parking facility. Lighting facilities shall be so arranged that light is reflected away from adjacent properties.
(Amended November 11, 2013.)
- (e) All loading spaces required under § 9-184.6 must be at least 12 feet wide by 25 feet in length. In addition, there shall be sufficient area for maneuvering.

(Added February 7, 2000.)

§ 9-184.5. *Sharing of Parking Lots.*

- (a) Multiple enterprises may share a single parking lot, but except as provided in paragraph (b) below, no parking space may be counted toward the requirements of more than one enterprise.
- (b) Upon application and approval by the Administrator, an assembly use (such as a church or theatre) may assign fifty percent of its parking spaces to another use, so long as there is substantially no overlap in the hours of significant parking demand for the assembly use and the other use.

(Added February 7, 2000.)

§ 9-184.6. *Off-Street Loading and Unloading Space.* In addition to the parking required by § 9-184.2, all property used for retail, wholesale, or industrial purposes shall provide space for the loading and unloading of vehicles off the street or public alley. Such space shall have access to a public alley or if there is no alley, to a public street. The space requirements are,

- (a) For retail businesses, one loading space for each 2,000 square feet of floor space.
- (b) For wholesale and industrial businesses, one loading space for each 10,000 square feet of floor space.

The parking standards of § 9-184.4 shall govern loading spaces required by this section. The rules of construction set forth in § 9-184.3 shall govern the interpretation of this section. (Added February 7, 2000.)

§ 9-184.7. *Zoning Classifications.*

- (a) Parking for a specific enterprise or structure is a use which is accessory to the enterprise or structure. Therefore such parking must be on property which would be properly zoned for the enterprise or structure. For example, parking for a B-1 use must be on property zoned B-1 or less restrictively.
- (b) Parking for a fee as a separate commercial enterprise is not an accessory use and must be located in a zone which allows it.

(Added February 7, 2000.)

CHAPTER 21
Signs, Billboards, and other Advertising Structures
(Repealed May 1, 1995)

CHAPTER 21.1
Signs
(Enacted May 1, 1995)

§ 9-194.1 Definitions. The following definitions apply throughout this chapter:

- (a) Ground Sign. A ground sign is any sign which (1) rests directly on the ground or (2) is supported by uprights or braces placed in or upon the ground. Two separate signs built on the same support structure shall be counted as one ground sign.
- (b) Wall Sign. A wall sign is any sign which is attached to the front, rear or side of any building or other structure.
- (c) Roof Sign. A roof sign is any sign built upon the roof of any building or other structure.
- (d) Height. The height of a sign is the vertical distance from the ground to the highest point on the sign or its support structure. A berm built beneath the sign shall not be counted as the “ground” for the purpose of calculating the height of a sign.
- (e) Temporary Signs. A temporary sign is either of the following:
 - (1) Any sign constructed of cloth, canvas, light fabric, cardboard, wallboard, plastic, or other light materials with or without frames, intended to be displayed for a short period of time, or
 - (2) Any sign which, through the use of wheels or otherwise, is designed to be transported from place to place.

The category of “Temporary Signs” is not mutually exclusive with other categories. For example, a temporary sign may also be a ground sign. Therefore, a temporary sign must meet the requirements for temporary signs as well as other requirements which apply to the type of sign involved.

- (f) Area. The area of a sign is the area of the smallest rectangle which can fully enclose the sign. (Where multiple signs share the same support structure, their combined area is the sum of their individual areas.) The area of a sign designed to be viewed from two directions shall be the area of the largest side. Nevertheless, if the two faces of the sign are (i) more than two feet apart, or (ii) neither parallel nor at an angle of less than 45°, the area of the sign shall be the total area of both sides. The area of signs with more than two sides shall be the total area of all sides. A sign’s support structure is not considered when calculating the area of a sign.
- (g) Setback. The setback of a sign is the minimum distance between any portion of the sign and any public or private street.
- (h) Relate. A sign relates to a use if its principal feature is the identification or promotion of that use.
- (i) Sign. A sign is any two or three dimensional object containing letters, numbers, or graphics advertising a business, identifying a structure, or otherwise conveying information. Nevertheless, advertising displays which are inside a structure and visible externally only through windows are not signs.
- (j) Incidental Signs. Incidental signs are signs allowed under § 9-194.2(a). They shall not be treated as ground signs, wall signs, or roof signs.

§ 9-194.2 Incidental Signs.

- (a) In addition to signs permitted by other sections of this chapter, the following incidental signs are allowed in all zoning classifications:
 - (1) One temporary sign of not more than four feet in height and nine square feet in area identifying the structure as being for sale or rent.
 - (2) One temporary sign of not more than four feet in height and nine square feet in area relating to active construction or special events on the site.

- (3) Memorial signs or tablets, including names of buildings and dates of erection when written into masonry, bronze, or other materials. Such signs shall not be more than two square feet in area.
 - (4) Subdivision entrance signs identifying the subdivision. After development of the subdivision is complete, no such sign shall include sales-related information, such as the telephone number of the developer. Such signs shall be no more than five feet in height and forty square feet in area.
 - (5) Signs of not more than two square feet conveying legal notices, such as “No Trespassing.”
- (b) Incidental signs in any zone need only have a setback of ten feet. Except for subdivision entrance signs—which must be at the entrance to the subdivision—incidental signs must be located on the same lot as the use to which they relate.

§ 9-194.3 Allowed Signs. Subject to § 9-194.2 and any restrictions which follow, this section governs what signs are allowed in each zoning classification.

- (a) In R-1, R-2, and R-3 zones, the following signs shall be allowed:
 - (1) One wall sign identifying the structure, its address, and/or the occupants. In R-1 zones, wall signs shall be no larger than six square feet. In R-2 and R-3 zones, wall signs shall be no larger than eight square feet.
 - (2) As an alternative to the sign permitted under paragraph (a)(1) of this section, one ground sign identifying the structure, its address, and/or the occupants. In R-1 zones, ground signs shall be no larger than three square feet in area and no more than four feet in height. In R-2 and R-3 zones ground signs shall be no larger than eight square feet in area and no more than five feet in height.
- (b) In all other zoning classifications, any combination of ground, wall, or roof signs is permitted, provided:
 - (1) On any lot, ground signs within 25 feet of the street must be placed at least 100 feet apart, and
 - (2) The total area of ground signs on any lot shall not exceed 100 square feet in an HB-1 or B-1 zone; 150 square feet in a B-2, A-1, or A-2 zone; or 200 square feet in an M-1 zone. (Amended February 7, 2000.)

§ 9-194.4 Location of Signs. Except for subdivision entrance signs, which may be placed at the entrance to the subdivision, signs may be located anywhere on the lot to which they relate. Nevertheless, signs greater than 100 square feet in area must have a setback of at least 25 feet.

§ 9-194.5 Drop Down Regulations. Wherever the principal structure or use of a lot complies with a more restrictive zoning classification than the lot is actually zoned, the sign regulations for the more restrictive classification shall govern.

§ 9-194.6 Special Use Permits. Whenever property is used under a special use permit, the council may, in its discretion, relax the sign regulations of this chapter by special use permit. However, the sign regulations shall not be made less restrictive than those of the zoning classification in which the use is permitted as a matter of right.

§ 9-194.7 General Provisions.

- (a) Notwithstanding any other provision of this chapter, no sign shall be erected or maintained at any location where by reason of its location, size, shape, illumination, or other characteristic, there is a reasonable possibility that it will obstruct drivers’ or pedestrians’ view of a road, sidewalk, or traffic control device (or otherwise create a traffic hazard). The Town Superintendent shall have the authority to order the relocation of any sign he finds to be in violation of this paragraph.
- (b) No sign shall contain or make use of any word, phrase, symbol, shape, form, or character so as to interfere with, mislead, or confuse traffic.
- (c) No sign having flashing, intermittent, or animated illumination shall be permitted. However, this prohibition does not extend to electronic message boards in which the flashing, intermittent, or animated illumination itself conveys information.
- (d) No illuminated sign shall be permitted within fifty feet of any residential district unless the illumination is so designed that it does not shine or reflect light onto property in the residential district.
- (e) Where a lot has insufficient front yard to reasonably accommodate a sign, the Town Superintendent may authorize the location of a sign on or above public land. Such authorization shall be revocable and shall not import the approval of any other governmental agencies which might be interested.

- (f) No sign shall exceed the maximum height for structures in the relevant zoning classification. (Added February 7, 2000.)

§ 9-194.8 *Temporary Signs.* Temporary signs must meet the requirements of this section in addition to all other applicable requirements of this chapter.

- (a) Temporary signs are allowed for the following periods:
 - (1) For signs identifying a structure as being for sale or rent, only until the structure is sold or rented.
 - (2) For signs relating to active construction on a site, only until the construction is substantially complete (up to a maximum of 24 months).
 - (3) For signs identifying a new business, 30 days.
 - (4) For signs advertising an event, promotion, or sale a maximum of 30 days, ending on the day after the event, at which time the sign must be removed.
 - (5) For others signs, 21 days.
- (b) Temporary signs may be placed on public property only with written permission of the Town Superintendent. The superintendent shall grant such permission only (1) for non-commercial or non-profit groups advertising special events, (2) if the group agrees to remove the sign as provided in paragraph (b)(4) of this section, and (3) the sign, in his opinion, will comply with the provisions of § 9-194.6, is of a reasonable size and will be placed in a reasonable location.

§ 9-194.9 *Application.* Except for temporary signs and incidental signs, no sign shall be installed until a zoning permit is issued in accordance with § 9-11. The application for such a zoning permit must be in the form prescribed by § 9-12 and must include a sketch of the proposed sign, along with its support structure. The application shall specify the area and height of the sign.

CHAPTER 22 **Special Use Permits**

The following procedure is established to integrate properly the Uses Permitted on Review with other land uses located in the district. These uses shall be reviewed by and authorized or rejected by the Town Council under the following procedures:

§ 9-195. *Application.* An application shall be filed with the Council for review. Said application shall show the location and intended use of the site, the names of the property owners and existing land uses within two hundred (200) feet, and any other material pertinent to the request which the Council may require.

§ 9-196. *Public Hearing.* Upon application, the Council shall hold a public hearing as required by state law.

§ 9-196.1 *Standard of Review for Special Use Permits..*

- (a) Generally. In considering the issuance of a special use permit, the Council will engage in a highly fact-specific discernment of the proposed use or structure. Every property (and every application for a special use permit) presents unique facts, and the Council will consider each situation on its own merits. The Council will grant a special use permit only if it is well convinced that the proposed use or structure will further the Town's objectives as expressed in § 9-3 of this Title. This section shall not override any specific criteria expressed elsewhere in this Title.
- (b) Adult Businesses. Notwithstanding any other provision of this Title, unless the applicant consents to a longer period of review, an application for a special use permit for an Adult Business must be approved or denied within 90 days of the filing of a complete application. In considering the application, the Town may consider the following factors as well as other appropriate land-use considerations:
 - 1. The nature of the surrounding area and the extent to which the proposed use might significantly impair its present or future development;
 - 2. The proximity of dwellings, churches, schools, parks, or other places of public gathering.

3. The probable effect of the proposed use on the peace and enjoyment of people in their homes;
4. The preservation of cultural and historical landmarks and trees;
5. The probable effect of noise and glare upon the uses of surrounding properties;
6. The conservation of property values, and
7. The contribution, if any, such proposed use would make toward the deterioration of the area and neighborhoods.

Further, if an application for a special use permit for an Adult Business is denied and the applicant desires to appeal the denial, the Town will facilitate the applicant's obtaining prompt review of the decision from the Circuit Court of Rockingham County. Unless the applicant agrees to an extension, the Town will file a responsive pleading within 10 days of service upon the Town of an appeal, will file a responsive brief within 15 days of service of the applicant's brief and will agree to any reasonable expedited trial or hearing date.

(Added July 11, 2005.)

§ 9-197. *Restrictions.* In the exercise of its review, the Council may impose such conditions regarding the

- (i) location, character, or other features of the proposed use or buildings or
- (ii) the term or transferability of the permit itself

as it may deem advisable in the furtherance of the general purposes of this Code. (Amended December 10, 2007)

§ 9-198. *Issuance of Permit.* Upon completion of the necessary application, hearing, and approval of the Town Council, the Zoning Administrator shall issue the permit subject to all applicable rules, regulations and conditions.

§ 9-199. *Validity of Plans.* All approved plans, conditions, restrictions, and rules made a part of the approval of the Council, shall constitute certification on the part of the applicant that the proposed use shall conform to such regulations at all times.

CHAPTER 23
Nonconforming Uses
(Repealed June 6, 1994)

CHAPTER 23.1
Nonconforming Lots, Uses, and Structures
(Enacted June 6, 1994)

§ 9-210.1. *Definitions.* For purposes of this chapter, the following definitions shall apply:

- (a) "Event of Prohibition" means a change in regulations applicable to a structure, use, or lot which causes the structure, use, or lot to fail to comply with the provisions of this title. An event of prohibition can occur when property is reclassified under this title or when zoning regulations are adopted or amended.
- (a1) "Nonconforming Building" means a building which is lawfully in existence at the time of an event of prohibition. (Added December 10, 2007.)(b) "Nonconforming Use" means an activity which is ongoing and lawful at the time of an event of prohibition.
- (c) "Nonconforming Structure" means a structure which is lawfully in existence at the time of an event of prohibition.
- (d) "Nonconforming Lot" means a lot of record, created lawfully, in existence at the time of an event of prohibition.
- (e) "Zoning Regulations" means all of the applicable requirements of this title, other than the provisions of this Chapter. (Added December 10, 2007.)

§ 9-210.2. Continuation.

- (a) A nonconforming use may be continued, subject only to the provisions of this chapter. A nonconforming structure may continue to be occupied and used, subject only to the provisions of this chapter.
- (b) The rights granted in paragraph (a) of this section shall continue irrespective of any change in ownership of the property.
- (c) If any nonconforming use is discontinued for a period exceeding two years, the rights granted in paragraph (a) of this section shall be deemed abandoned and any subsequent activity must conform to the Town's Zoning Regulations. (Amended December 10, 2007.)
- (d) If any nonconforming structure is unused for a period exceeding two years, the rights granted in paragraph (a) of this section shall be deemed abandoned and the structure shall not thereafter be used unless it is made to comply with Town's Zoning Regulations. (Amended December 10, 2007.)

§ 9-210.3. Repairs and Maintenance. On any nonconforming structure or any structure containing a nonconforming use, work may be done in any of twelve (12) consecutive months on ordinary repairs or on repair or replacement of non load bearing walls, fixtures, wiring or plumbing, to an extent not exceeding fifty percent of the current replacement value of the structure, provided that the volume of the structure (measured by exterior walls) shall not be increased.

If a nonconforming structure or a structure containing a nonconforming use becomes physically unsafe or unlawful due to lack of repairs and maintenance, and it is declared by any duly authorized official to be unsafe or unlawful by reason of physical condition, it shall not thereafter be restored, repaired, rebuilt, or used except in conformity with the Town's Zoning Regulations. (Amended December 10, 2007.)

§ 9-210.4. Restoration.

- (a) If a structure containing a nonconforming use is destroyed or damaged to the extent that the cost of restoration to its condition before the occurrence exceeds fifty percent of the cost of reconstructing the entire structure, the rights granted by this chapter to carry on the nonconforming use shall terminate.
- (b) If a nonconforming structure is destroyed or damaged to the extent that the cost of restoration to its condition before the occurrence exceeds seventy-five percent of the cost of reconstructing the entire structure, the rights granted by this chapter shall terminate and any restoration shall comply with the Town's Zoning Regulations. (Amended December 10, 2007.)
- (c) Whenever a damaged structure may be restored under paragraphs (a) or (b) of this section, such restoration shall be commenced within twelve months and completed within eighteen months from the date of damage. If restoration is not commenced or completed within these respective periods, the rights granted by this chapter shall terminate.
- (d) Nothing in this section authorizes the maintenance of a destroyed or partially destroyed structure.
- (e) Notwithstanding the foregoing paragraphs of this section, if a residential or commercial Nonconforming Building is damaged or destroyed by a natural disaster or other act of God, it may be repaired, replaced, or rebuilt as provided in this paragraph (e).

To the extent possible, the nonconforming features of the building shall be eliminated upon repair, replacement or reconstruction. However, if it is not possible to reduce or eliminate the nonconforming features of the building, it may be repaired, replaced, or rebuilt to its original nonconforming condition. Nevertheless, the repair, replacement, or reconstruction shall comply with the Uniform Statewide Building Code and Chapter 13.1 of this Title.

Unless such building is repaired, replaced, or rebuilt within two years of the date of the natural disaster or other act of God, such building shall only be repaired, rebuilt, or replaced in accordance with the Town's Zoning Regulations. This two-year period shall be extended to four years if the Nonconforming Building is in an area under a federal disaster declaration and the building was damaged or destroyed as a direct result of conditions that gave rise to the declaration.

(Paragraph (e) added December 10, 2007.)

(Code of Virginia, § 15.2-2307.)

§ 9-210.5. Expansion and Enlargement.

- (a) Nonconforming structures shall not be extended or enlarged, except as provided in this section.

- (b) A nonconforming use may be extended throughout any structure which was arranged or designed for such activity at the time of the event of prohibition, but no such use shall be extended to occupy any land outside such structures.
- (c) Notwithstanding any other provision of this chapter, a nonconforming structure may be enlarged or extended if (i) the enlargement or extension does not worsen the structure's nonconformity (either by increasing the amount of the structure which is not in conformity or by increasing the severity of any nonconformity) and (ii) the structure—after enlargement or extension—meets all provisions of this title which it met prior to enlargement or extension. (Paragraph (c) added May 1, 1995.)

§ 9-210.6. *Changes in use.*

- (a) Any nonconforming use may be changed to a different use, provided (i) that no structural alterations are made and (ii) that the Board of Zoning Appeals finds that the proposed use is equally appropriate or more appropriate to the district and the neighborhood than the existing use. In taking such action, the Board of Zoning Appeals shall be granting a special exception. Nothing in this section shall authorize the board to grant special exceptions in any other context.
- (b) When any nonconforming use is changed in accordance with paragraph (a) of this section, it may not be changed back to the prior use without again following the procedure in paragraph (a).

§ 9-210.7. *Nonconforming Lots.* The Board of Zoning Appeals shall determine appropriate setbacks and other dimensional regulations for nonconforming lots on a case by case basis.

§ 9-210.8. *Moving Uses and Structures.* No nonconforming use or structure shall be moved to any other lot or to any other portion of the lot than that already occupied by such use or structure; provided, however that a nonconforming structure may be moved to conform with the provisions of this title or reduce the degree of nonconformity.

§ 9-210.9. *Interpretation.* This chapter shall be interpreted so as to be consistent with § 15.2-2307 of the Code of Virginia.

CHAPTER 24
Board of Zoning Appeals

§ 9-211. *Appointment.* A Board consisting of five (5) members shall be appointed by the Circuit Court of Rockingham County. Appointments for vacancies occurring otherwise than by expiration of term shall in all cases be for the unexpired term.

§ 9-212. *Terms of Office.* The term of office shall be for five (5) years except that of the first five (5) members appointed, one (1) shall serve for five (5) years, one (1) for four (4) years, one (1) for three (3) years, one (1) for two (2) years, and one (1) for one (1) year.

§ 9-213. *Disqualification.* Any member of the board shall be disqualified to act upon a matter before the board with respect to property in which the member has an interest.

§ 9-214. *Election of Officers.* The board shall choose annually its own chairman and the vice chairman who shall act in the absence of the chairman.

§ 9-215. *Powers of the Board of Zoning Appeals.* Boards of Zoning Appeals shall have the following powers and duties:

- (a) To hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of this article or of any ordinance adopted pursuant thereto.
- (b) Variances. To authorize upon appeal in specific cases such a variance from the terms of the ordinance as will not be contrary to the public interest when owing to special conditions a literal enforcement of the provisions will result in unnecessary hardships; provided that the spirit of the ordinance shall be observed and substantial justice done, as follows:

When a property owner can show that his property was acquired in good faith and where by reason of the exceptional narrowness, shallowness, size or shape of a specific piece of property at the time of the effective date of the ordinance, or where by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, or of the use, condition, situation, or development of property immediately adjacent thereto, the strict application of the terms of the ordinance would effectively prohibit or unreasonably restrict the utilization of the property or where the board is satisfied, upon the evidence heard by

it, that the granting of such variance will alleviate a clearly demonstrable hardship approaching confiscation, as distinguished from a special privilege or convenience sought by the applicant, provided that all variances shall be in harmony with the intended spirit and purpose of the ordinance. No such variance shall be authorized by the board unless it finds:

- (i) That the strict application of the ordinance would produce undue hardship relating to the property;
- (ii) That such hardship is not shared generally by other properties in the same zoning district and the same vicinity; and
- (iii) That the authorization of such variance will not be of substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the variance.

No such variance shall be authorized except after notice and hearing as required by the Code of Virginia.

No variance shall be authorized unless the board finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the ordinance.

In authorizing a variance the board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary in the public interest, and may require a guarantee or bond to insure that the conditions imposed are being and will continue to be complied with.

The property upon which a property owner has been granted a variance shall be treated as conforming for all purposes under state law and local ordinance. However, the use or the structure permitted by the variance may not be expanded unless the expansion itself is fully compliant with the requirements of this title.

(Paragraph (b) amended December 10, 2007.)

- (c) To hear and decide appeals from the decision of the Zoning Administrator. No such appeal shall be heard except after notice and hearing as provided by state law.
- (d) To hear and decide applications for interpretation of the District Map where there is any uncertainty as to the location of a district boundary. After notice to the owners of the property affected by any such question, and after public hearing with notice as required by state law, the board may interpret the map in such way as to carry out the intent and purpose of the ordinance for the particular section or district in question. The board shall not have the power to change substantially the locations of district boundaries as established by ordinance.
- (e) None of the provisions in this ordinance shall be construed as granting the board any power to rezone property.

§ 9-216. *Rules and Regulations.* The Board of Zoning appeals shall adopt such rules and regulations as it may consider necessary not inconsistent with this ordinance.

§ 9-217. *Time and Meeting.* The meeting of the board shall be held at the call of its chairman or at such time as a quorum of the board may determine.

§ 9-218. *Administering of Oath.* The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses.

§ 9-219. *Keeping of Minutes.* The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact. It shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the board and shall be a public record.

§ 9-220. *Public Meetings Required.* All meetings of the board shall be open to the public.

§ 9-221. *Quorum Requirement.* A quorum shall be at least three (3) members.

§ 9-222. *Vote Required.* A favorable vote of three (3) member of the board shall be necessary to reverse any order, requirement, decision, or determination of any administrative official or to decide in favor of the applicant on any matter upon which the board is required to pass.

§ 9-223. *Appeal to the Board.* An appeal to the board may be taken by any person aggrieved or by any officer, department, board or bureau of the Town affected by any decision of the Zoning Administrator. Such appeal shall be taken within thirty (30) days after the decision is appealed by filing with the Zoning Administrator, and with the board, a notice of appeal specifying the grounds thereof. The Zoning Administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed was taken. An appeal shall stay all proceedings in furtherance of the action appealed for unless the Zoning Administrator certifies to the board that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril of life or property, in which case proceedings shall not be stayed otherwise than by a restraining

order granted by the board or by a court of record, on application and on notice to the Zoning Administrator and for good cause shown.

§ 9-224. **Appeal Procedure.** Appeals shall be mailed to the board of Zoning Appeals, c/o the Zoning Administrator.

§ 9-225. **Costs Required.** Appeals requiring an advertised public hearing shall be accompanied by such fee as is established by the Town Council from time to time.

§ 9-226. **Appeal from Decision of Board.** An appeal from the decision of the Board of Zoning Appeals shall be handled as provided by state law.

CHAPTER 25
Telecommunications Towers
(Added November 6, 2000.)

§ 9-227. **Purposes.** It is the purpose of this Chapter (i) to facilitate the orderly development of structures which are needed to provide wireless telecommunications services, (ii) to encourage the location of such structures in areas whose character would not be affected by the structures, (iii) to encourage the joint use of new and existing towers and minimize the total number of towers throughout Town, and (iv) to encourage the configuration of such structures in a way that minimizes the burdens created by them. Furthermore, it is the purpose of this Chapter to treat providers of functionally equivalent services in a reasonably like manner and to provide adequate sites for the provision of telecommunications services throughout the Town. In enacting this Chapter, no attempt has been made to address the environmental effects of radio frequency emissions.

§ 9-228. **Definitions.** For purposes of this Chapter, the following terms shall carry the meanings assigned in this section:

- (a) **Antenna.** A structure or device used to collect or radiate electromagnetic waves.
- (b) **Telecommunications Antenna.** An Antenna used to provide “telecommunications service,” as that term is defined in 47 U.S.C. § 153. The term Telecommunications Antenna does not include any Antenna which solely services a radio station operated by a duly authorized person interested in radio technique solely with a personal aim and without pecuniary interest.
- (c) **Telecommunications Tower.** A structure used primarily for the purpose of supporting one or more Telecommunications Antennas.
- (d) **Height of Telecommunications Tower or Telecommunications Antenna. Height Calculation.** For purposes of this Chapter, the height of an Antenna is the distance between (i) the finished grade of the ground nearest the Antenna and (ii) the tallest point of the Antenna. For purposes of this Article, the height of a Telecommunications Tower is the distance between (i) the finished grade of the ground nearest the Telecommunications Tower and (ii) the tallest point of the Telecommunications Tower or any Antenna mounted on the tower, whichever is higher.

§ 9-229. **Special Use Permit Consideration.** In ruling on special use permits for Telecommunications Towers or Antennas under Chapter 22, the council will not consider the effects of radio frequency emissions, if there be any. The council will consider the character of the neighborhood, conformity with the comprehensive plan, the guidelines of this section, the purposes of this Chapter, the public’s need for the facility, and any other issues bearing on the propriety of the application.

- (a) **Separation from Adjacent Properties.**
 - (1) Subject to paragraph (b)(2) below, Telecommunications Antennas should be separated from other parcels zoned R-1, R-2, or R-3 by a distance not less than three times the Antenna Height, from other parcels zoned B-1 or B-2 by a distance not less than twice the Antenna Height, and from other parcels carrying any other zoning classification by a distance not less than the Antenna Height.
 - (2) If the Antenna is mounted on a structure other than a Telecommunications Tower, it need not comply with paragraph (b)(1) if its height is no more than 110% of the height of the structure on which it is mounted.
- (b) **Co-location.** All Telecommunications Towers over 75 feet in height should be designed and built to accommodate a minimum of three or more Telecommunications Antennas. The owner of the tower must certify to the Town that the tower is available for use by other telecommunications service providers on a reasonable and nondiscriminatory basis.
- (c) **Height.** All Telecommunications Towers should be designed and built so that they are as short as possible.

§ 9-230. *Signs.* No signs, lettering, symbols, images, or trademarks shall be placed on or affixed to any part of any Telecommunications Antenna or Telecommunications Tower, other than as required by FCC regulations or other applicable law.

§ 9-231. *Inventory of Existing Towers Required.* All Telecommunications Tower applications shall include a complete and accurate inventory and map of the applicant's and other known existing and proposed Telecommunications Towers and other structures on which a Telecommunications Antenna could be located or co-located within five (2) miles of the proposed Telecommunications Tower

§ 9-232. *Removal of Towers.* Any Telecommunications Antenna or Telecommunications Tower that is not operated for a continuous period of twenty-four (24) months shall be considered abandoned, and its owner shall remove it within sixty (60) days notice from the Town, at the owner's expense.

TOWN OF DAYTON
TITLE 10
BOARDS AND COMMISSIONS

Part I
Planning Commission
(Enacted June 2, 1975)

Section	
10-1.	Authority; Establishment; Construction of Title.
10-2.	Composition; Qualifications, Appointment, Terms, etc., of Members; Filling of Vacancies.
10-3.	Election of Chairman; Meetings; Rules and Regulations.
10-4.	Finances.
10-5.	Comprehensive Plan.
10-6.	(Repealed July 10, 2000.)
10-7.	Effect of Plan on Public Improvements.
10-8.	Powers and Duties.

§ 10-1. Authority; Establishment; Construction of Title. Pursuant to the provisions of § 15.2-2210, *et seq.*, of the Code of Virginia, the Town has established a Planning Commission. Under the authority of § 1-13.39:2 of the Code of Virginia, all references in this title to state law shall be deemed to include any future amendments to or recodification of state law. (Amended July 10, 2000.)

§ 10-2. Composition; Qualifications, Appointment, Terms, etc., of Members; Filling of Vacancies. The town planning commission shall consist of 5 members, to be appointed by the council, all of whom shall be residents of the town, and who shall be qualified by knowledge and experience to make decisions on questions of community growth and development.

The council may appoint honorary, nonvoting members to the town planning commission who shall continue on such commission at the pleasure of the council.

One member of the commission shall be a member of the council, and one member may be a member of the administrative branch of the town government, the terms of both of which two members shall be co-extensive with the term of office to which they have been elected or appointed, unless the council, at the first regular meeting in any given year, appoints another or others to serve in his or their stead. The remaining 3 members shall serve for terms of four years each, to be staggered initially.

Vacancies shall be filled for unexpired terms by the council. Members may be removed for malfeasance in office.

Except for the planning commission members from the town council and the administrative branch of town government, members shall hold no other town office; provided that one person may sit on the commission and serve on the Board of Zoning Appeals.

(Virginia Code, §§ 15.2-2212, 15.2-2308)

§ 10-3. Election of Chairman; Meetings; Rules and Regulations.

- (i) The commission shall elect from its membership a chairman and vice-chairman, each of whom shall serve terms of one year.
- (ii) The commission shall hold regular monthly meetings; provided, however, that the chairman (or the vice-chairman, in the chairman's absence) may cancel a regular meeting if he finds that the commission has no substantial business to discuss. Nevertheless the Commission must meet at least as often as required by § 15.2-2214 of the Code of Virginia.
- (iii) Special meetings of the commission may be held in accordance with § 15.2-2214 of the Code of Virginia.

- (iv) Within the boundaries of state law, the commission may adopt rules of procedure for the transaction of its business.

(Va. Code, §§ 15.2-2214, 15.2-2215, 15.2-2217) (Amended July 10, 2000.)

§ 10-4. Finances. The expenditures of the planning commission, exclusive of gifts to the commission, shall be within the amounts duly appropriated by the town council for that purpose

§ 10-5. Comprehensive Plan. The Commission shall prepare a Comprehensive Plan in accordance with Title 15.2, Chapter 22, Article 3 of the Code of Virginia. (Amended July 10, 2000.)

§ 10-6. (Repealed July 10, 2000.)

§ 10-7. Effect of Plan on Public Improvements. To the extent required by § 15.2-2232 of the Code of Virginia, if the comprehensive plan does not show or otherwise embrace any

- (i) Street or connection to an existing street,
- (ii) Park or other public area,
- (iii) Public building or structure, or
- (iv) Public utility facility or public service corporation facility other than a railroad, whether publicly or privately owned,

then the proposed public improvement shall be submitted to and approved by the commission as being substantially in accord with the comprehensive plan. Appeals to the council, reversals by the council, and exceptions to this requirement shall be addressed in the manner prescribed by § 15.2-2232. (Virginia Code § 15.2-2232) (Amended July 10, 2000.)

§ 10-8. Powers and Duties. The Planning Commission shall have the powers and duties set forth in § 15.2-2221 of the Code of Virginia. Additionally, the Commission shall perform such other duties as are assigned to it by the law of the Commonwealth of Virginia. (Amended July 10, 2000.)

TITLE 11 WAS REPEALED ON

March 4, 2002

TITLE 12
Real Estate Taxation

Chapter 1
Land Use Assessment

- 12-1 Legislative Findings
- 12-2 Application
- 12-3 Approval; Town Authority

Chapter 2
Payment

- 12-4 Semi-Annual Collections.

Chapter 1
Land Use Assessment
(Enacted December 4, 2000)

§ 12-1. Legislative Findings.

- (a) The Town finds that the preservation of real estate devoted to agricultural, horticultural, forest and open space uses within its boundaries is in the public interest and having heretofore adopted a land use plan, hereby ordains that such real estate shall be taxed in accordance with the provisions of Article 4 of Chapter 32 of Title 58.1 of the Code of Virginia and of this article.
- (b) The council further finds that because
 - (i) Rockingham County has made similar provisions in its ordinances, and
 - (ii) The Town makes use of Rockingham County's property assessments in levying its real estate tax,

The Town should defer to the County, to the extent possible, in the administration of this chapter.

§ 12-2. Application.

- (a) Any owner of land in the Town of Dayton may apply to the Town under § 58.1-3234 for use value assessment for
 - (i) Real estate devoted to agricultural use,
 - (ii) Real estate devoted to horticultural use,
 - (iii) Real estate devoted to forest use, or
 - (iv) Real estate devoted to open-space use,within the meaning of § 58.1-3230 of the Code of Virginia.
Upon request, the Treasurer shall supply appropriate forms.
- (b) Alternatively, such an owner may make a similar application to Rockingham County under § 7-33, *et seq.* of the County Code. Subject to § 12-3(b) below, the Town will deem such an application to be an application for Town tax relief as well.

§ 12-3. Approval; Town Authority.

- (a) Subject to paragraph (b) below, Rockingham County's approval of the application shall *ipso facto* allow use value assessment for Town taxes.

- (b) The Town of Dayton, not Rockingham County, is ultimately responsible for determining eligibility for use value assessment for Town taxes. Any approval (or denial) of an application by Rockingham County shall be subject to review and reversal by the Town (insofar as Town taxes are concerned). Further, the Treasurer may require that a separate application be filed. With respect to an application filed with the Town, Rockingham County's procedures, as they are currently set forth in § 7-33 *et seq.* of the County Code, shall apply to the process, *mutatis mutandis*.

Chapter 2 Payment

§ 12-4. *Semi-Annual Collections.* All real property taxes shall become due, in equal installments, on June 5 and December 5 of the year for which assessed. (Added May 5, 2003 [effective December 31, 2003])

TITLE 13
MEALS TAX
(Effective July 1, 2003)

- 13-1 Definitions.
- 13-2 Levy.
- 13-3 Collection of Tax By Seller.
- 13-4 Exemptions; Limits on Application.
- 13-5 Gratuities and Service Charges.
- 13-6 Report of taxes collected; remittance; preservation of records.
- 13-7 Penalty for violation of Title.
- 13-8 Regulations.

§ 13-1. Definitions. The following words and phrases, when used in this Title, shall have, for the purposes of this Title, the following respective meanings except where the context clearly indicates a different meaning:

- (a) *Cater.* The furnishing of Food, beverages, or both on the premises of another, for compensation.
- (b) *Treasurer.* The Treasurer and any duly designated deputies, assistants, inspectors or other employees.
- (c) *Food.* All Food, beverages or both, including alcoholic beverages, purchased in or from a Food Establishment, whether prepared in such Food Establishment or not, and whether consumed on the premises or not, and without regard to the manner, time or place of service.
- (d) *Food Establishment.* Any place in or from which Food or Food products are prepared, packaged, sold or distributed in the town, including but not limited to, any restaurant, dining room, grill, coffee shop, cafeteria, café, snack bar, lunch counter, convenience store, movie theater; delicatessen, confectionery, bakery, eating house, eatery, drugstore, ice cream/yogurt shops, lunch wagon or truck, pushcart or other mobile facility from which Food is sold, public or private club, resort, bar, lounge, or other similar Establishment, public or private, and shall include private property outside of and contiguous to a building or structure operated as a Food Establishment at which Food or Food products are sold for immediate consumption.
- (e) *Meal.* Meal shall mean any prepared Food or drink which is (i) offered or held out for sale by a Food Establishment for the purpose of being consumed by any person to satisfy the appetite and (ii) ready for immediate consumption. All such Food and beverage, unless otherwise specifically exempted or excluded herein shall be included, whether intended to be consumed on the seller's premises or elsewhere, whether designated as breakfast, lunch, snack, dinner, supper or by some other name, and without regard to the manner, time or place of service.

(Added June 9, 2003.)

§ 13-2. Levy. There is hereby imposed and levied by the town on each person a tax at the rate of five percent (5%) on the amount paid for Meals purchased from any Food Establishment, whether prepared in such Food Establishment or not, and whether consumed on the premises or not. (Code of Virginia, § 58.1-3840) (Added June 9, 2003; amended July 1, 2007.)

§ 13-3. Collection of tax by seller. Every person receiving any payment for Food with respect to which a tax is levied hereunder shall collect and remit the amount of the tax imposed by this Title from the person on whom the same is levied or from the person paying for such Food at the time payment for such Food is made; provided, however, no blind person operating a vending stand or other business enterprise under the jurisdiction of the Department for the Visually Handicapped and located on property acquired and used by the United States for any military or naval purpose shall be required to collect or remit such taxes. All tax collection shall be deemed to be held in trust for the town. (Added June 9, 2003.)

§ 13-4. Exemptions; limits on application.

- (a) The tax imposed under this Title shall not be levied on factory-prepackaged candy, gum, nuts and other items of essentially the same nature served for on or off-premises consumption.
- (b) The tax imposed under this Title shall not be levied on the following items when served exclusively for off-

premises consumption:

- (1) Donuts, crackers, nabs, chips, cookies and other factory-prepackaged items of essentially the same nature.
 - (2) Food sold in bulk. For the purposes of this provision, a bulk sale shall mean the sale of any item that would exceed the normal, customary and usual portion sold for on premises consumption (e.g. a whole cake, a gallon of ice cream); a bulk sale shall not include any Food or beverage that is Catered or delivered by a Food Establishment for off-premises consumption.
 - (3) Alcoholic and non-alcoholic beverages sold in factory sealed containers.
 - (4) Any Food or Food product purchased with Food coupons issued by the United States Department of Agriculture under the Food Stamp Program or drafts issued through the Virginia Special Supplemental Food Program for Women, Infants, and Children.
 - (5) Any Food or Food product purchased for home consumption as defined in the federal Food Stamp Act of 1977, 7 U.S.C. § 2012, as amended except hot Food or hot Food products ready for immediate consumption. 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. This subsection shall not affect provisions set forth in subparagraphs (d) (3), (4) and (5) hereinbelow.
- (c) A grocery store, supermarket or convenience store shall not be subject to the tax except for any portion or section therein designated as a delicatessen or designated for the sale of prepared Food and beverages.
- (d) The tax imposed hereunder shall not be levied on the following purchases of Food and beverages:
- (1) Food and beverages furnished by Food Establishments to employees as part of their compensation when no charge is made to the employee.
 - (2) Food and beverages sold by day care centers, public or private elementary or secondary schools or Food sold by any college or university to its students or employees.
 - (3) Food and beverages for use or consumption and which are paid for directly by the Commonwealth, any political subdivision of the Commonwealth or the United States.
 - (4) Food and beverages furnished by a hospital, medical clinic, convalescent home, nursing home, home for the aged, infirm, handicapped, battered women, narcotic addicts or alcoholics, or other extended care facility to patients or residents thereof and the spouses and children of such persons.
 - (5) Food and beverages furnished by a public or private non-profit charitable organization or Establishment or a private Establishment that contracts with the appropriate agency of the Commonwealth to offer Meals at concession prices to elderly, infirm, blind, handicapped or needy persons in their homes or at central locations.
 - (6) Food and beverages sold on an occasional basis, not exceeding 12 times per calendar year, by a non-profit educational, charitable or benevolent organization, church, or religious body as a fundraising activity, the gross proceeds of which are to be used by such organization exclusively for non-profit educational, charitable, benevolent or religious purposes.
 - (7) Food and beverages sold on an occasional basis not exceeding six times per calendar year.

(Code of Virginia, § 58.1-3840) (Added June 9, 2003, Amended October 14, 2013)

§ 13-5. *Gratuities and service charges.* Where a purchaser provides a gratuity for an employee of a seller, and the amount of the gratuity is wholly in the discretion of the purchaser, the gratuity is not subject to the tax imposed by this Title, whether paid in cash to the employee or added to the bill and charged to the purchaser's account, provided in the latter case, the full amount of the gratuity is turned over to the employee by the seller. An amount or percent, whether designated as a gratuity,

tip or service charge, that is added to the price of the Food and beverages by the seller, and required to be paid by the purchaser, as a part of the selling price of the Food and beverages and is subject to the tax imposed by this Title. (Added June 9, 2003.)

§ 13-6. Report of taxes collected; remittance; preservation of records.

- (a) It shall be the duty of every person required by this Title to pay to the town the taxes imposed by this Title to make a report thereof setting forth such information as the Treasurer may prescribe and require, including all purchases taxable under this Title, the amount charged the purchaser for each such purchase, the date thereof, the taxes collected thereon and the amount of tax required to be collected by this Title.
- (b) Reports and tax payments for the months of January, February and March shall be made on or before the following April 20th. Reports and tax payments for the months of April, May, and June shall be made on or before the following July 20th. Reports and tax payments for the months of July, August, and September shall be made on or before the following October 20th. Reports and tax payments for the months of October, November, and December shall be made on or before the following January 20th.
- (c) Further, every such person shall maintain records supporting the reports required by paragraph (a) of this section. Such records shall be kept and preserved for a period of five (5) years. The Treasurer 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 Title, and to make transcripts of all or any parts thereof.

(Added June 9, 2003.)

§ 13-7. Penalty for violation of title.

- (a) Interest and penalties; collection.
 - (1) Penalties. Should any tax due under this title not be paid when due, the Treasurer shall assess a penalty according to the following schedule:
 - i. 10% of the tax due, if payment is made within one month of the due date;
 - ii. 15% of the tax due, if payment is made more than one month after the due date, but not more than two months afterward;
 - iii. 20% of the tax due, if payment is made more than two months after the due date, but not more than three months afterward;
 - iv. 25% of the tax due, if payment is made more than three months afterward.
 - (2) Interest. In addition to the penalties provided for in paragraph (a)(1) above, interest shall accrue on any delinquent taxes at the annual rate of 10%, beginning on the day after the due date. Likewise, any Meals Taxes paid on an erroneous assessment shall be refunded with interest at the rate of 10% per annum.
 - (3) Penalties and interest shall not be imposed if the failure to pay the tax was not the fault of the taxpayer, as determined by the Treasurer.
 - (4) Should the Town consult an attorney with respect to the collection of delinquent Meals Taxes, the taxpayer shall also be responsible for the Town's attorneys' fees, in a reasonable amount not to exceed 20% of the taxes collected by—or upon the advice of—the attorney.
- (b) Criminal Sanctions Any person willfully (i) failing or refusing to file a return or under this title or (ii) failing to collect or pay over the tax imposed hereby, shall, upon conviction thereof, be guilty of a class 1 misdemeanor; provided, however, that if the assessed tax is \$1,000.00 or less, such violation shall be a class 3 misdemeanor.

(Added July 1, 2003; amended July 1, 2006) (See also Va. Code §§ 58.1-3906, 58.1-3907, 58.1-3916.)

§ 13-8. Regulations. The Treasurer is authorized but not required to adopt rules and regulations not inconsistent with the provisions of this title for the purpose of carrying out and enforcing the payment, collection, and remittance of the tax levied

by this title. A copy of those rules and regulations shall be on file and available for public examination in the Treasurer's office. Failure or refusal to comply with any rules and regulations promulgated under this section shall be deemed a violation of this title. (Added June 9, 2003.)

TITLE 14
VIRGINIA LOCAL GOVERNMENT INSURANCE ASSOCIATION

§14-1. Competitive sealed bidding and competitive negotiation.

§14-2. Procurement of insurance.

§14-3. Joint Powers Agreement.

§14-4. Authority of Mayor to execute Joint Powers Agreement.

§14-5. Payment obligations.

§14-1. Competitive sealed bidding and competitive negotiation for the procurement of insurance are not fiscally advantageous to the public because of the administrative and economic advantages of procuring such insurance through the Association.

§14.2. The procurement of insurance pursuant to the Joint Powers Agreement is hereby approved and the Town of Dayton shall become and be a member of the Virginia Local Government Insurance Association.

§14.3. The Joint Powers Agreement and the performance of the terms and conditions thereof on behalf of the Town of Dayton are hereby authorized and approved.

§14.4. The Mayor is hereby authorized and directed to execute and deliver the Joint Powers Agreement on behalf of the Town of Dayton in substantially the form presented to this meeting.

§14.5. The payment obligations of the Town of Dayton pursuant to the provisions hereof and the Joint Powers Agreement shall be subject to the annual approval of funds therefor in its budget by the Town of Dayton.