

**ARLINGTON COUNTY CODE**

**Chapter 25**

**RESERVED\***

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\* **Editors Note:** Ord. No. 09-16, adopted June 13, 2009, repealed former Ch. 25, relative to taxicabs, in its entirety, and enacted Ch. 25.1 of this Code.

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Chapter 25.1

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§ 25.1-1. Purpose and ~~p~~Persons ~~e~~Covered.

~~(a)~~A. The purpose of this ~~e~~Chapter is to regulate and control Taxicab Service in Arlington County, the operation of Taxicabs for hire, rates and charges for service, and the character and qualifications of operators through the issue of Certificates of public convenience and necessity, in order to preserve the health, safety, welfare and property of Arlington County citizens and the public at large, as well as assuring robust competition among providers that results in quality Taxicab Service throughout Arlington.

~~(b)~~B. *Persons covered.* Any Person who transports individuals for hire in a Taxicab, engages in the Taxicab business, or provides Taxicab Service in Arlington County shall be governed by the provisions of this ~~e~~Chapter. Persons covered also include Certificate-holders, Drivers, Passengers and any other Person who is an Applicant for authority pursuant to this ~~e~~Chapter.  
(Ord. No. 09-16, 6-13-09)

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§ 25.1-2. Definitions.

~~Unless it clearly appears from the context that a different meaning is intended, the following words and phrases/terms, when used in this Chapter, shall have the following meanings ascribed to them by this section unless the context clearly indicates otherwise:~~

“Applicant” means any individual, company, corporation, partnership or other such legal entity that seeks a Certificate, a Public Vehicle Driver’s License, or an amendment, modification, or revision to such Certificate or Public Vehicle Driver’s License.

“Certificate” means the certificate of public convenience and necessity issued to Persons in the Taxicab Business as provided in this Chapter. A Certificate indicates the total number of Taxicabs which the Certificate-holder is authorized to operate in Arlington County.

“Certificate-holder” means any Person that has been granted a Certificate.

“County Board” or “Board” means the County Board of Arlington County, Virginia.

“County Manager” means the County Manager of Arlington County, Virginia.

“Day” means a calendar day, unless otherwise provided in this Chapter. If the last day on which to satisfy an obligation set forth in this Chapter is a Saturday, Sunday, federal holiday, or County holiday, then the obligation shall not be required to be satisfied until the next day which is not a Saturday, Sunday, federal holiday or County holiday.

“Driver” means the individual who operates, or is in actual physical control of, a Taxicab on a street, highway, or other place open to use by the public for the purpose of vehicular travel.

“Passenger” means a person carried or transported in a Taxicab in consideration of a fare.

“Person(s)” means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, or any other legal or commercial entity, and any successor, representative, agent, agency, or instrumentality thereof.

“Person with Disability” means any individual person who has a physical or mental impairment which substantially limits one or more major life activities of that individual, an individual person who has a record of such impairment, or who is regarded as having such impairment. For the purposes of this Chapter, the term “major life activities” means functions such as, but not limited to, caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

“Prepaid Purchase” means the advance payment, for ten (10) or more Taxicab trips.

“Public Vehicle Driver’s License” means the license issued to a Taxicab Driver by the County Manager, or his designee, authorizing the Taxicab Driver to operate a Taxicab pursuant to this Chapter.

“Service Animal” means any animal individually trained to work or perform tasks for an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items. Some, but not all, service animals wear special collars and harnesses. A pet is not necessarily a service animal.

“Taxicab” or “Other Motor Vehicle Performing Taxicab Service” means any motor vehicle having a seating capacity of not more than six (6) passengers, excluding the driver, not operating on a regular route or between fixed terminals, used in the transportation of passengers for hire or for compensation, and not a common carrier or restricted common carrier as defined in Chapter 20, Title 46.2 of the Code of Virginia.

“Taxicab Business” means the activity of transporting Passengers for compensation by a Taxicab or other vehicle performing a Taxicab Service.

“Taxicab Inspector” means the individual or individuals appointed by the Chief of Police and authorized to enforce specified provisions of this Chapter.

“Taxicab Service” means the operation of any Taxicab upon any street, highway, or other place open to use by the public for the purpose of vehicular travel, on call or on demand, accepting or soliciting passengers indiscriminately for transportation for hire between such points along streets or highways as may be directed by the passenger or passengers so being transported.

“Taxicab Stand” means a location which has been designated by signage for use by Taxicabs for passenger hire.

“Taximeter” means an instrument or device by which the charge for hire of a Taxicab is calculated by either distance traveled, or waiting time, or both, and upon which such charge shall be indicated by figures.

“Transfer” means any transaction in which an ownership interest, rights or obligations or other interest in a Certificate-holder or its Taxicab Business, or permission granted by a Certificate, is proposed to be sold, conveyed, assigned, exchanged, or transferred from one Person or group of Persons to another Person or group of Persons so that control of a Certificate-holder or its Taxicab Business, or permission granted by a Certificate, is proposed to be transferred. The term “control” means working control, in whatever manner exercised. By way of illustration, and not limitation, the addition, deletion, or other change of –(i) any general partner of a Certificate-holder; or (ii), any Person who owns or controls a Certificate-holder; is a change of control.

“Transportation Commission” means the advisory group by that name created by the County Board.

“Vehicle Owner” means any Person having title to any Taxicab.

“Wheelchair-accessible Taxicab” means a Taxicab that has been constructed, modified, or specially equipped with the installation of lifts or other equipment necessary for the transport of persons who use wheelchairs or wheelchair conveyances.  
(Ord. No. 09-16, 6-13-09)

§ 25.1-3. Certificate of ~~p~~Public ~~e~~Convenience and ~~n~~Necessity.

~~(a)~~A. *Certificate required.* Unless otherwise specifically provided in this Chapter, it shall be unlawful for any Person to engage in the Taxicab Business within Arlington County without having first obtained a Certificate or any other authorization required by this Chapter.

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~~(b)~~B. *Application for Certificate.*

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~~(1.)~~ Each application for a Certificate shall be made, under oath, by each prospective Certificate-holder by filing an application with the County Manager, or his designee, upon forms provided by the County for such purpose. Applications for Certificates shall be filed only between July 1 and September 1 of each even-numbered year. Any amendment, modification, or revision to an existing Certificate requires the filing of an application for a Certificate which shall be filed only during such time period in even-numbered years.

~~(2.)~~ Each Applicant for a Certificate, which Applicant is not, as of the day of the application, a current Certificate-holder, shall provide, with the application, the following information and supporting documents:

- ia. The full name and the home and business address(es) of the Applicant. If the Applicant is not an individual, certified copies of documents indicating that the Applicant is a legally existing entity, in good standing, and further indicating the Person or Persons authorized to legally bind the Applicant.

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- ~~ii~~b. The trade name (if any) and the telephone number under which the Applicant does, or proposes to do, business, and documents indicating that the Applicant is legally authorized to use such trade (or fictitious) name.
- ~~iii~~c. The financial status and the fiscal and operational fitness of the Applicant, including evidence that the Applicant has the ability to engage in the Taxicab Business, to acquire and to maintain the Taxicabs proposed to be operated pursuant to a Certificate.
- ~~iv~~d. The number and ownership of the Taxicabs proposed to be operated pursuant to a Certificate, and the make, model, year, seating capacity, and combined (city/highway) fuel-efficiency rating of each vehicle. The number and type (Wheelchair-accessible and hybrid or vehicles not primarily powered by gasoline or diesel fuel) of Taxicabs, if any, currently authorized to operate under a Certificate.
- ~~v~~e. A proposed color scheme, insignia, and cruising light design which shall be unique and readily distinguishable from previously approved color schemes, insignia and light design.
- ~~vi~~f. The address, condition, and all proposed uses of each Taxicab depot, terminal and garage to be involved in the Taxicab Business for which a Certificate is required.
- ~~vii~~g. A description of the proposed communications systems to be used between or among the dispatcher, the depots, terminals, garages and Taxicabs.
- ~~viii~~h. A description of the hours of operation proposed to be provided, including times of day and night, and limitations on days and types of Taxicab Service.
- ~~ix~~i. True copies of court records clearly indicating each conviction of or plea of guilty or *nolo contendere* by the Applicant for each violation of any criminal or traffic law, whether such violation or violations be of an ordinance, state law or federal law. If the Applicant is not an individual, then true copies of records of such convictions, pleas, and violations shall be submitted for each officer, director, partner, and member of such Applicant who is legally authorized to bind the Applicant.
- ~~x~~j. The specific experience of the Applicant in the transportation of passengers for hire and the Taxicab Business.
- ~~xi~~k. All facts or circumstances upon which the Applicant bases his or her belief that public convenience and necessity would be enhanced by the granting of the application.
- ~~xii~~l. A description of the type of Taxicab Service the Applicant intends to supply, including whether such Taxicab Service will be similar to, or different from, Taxicab Service provided by Certificate-holders.
- ~~xiii~~m. The Applicant's five (5) year business plan for providing Taxicab Service in Arlington County.
- ~~xiv~~n. All other information and documents requested or required by the County Manager, or his designee.

(3.) Each Applicant for a Certificate, which Applicant is, as of the day of the Application, a current Certificate-holder, shall provide, with the application, the information and documents specified above in subsections ~~2.a(2)i~~, ~~2.b(2)ii~~, ~~2.c(2)iii~~, ~~2.d(2)iv~~, ~~2.f(2)vi~~, ~~2.g(2)vii~~, ~~2.h(2)viii~~, ~~2.i(2)ix~~, ~~2.k(2)xi~~, ~~2.l(2)xii~~ and ~~2.n(2)xiv~~ for the Taxicabs operating under an existing Certificate and for the Taxicabs for which authority is being requested. In addition, such Applicant shall provide

documents indicating the effect which additional vehicles will have on customers and generally accepted industry measures of Taxicab Service productivity in Arlington County.

~~(c)~~C. Upon receipt of an application for a Certificate, the County Manager, or his designee, shall notify each Certificate-holder in writing that an application has been filed. Certificate-holders will be provided an opportunity, at the appropriate time, to express to the Transportation Commission the Certificate-holder's views about such application.

~~(d)~~D. The County Manager, or his designee, will forward copies of the applications to the Transportation Commission no later than September 15 of each even-numbered year.

~~(e)~~E. In order to carry out the purposes of this ~~C~~chapter, the County Manager, or his designee, may request from the Applicant relevant information and documents in addition to that provided with the application.

~~(f)~~F. *False information on any application for a Certificate.* It shall be unlawful for any Person knowingly to make or cause to be made, either directly or indirectly, any materially false statement on any application for a Certificate, accompanying documents or reports submitted pursuant to this ~~C~~chapter. Any such application containing a materially false statement may be rejected by the County Manager, or his designee. Upon rejection of the application for a Certificate, the Applicant shall not be permitted to resubmit an application for a period of two (2) years after the date of the application containing the false statement(s). (Ord. No. 09-16, 6-13-09)

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**§ 25.1-4. Determination of ~~n~~Number of ~~t~~Taxicabs; Issuance of ~~e~~Certificates.**

~~(a)~~A. The number of Taxicabs for which Certificates are proposed to be authorized shall be determined by the County Manager, on a biennial basis, not later than July 1 of each even-numbered year, or as may be directed by the County Board, after considering for the immediately preceding two (2) years:

- ~~(1)~~ the percentage change in residents, Taxicab and paratransit trips, and indicators of business activity, tourism, and public transportation use (jointly "Market Change") within Arlington County;
- ~~(2)~~ Taxicab industry and Certificate-holder performance indicators;
- ~~(3)~~ Competition, including consideration of the number of Taxicabs authorized to be operated by any Certificate-holder in relation to the total number of Taxicabs authorized to be operated under all Certificates, and the goal of preventing any disadvantageous effects on competition, the quality of Taxicab service, and the public health, safety, and welfare resulting from a concentration of the total authorized Certificates in any one Certificate-holder; and
- ~~(4)~~ Other factors having, in the reasonable opinion of the County Manager, specific relevance to the provision of Taxicab Service to the public.

~~(b)~~B. Upon making such determination, the County Manager shall issue a statement indicating the number of additional Taxicabs proposed to be authorized, the rationale for such number, and the general methodology expected to be used in arriving at a recommendation which the County Manager may make pursuant to ~~S~~subsection ~~D~~(~~d~~) below.

~~(c)~~C. If an Applicant applies for a Certificate, the issuance of which would authorize an increase in the number of Taxicabs for such Applicant or Certificate-holder, and which increase would exceed the number of Taxicabs determined by the County Manager pursuant to subsection ~~A~~(~~a~~) above, then the application shall include relevant facts indicating the reasons that the Applicant contends that the Market Change, industry performance, Certificate-holder performance, competition, and other specified factors are other than those determined by the County Manager.

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~~(D)~~ The County Manager shall recommend to the Board, not later than October 15 of each even-numbered year, the number of additional Taxicabs (to be authorized by Certificates) allocated to each Applicant, including the number of Wheelchair-accessible Taxicabs and hybrid or vehicles not primarily powered by gasoline or diesel fuel.

~~(E)~~ In making such recommendation, the County Manager shall consider the following factors, in no particular order, and such other relevant information as the County Manager deems appropriate, including the effect of the granting of the application(s) on Taxicab Service in Arlington County:

- ~~(1.)~~ whether the Applicant will offer hail and Taxi Stand service;
- ~~(2.)~~ whether the Applicant will offer telephone-reservation and dispatch service;
- ~~(3.)~~ how many of the additional Taxicabs will be Wheelchair-accessible vehicles;
- ~~(4.)~~ to what extent customers may pay using credit or debit cards;
- ~~(5.)~~ fuel efficiency of proposed additional Taxicabs including whether the additional Taxicabs will be hybrid or vehicles not primarily powered by gasoline or diesel fuel;
- ~~(6.)~~ the Applicant's recent vehicle productivity, if any, as evidenced by paid Taxicab trips per authorized Taxicab per day;
- ~~(7.)~~ the Applicant's recent vehicle efficiency, if any, as evidenced by percent of total miles travelled for which Passengers travel;
- ~~(8.)~~ the days and hours for which service will be available;
- ~~(9.)~~ the Applicant's recent customer-service record, if any, as evidenced by the scarcity of complaints per authorized taxicab;
- ~~(10.)~~ the Applicant's intended fleet sustainability, as evidenced by the current (if any) and proposed fleet fuel-efficiency ratings;
- ~~(11.)~~ competition within the industry including the number of Taxicabs that the Applicant(s) would be authorized, should the number applied for be granted, relative to the total number of Taxicabs authorized under all Certificates, and the effect thereof on the public convenience and welfare; and
- ~~(12.)~~ proposed innovation to Taxicab service in Arlington County.

The County Manager, or his designee, may transmit to the Applicants and to all Certificate-holders written notice of the County Manager's recommendations.

~~(F)~~ *Decrease in number of Taxicabs authorized under a Certificate:*

~~(1.)~~ At the time the County Manager issues recommendations to the County Board pursuant to subsection ~~D(4)~~ above, the County Manager shall indicate the number of Taxicabs, authorized by a Certificate, that were not operated during any of the immediately preceding one hundred and eighty (180) calendar days. Thereafter, the County Manager shall give written notice to the Certificate-holder and afford the Certificate-holder an opportunity to be heard by the County Manager. If the County Manager determines that a decrease in the number of Taxicabs authorized by Certificates is warranted because Taxicabs were not operated during the above time period, then, upon receipt of notice of said determination, the Certificate-holder shall surrender the existing Certificate to the County Manager and the County Manager will issue a new Certificate authorizing the specified lesser number of Taxicabs to the Certificate-holder.

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~~(2.)~~ Subsection ~~(1)~~ above shall not apply, for a period of one (1) year, to new or additional Taxicabs authorized under a Certificate.

~~(e)G.~~ The County Manager, or his designee, prior to the public hearing on the application(s) before the Board, will furnish to the Transportation Commission all appropriate documents concerning the application(s) under consideration, and will request a recommendation thereon from the Transportation Commission. Not later than November 15 of each even-numbered year, the Transportation Commission shall make its written recommendation to the Board. The recommendation shall state whether or not the Transportation Commission recommends that the Board grant any or all the application(s), in whole or in part. If the Transportation Commission does not forward a recommendation to the Board by November 15, then the Board may act without any such recommendation.

~~(h)H.~~ After receipt by the Board of recommendations from the County Manager, and not sooner than November 15 of each even-numbered year, the Board, after a public hearing, after considering the factors contained in subsection ~~E(e)~~ above, and after determining whether the public health, safety and welfare will be protected or enhanced, may authorize the County Manager to issue Certificate(s) to any or all of the Applicants as the Board deems appropriate, concerning the application(s). The Board may determine that no Certificate(s) shall be issued, in which case all existing Certificate(s) shall remain in effect.

~~(i)I.~~ If the Board authorizes the County Manager to issue any new Certificate(s) to any Applicant(s), then, upon the surrender to the County Manager of any existing Certificate(s), the County Manager, or his designee, shall issue a new Certificate(s) to the Certificate-holder(s). The issuance of a Certificate constitutes permission for the Certificate-holder to engage in the Taxicab Business in accordance with this ~~C~~chapter and all applicable laws, ordinances and regulations.  
(Ord. No. 09-16, 6-13-09)

~~§ 25.1-5. Annual Certificate ~~f~~ees and ~~a~~pplication ~~f~~ees.~~

~~(a)A.~~ The following fees shall be paid, as applicable, to the Treasurer of Arlington County. All fees are non-refundable.

~~(b)B.~~ For each Taxicab authorized under an existing Certificate, the annual fee is one hundred and fifty dollars (\$150.00), which shall be paid not later than February 1 of each year.

~~(c)C.~~ Application fees, which shall be paid upon submission of an application, are as follows:

~~(1.)~~ For each application for a Certificate by a Person who is not a Certificate-holder, the fee is five hundred dollars (\$500.00), plus an additional one hundred dollars (\$100.00) for each Taxicab requested, in excess of five (5) Taxicabs.

~~(2.)~~ For each application for a Certificate by a Person who is a Certificate-holder, the fee is one hundred dollars (\$100.00) for each Taxicab requested in excess of number of Taxicabs authorized under the existing Certificate.

(Ord. No. 09-16, 6-13-09)

~~§ 25.1-6. Certificate ~~f~~orm and ~~t~~erm.~~

~~(a)A.~~ Each Certificate will state the following:

~~(1.)~~ The name and address of the Certificate-holder.

~~(2.)~~ The number of Taxicabs authorized by the Certificate. The Certificate may indicate the specific number of Wheelchair-accessible taxicabs authorized and hybrids or non-gasoline-fueled vehicles.

~~(3.)~~ The date of issuance of the Certificate.

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~~(4.)~~ The fact that the Certificate is subject to the provisions of this ~~C~~chapter and all other laws and ordinances governing the operation of public vehicles, Taxicabs, for-hire vehicles in Arlington County, and the Taxicab Business.

~~(b)B.~~ Every Certificate shall be valid from the date of issuance until surrendered, suspended, or revoked as specified under ~~sections §§~~ 25.1-4, ~~F~~~~(F)~~ and 25.1-8.

~~(c)C.~~ In cases of death, sickness or unusual circumstances, the County Manager may authorize in writing to the Certificate-holder the continued operation of an existing Certificate for a reasonable time specified in such authorization.  
(Ord. No. 09-16, 6-13-09)

~~§~~ 25.1-7. Insurance ~~R~~Requirements.

~~(a)A.~~ Every Vehicle Owner, operating a Taxicab under a Certificate issued pursuant to this ~~C~~chapter, from any point within Arlington County, which for the purpose of this section includes Arlington National Cemetery, Ronald Reagan Washington National Airport and the Pentagon reservation, or any other federal or state enclave, reservation or area within the boundaries of Arlington County, to any other point within Arlington County, including Arlington National Cemetery, Ronald Reagan Washington National Airport and the Pentagon reservation, or any other federal or state enclave, reservation or area within the boundaries of Arlington County, shall keep in effect at all times, and file with the County Manager, or his designee, a certificate of insurance evidence of a policy of insurance with a reputable insurance company duly licensed or otherwise authorized to do business in the Commonwealth of Virginia, in the amount specified in this section covering damages for any liability incurred on account of any injury to persons or damage to property resulting from the operation of such Taxicab in the amounts prescribed in this section, or provide a combination of self-insurance and policy of insurance in the total amount herein specified covering such damages. Such combination to be subject to the approval of the County Manager, or his designee; provided, however, this section shall not apply to Taxicabs operating in Arlington County which Taxicabs operate solely on federal or state enclaves.

~~(b)B.~~ The required insurance coverage shall be as follows:

~~(1.)~~ If a purchased insurance policy is furnished, the minimum amount of coverage will be:

For injury to one (1) person in any one (1) accident: ~~one~~ one hundred thousand dollars (\$100,000.00)

For injury to two (2) or more persons in any one (1) accident: ~~three~~ three hundred thousand dollars (\$300,000.00)

For property damage in any one (1) accident: fifty thousand dollars (\$50,000.00)

~~(2.)~~ If a combination of self-insurance and a policy of insurance is approved, such combination will provide the coverage specified in subsection ~~B.1~~~~(b)(1)~~ above.

~~(c)C.~~ Each insurance policy offered as fulfillment of the requirements of this section shall contain a clause to the effect that the insurance carrier may not cancel the policy except upon thirty (30) day's written notice to the County Manager, or his designee, as well as other notices as may be required by law to be given to the policy holder.

~~(d)D.~~ If an insurance policy or a state issued self-insurance certificate or permit offered as fulfillment of the requirement of this section is cancelled, then the Certificate-holder shall not permit any Taxicab to be operated that was covered by such policy, certificate or permit until other insurance is furnished as required by this section.

~~(e)E.~~ If judgment is rendered against the Vehicle Owner or Driver, or both, in any court of competent jurisdiction by reason of any accident for which self-insurance or an insurance policy is provided in this section, then the Vehicle Owner shall, within twenty-four (24) hours after the rendition of such judgment, whether appealed from or not, maintain the total amount of insurance required by this section or any other provision of law, whichever

is greater, so that no reduction in insurance coverage results from such judgment.

~~(F)~~ *Self-insurance.* Up to one hundred thousand dollars (\$100,000.00) of the insurance required under section ~~B(b)~~ above may be provided by self-insurance. A Vehicle Owner may self-insure only up to one hundred thousand dollars (\$100,000.00) and only if such owner has obtained a certificate of self-insurance pursuant to ~~Section §~~ 46.2-368 of the Code of Virginia, and has fulfilled the requirements and obtained a certificate or permit as required by law, provided that the certificates or permits for self-insurance shall be in full force and effect at all times. Evidence of such certificates or permits shall be filed with the County Manager, or his designee, before the issuance of any Certificate and shall require notice by the Commonwealth of Virginia to the County Manager, or his designee, before termination of the self-insurance certificates or permits. The remaining insurance shall be provided as required by section ~~B(b)~~ above, and the following requirements must be met:

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~~(1.)~~ Application for approval, partially to meet County insurance requirements through self-insurance up to one hundred thousand dollars (\$100,000.00) shall be made by the Certificate-holder or his designated agent upon forms provided by the County Manager, or his designee, and upon such forms the Applicant shall supply the following information:

~~i.a.~~ Proof that all requirements for self-insurance established by the Virginia Department of Motor Vehicles and the Virginia State Corporation Transportation Commission have been met, including copies of the state certificate documents and all documents filed with the State in order to obtain certification as a self-insurer.

~~i.b.~~ A written statement from the Virginia Department of Motor Vehicles and the Virginia State Corporation Transportation Commission that they will notify the County Manager, or his designee, prior to the termination of the state-issued self-insurance certificates or permits.

~~i.c.~~ Claims history for the Applicant for the preceding four (4) year period.

~~i.d.~~ The most current financial statement of the Applicant.

~~(2.)~~ The Certificate-holder has a continuing obligation to file with the County Manager, or his designee, copies of all documents, statement, filed with the Virginia Department of Motor Vehicles and the Virginia State Corporation Commission in order to obtain or maintain state self-insurance certification.

~~(3.)~~ The Certificate-holder must submit a report to the County Manager, or his designee, two (2) years to the day after receiving approval from the County Manager, or his designee, to self-insure, and every other year thereafter, concerning the Certificate-holder's claims history and claims procedures. The report will be ordered and undertaken at the Certificate-holder's expense.

~~(4.)~~ If at any time it should appear that the Certificate-holder no longer meets the criteria required for approval as a self-insurer as set forth herein or fails to file any required documents, then the Certificate-holder will be given written notice identifying the particular criteria or filing default. The written notice will stipulate a reasonable date and time by which the Certificate-holder must furnish evidence, satisfactory to the County Manager, or his designee, that the approval criteria are again met or the default cured. Failure to respond in a timely manner to the notice, failure to meet approval criteria or failure to cure a default will result in revocation of the right to self-insure.

~~(G)~~ Taxicabs licensed by other jurisdictions and providing Taxicab Service in Arlington County pursuant to ~~section §~~ 25.1-26, shall maintain the insurance coverage required by the licensing jurisdiction.

~~(H)~~ ~~Section §~~ 25.1-7 is not intended to release a Vehicle Owner from its independent obligation to comply with insurance requirements of the Commonwealth of Virginia.  
(Ord. No. 09-16, 6-13-09)

§ 25.1-8. Suspension or ~~R~~evocation of Certificates.

~~(a)~~A. Certificates may be suspended for a period of one (1) to thirty (30) calendar days, or revoked, by the County Manager for any of the following reasons:

- ~~(1.)~~ Failure to operate Taxicabs, provide Taxicab Service, or engage in Taxicab Business in strict accordance with this ~~C~~chapter,
- ~~(2.)~~ Failure to maintain Taxicabs in good order and repair,
- ~~(3.)~~ Failure to maintain insurance as required by this ~~C~~chapter,
- ~~(4.)~~ Repeated and persistent violations by the Certificate-holder or Drivers, of the Code of Arlington County, Virginia, or the motor vehicle laws of the Commonwealth of Virginia,
- ~~(5.)~~ Failure to report any accident as required by this ~~C~~chapter,
- ~~(6.)~~ Failure of the Certificate-holder to pay any fees required by this ~~C~~chapter, or
- ~~(7.)~~ Failure to submit information or documents required by any provision of this ~~C~~chapter.

~~(b)~~B. Process and effect.

~~(1.)~~ After considering the reasons in subsection ~~A~~(~~a~~) above, and related facts and documents, the County Manager shall notify the Certificate-holder, by certified mail or hand delivery, that the County Manager is considering a suspension or revocation of a Certificate. The notice shall state the reasons for which the County Manager is considering such action. The Certificate-holder shall have fourteen (14) calendar days after receipt of such written notice to remedy all failures and violation(s) giving rise to the proposed suspension or revocation. Upon the expiration of such fourteen (14) day period, if all such failure(s) and violation(s) are not fully remedied, then the County Manager shall notify the Certificate-holder, by certified mail or hand delivery, of the date, time and place for a hearing before the County Manager. During such hearing the Certificate-holder shall be given an opportunity to be heard, including the opportunity to present relevant evidence against any suspension or revocation. If, after the hearing and consideration of the facts, the County Manager determines that a suspension or revocation is warranted, then the Certificate-holder shall be so notified in writing and the Certificate shall be suspended or revoked as provided in such notice. Such action shall be effective upon receipt by the Certificate-holder of such written notice, by certified mail or hand delivery.

~~(2.)~~ Notwithstanding any provision of this ~~C~~chapter to the contrary, if the County Manager determines that the reasons for any proposed or impending suspension or revocation of a Certificate constitute an immediate hazard to the public health, safety or welfare, then the County Manager may suspend or revoke a Certificate immediately upon delivery of a written notice thereof, by certified mail or hand delivery, to the Certificate-holder, without the necessity of the fourteen (14) day notice set forth in subsection ~~B.1~~(~~b~~)(~~1~~) above. Thereafter, the Certificate-holder shall be given notice, by certified mail or hand delivery, and an opportunity to be heard by the County Manager. If, after such hearing, the County Manager determines that the certificate should not have been immediately suspended or revoked, then the County Manager may either suspend or revoke the Certificate in accordance with the procedure specified in subsection ~~B.1~~(~~b~~)(~~1~~) above, or reissue the Certificate without the necessity of a reapplication by the Certificate-holder as otherwise required under subsection ~~C~~(~~e~~) below.

~~(c)~~C. Application after revocation of Certificate. If the County Manager revokes a Certificate, then the prior holder of the revoked certificate shall not engage in the Taxicab Business in Arlington County, unless and until the prior Certificate-holder reapplies for a Certificate in accordance with the application process of this ~~C~~chapter and is issued a Certificate. The prior Certificate-holder shall be entitled to reapply for a Certificate only at the times

provided in ~~section § 25.1-3.B.1-(b)(1)~~ but, in any event, not sooner than three hundred and sixty-five (365) calendar days after the effective date of the revocation.

~~(d)~~ In the case of a Certificate suspension, the Certificate-holder shall not be required to reapply for a Certificate at the end of the suspension periods. Permissions to engage in the Taxicab Business shall recommence as provided in the notice of suspension.  
(Ord. No. 09-16, 6-13-09)

**§ 25.1-9. Public ~~V~~ehicle ~~d~~river's ~~L~~icenses.**

~~(a)~~A. License required, limitations on the transporting of Passengers.

~~(1)~~ It shall be unlawful for any person to drive a Taxicab for hire from an origin within Arlington County to a destination within or outside of Arlington County except as provided in ~~section § 25.1-26~~ of this ~~C~~hapter, unless the Driver has first obtained, and has in his possession, a valid Public Vehicle Driver's License.

~~(2)~~ Upon the request of the Taxicab Inspector, his designee, or any law-enforcement officer, a Driver shall produce to the Taxicab Inspector, his designee, or law-enforcement officer, the Public Vehicle Driver's License, a current motor vehicle operator's license and any other requested identification.

~~(3)~~ The Public Vehicle Driver's License is valid only during such time as the Driver is operating a Taxicab authorized by a Certificate. The Public Vehicle Driver's License is not valid during such time as the Driver is operating a Taxicab authorized, licensed, or having a certificate issued from any other jurisdiction.

~~(4)~~ Each Public Vehicle Driver's License is the property of the County. Each Driver to which a license has been issued shall immediately surrender such License to the County Manager, or his designee, when such License is suspended or revoked.

~~(5)~~ This ~~C~~hapter does not prohibit a Driver from transporting passengers into Arlington County if the trip originated in a jurisdiction where the Driver and Taxicab are authorized to operate.

~~(6)~~ Except to the extent expressly permitted by federal or state law, unless a person has a valid Public Vehicle Driver's License issued pursuant to this ~~C~~hapter, such person shall not solicit business or pick up and transport a Passenger in Arlington County, provided that a Passenger may hire a Taxicab to transport such Passenger into Arlington County, wait for that Passenger, and then transport such Passenger to another location.

~~(b)~~B. Application for a Public Vehicle Driver's License.

~~(1)~~ Application for a Public Vehicle Driver's License shall be made in person, under oath, to the County Manager, or his designee.

~~(2)~~ The Applicant shall provide the following information and supporting documents with the application:

~~i~~a. Required personal data.

~~ii~~b. Physical condition of Applicant.

~~iii~~c. Traffic record (excluding parking citations) for ten (10) years immediately prior to the date of the application.

~~iv~~d. Criminal record including, but not limited to, an FBI record check.

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~~v~~e. Prior driving experience.

~~v~~f. Four (4) copies of a recent photograph of the Applicant, of size and manner prescribed by the County Manager, or his designee.

~~(c)~~C. The Applicant shall permit the County to make a record of his or her fingerprints.

~~(d)~~D. The Applicant shall successfully complete a written examination concerning the laws, rules and regulations governing the operation of Taxicabs, the County street system, and the location of prominent buildings and landmarks in Arlington County.

~~(e)~~E. *Investigation of Applicant.* The County Manager, or his designee, will cause to have an investigation made of the facts stated in an application for a Public Vehicle Driver's License and of other relevant matters. Unless otherwise prohibited by law, documents containing such investigation will be available to the Applicant, for inspection, upon written request.

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~~(f)~~F. *Issuance of Public Vehicle Driver's License.*

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~~(1.)~~ If the County Manager, or his designee, determines that the Applicant satisfies the requirements of this ~~C~~chapter, then the County Manager will issue a Public Vehicle Driver's License to the Applicant.

~~(2.)~~ The County Manager, or his designee, may refuse to issue a Public Vehicle Driver's License to an Applicant for, among other things, any of the following reasons:

~~i~~a. Repeated and persistent violations of motor vehicle laws of any jurisdiction.

~~ii~~b. Conviction, plea of guilty, or plea of *nolo contendere* to the violation of any law involving: the commission of a felony; any sex offense; solicitation of prostitution; alcohol; marijuana; any drugs classified as controlled substances under federal or state laws; gambling; larceny; theft; assault; battery; burglary; disorderly conduct; drunk in public or related charge; impaired driving; driving while intoxicated or under the influence; reckless driving; or a crime involving moral turpitude.

~~iii~~c. Applicant is on parole or probation for a criminal or traffic offense.

~~iv~~d. Applicant is younger than twenty-one (21) years of age.

~~(g)~~G. A Public Vehicle Driver's License shall not be issued to any person who has less than six (6) months' experience as a licensed driver of a motor vehicle anywhere in the United States or any of its possessions.

~~(h)~~H. Form of license, term, non-transferable, surrender, renewal.

~~(1.)~~ The form of the Public Vehicle Driver's License shall be prescribed by the County Manager, or his designee. The Public Vehicle Driver's License shall bear a recent photograph of the Public Vehicle Driver's License holder.

~~(2.)~~ The Public Vehicle Driver's License shall be valid for one (1) year from the date of issuance. A Public Vehicle Driver's License may be renewed for a two (2) year period, provided that the investigation by the County Manager, or his designee, of the Driver's traffic and criminal record reveals no criminal or traffic violations during the period of the expiring Public Vehicle Driver's License, and further provided that the applicant meets all other relevant requirements of this ~~C~~chapter. If the investigation reveals such violations, and if the Public Vehicle Driver's License is permitted to be renewed, it may be renewed for a one (1) year period. Temporary Public Vehicle

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Driver's Licenses may be issued by the Taxicab Inspector, or his designee, and shall not be valid for more than sixty (60) calendar days.

~~(3.)~~ The Public Vehicle Driver's License is the property of the County and is not transferable.

~~(4.)~~ Such License immediately shall be surrendered by the Driver to the County Manager, or his designee, upon such Driver's ceasing to drive a Taxicab in Arlington County and upon other instances required by this ~~C~~chapter.

~~(5.)~~ *Renewal of Public Vehicle Driver's License.* An application for a renewal of a Public Vehicle Driver's License shall conform to the procedures set forth in subsections ~~A~~(~~a~~) through ~~G~~(~~g~~) above.

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~~(6.)~~ *Public Vehicle Driver's License fees:*

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~~(1.)~~ For each original application for a Public Vehicle Driver's License the fee shall be: sixty-five dollars (\$65.00)

~~(2.)~~ For each renewal application for a Public Vehicle Driver's License the fee shall be: forty dollars (\$40.00)

~~(3.)~~ For each retest application for a Public Vehicle Driver's License the fee shall be: thirty dollars (\$30.00)

~~(4.)~~ For each replacement Public Vehicle Driver's License the fee shall be: twenty dollars (\$20.00)

~~(7.)~~ It shall be unlawful to operate a Taxicab without the Driver's Public Vehicle Driver's License being conspicuously displayed so as to be clearly visible at all times to Passengers.

~~(8.)~~ *Suspension, revocation and surrender of a Public Vehicle Driver's License*

~~(1.)~~ The County Manager, or his designee, may suspend, for a period of one (1) to sixty (60) calendar days, or revoke, the Public Vehicle Driver's License of any Driver licensed under this ~~C~~chapter for any of the following reasons:

~~i~~a. Repeated violations of motor vehicle laws of any jurisdiction;

~~ii~~b. Conviction of the crime of reckless driving;

~~iii~~c. Failure to report, to the Taxicab Inspector, any accident, however slight, involving a Taxicab and the License holder;

~~iv~~d. Driving of any Taxicab not in good order or repair;

~~v~~e. A violation of this ~~C~~chapter, regulations adopted hereunder, or any other applicable federal, state or County laws or ordinances;

~~vi~~f. A consistent pattern of reasonably verified complaints against the License holder or Driver within any twelve (12) month period, or a reasonably verified complaint involving a threat to health, safety or welfare related to the provision of Taxicab Service;

~~vii~~g. Conviction, plea of guilty, or plea of *nolo contendere* to the violation of any law involving: the commission of a felony; any sex offense; solicitation of prostitution; alcohol; marijuana; any drugs classified as controlled substances under federal or state laws; gambling; larceny; theft; assault; battery; burglary; disorderly conduct; drunk in public or related charge; impaired driving; driving while intoxicated or under the influence; or a crime involving moral turpitude;

~~viii~~. Creating or maintaining an incomplete, inaccurate, or false manifest; or

~~ix~~. Failure to comply with the requirements of any applicable taxicab reciprocity agreement approved by the Board.

~~(2)~~ Notice of such revocation or suspension shall be given by the County Manager, or his designee, in person, or in writing to the Public Vehicle Driver's License holder and shall be effective on the date indicated on such written notice or the date of the in-person delivery.

~~(3)~~ If any Public Vehicle Driver's License has been expired for a period of six (6) months or less, then the Driver may thereafter obtain authorization to operate a Taxicab in Arlington County by completing a renewal application. If any Public Vehicle Driver's License has been expired for a period of greater than six (6) months, then the Driver may thereafter obtain authorization to operate a taxicab in Arlington County by completing the application process in subsection ~~B~~ above.

~~(L)~~ The Public Vehicle Driver's License of any Driver shall automatically become void and shall be immediately surrendered by the Driver to the County Manager, or his designee, whenever the Driver's applicable permit or license to drive issued by the Commonwealth of Virginia or any other licensing jurisdiction has been revoked, suspended, or interrupted for any reason. Thereafter, a Public Vehicle Driver's License may only be obtained by such person upon making application therefore and satisfying the applicable requirements of this ~~C~~ chapter.

~~(M)~~ *Revocation of a Public Vehicle Driver's License.* The Public Vehicle Driver's License of any Driver shall automatically be revoked, without the necessity of any action by the County, and such License immediately shall be surrendered to the Taxicab Inspector, or his designee, by the Driver upon such Driver's conviction of, or a plea of, guilty or *nolo contendere*, to the violation of any law involving any:

~~(1)~~ Commission of a felony;

~~(2)~~ Sex offense;

~~(3)~~ Prostitution or solicitation thereof;

~~(4)~~ Narcotics; or

~~(5)~~ Revocation of driving permits issued by the Commonwealth of Virginia.

~~(N)~~ When an application for a Public Vehicle Driver's License has been denied or a License revoked, the Applicant or licensee may not reapply for a new License for a period of two (2) years after the date of application denial or license revocation.  
(Ord. No. 09-16, 6-13-09)

**§ 25.1-10. Appeal from ~~s~~Suspension, ~~r~~Revocation, or ~~d~~Denial of a Certificate or Public Vehicle Driver's License.**

~~(A)~~ Appeal procedure for Certificate-holders or Applicants.

~~(1)~~ The appeal of a decision of the County Manager, or his designee, concerning the suspension, revocation, or denial of a Certificate shall be by notice of appeal, made in writing, signed by the Certificate-holder, stating an address at which the Certificate-holder will receive subsequent notifications. The notice of appeal shall be filed with and received by the Clerk of the County Board no later than fourteen (14) calendar days after the date a notice of the decision of the County Manager, or his designee, has been hand delivered or mailed by certified mail. The notice of appeal shall clearly and specifically state: the decision appealed from, all reasons why the

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decision is claimed to not be in accordance with this ~~C~~chapter, and the requested relief. Any such notice which is not timely filed or fails to provide such required information shall be denied.

~~(2.)~~ The Clerk of the County Board will notify the County Manager, or his designee, of the filing of a notice of appeal.

~~(3.)~~ After the receipt by the Clerk of the notice of appeal, the Certificate-holder will be entitled to a hearing by the Board which shall be held no sooner than ten (10) calendar days after the filing of the notice of appeal.

~~(4.)~~ The Certificate-holder will have the right to present his or her case in person or by counsel licensed to practice law in the Commonwealth of Virginia.

~~(5.)~~ The Board will consider information and documents offered by the Certificate-holder and County staff. The hearing need not be conducted according to technical rules relating to evidence and witnesses, provided, however, that the Board only need consider relevant information and documents. The Board may affirm, reverse, or modify the decision of the County Manager, or his designee.

~~(6.)~~ If the Board reverses the County Manager's decision, so as to restore a Certificate, then the Board will direct the County Manager, or his designee, to restore the Certificate in accordance with the order of the Board.

~~(7.)~~ During the pendency of an appeal, the decision of the County Manager, or his designee, shall remain in full force and effect.

~~(b)B.~~ Appeal procedure for Public Vehicle Driver's License holders or Applicants.

~~(1.)~~ The appeal of a decision of the County Manager, or his designee, concerning the suspension, revocation or denial of a Public Vehicle Driver's License or application shall be by notice of appeal, made in writing, signed by the License holder or Applicant, stating an address at which the License holder or Applicant will receive notices. The notice shall be filed with the Clerk of the County Board not later than fourteen (14) calendar days after the date a notice of such decision has been hand delivered or mailed by certified mail. The notice of appeal shall clearly and specifically state: the decision appealed from, all reasons why the decision is claimed to not be in accordance with this ~~C~~chapter, and the requested relief. Any such notice which is not timely filed or fails to provide such required information shall be denied.

~~(2.)~~ The Clerk of the County Board will notify the County Manager, or his designee, of the filing of a notice of appeal.

~~(3.)~~ After the filing a notice of appeal, the License holder or Applicant will be entitled to a hearing before a hearing examiner, who will be a lawyer admitted to practice in the Commonwealth of Virginia, and employed by the County for the purpose of conducting such hearings. The time and place of the hearing will be scheduled by the Clerk of the County Board. The Clerk shall give notice of the hearing to the hearing examiner and shall give notice, by certified mail, of the date, time and location of the hearing to the license holder or Applicant.

~~(4.)~~ The License holder or Applicant will have the right to present his case in person or by counsel licensed to practice law in the Commonwealth of Virginia.

~~(5.)~~ The hearing examiner will consider documentary evidence as well as statements offered by the License holder or Applicant, and County staff. The hearing need not be conducted according to technical rules relating to evidence and witnesses, provided, however, that the hearing examiner only need consider relevant documents and statements. The hearing examiner may confirm,

modify, or reverse the County Manager’s decision from which the License holder or Applicant is appealing.

(6.) If, in a case of suspension, revocation or denial of a License by the County Manager, the hearing examiner’s decision is to reverse such suspension, revocation or denial, then the hearing examiner will advise the County Manager, or his designee, to issue or restore the Public Vehicle Driver’s License in accordance with the order of the hearing examiner.

(7.) If the hearing examiner’s decision has the effect of neither issuing, reinstating, nor restoring a Public Vehicle Driver’s License, then the appealing License holder or Applicant shall not file a new application within two (2) years after the date of the final decision by of the hearing examiner on the appeal.

(8.) During the pendency of an appeal, the decision of the County Manager, or his designee, shall remain in full force and effect.

(Ord. No. 09-16, 6-13-09)

§ 25.1-11. Records and Reports.

(A) Information which shall be kept on file by Certificate-holders with the County. Thirty (30) days after the effective date of the enactment of this Chapter, every Certificate-holder shall file with the County Manager, or his designee, the Certificate-holder’s name, all business street addresses, depot, terminal and garage addresses, all business telephone numbers listed in the Certificate-holder’s name, the names of all Drivers, such Driver’s Public Vehicle Driver’s License numbers and street addresses, the names and addresses of all Vehicle Owners, and the make and meter number of the Taximeter in each Taxicab Vehicle. Not later than forty-eight (48) hours after a request for information concerning any change in any of the above-required information, the Certificate-holder shall provide to the County Manager, or his designee, in writing, such changed information.

(B) Driver’s daily manifest.

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(1.) Each Driver shall maintain a daily manifest upon which shall be recorded accurately and legibly by the Driver, at the end of each trip, the following: the time the Taxicab began and ceased operation on the street; the Taxicab number and Driver’s name; all trips made each day, showing time and address of origin and address of destination of each trip; the number of Passengers of each trip; and the corresponding amount of fare. In addition, the Driver shall record on the manifest: the meter register readings at the beginning and end of each tour of duty for total miles during such tour; paid miles; trips; units; extra Passengers; the speedometer readings; and all additional information required by any reciprocity agreement.

(2.) Drivers of Wheelchair-accessible Vehicles shall designate on the manifest the trips made by persons in wheelchairs.

(3.) All completed manifests shall be delivered by the Driver to the Certificate-holder at the conclusion of the Driver’s tour of duty. If the Driver changes Taxicabs during a tour of duty, then such Driver shall maintain a separate manifest for that portion of the tour of duty in which another vehicle is used.

(4.) The forms for such records will be furnished to the Driver by the Certificate-holder and shall be subject to the approval of the County Manager, or his designee.

(C) It shall be unlawful for any Driver to create or maintain an incomplete, inaccurate or false manifest.

(D) Every Certificate-holder shall retain and preserve all Drivers’ manifests in a safe place for one (1) year after the end of the tour of duty.

~~(e)E.~~ Driver’s manifests shall be made available immediately upon demand for inspection by the Taxicab Inspector, or his designee, or any law-enforcement officer.

~~(e)E.~~ *Accident reports.* Every accident in which any Taxicab is involved shall be reported in writing by the Certificate-holder, Vehicle Owner, or by the Driver to the Taxicab Inspector, or his designee, within five (5) calendar days of such accident, even if no report is required by other authorities to be filed.

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~~(e)G.~~ *Financial information.* The County Manager, or his designee, periodically may require every Certificate-holder and/or Vehicle Owner to provide written information, with supporting documentation, accurately indicating the revenues, expenses, and property owned by such person or entity, and all other financial and statistical information required by the County Manager, or his designee regarding the Taxicab Business. Such information shall be provided in a format required by the County Manager or his designee. Upon such a request by the County Manager, or his designee, each Certificate-holder and/or Vehicle Owner shall supply the complete and accurate information and supporting documents within thirty (30) calendar days after the date of the request.

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~~(h)H.~~ *Financial agreements.* The County Manager, or his designee, may at any time require that all Certificate-holders deliver to the County Manager, or his designee, true copies of all current agreements between the Certificate-holder and Owners, and agreements among Certificate-holder or Vehicle Owners and third parties, which agreements address the payment for any or all of the following: use of Taxicab, rental payment for use of colors, rental payment for use of radio equipment, payment for dispatching service, obligation of drivers to perform unpaid services for Certificate-holders or Owners, and arrangements between Certificate-holders and Drivers concerning credit card fees, and any other agreements which the County Manager, or his designee, determines necessary to implement the provisions of this ~~E~~chapter. The County Manager, or his designee, may require that Certificate-holders and/or Vehicle Owners at designed times deliver updated true copies of such agreements. All such agreements shall be delivered to the County Manager, or his designee, within the time period specified in the request. The term “agreements” as used in this subsection shall include accurate written summaries of verbal agreements, if any.

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~~(i)I.~~ Other information and documents concerning a Certificate-holder’s Taxicab Business. The County Manager, or his designee, periodically may require a Certificate-holder to provide to the County with documents and information regarding Certificate-holder’s Taxicab Business, which documents shall be accurate and complete.

~~(j)J.~~ It shall be unlawful for any Certificate-holder to create or maintain false records and documents. (Ord. No. 09-16, 6-13-09)

**§ 25.1-12. Rate ~~s~~Schedule, ~~t~~Tolls, ~~p~~Payment.**

The rate schedule for fares and service charges is as follows:

~~(a)A.~~ For the first one-fifth (1/5) mile (initial drop charge): two dollars and seventy-five cents (\$2.75)

~~(b)B.~~ For each succeeding one-fifth (1/5) mile or fraction thereof (mileage charge): forty cents (\$0.40)

~~(c)C.~~ For each sixty-four (64) seconds of wait time: forty cents (\$0.40)

Waiting time begins five (5) minutes after the appointed pickup time, once the Taxicab arrives at the pickup location specified by the potential Passenger. The Driver shall not charge a Passenger for early response to any call for Taxicab Service. Waiting time will also be charged while the Taxicab is stopped, or slowed for traffic to a speed of less than ten (10) miles per hour. While such stopping or slow traffic time is charged, there shall be no charge for mileage. Waiting time includes time consumed because of stopovers en route at the direction of a Passenger, but waiting time shall not include time lost due to the inefficiency of a Taxicab or Driver.

~~(d)D.~~ For each additional Passenger over six (6) years of age when more than one (1) Passenger is transported: one dollar (\$1.00)

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Should more than one (1) Passenger enter a Taxicab, bound for different destinations, the fare shall be as follows: whenever a Passenger exits the Taxicab and pays the fare, the Driver shall reset the meter upon the Passenger's departure. Whenever a Passenger exits the Taxicab and does not pay the fare, the Driver shall not reset the meter.

~~(e)~~**E.** For each suitcase (in excess of two (2)), if handled by the Driver: fifty cents (\$0.50)

~~(f)~~**F.** For each footlocker or similar-size case handled by the Driver: two dollars (\$2.00)

~~(g)~~**G.** Tolls paid by the Driver between the point of Passenger pickup and the Passenger destination will be added to the Passenger's fare, provided that the Passenger is first informed by the Driver of the existence of a toll, and further provided that the Driver first gives the Passenger the option of the Taxicab taking an alternative route, which route would not require the payment of a toll. The Passenger shall be provided a receipt for such toll if the Passenger so requests.

~~(h)~~**H.** Provided that the Passenger is first informed by the Driver of the existence of an airport surcharge, where the Driver pays such surcharge, the surcharge will be added to the total fare. The Passenger shall be provided a receipt for such airport surcharge if the Passenger so requests.

~~(i)~~**I.** *Fare receipt.* When so requested by a Passenger, the Driver shall give to the Passenger a written receipt signed by the Driver indicating the Public Vehicle Driver's License number, the Taxicab number, the origin and destination of the trip, items for which charge is made, the amount paid, time and date.

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~~(j)~~**J.** Certificate-holders may offer discounts to senior citizens and Persons with Disabilities in an amount not to exceed twenty-five ~~percent~~ (25%) ~~percent~~.

~~(k)~~**K.** Payment for Taxicab Service which is prepaid may be made by coupons or vouchers purchased before the time of the Taxicab trip. Alternatively, a pre-payer may open an account with the Taxicab Company, pay for Taxicab Service in advance, and then draw down the prepaid account.  
(Ord. No. 09-16, 6-13-09)

**§ 25.1-13. Rate ~~d~~Display ~~e~~Cards.**

~~(a)~~**A.** The County Manager, or his designee, will issue, to each Certificate-holder, two (2) County-approved rate display cards for each Taxicab authorized to operate under a Certificate. Such display cards shall be issued upon payment to the County of the actual cost of printing and shipping such cards. Such display cards shall indicate the rates of fare as provided by, or authorized in, this ~~C~~chapter. Such display cards shall further include a telephone number provided by the County Manager, or his designee, for inquiries about taxi regulation. Each display card shall be attached by the Certificate-holder or Driver to the Taxicab's right and left rear windows, in such a fashion as to be clearly visible, at all times, from the inside and outside of the Taxicab. The rate display cards shall neither be transferred nor resold to any Person, and shall not be transferred or resold to any Person other than the Vehicle Owner. If such rate display cards are sold to any Vehicle Owner, then the price to the Vehicle Owner shall be the price paid by the Certificate-holder to the County.

~~(b)~~**B.** *Violations of this section.* A willful violation of this section by a Certificate-holder shall be cause for revocation or suspension of the Certificate. A willful violation of this section by a Driver shall be cause for suspension or revocation of the Driver's Public Vehicle Driver's License.  
(Ord. No. 09-16, 6-13-09)

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**§ 25.1-14. Duty of Driver and Certificate-~~h~~Holder to ~~e~~Charge ~~a~~Authorized ~~f~~Fare or ~~e~~Charge.**

It shall be unlawful for any Driver or Certificate-holder to charge, cause to be charged, or knowingly allow to be charged, any fare or service charge other than provided by, or authorized in, this ~~C~~chapter.  
(Ord. No. 09-16, 6-13-09)

**§ 25.1-15. Duty of Passenger to ~~p~~Pay ~~f~~Fare or ~~e~~Charge.**

It shall be unlawful for any person who receives Taxicab Service in Arlington County, Virginia, to fail or refuse to pay any lawful fare or charge due to a Taxicab Driver.  
(Ord. No. 09-16, 6-13-09)

§ 25.1-16. Adjustments in ~~r~~Rates of ~~f~~Fare.

~~(a)~~A. *Rate adjustment process.* The County Board may, from time to time, after public notice, and after a public hearing, prescribe just and reasonable rates of fare, changes in rates, and other charges or surcharges. The rates so prescribed may be maximum rates or rates certain. Members of the public seeking a change in rates of fare and other charges or surcharges may request the County Board to consider approving such changes and other charges and surcharges.

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~~(b)~~B. Upon petition by any Certificate-holder to the County Manager, received not later than June 30 in odd-numbered years, or the County Manager, on his own accord, may consider recommending to the County Board ordinance amendments regarding changes in rates of fares, charges or surcharges. The County Manager also may make such other recommendations as the Manager deems necessary and appropriate.

~~(c)~~C. Any petition described in subsection ~~B~~(~~b~~) above shall be filed by the Certificate-holder simultaneously with the County Manager and the Clerk of the County Board. A copy of such petition will be sent by the County Manager, or his designee, to all Certificate-holders within seven (7) Days of receipt of such petition by the County Manager.

~~(d)~~D. Each petition shall contain the following:

1. The existing rates of fare, charges, and surcharges which are requested to be changed;
2. The proposed new rates of fares, charges, and surcharges; and
3. A sample billing analysis which shall indicate the cost to a typical Passenger, in terms of first drop and mileage charge only, for each of twenty (20) trips, ranging from one (1) mile to twenty (20) miles, in one (1) mile increments, using existing rates and proposed new rates of fare, including for each increment the percent change. Trip lengths analyzed will be precise to the one-hundredth (1/100) of a mile, with the decimal portion (i.e., 0.00 through 0.99) selected at random.

~~(e)~~E. Rate change petitions will be analyzed by the County Manager, or his designee, using information submitted by the Certificate-holder under subsection ~~D~~(~~d~~) above and other information which the County Manager deems relevant and appropriate to the determination of changes in rates of fares, charges, and surcharges, including but not limited to, fluctuation in the Consumer Price Index (CPI) and related transportation cost indices. Based upon such analysis, the County Manager will make a recommendation to the County Board.

~~(f)~~F. The Transportation Commission may review such petitions and the County Manager's recommendation(s) for the purpose of making a recommendation to the County Board. The Transportation Commission may hold a hearing to consider evidence related to such petitions or recommendations, or related to any rule, regulation, or practice regarding the same, as a basis for Transportation Commission recommendations to the County Board concerning the appropriate Taxicab rates, charges, or surcharges. Any Transportation Commission recommendation provided to the County Board shall be provided not later than a date determined by the County Manager. Thereafter, the County Board may consider enacting an ordinance or ordinance amendment changing the rates of fares, charges, or surcharges. If the Transportation Commission does not forward a recommendation to the County Board by the date determined or the County Manager, then the Board may act without any such recommendation.

~~(g)~~G. Notwithstanding the biennial consideration by the County Manager of any requested or proposed changes in rates of fares, charges, or surcharges, such consideration shall not prohibit the County Board from enacting at any time any ordinance amendments, regarding Taxicab rates or otherwise, on an emergency basis or otherwise.  
(Ord. No. 09-16, 6-13-09)

§ 25.1-17. Operation of Taxicabs.

~~(A)~~ *Out-of-service notice.* At all times when a Taxicab is not available for transporting any Passenger, the Driver shall conspicuously display, upon or in the Taxicab, a notice or placard, in a form approved by the County Manager, or his designee, indicating that the Taxicab is out of service.

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~~(B)~~ *Duty to accept and convey Passengers.* When directed by the Taxicab dispatcher, or upon request of any potential Passenger, each Driver shall accept and convey any potential Passenger, unless:

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- ~~(1)~~ The Taxicab is out of service;
- ~~(2)~~ The Driver is expressly committed to accept or convey another Passenger or potential Passenger; or
- ~~(3)~~ The Driver is prohibited by this ~~C~~chapter or by law from hiring or accepting such potential Passenger.

~~(C)~~ Any Driver refusing to transport a potential Passenger for any reason other than those stated in subsection ~~B~~(~~B~~) above shall:

- ~~(1)~~ immediately report the incident to the dispatcher or to the Certificate-holder, and
- ~~(2)~~ not later than forty-eight (48) hours after the occurrence, deliver a written report to the Taxicab Inspector or his designee, in an approved method, which report shall include the date, time, address or location, and a description of the incident, and all reasons why the transportation was refused.

~~(D)~~ A Driver may terminate the transportation of a Passenger or refuse to transport a potential Passenger if the Driver reasonably believes the Driver's life, safety or property is in danger. In such event, the Driver shall make the report required by subsection ~~C~~(~~C~~) above.

~~(E)~~ *Use of tobacco within Taxicab.* A Driver, while the Taxicab is occupied by a Passenger, shall not have in his or her possession a lighted cigarette, lighted cigar or lighted pipe. Furthermore, no Passenger shall have in his or her possession a lighted cigarette, lighted cigar or lighted pipe inside a Taxicab engaged in Taxicab Service. No Driver shall engage in chewing tobacco or using snuff while the Taxicab is occupied by a Passenger. A sign indicating that smoking or use of tobacco is not permitted shall be posted in each Taxicab.

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~~(F)~~ *Use of cell phone, text-messaging device, sound system, or radio by Driver.* No Driver, while the Taxicab is occupied by a Passenger, shall play a sound system or radio if the Passenger or Passengers request that the Driver not do so. Additionally, no Driver shall use a cell phone or text-messaging device while the Taxicab is occupied by a Passenger. This subparagraph ~~F~~(~~F~~) shall not apply to any method of communication used by a Driver to: communicate with a Taxicab dispatcher; communicate with law enforcement personnel; or obtain traffic information.

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~~(G)~~ *Receiving and discharging passengers.* No Driver shall stop a Taxicab, or any portion thereof, on the traveled portion of any highway, street, or other place open to use by the public for vehicular travel, to receive or discharge any Passenger or their belongings, except where motor vehicle parking or stopping is specifically permitted by law. When so permitted, the Driver shall park or stop the Taxicab in the manner permitted by law. No Driver shall load or unload Passengers or their belongings in a manner that impedes or interferes with the orderly flow of vehicular traffic.

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~~(H)~~ *How Passenger of the vehicle is to enter or leave Taxicab.* A Driver shall not permit any potential Passenger to enter a Taxicab, or permit a Passenger to exit a Taxicab, from the left side, except when the Taxicab is at the left curb of a one (1) way street or when the Taxicab is parked or standing perpendicular to the curb at a location where such parking or standing is permitted.

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~~(+)I.~~ Restriction on number of Passengers in any taxicab. A Driver shall not permit more persons to enter a Taxicab in Arlington County in excess of the seating capacity thereof, as rated by the Taxicab's manufacturer, including the Driver.

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~~(+)J.~~ Acceptance of additional Persons. Whenever any Taxicab is occupied by a Passenger, the Driver shall not permit any other Person to occupy such Taxicab, unless the Passenger, having been requested by the Driver, gives affirmative permission to the Driver to do so.

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~~(+)K.~~ Deception of Passengers. A Driver shall not deceive any Passenger, or potential Passenger, as to the destination, route, rate of fare, or any other provision of this Chapter.

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~~(+)L.~~ Trips to be made by most direct route. A Passenger may request that a Driver take a Passenger-specified route to the Passenger's destination. If a Passenger does not specify a route, then a Driver shall take the most direct route from the point of pickup to the destination. A Driver may suggest, and a Passenger may approve, a less direct route.

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~~(+)M.~~ Compliance with lawful requests of Passengers. All Drivers shall comply with all reasonable and lawful requests of Passengers.

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~~(+)N.~~ Lost personal property. All personal property found in a Taxicab at the end of a trip shall be immediately returned by the Driver or Certificate-holder to the Passenger who left the item(s) in the Taxicab, if the identity of the Passenger is known or can be reasonably ascertained. Otherwise, the personal property shall be deposited by the Driver with the Certificate-holder at the conclusion of the Driver's tour of duty. A notation describing the property, any identifying marks therein, and its estimated value shall be made on the Driver's manifest. A written report including a description of the property and its estimated value shall be submitted by the Driver or Certificate-holder to the Taxicab Inspector within twenty-four (24) hours of the finding of the property.

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~~(+)O.~~ Alcohol and narcotics. No Driver shall ingest or be under the influence of alcoholic beverages, narcotics or other habit-forming drugs while operating a Taxicab. No Driver shall transport in a Taxicab alcoholic beverages or narcotics other than those carried in possession of a paying Passenger.

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~~(+)P.~~ Length of Driver's working day. No Driver of any Taxicab shall operate, nor shall a Certificate-holder require or permit any Driver to operate, a Taxicab for more than thirteen (13) hours within any consecutive twenty-four (24) hour period.

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~~(+)Q.~~ Solicitation. No Driver shall solicit potential passengers by word, signal or otherwise.

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~~(+)R.~~ Leaving Public Vehicle Driver's License in unattended Taxicab. A Driver shall not leave any Public Vehicle Driver's License in an unattended Taxicab.

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~~(+)S.~~ Use of Taxicab for unlawful purposes. No Driver or Vehicle Owner or Certificate-holder shall use, or permit to be used any Taxicab for any unlawful purpose.

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~~(+)T.~~ Drivers to be clean and neat. Every Driver of a Taxicab while on duty shall be clean and neat in dress and in person.

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~~(+)U.~~ Taxicabs to be attended by Drivers. Every Taxicab, while in operation and available for the transportation of Passengers, shall be attended by the Driver at all times.

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~~(+)V.~~ Taxicab Stands. No Taxicab shall occupy a Taxicab Stand except for the purpose of being held forth for hire. Taxicabs shall enter public stands only at the rear approach to such stands. Every Taxicab shall move forward toward the front of the stand immediately as space becomes available for the Taxicab by either the departure or movement of preceding Taxicab(s). When a Taxicab Stand is fully occupied by the maximum number of Taxicabs authorized for such stand, then no Driver shall loiter or wait nearby for the purpose of occupying a

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space expected to become available within the Taxicab Stand. Prospective passengers may choose to hire any Taxicab occupying any position in a Taxicab Stand.

~~(w)W.~~ *Compliance with laws and ordinances.* Every Taxicab shall be operated in accordance with all applicable federal, state and local laws, ordinances and regulations. (Ord. No. 09-16, 6-13-09)

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§ 25.1-18. Taximeters, ~~m~~Maintenance and ~~i~~Inspection ~~f~~Thereof.

~~(a)A.~~ Taximeter required.

~~(1.)~~ All Taxicabs operating under the authority of this ~~C~~chapter shall be equipped with Taximeters capable of computing fares on a mileage and time basis. Taximeters must register on visual counters displaying the following information: total miles, paid miles, number of trips, and the cost of "extras."

~~(2.)~~ Every Taximeter shall be set in strict accordance with the current rates of fare established by this ~~C~~chapter. The Taximeter shall accurately compute the fare, and shall clearly satisfy all other requirements of this ~~S~~section.

~~(b)B.~~ *Requirements prior to use.* Prior to being used in passenger service, each Taximeter required by this section shall be calibrated by a Commonwealth of Virginia-certified Weights & Measures technician indicated by a Placed in Service Report and a tamper-proof seal affixed thereto.

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~~(c)C.~~ Tampering of Taximeters prohibited.

~~(1.)~~ It shall be unlawful for any Person to tamper with any Taximeter required by this section.

~~(2.)~~ It shall be unlawful for any Person to change or cause to be changed any part of any Taximeter or any part of any Taxicab to which such Taximeter is attached, directly, or indirectly, which change may alter the accuracy of such Taximeter.

~~(3.)~~ It shall be unlawful for any Person to operate or permit to be operated any Taxicab for hire if such Taxicab's Taximeter has not been properly sealed in accordance with this section.

~~(d)D.~~ *Inspection of Taximeters.* The Taxicab Inspector, or his designee, may require that each Taximeter be inspected annually, on a schedule as determined by the Taxicab Inspector, or his designee. Without limiting the foregoing, all Taximeters shall be subject to inspection at all times, at a place designated by the Taxicab Inspector, or his designee, for compliance with the requirements of this ~~C~~chapter and any rules and regulations promulgated hereunder.

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~~(e)E.~~ It shall be unlawful for any Person to operate, or permit to be operated, a Taxicab for hire with knowledge that the Taxicab is not in strict compliance with this section. (Ord. No. 09-16, 6-13-09)

§ 25.1-19. Vehicles and ~~e~~Contents.

~~(a)A.~~ All motor vehicles meeting the definition of Taxicab shall be subject to the requirements of this ~~C~~chapter. Unless otherwise provided in this ~~C~~chapter, every Taxicab shall be of passenger car design, carry no more than six (6) passengers excluding the driver, and shall be equipped with at least two (2) doors for the entrance and exit of Passengers, in addition to the front door located on the Driver's side. All passenger doors shall be constructed so as to remain securely fastened during normal operation of the Taxicab, provided, however, that such passenger doors shall be designed so as to be easily opened by a Passenger in an emergency. Every Taxicab shall be equipped with tires having at least two thirty-seconds (2/32) of an inch of tread. No Taxicab shall be operated with unsafe tires or tires not meeting the above tread requirement. Every Taxicab shall be equipped with a properly inflated spare tire mounted on the appropriate rim.

~~(B)~~ No Taxicab shall be equipped or modified in such a way as to shield the occupants or Driver from observation from outside the Taxicab.

~~(C)~~ Every Taxicab in service shall be equipped with a properly installed speedometer and odometer, each maintained in good working order and each exposed to view. If a Taxicab is found to have a defective speedometer or odometer, then the Taxicab shall not be operated until the speedometer or odometer is repaired. The Certificate-holder shall provide to the Taxicab Inspector or his designee, within fifteen (15) Days of any odometer replacement, the date of change, old odometer reading, reading on replacement odometer at the time of installation thereof, and Taxicab number.

~~(D)~~ The upholstery covering the interior lining of every Taxicab shall be of a synthetic or any other nonabsorbent, washable material, with the exception of a "kick" strip not exceeding a reasonable height at the bottom of the doors. The rear cushion shall be removable. No floor mat shall be permitted in any Taxicab, unless it is made of nonabsorbent, washable material and easily removable, except when such floor-covering material is cemented in place on the floor of a Taxicab and the entire area of the floor is covered.

~~(E)~~ Every Taxicab shall be so constructed and shall be maintained as to provide for the safety of the public and for continuous and satisfactory operation. Every Taxicab shall be further constructed and manufactured to reduce to a minimum, noise and vibration caused by operation. Every Taxicab shall be structurally sound and shall neither be placed in, nor remain in, service unless the taxicab has passed state inspection at the required times. All factory-installed safety equipment shall be in good working condition at all times. A Certificate-holder will be given a reasonable time to complete needed repairs, except in cases where the defect affects the safety of the Taxicab and/or the Passengers therein. In such cases, the Taxicab shall not be operated until all defects have been corrected. Every Taxicab shall be painted to give reasonable protection to all exposed surfaces from the elements, and all identifying marks shall be clearly legible at all times.

~~(F)~~ Every Taxicab shall be equipped with cruising lights mounted on the forward portion of the roof of the Taxicab. The lights shall be of a design so as to clearly identify the vehicle as a Taxicab. A Driver, when offering Taxicab Service, shall have the cruising light on from sunset to sunrise. Each Taxicab shall also be equipped with one (1) or two (2) marker lights on the forward portion of the roof of the taxicab. The marker lights shall be connected to, and shall be operated by the Taximeter such that when the Taximeter is on, the marker lights are off and vice versa.

~~(G)~~ Color scheme and insignia for Taxicabs:

~~(1.)~~ Every Taxicab authorized under a Certificate shall have a color scheme, insignia and cruising light of design, uniform with other Taxicabs authorized under such Certificate, and approved by the County Manager, or his designee.

~~(2.)~~ No approved color scheme, insignia, cruise light design, or addition of advertising or advertising devices on or within Taxicabs shall be changed without the prior written approval of the County Manager, or his designee.

~~(H)~~ All identifying marks on Taxicabs shall be plainly distinguishable in letters not less than three (3) inches in height. The Taxicab number shall not be less than four (4) inches in height, permanently painted or otherwise permanently affixed to each of the two (2) front quarter panels of the Taxicab and to the right and left side of the rear window. The lettering shall indicate the name of the Taxicab Company.

~~(I)~~ Every Wheelchair-accessible Taxicab shall be plainly marked with a reflective six (6) inch by six (6) inch blue with white markings international wheelchair symbol on each side of the Taxicab and on the rear of the Taxicab. All wheelchair symbols shall be above door handle height. A reflective four (4) inch by four (4) inch international wheelchair symbol shall be placed on the top center of the windshield.

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~~(+)I.~~ If a motor vehicle is taken out of service as a Taxicab on a permanent basis, then the Certificate-holder and Vehicle Owner shall, within seventy-two (72) hours thereafter, remove or cause to be removed the Taxicab markings along with all other indications of the vehicle's previous use as a Taxicab.

~~(+)K.~~ Every Taxicab shall be equipped with a light capable of illuminating the interior of the Taxicab and controlled by the operation of the doors or manually controlled by the Driver.

~~(+)L.~~ Every Taxicab shall be kept in as clean and sanitary a condition as is reasonably possible considering existing weather conditions. A Certificate-holder shall be given reasonable time in which to clean a Taxicab upon direction of the Taxicab Inspector or his designee.

~~(+)M.~~ Every Taxicab shall be equipped at all times with heating and air conditioning units in good working condition. Such units shall be turned on or off by the Driver at the Passenger's request.

~~(+)N.~~ The average fuel efficiency (based on the United States Environmental Protection Agency combined (city/highway) fuel-efficiency ratings for driving), during the specified twelve (12) month period, among all Taxicabs placed into service as additional and replacement vehicles ("New Taxicabs") by such Certificate-holder shall be the following or after July 1, 2012, any more stringent federal Corporate Average Fuel Economy standard in effect at that time:

Twelve (12) Month Periods beginning July 1 and ending June 30	Average Fuel-Efficiency Rating for New Taxicabs (miles per gallon)
2010/11 and 2011/12	26 or greater
2012/13 and 2013/14	28 or greater
2014/15 and 2015/16	30 or greater
2016/17 and 2017/18	32 or greater
2018/19 and 2019/20	34 or greater
2020/21 and thereafter	35 or greater

Wheelchair-accessible Taxicabs shall be excluded from the above fuel-efficiency calculations. Taxicabs not primarily powered by gasoline or diesel fuel also shall be excluded from the above fuel-efficiency calculations.

~~(+)O.~~ Any Certificate-holder that fails to meet or exceed the applicable average fuel efficiency ("Rating") for any twelve (12) month period specified in subsection ~~N(+)~~ above, upon written notice from the County Manager, or his designee, shall be subject to the requirements of subsection ~~Q(+)~~ below.

~~(+)P.~~ As of March 1, 2011, and as of each March 1 thereafter, each Certificate-holder that has placed any New Taxicabs into service since July 1 of the previous year shall meet the Rating for the applicable twelve (12) month period in subsection ~~N(+)~~ above. Any Certificate-holder that fails to meet or exceed such Rating, upon written notice from the County Manager, or his designee, shall be subject to the requirements of subsection ~~Q(+)~~ below.

~~(+)Q.~~ A Certificate-holder that has been provided notice under subsection ~~O(+)~~ or ~~P(+)~~ or both, above, shall not place into service any New Taxicab unless the Rating of such Taxicab equals or exceeds the Rating for the applicable twelve (12) month period specified in subsection ~~N(+)~~.

~~(+)R.~~ New Taxicabs that are Wheelchair-accessible or not primarily powered by gasoline or diesel fuel are permitted with any Rating.

~~(+)S.~~ If the County Manager, or his designee, determines that any Certificate-holder, receiving a notice under subsection ~~O(+)~~ or ~~P(+)~~ above, has increased the average Rating for New Taxicabs so as to meet or exceed the applicable Rating in subsection ~~N(+)~~ above, then the County Manager, or his designee, may issue notification to such Certificate-holder that it is no longer subject to the prohibition in subsection ~~Q(+)~~ above.

~~(a)T.~~ Prior to placing in service a Wheelchair-accessible Taxicab, the Certificate-holder shall present to the County Manager, or his designee, proof of the Driver's successful completion of training in the use of wheelchair lifts, in accordance with the County Manager's requirements.  
(Ord. No. 09-16, 6-13-09)

**§ 25.1-20. Age of ~~v~~Vehicles.**

~~(a)A.~~ It shall be unlawful for any Certificate-holder to place, or permit to be placed, into Taxicab Service in Arlington County any motor vehicle which has been previously used for any purpose, with a model-year age greater than two (2) years, or with greater than eighty thousand (80,000) recorded miles of use, and such vehicle shall be approved by the County Manager, or his designee, after being satisfied as to the condition of the Taxicab. Notwithstanding the above, a Wheelchair-accessible motor vehicle, which has been used previously for any purpose, having a model-year age of less than four (4) years and not greater than one hundred and twenty-five thousand (125,000) recorded miles, may be approved by the County Manager, or his designee, after being satisfied as to the condition of the Taxicab.

~~(b)B.~~ It shall be unlawful for any Certificate-holder to operate, or permit to operate, a motor vehicle for Taxicab Service any vehicle having a model-year age greater than seven (7) years or with greater than three hundred and fifty thousand (350,000) recorded miles of use.

**§ 25.1-21. Inspection of Taxicabs; ~~i~~Inspection ~~f~~Fee; ~~p~~Procedure ~~w~~When Taxicab is ~~f~~Found in ~~u~~Unsafe, ~~u~~Unfit or ~~u~~Unclean ~~e~~Condition.**

~~(a)A.~~ The Taxicab Inspector, or his designee, may require that each Taxicab be inspected annually, on a schedule as determined by the Taxicab Inspector, or his designee. Notwithstanding the foregoing, each Taxicab operating under a Certificate within Arlington County, Virginia shall be subject, at all times, to inspection by the Taxicab Inspector, his designee, or any law enforcement officer, at such times and places determined by such persons.

~~(b)B.~~ The fee for each scheduled inspection of a new or in service Taxicab operating under a Certificate in Arlington County, Virginia shall be twenty dollars (\$20.00). Such fee shall be paid at such times as determined by the Taxicab Inspector or his designee.

~~(c)C.~~ If, after an inspection, any Taxicab is determined by the Taxicab Inspector to be in unsafe condition, then the Taxicab shall immediately be removed from service by the Driver and the Certificate-holder. The Taxicab shall not be operated thereafter until the unsafe condition has been remedied and the Taxicab Inspector, or his designee, has re-inspected such Taxicab and authorized its return to service.  
(Ord. No. 09-16, 6-13-09)

**§ 25.1-22. Obstruction and ~~h~~Hindering of ~~e~~Official ~~d~~Duties; ~~f~~False ~~s~~Statements.**

~~(a)A.~~ It shall be unlawful for any Person to prevent, hinder or obstruct the County Manager, his designee, the Taxicab Inspector, his designee, or any law-enforcement officers in the performance of their official duties authorized by this ~~C~~chapter.

~~(b)B.~~ It shall be unlawful for any Person to obtain, or attempt to obtain, any Certificate, Public Vehicle Driver's License, authorization, or permission, pursuant to this ~~C~~chapter, by fraud, misrepresentation, false or misleading statement, or omission of any material fact.  
(Ord. No. 09-16, 6-13-09)

**§ 25.1-23. Transfer of Certificates.**

~~(a)A.~~ Board approval required.

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- ~~(1.)~~ A Certificate is a privilege that is in the public trust and personal to the Certificate-holder. A Certificate-holder's obligations under its Certificate involve services, the performance of which involves trust and confidence in the Certificate-holder.
- ~~(2.)~~ No Transfer (including, but not limited to, transfer as a result of forced or voluntary sale, merger, consolidation, receivership, or any other means) shall occur unless prior application is made by the Certificate-holder to the County Manager, or his designee, and the Board's prior written consent is obtained, pursuant to this ~~C~~chapter, subject to such terms and conditions as the Board deems necessary and proper. Any Transfer without the Board's prior consent shall be considered to impair the County's assurance of due performance by the Certificate-holder. The approval of an application for a Transfer shall not render unnecessary approval of any subsequent Transfer.
- ~~(B.)~~ Application.
- ~~(1.)~~ A Certificate-holder shall promptly notify the County Manager, or his designee, of every proposed Transfer.
- ~~(2.)~~ At least one hundred and twenty (120) calendar days prior to the proposed effective date of a Transfer, the Certificate-holder shall submit to the County Manager or his designee, a request for approval of the Transfer. The request shall provide complete information on the proposed transaction, including details on the legal, financial, technical, and other qualifications of the proposed transferee, and on the potential impact of the Transfer on Taxicab Service in Arlington County, and copies of the following:
  - ~~i.~~ All information and documents required by ~~section § 25.1-3.B(b)~~ of this ~~C~~chapter, concerning the proposed transferee;
  - ~~ii.~~ All contracts, transfer agreements, financing documents, or other documents that relate to the proposed transaction, and all documents, schedules, exhibits, or the like referred to therein;
  - ~~iii.~~ Complete financial statements for the proposed transferee for the last three (3) years, including balance sheets, income statements, profit and loss statements, and documents detailing capital investments and operating costs;
  - ~~iv.~~ A detailed description of the sources and amounts of funds to be used in the proposed transaction;
  - ~~v.~~ Complete information regarding any potential impact of the Transfer on Taxicab Service in Arlington County.
- ~~(3.)~~ In addition to providing the information specified above, the Certificate-holder shall, at the request of the County Manager, or his designee, furnish all other information necessary to provide a complete and accurate understanding of the financial position of the Certificate-holder's and the proposed transferee's Taxicab Businesses before and after the proposed Transfer.
- ~~(4.)~~ For the purpose of determining whether it shall consent to a Transfer, the Board, the County Manager, the Taxicab Inspector, or their designees, may inquire into all qualifications of the proposed transferee and such other matters as the County may deem necessary and relevant to determine whether the transfer is in the public interest and should be approved, denied, or conditioned. A Certificate-holder and the proposed transferee shall assist the County in any such inquiry. If the Certificate-holder or transferee fails to do so, the request for a Transfer may be denied.
- ~~(C.)~~ *Determination by the Board.* The Board shall act upon an application for transfer of Certificate after written notice to the Applicant of a public hearing, during which the Applicant shall be granted an opportunity

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to be heard. In making a determination as to whether to grant, deny, or grant subject to conditions, a request for a Transfer, the Board may consider, without limitation: the legal, financial and operational qualifications of the proposed transferee to operate a taxicab business and provide taxicab service in Arlington County; any potential effects of the transfer on Taxicab Service, whether a Certificate-holder is in compliance with the existing Certificate and this Chapter and, if not, the proposed transferee's commitment to cure such noncompliance; whether the transferee owns or controls any other Taxicab Business, and whether operation by the transferee or approval of the Transfer would adversely affect the provision of Taxicab Service in Arlington County, or the health, safety and welfare of the citizens of Arlington County and the public at large.

~~(d)~~ *Transferee's agreement.* No request for a Transfer of a Certificate shall be granted unless the transferee agrees in writing that it will abide by and accept all terms of this Chapter and any conditions placed upon the transfer by the Board. Upon approval of a Transfer, the Certificate-holder shall surrender to the County Manager the Certificate and a new Certificate, consistent with the Board approval, shall be issued by the County Manager or his designee, to the transferee.

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~~(e)~~ *Approval does not constitute waiver.* Approval by the Board of a Transfer does not constitute a waiver or release of any of the rights of the County under this Chapter, whether arising before or after the date of the Transfer.

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~~(f)~~ *E.* As provided in ~~section §~~ 25.1-23, ~~A.1(a)(1)~~, a Certificate is personal to a Certificate-holder. A Certificate shall not be assigned, leased, or sold. A Certificate may be Transferred as provided in, and upon compliance with, the requirements of this section. It is not the intention of this subsection to prohibit any lease, contract, or other permission between a Certificate-holder and a Driver to operate a Taxicab authorized under a duly issued Certificate, or between a Certificate-holder and a Vehicle Owner, provided that such lease, contract, or other permission is not otherwise inconsistent with the other provisions of this Chapter.  
(Ord. No. 09-16, 6-13-09)

#### ~~§~~ 25.1-24. Notification in Taxicabs of ~~p~~Proposed ~~a~~Amendments to this ~~e~~Chapter.

Upon written direction from the County Manager to each Certificate-holder, such Certificate-holder shall cause to be conspicuously displayed in each Taxicab a notice indicating the date, purpose and place of a public hearing during which amendments to this Chapter are scheduled to be considered by the County Board.  
(Ord. No. 09-16, 6-13-09)

#### ~~§~~ 25.1-25. Rules and ~~r~~Regulations.

The County Manager may promulgate such rules and regulations as deemed necessary to address, regulate and control: safe and reliable Taxicab Service; the operation of Taxicabs; the character and qualifications of Drivers; the Taxicab Business; and, any other matters within the scope of this Chapter.  
(Ord. No. 09-16, 6-13-09)

#### ~~§~~ 25.1-26. Compliance with this Chapter and Reciprocity Agreements.

~~(a)~~ *A.* Every duly authorized Taxicab, Certificate-holder, or Driver in Arlington County shall comply with all applicable provisions of this Chapter and all applicable provisions of every current reciprocity agreement between the County and any other state, locality, or entity.

~~(b)~~ *B.* The Driver of a Taxicab which is duly authorized to operate as a Taxicab in any other jurisdiction of the Commonwealth of Virginia, or in any other state, or in the District of Columbia may convey into and may discharge within Arlington County a passenger or passengers. If required by the passenger or passengers, the Taxicab Driver conveying the passenger or passengers into Arlington County may wait for the passenger or passengers and convey the passenger or passengers to his or her or their ultimate destination. The Driver of a Taxicab registered in any jurisdiction other than Arlington County shall not otherwise solicit, pick up, transport, convey, or wait for any passenger or passengers within Arlington County, except as permitted in any reciprocity agreement.  
(Ord. No. 09-16, 6-13-09)

§ 25.1-27. Enforcement.

The provisions of this Chapter may be enforced by the County Manager, his designee, the Taxicab Inspector, his designee, or any law-enforcement officer.  
(Ord. No. 09-16, 6-13-09)

§ 25.1-28. Penalties.

~~(a)~~A. Any Vehicle Owner or Driver who violates any provision of this Chapter, or any rule or regulation promulgated hereunder, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than one hundred dollars (\$100.00) for the first offense, and not more than five hundred dollars (\$500.00) for each subsequent offense.

~~(b)~~B. Any Person, other than a Vehicle Owner or Driver, who violates any provision of this Chapter, or any rule or regulation promulgated hereunder, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished as provided in ~~section §~~ 1-6 of this Code.  
(Ord. No. 09-16, 6-13-09)

§ 25.1-29. Effect of eEnactment of this eChapter.

Every Certificate and Public Vehicle Driver's License in effect on the date of the enactment of this Chapter shall continue in full force and effect.  
(Ord. No. 09-16, 6-13-09)

ARLINGTON COUNTY CODE

Chapter 26

UTILITIES\*

\* **Editors Note:** Ord. No. 92-25, adopted June 16, 1992, amended former Ch. 26, relative to utilities, in its entirety to read as herein set out. The provisions of former Ch. 26 derived from an ordinance adopted Oct. 11, 1969; Ord. No. 83-24, 4-1-84; Ord. No. 84-1, 4-1-84; Ord. No. 85-27, 7-13-85; Ord. No. 90-25, 8-11-90; Ord. No. 90-32, 10-6-90.

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ARTICLE I.

IN GENERAL

DIVISION 1.

GENERAL PROVISIONS

§ 26-1. Definitions.

~~Unless the context specifically indicates otherwise, t~~The following words and terms and phrases, as when used in this ~~C~~chapter, shall have the following meanings ~~hereinafter designated unless the context clearly indicates otherwise:~~

~~“Act”~~; means ~~F~~the Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, et seq.

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~~“Approval authority”~~; means ~~F~~the Commonwealth of Virginia.

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~~“Approved”~~; means ~~M~~material, equipment, workmanship, process, or method that has been accepted by the ~~d~~Division as suitable for the proposed purpose.

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~~“Approved backflow prevention device”~~; means ~~A~~any device or method intended to prevent backflow into a waterworks which has been approved by the ~~i~~Inspection ~~s~~Services ~~d~~Division for compliance with the County Code.

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~~“Authorized agent”~~; means ~~F~~the person or agency of the ~~e~~County government designated by the County Board or the County Manager to act on his behalf in the enforcement of this chapter.

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~~“Authorized representative of the industrial user”~~;

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(a1) If the industrial user is a corporation, ~~“authorized representative”~~-~~shall~~ means:

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(4a) The president, secretary, treasurer, or a vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

(2b) The manager of one (1) or more manufacturing, production, or operation facilities employing more than two hundred fifty (250) persons or having gross annual sales or expenditures exceeding twenty-five million dollars (\$25,000,000.00) (in second-quarter 1980 dollars), if authority to sign documents has been delegated to the manager in accordance with corporate procedures.

(b2) If the industrial user is a partnership, association, or sole proprietorship, "authorized representative" shall mean a general partner or the proprietor

(e3) If the industrial user is representing federal, state or local governments, or an agent thereof, "authorized representative" shall mean a director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility.

(44) The individuals described in paragraphs (a1) through (e3) above may designate another authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the written authorization has been submitted to the eCounty.

"Auxiliary water system" means Any water system from a source or available to a water user in Arlington County other than the waterworks. These auxiliary water systems may include water from sources such as wells, lakes, or streams, process fluids, or used water. They may be polluted or contaminated or objectionable, or constitute an unapproved water source or system over which the water purveyor does not have control.

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"Backflow" means The flow of water or other liquids, mixtures, or substances into the distribution piping of a waterworks from any source or sources other than its intended source.

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"Best Management Practices" (BMP) means Any schedule of activities, prohibitions of practice, maintenance procedures, operational practices, and other management practices to implement the prohibitions listed in § 26-35 of this eCode.

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"Biochemical oxygen demand" (BOD) means The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard methods, (five (5) days at twenty (20) degrees Centigrade) expressed in terms of weight and concentration (milligrams per liter (mg/l)).

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"Categorical pretreatment standard" or "categorical standard" means Any regulation containing pollutant discharge limits promulgated by the U.S. EPA in accordance with Section § 307(b) and (c) of the Act (3334 U.S.C. 1317) which applies to a specific category of industrial user and which appears in 40 CFR Chapter 1, Subchapter N, Parts 405 through 471 or any successor provision, incorporated herein by reference.

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"Composite sample" means The sample resulting from the combination of individual wastewater samples taken at selected intervals based on either an increment of flow or time.

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"Contaminant" means Any objectionable or hazardous physical, chemical, biological, or radiological substance or matter in water.

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"Control authority" means The bBureau eChief of the wWater pPollution eControl bBureau of the dDepartment of eEnvironmental sServices for Arlington County, Virginia.

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"Cooling water" means The water discharged from any use such as air conditioning, cooling or refrigeration, or to which the only pollutant added to the water is heat.

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"County" means The County of Arlington, Virginia, or the County Board of Arlington County.

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~~“County Manager”~~; ~~means~~ ~~T~~he County Manager of Arlington County, Virginia, or his ~~authorized agent(s)~~ ~~designee(s)~~.

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~~“Cross-connection”~~; ~~means~~ ~~A~~ny connection or structural arrangement, direct or indirect, to the waterworks whereby backflow can occur.

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~~“Customer”~~; ~~means~~ ~~A~~ny person who connects to the Arlington County waterworks and draws and uses water from that system.

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~~“Customer’s water system”~~; ~~means~~ ~~A~~ny water system located on the customer’s premises, supplied by or in any manner connected to a waterworks.

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~~“Division”~~; ~~means~~ ~~T~~he Commonwealth of Virginia, Department of Health, Division of Water Supply Engineering.

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~~“Domestic sewage”~~; ~~means~~ ~~H~~uman excrement, septage, and gray water from household uses, to include but not be limited to showers, toilets, dishwashing, and laundry.

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~~“Domestic user”~~; ~~means~~ ~~P~~ersons contributing only domestic sewage to the sanitary sewage system.

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~~“Environmental Protection Agency”~~ or ~~“U.S. EPA”~~; ~~means~~ ~~T~~he U.S. Environmental Protection Agency or the Regional Water Management Division Director or other duly authorized official of that agency.

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~~“Existing source”~~; ~~means~~ ~~A~~ny source of discharge, the construction or operation of which source commenced prior to the publication of proposed categorical pretreatment standards under ~~Sections~~-~~§§~~ 307(b) and (c) (33 U.S.C. 1317) of the Act, which will be applicable to such source if the standard is thereafter promulgated in accordance with ~~Section~~-~~§~~ 307 of the Act.

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~~“Grab sample”~~; ~~means~~ ~~A~~n individual sample which is taken from a waste stream over a period of time less than fifteen (15) minutes, without regard to the flow of the waste stream.

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~~“Health hazard”~~; ~~means~~ ~~A~~ny condition, device, or practice in a waterworks or its operation that creates, or may create, a danger to the health and well-being of the water customer, or any persons using, operating, or maintaining the waterworks.

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~~“Holding tank waste”~~; ~~means~~ ~~A~~ny waste from holding tanks, including vessels, chemical toilets, campers, trailers, septic tanks, and vacuum-pump tank trucks.

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~~“Impacting user”~~; ~~means~~ ~~A~~ny industrial user for whom no permit is otherwise required, but the WPCB ~~e~~Chief finds to have a reasonable potential for causing interference or pass-through to the treatment plant, either alone or by interaction with other pollutants.

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~~“Indirect ~~D~~ischarger”~~; ~~means~~ ~~T~~he introduction of pollutants to a wastewater treatment plant from any industrial user regulated under ~~section~~-~~§~~ 307(b), (c), or (d) of the Act.

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~~“Industrial user”~~; ~~means~~ ~~P~~ersons contributing nondomestic pollutants to the sanitary sewage system.

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~~“Inspection ~~s~~Services ~~d~~Division”~~; ~~means~~ ~~T~~he ~~i~~nspection ~~s~~ervices ~~d~~ivision of the ~~d~~epartment of ~~e~~Community ~~p~~lanning, ~~h~~ousing and ~~d~~evelopment (DCPHD).

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~~“Instantaneous ~~L~~imit”~~; ~~means~~ ~~T~~he maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of a discrete or composited sample collected, independently of the industrial flow rate and duration of the sampling event.

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~~“Interference”~~; ~~means~~ ~~A~~a discharge which causes or contributes to the inhibition or disruption of the sanitary sewage system, including sewage collection facilities, the processes or operations of the treatment plant, or

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the process, use or disposal of sewage sludge, or causing a violation of the eCounty's VPDES permit or any of the following regulations or permits issued thereunder (or more stringent state or local regulations): Section § 405 of the Clean Water Act; the Solid Waste Disposal Act (SWDA) (including Title II commonly referred to as the Resource Conservation and Recovery Act (RCRA)); any state sludge management plan prepared pursuant to Subtitle D of the SWDA; the Clean Air Act; the Toxic Substances Control Act; and the Marine Protection, Research and Sanctuaries Act, or any other successor provisions.

"Medical waste": means Any waste resulting from medical activities including, but not limited to, isolation wastes, infectious agents, human blood and blood byproducts, pathological wastes, sharps, body parts, fomites, etiologic agents, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes and dialysis wastes.

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"Monitoring point": means Aa point at which a representative sample of the users' wastewater may be collected, as specified in the wastewater permit.

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"New source": means Any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction or operations of which commenced after the publication of proposed Categorical Pretreatment Standards under Section § 307(c) (33 U.S.C. 1317(c)) of the Act which will be applicable to such source if the standard is thereafter promulgated in accordance with Section § 307(c), provided that:

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- (a1) No other source is located at that site; or
(b2) The source completely replaces the process or production equipment of an existing source at the site; or
(e3) The new wastewater generating process of the source is substantially independent of an existing source at the site, and the construction of the source creates a new facility rather than modifies an existing source at that site.

For purposes of this definition, construction or operation has commenced if the owner or operator has:

- (a1) Begun or caused to begin as part of a continuous on-site construction program:
(4a) Any placement, assembly, or installation of facilities or equipment; or
(2b) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or
(b2) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this definition.

"Nondomestic pollutants": means Any substances other than human excrement and household gray water (from showers, dishwashing operations, etc.).

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"Pass-through": means Aa discharge which exits the treatment plant effluent in quantities or concentrations which, in whole or in part causes or increases the magnitude or duration of a violation of any requirement of the eCounty's VPDES permit.

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"Person": means Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents, or assigns. This definition includes, without limitation, all federal, state or local government entities.

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"pH": means Aa measure of the acidity or alkalinity of a substance, expressed in standard units.

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~~“Pollutant” means Any~~ dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, industrial wastes, biological materials, radioactive materials, heat wrecked or discharged equipment, rock, sand, cellar dirt and agricultural wastes, and the characteristics of the wastewater (such as pH, temperature, TSS, BOD, COD, toxicity and odor).

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~~“Pollution hazard” means Aa~~ condition through which an aesthetically objectionable or degrading material may enter the waterworks or a customer’s water system.

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~~“Pretreatment” or “treatment” means T~~he reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater thereby rendering them less harmful to the sanitary sewage system prior to introducing such pollutants into the system. This reduction or alteration can be obtained by physical, chemical or biological processes, by process changes, or by other means, except by diluting the concentration of the pollutants unless allowed by an applicable pretreatment standard.

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~~“Pretreatment standard” or “pretreatment requirements” means Aa~~ substantive or procedural requirement related to pretreatment, including national pretreatment categorical standards and prohibitive discharge standards, best management practices and local limits imposed on an industrial user.

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~~“Process fluids” means Aa~~ny fluid or solution that may be chemically, biologically, or otherwise contaminated or polluted which would constitute a health, pollution, or system hazard if introduced into the waterworks.

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~~“Prohibited discharge standards” or “prohibited discharges” means Aa~~bsolute prohibitions against the discharge of certain defined types of wastewater.

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~~“Public water system” means T~~he publicly-owned system of mains or pipes, valves, hydrants, pumping stations, ground and elevated storage tanks and other structures for the distribution of potable water to the residences, business buildings, institutions and industrial establishments.

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~~“Qualified professional” means Aa~~ person who, by virtue of practical or educational training, has experience in the design, development, and/or operation of such pretreatment processes which they are evaluating.

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~~“Receiving stream” means T~~he stream in which the sanitary sewage system discharges effluent.

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~~“Sanitary district” means T~~he Arlington Sanitary District, as authorized under the provisions of Chapter 161, the Acts of Assembly of Virginia, 1926, for which an order was entered in the Circuit Court of the County on April 25, 1930, and the boundaries of which as co-extensive with the boundaries of the County.

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~~“Sanitary sewage system” means T~~he publicly-owned system of mains or pipes, manholes, pumping stations and wastewater treatment (water pollution control) facilities for the collection and treatment of sewage.

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~~“Sewage” means T~~he water-carried wastes from residences, business buildings, institutions and industrial establishments.

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~~“Significant industrial user.” Except as provided in paragraph (e3) and (d4) of this section below, the term significant industrial user shall~~ means:

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- (a1) Industrial users subject to categorical pretreatment standards; or
- (b2) Any other industrial user that:
  - (1a) Discharges an average of ~~twenty-five thousand~~ (25,000) gpd or more of process wastewater; or
  - (2b) Contributes a process wastestream which makes up five ~~percent~~ (5%) ~~percent~~ or more of the average dry weather hydraulic or organic capacity of the treatment plant; or

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(3c) Is designated as significant by the eCounty on the basis that the industrial user has a reasonable potential for causing pass-through or interference.

(e3) The WPCB eChief may determine that an industrial user subject to categorical pretreatment standards is a Non-Significant Categorical Industrial User rather than a Significant Industrial User on a finding that the industrial user never discharges more than one hundred (100) gpd of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blow-down wastewater, unless specifically included in the Pretreatment Standard) and the following conditions are met:

(4a) The industrial user, prior to the WPCB eChief's finding, has consistently complied with all applicable categorical Pretreatment Standards and Requirements;

(2b) The industrial user annually submits the certification statement required by 40 CFR 403.12(q), together with any additional information necessary to support the certification; and

(3c) The industrial user never discharges any untreated concentrated wastewater.

(44) Upon a finding that a user meeting the criteria in (b2)-of this section above has no reasonable potential for adversely affecting the sanitary sewer collection system, the Water Pollution Control Plant's operation, or for violating any Pretreatment Standard or Requirement, the WPCB chief may determine that the user should not be considered a significant industrial user in accordance with procedures in 40 CFR 403.8(f)(6).

"Slug load"; means Any pollutant (including BOD) released in a discharge at a flow rate or concentration which will cause a violation of the specific discharge prohibitions in Division 2 of Article II of this chapter, or any discharge of a nonroutine episodic nature including, but not limited to, accidental spills or a noncustomary batch discharge.

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"Standard Industrial Classification (SIC) Code"; means Aa classification pursuant to the Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget.

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"Standard Methods"; means The latest edition of Standard Methods for the Examination of Water and Wastewater, published by the American Public Health Association, Water Pollution Control Federation and American Water Works Association.

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"State waters"; means All waters defined as "surface waters" in 9 VAC 25-31-10 et seq., or its successor.

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"Storm drainage (storm water) system"; means The publicly-owned system of mains or pipes, manholes, catch basins, box culverts and other structures for the conveyance of storm (or rain), surface and ground waters, exclusive of sewage and industrial wastes. Open watercourses in which a flow of water occurs either continuously or intermittently, whether on public or private land, shall be considered as part of the storm drainage system.

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"Storm sewer system"; means The publicly-owned system of mains or pipes, manholes, catch basins, box culverts, constructed open channels and other structures for the conveyance of stormwater, exclusive of sewage and industrial wastes.

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"Suspended solids"; means The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, as determined by "Standard Methods," and which is removable by laboratory filtering.

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"Toxic pollutant"; means One of the pollutants or any combination of those pollutants listed as toxic in regulations promulgated by the Environmental Protection Agency (EPA) under the provision of Section § 307 (33 U.S.C. 1317) of the Act.

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"Treatment plant"; means That portion of the sanitary sewage system designed to provide treatment of sewage and industrial waste.

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~~“Upset” means An exceptional incident in which there is unintentional and temporary noncompliance with the pretreatment standards because of factors beyond the reasonable control of the user. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.~~

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~~“User” means Any person who contributes to, causes, or allows from property he owns or operates the contribution of sewage or industrial wastewater into the sanitary sewage system, including persons who contribute such wastes from mobile sources.~~

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~~“Wastewater” means The water-carried wastes from residences, business buildings, institutions and industrial establishments together with any groundwater, surfacewater or stormwater that may be present. Also referred to as “sewerage.”~~

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~~“Wastewater facilities” means Any device used in the collection, storage, treatment, recycling and reclamation of sewage or industrial wastes of a liquid nature and any conveyance which conveys wastewater to the wastewater treatment works. Also known as a Publicly Owned Treatment Works (POTW) as defined by Section § 212 of the Act (33 U.S.C. Section 1292).~~

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~~“Water Pollution Control Bureau Chief” means The Bureau Chief for the wWater pPollution eControl bBureau and designated by the County to manage the operation of the sanitary sewage system and who is charged with certain duties and responsibilities by this article or his ~~duly authorized representative designee.~~~~

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~~“Water, Sewer and Streets Bureau” means The Water, Sewer and Streets Bureau of the Department of Environmental Services.~~

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~~“Waterworks” means Aa system that serves piped water for drinking or domestic use to the public. The term “waterworks” shall include all structures, equipment, and appurtenances used in the storage, collection, purification, treatment, and distribution of pure water except the piping and fixtures inside the building to which such water is delivered.~~

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~~“VPDES” means the Virginia Pollutant Discharge Elimination System permit program, as administered by the Commonwealth of Virginia. (Ord. No. 92-25, 6-16-92; Ord. No. 92-38, 8-8-92; Ord. No. 93-5, 5-20-93; Ord. No. 95-10, 4-29-95; Ord. No. 95-11, 4-29-95; Ord. No. 98-3, 2-7-98; Ord. No. 01-15, 7-28-01; Ord. No. 04-25, 10-2-04; Ord. No. 08-13, 6-17-08, Ord. No. 08-11, 4-19-08, effective 1-1-08)~~

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§ 26-2. Abbreviations.

The following abbreviations shall have the indicated meanings:

- BOD -- Biochemical Oxygen Demand
- CFR -- Code of Federal Regulations
- COD -- Chemical Oxygen Demand
- EPA -- U.S. Environmental Protection Agency
- gpd -- Gallons Per Day
- LC50 -- Lethal Concentration for Fifty Percent (50%) of the Test Organisms
- l -- Liter
- mg -- Milligrams

mg/l -- Milligrams per liter

VPDES -- Virginia Pollutant Discharge Elimination System

O&M -- Operation and Maintenance

POTW -- Publicly-Owned Treatment Works

RCRA -- Resource Conservation and Recovery Act

SIC -- Standard Industrial Classifications

SWDA -- Solid Waste Disposal Act (42 U.S.C. 6901, et seq.)

TSS -- Total Suspended Solids

USC -- United States Code

WPCB -- Water Pollution Control Bureau

(Ord. No. 92-25, 6-16-92; Ord. No. 04-25, 10-2-04)

**§ 26-3. Administration.**

~~(a)A.~~ Except as otherwise provided herein, the provision of water and sewer service shall be governed by the ~~w~~Water ~~r~~Rules and ~~r~~Regulations ~~h~~Handbook, which may be amended by the ~~e~~County ~~b~~Board. The ~~e~~County ~~m~~Manager or his designee, shall administer and enforce the provisions of the ~~h~~Handbook.

~~(b)B.~~ The ~~e~~County ~~m~~Manager shall develop such rules and regulations as are necessary to govern the administration of the infrastructure availability fee. Such rules and regulations shall be incorporated into the ~~e~~County's ~~w~~Water ~~r~~Rules and ~~r~~Regulations ~~h~~Handbook.  
(Ord. No. 93-11, 6-19-93; Ord. No. 07-03, 4-21-07; effective 7-1-07)

**DIVISION 2.**

**WATER AND SEWER SERVICE**

**§ 26-4. Public ~~w~~Water ~~s~~System.**

~~(a)A.~~ It shall be unlawful for any person to connect any water supply system not specifically approved by the County Manager to the public water system.

~~(b)B.~~ It shall be unlawful for any person not specifically authorized by the County Manager to operate, injure, disturb, connect to or disconnect from, or otherwise interfere with any water meter, meter box, vault, main or pipe, valve, hydrant, pumping station, ground or elevated storage tank, or other structure which is part of the public water system.

~~(c)C.~~ *Conservation of water use.:*

~~(1)~~ If a water shortage occurs because of a main break, reservoir leak, pump failure or for any other reason, the County Manager is authorized to impose immediate emergency restrictions on water use, notifying the public by radio, television or door to door contact of the need for limiting water use during the emergency.  
(Ord. No. 92-25, 6-16-92; Ord. No. 93-11, 6-19-93; Ord. No. 02-5, § 2, 4-20-02)

**§ 26-5. Storm ~~s~~Sewer ~~s~~System.**

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~~(a)A.~~ It shall be unlawful for any person not specifically authorized by the County Manager to remove a manhole cover or catch basin cover or grate inlet cover or to make any connections with, or any opening into, use, or in any way alter, disturb, or otherwise interfere with any manhole, catch basin, grate inlet, or other structure which is a part of the public storm sewer system.

~~(b)B.~~ It shall be unlawful for any person to deposit into any open watercourse or gutter or pipe or other drainage structure any rocks, logs, dirt, paper, branches, leaves, grass, or any other material capable of causing a stoppage or disrupting the flow of storm or rain water or otherwise adversely affecting the hydraulic capacity of the watercourse or drainage structure.

~~(c)C.~~ It shall be unlawful for any person to discharge directly or indirectly into the storm sewer system or state waters, any substance likely, in the opinion of the County Manager, to have an adverse effect on the storm sewer system or state waters. A discharge may be considered serious or moderate. A serious discharge is one that is determined to be an immediate threat to the environment, public health, or safety of the County's storm sewer system or state waters. Any other discharge under this subsection shall be considered moderate. To prevent such adverse effects, the County Manager may adopt rules and regulations governing direct or indirect discharges into the storm sewer system and state waters. Discharge of any substance directly to state waters must be authorized by a separate Virginia Pollutant Discharge Elimination System (VPDES) permit in accordance with 9 VAC 25-31-10 et seq., or its successor.

(Ord. No. 92-25, 6-16-92; Ord. No. 93-11, 6-19-93; Ord. No. 01-15, 7-28-01; Ord. No. 10-13, 6-12-10)

§ 26-6. Water and/or ~~s~~Sewer ~~b~~Billing.

~~(a)A.~~ *Responsibility.*

~~(1)~~ Where the use of any water or sewer system is contracted for by an occupant who is not the owner of the premises and where such occupant's premises are separately metered for service, the owner of any such premises shall be liable for the payment of delinquent rates or charges applicable to three (3) delinquent billing periods but not to exceed a period of ninety (90) days for such delinquency, as provided by Virginia law, provided that no such lien shall be placed by the County Board (~~b~~Board) unless the ~~b~~Board or its billing and collection agent (i) shall have advised the owner of such real estate at the time of initiating service to a lessee or tenant of such real estate that a lien will be placed on such real estate if any lessee or tenant fails to pay any fees, rents, or other charges when due for services rendered to a lessee or tenant; (ii) shall have mailed to the owner of such real estate a duplicate copy of the final bill rendered to such lessee or tenant at the time of rendering the final bill to such lessee or tenant; and (iii) shall employ the same collection efforts and practices to collect amounts due the ~~b~~Board from a lessee or a tenant as are employed with respect to collection of such amounts due from customers who are owners of the real estate for which service is provided.

~~(b)B.~~ *Billing.*

~~(1)~~ All water and/or sewer accounts shall be billed not less than four (4) times each year. All accounts are due and payable when rendered.

~~(c)C.~~ *Delinquency.*

~~(1)~~ If any rates, fees, or charges for the use of and for water and/or sewer services furnished by any system constructed by Arlington County are not paid within thirty (30) days after the bill date and the person who incurred the debt is the occupant of such premises, at the expiration of such thirty-~~(30)~~ day period the ~~e~~County may disconnect the water-sewer service at the premises and proceed to recover the amount of such delinquent rates, fees, or charges, with interest.

~~(d)D.~~ *Liens.*

~~(1)~~ Any unpaid charge entered in the judgement lien docket of the ~~e~~Circuit ~~e~~Court ~~e~~Clerk's ~~e~~Office

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shall become a lien superior to the interest of any owner, lessee, or tenant, as provided by Virginia law.

~~(e)E.~~ Collections.

~~(1)~~ The Treasurer of Arlington County is authorized to collect any and all utilities charges under this chapter.  
(Ord. No. 93-11, 6-19-93; Ord. No. 94-22, 8-6-94; Ord. No. 98-22, 7-11-98)

§ 26-7. Water/~~s~~Sewer ~~r~~Rates and ~~f~~Fees.

BASE: The charge for water/sewer service shall be based on the consumption of water as reflected by periodic readings of water meters serving the property.

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RATES:

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~~(a)A.~~ The rate for properties which use both shall be twelve dollars and nineteen cents (\$12.19) per thousand (1,000) gallons of water furnished. The rate for these services is set forth as follows:

~~(1.)~~ Water Services – three dollars and sixty-eight cents (\$3.68) per one thousand (1,000) gallons of water furnished.

~~(2.)~~ Sewer services – eight dollars and fifty-one cents (\$8.51) per one thousand (1,000) gallons of water furnished.

~~(b)B.~~ The rate for properties which are served by the County water system only shall be three dollars and fifty cents (\$3.50) per one thousand (1,000) gallons of water furnished.

~~(c)C.~~ The rate for properties which are served by the County sewer system only shall be eight dollars and twenty-four cents (\$8.24) per one thousand (1,000) gallons of water furnished based on the periodic water or sewer meter reading by the utility serving the property.

~~(d)D.~~ The rate for the establishment of a late charge shall be six percent (6%) ~~percent~~ imposed on the outstanding balance of water/sewer and refuse accounts thirty (30) days after the bill date.

~~(e)E.~~ The rate for the establishment of new water service accounts shall be twenty-five dollars (\$25.00) per account. The rate for reactivation of service following the customer's request for deactivations and those reactivations necessitated by occupant delinquency or repair shall be twenty-five dollars (\$25.00) per each request.

~~(f)F.~~ The charges for drainage fixture unit inspections shall be one hundred seventy-five dollars (\$175.00) for one (1) to twenty-four (24) fixtures, two hundred seventy-five dollars (\$275.00) for twenty-five plus fixtures.

~~(g)G.~~ The charge for fire flow tests shall be three hundred dollars (\$300.00).

The rates for water and sewer service become effective with water used on May 1, 2010. The rates for the late charge and the water service activation/reactivation became effective July 1, 1992. The charges for drainage fixture unit inspections and fire flow tests became effective July 1, 2008.  
(Ord. No. 93-11, 6-19-93; Ord. No. 94-11, 5-1-94; Ord. No. 94-22, 8-6-94; Ord. No. 95-10, 4-29-95; Ord. No. 95-11, 4-29-95; Ord. No. 96-4, 4-13-96; Ord. No. 98-22, 7-11-98; Ord. No. 00-09, 4-13-00; Ord. No. 01-06, 4-16-01; Ord. No. 02-09, 4-20-02; Ord. No. 03-09, 4-26-03; Ord. No. 04-07, 4-24-04; Ord. No. 05-04, 4-16-05, effective 5-1-05; Ord. No. 06-06, 4-22-06, effective 5-1-06; Ord. No. 07-04, 4-21-07, effective 5-1-07; Ord. No. 08-03, 4-19-08, effective 5-1-08; Ord. No. 08-04, 4-19-08, effective 7-1-08; Ord. No. 09-04, 4-28-09; Ord. No. 10-03, 4-24-10, effective 5-1-10)

§ 26-8. Water ~~s~~Service to ~~b~~Buildings to be ~~d~~Demolished.

The issuance of a demolition permit by the County Manager or a demolition order entered by a court shall constitute an implied request by and permission from the owner of the building for discontinuance of the water service connection.

(Ord. No. 92-25, 6-16-92; Ord. No. 93-11, 6-19-93)

**§ 26-9. Penalty.**

~~(a)A.~~ Any person who violates any provision of this ~~A~~article, except for ~~Sections §§ 26-5.B(b)~~ and ~~26-5.C(e)~~, or any rule or regulation pursuant thereto shall be subject to a fine of not less than twenty-five dollars (\$25.00) nor more than one thousand dollars (\$1,000.00) for each violation. Each day of violation shall constitute a separate offense.

~~(b)B.~~ Any person who violates ~~Section § 26-5.B(b)~~ or ~~26-5.C(e)~~, or any regulations adopted thereunder or who fails, neglects or refuses to comply with any order of the County Manager, shall be subject to a civil penalty not to exceed ~~thirty-two thousand five hundred dollars (\$32,500.00)~~ for each violation within the discretion of the Court. Each day of violation shall constitute a separate offense. The County Manager may issue a summons for collection of the civil penalty in the Arlington County Circuit Court. Such civil penalties shall be paid to the Treasurer of Arlington County and shall be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters.

~~(1.)~~ A first violation under this subsection shall be subject to a civil penalty of ~~five hundred dollars (\$500.00)~~ for a serious violation or ~~one hundred dollars (\$100.00)~~ for a moderate violation.

~~(2.)~~ A second violation under this subsection shall be subject to a civil penalty of ~~one thousand dollars (\$1,000.00)~~ for a serious violation or ~~two hundred and fifty dollars (\$250.00)~~ for a moderate violation.

~~(3.)~~ A third violation or thereafter under this subsection shall be subject to a civil penalty of ~~two thousand five hundred dollars (\$2,500.00)~~ for a serious violation or ~~five hundred dollars (\$500.00)~~ for a moderate violation.

~~(e)C.~~ Any person who willfully and knowingly violates any provision of ~~Sections §§ 26-5.B(b)~~ or ~~26-5.C(e)~~ shall be guilty of a Class 1 misdemeanor.

~~(d)D.~~ Violations of ~~Sections §§ 26-5.B(b)~~ or ~~26-5.C(e)~~ may also be addressed in the following ways:

~~(1.)~~ The County may apply to the Circuit Court of Arlington County for injunctive relief to enjoin a violation or threatened violation.

~~(2.)~~ In lieu of any appropriate civil penalty that could be imposed under subsection ~~B(b)~~, the County may, with the consent and agreement of any person who has violated or failed, neglected or refused to obey with ~~Sections §§ 26-5.B(b)~~ or ~~26-5.C(e)~~ or any regulation thereunder, provide, in an order issued against such person, for payment of civil charges for violations in specific sums, not to exceed ~~thirty-two thousand five hundred dollars (\$32,500.00)~~ for each violation. Any civil charges collected shall be paid to the Treasurer of Arlington County and shall be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters.

(Ord. No. 92-25, 6-16-92; Ord. No. 93-11, 6-19-93; Ord. No. 10-13, 6-12-10)

**§ 26-10. Infrastructure ~~a~~Availability ~~f~~Fees.**

~~(a)A.~~ It shall be unlawful for any person to connect a structure to the public water distribution system or to the sanitary sewer system without payment of an infrastructure availability ~~infrastructure availability~~ fee.

~~(b)B.~~ It shall be unlawful for any person to install plumbing fixtures in a structure previously connected to the public water distribution system or to the sanitary sewer system which results in an increase in the total

drainage fixture units in that structure without payment of an infrastructure availability fee.

~~(c)C.~~ Infrastructure availability fees shall be paid in full prior to issuance of a building permit, or a plumbing permit if no building permit is required or according to regulations pursuant to ~~section §~~ 26-3. The infrastructure availability fee shall be in accordance with the rate schedule in force at the time of issuance of the permit.

~~(d)D.~~ The infrastructure availability fee rate shall be one hundred eighty-two dollars (\$182.00) per drainage fixture unit (DFU). For structures that are provided for water service only or sewer service only, the infrastructure availability fee shall be as follows:

Water Service only ~~—seventy-two dollars (\$72.00)~~ per DFU

Sewer Service only ~~—one hundred and ten dollars (\$110.00)~~ per DFU

~~(e)E.~~ The eCounty mManager shall develop such rules and regulations as are necessary to govern the administration of the infrastructure availability fee in accordance with ~~section §~~ 26-3.B(~~b~~) of this chapter. (Ord. No. 92-25, 6-16-92; Ord. No. 93-11, 6-19-93; Ord. No. 97-8, 5-17-97; Ord. No. 07-03, 4-21-07, effective 7-1-07; Ord. No. 10-04, 4-24-10, effective 7-1-10)

§ 26-11. Water mMain eEExtensions.

~~(a)A.~~ The eCounty, to provide additional capacity, increased reliability, or to otherwise improve service, may at any time make extensions to the water distribution system.

~~(b)B.~~ Extensions to the water distribution system necessitated by redevelopment, new development, or construction shall be the responsibility of the developer or property owner to the extent permitted by Virginia law.

~~(c)C.~~ Extensions by developers or property owners shall be constructed in accordance with plans and specifications approved by the eCounty. (Ord. No. 93-11, 6-19-93)

§ 26-12. Service eCconnection eCCharges.

Water Connection Charges

Service Connection Size (inches)	Meter Size (inches)	Connection Charge
1	3/4	\$ 3,200.00
1 1/2	1 1/2	4,600.00
2	2	4,800.00
3	3	19,800.00
4	4	21,200.00
6	6	23,200.00
8	8	25,300.00

Meter Installation Charges

Meter Size (inches)	Installation Charge
3/4	\$100.00
1-1/2	300.00
2	600.00
3	1,800.00
4	2,000.00
6	2,200.00

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8	3,000.00
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Water Service Discontinuation Charge

The charge to discontinue a public way service shall be five hundred dollars (\$500.00).

Meter Box Relocation Charge:

The charge to relocate a meter box (for services two (2)- inches and smaller) five (5) feet or less shall be one thousand dollars (\$1,000.00).

These charges became effective July 1, 2008.

(Ord. No. 93-11, 6-19-93; Ord. No. 94-22, 8-6-94; Ord. No. 08-04, 4-19-08, effective 7-1-08)

§ 26-13. Sanitary ~~d~~istrict ~~t~~ax.

~~(a)A.~~ There is hereby imposed a sanitary district tax of \$0.013 per one hundred dollars of assessed valuation of all taxable real estate not otherwise exempt from taxation located in the sanitary district for operating and capital expenses necessary to expand and upgrade the storm drainage (storm sewer) system. Such tax shall be effective as of January 1, 2010, and payable at the same time and in the same manner as real estate taxes are paid.

~~(b)B.~~ Any person assessed who fails to pay the tax installments on or before the respective payment date shall incur a penalty thereon of ten percent (~~10%~~ ~~percent~~) or ten dollars (\$10.00), whichever shall be greater, but not to exceed the amount of the tax, which shall be added to the amount of taxes due from such person assessed.

~~(c)C.~~ Interest shall accrue on any amount past due at the same rate as real property taxes under ~~section §~~ 27-3.1.

~~(d)D.~~ The Treasurer of Arlington County is authorized to collect any and all delinquent sanitary district taxes under this chapter.  
(Ord. No. 08-11, 4-19-08, effective 1-1-08; Ord. No. 10-06, 4-24-10, effective 1-1-10)

§§ 26-14--26-30. Reserved.

ARTICLE II.

WASTEWATER PRETREATMENT

DIVISION 1.

GENERAL PROVISIONS

§ 26-31. Purpose and ~~p~~olicy.

This article sets forth uniform requirements for direct and indirect dischargers of pollutants from any sources into the sewage collection and treatment system for the County of Arlington and enables the ~~e~~County to comply with all applicable state and federal laws. The objectives of this article are:

~~(a)A.~~ To prevent the introduction into the sanitary sewage system of pollutants which will interfere with the operation of the system;

~~(b)B.~~ To prevent the introduction into the sanitary sewage system of pollutants which will pass through the system, inadequately treated, into receiving waters or the atmosphere or otherwise be incompatible with the system;

~~(c)C.~~ To ensure that the quality of the sewage treatment plant sludge is maintained at a level which

allows its marketability or safe disposal;

~~(d)~~D. To protect persons who may come into contact with sewage, sludge and effluent in the course of their employment as well as to protect the general public;

~~(e)~~E. To preserve the hydraulic capacity of the sanitary sewage system;

~~(f)~~F. To improve the opportunity to recycle and reclaim wastewater and sludge from the system;

~~(g)~~G. To provide for equitable distribution of the cost of operations, maintenance and improvement of the sanitary sewage system; and

~~(h)~~H. To enable the eCounty to comply with its VPDES permit conditions, sludge use and disposal requirements and any other federal or state laws to which the sanitary sewage system is subject.

This article provides for the regulation of discharge to the sanitary sewage system through the issuance of permits to certain nondomestic users and through enforcement of general requirements for other users, authorizes monitoring and enforcement activities, establishes administrative review procedures, requires user reporting, and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

This article shall apply to persons within the eCounty and to persons outside of the eCounty who, by contract with the eCounty, are included as users of the sanitary sewage system.

It shall be unlawful for any person not specifically authorized by the County Manager to make any connection with or any opening into, use, alter, disturb or otherwise interfere with any manhole, main or pipe, building, tank or any other structure which is a part of the public sanitary sewer system.

Any facilities or measures called for in this Aarticle shall be provided, operated, and maintained at the industrial user's expense.  
(Ord. No. 92-25, 6-16-92; Ord. No. 95-10, 4-29-95; Ord. No. 95-11, 4-29-95)

**§ 26-32. Administration.**

Except as otherwise provided herein, the WPCB eChief shall administer and enforce the provisions of this article. Any powers granted to or duties imposed upon the WPCB eChief may be delegated by the WPCB eChief to other eCounty personnel.

To comply with the provisions of this article, the WPCB eChief may enter into agreements with service areas outside of Arlington County, or with industrial users as necessary.  
(Ord. No. 92-25, 6-16-92; Ord. No. 04-25, 10-2-04)

**§§ 26-33, 26-34. Reserved.**

**DIVISION 2.**

**GENERAL SEWER USE REQUIREMENTS**

**§ 26-35. Prohibited ~~d~~Discharge ~~s~~Standards.**

No user shall contribute or cause to be contributed to the sanitary sewage system, directly or indirectly, any pollutant or wastewater which will cause interference or pass-through. These general prohibitions apply to all users of the sanitary sewage system whether or not the user is subject to categorical pretreatment standards or any other national, state or local pretreatment standards or requirement. No user may contribute the following substances to the system:

~~(a)~~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 hazard or be injurious in any other way to the sanitary sewage system. Included without limitation in this prohibition are wastestreams with a closed cup flashpoint of less than 140°F (60°C) as determined using the test method specified in 40 CFR 261.21. At no time shall either of two (2) successive readings on an explosion hazard meter at the point of discharge into the system or at any point in the system be more than five ~~percent~~ (5%) ~~percent~~ nor any single reading over ten ~~percent~~ (10%) ~~percent~~ of the lower explosive limit (LEL) of the meter.

~~(b)~~**B.** Solid or viscous substances in amounts which will cause interference with the flow in a sewer but in no case solids greater than one-half (1/2) inch (1.27 centimeters) in any dimension.

~~(c)~~**C.** Any fats or greases including, but not limited to, petroleum oil, nonbiodegradable cutting oil, or products of vegetable, animal or mineral oil origin, in amounts that will cause interference, pass-through or blockage of the collection system.

~~(d)~~**D.** Any wastewater having a pH less than five (5.0) ~~0~~ or more than twelve and a half (12.5); but in no case having a daily average of less than six (6); and in no case which could otherwise cause corrosive structural damage to the system, to County personnel or to equipment.

~~(e)~~**E.** Any wastewater containing pollutants in sufficient quantity (flow or concentration), either alone or by interaction with other pollutants, to pass through or interfere with the sanitary sewage system, any wastewater treatment or sludge process, or constitutes a hazard to humans or animals.

~~(f)~~**F.** Any noxious or malodorous liquids, gases, or solids or other wastewater which, either alone or by interaction with other wastes, is sufficient to create a public nuisance or hazard to life or is sufficient to prevent entry into the sewers for maintenance and repair.

~~(g)~~**G.** Any substance which may cause the sanitary sewage system effluent or any other 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 system cause the County to be in noncompliance with sludge use or disposal regulations or permits issued under ~~Section §~~ 405 of the Act; the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substance Control Act, or other state requirements applicable to the sludge use and disposal practices being used by the County.

~~(h)~~**H.** Any wastewater which cannot be removed by the treatment process including, but not limited to, dye wastes and vegetable tanning solutions which impart color to the sanitary sewage system effluent thereby violating the County's VPDES permit. The color of such wastewater (in combination with turbidity) shall not cause the treatment plant effluent to reduce the depth of the compensation point for photosynthetic activity by more than ten ~~percent~~ (10%) ~~percent~~ from the seasonably established norm for aquatic life.

~~(i)~~**I.** Any wastewater having a temperature greater than 150°F (55°C), or any wastewater which due to its temperature or volume will inhibit biological activity in the sanitary sewage system resulting in interference, or which shall cause the temperature of the wastewater entering the treatment plant to exceed 104°F (40°C).

~~(j)~~**J.** Any wastewater containing any radioactive wastes or isotopes, except as specifically approved by the WPCB ~~e~~**C**hief in compliance with applicable state or federal regulations.

~~(k)~~**K.** Any pollutants which result in the presence of toxic gases, vapors, or fumes within the system in a quantity that may cause or endanger worker health and safety.

~~(l)~~**L.** Any trucked or hauled pollutants, except at discharge points designated by the County in accordance with ~~Section §~~ 26-49.

~~(m)~~**M.** Stormwater, surface water, groundwater, artesian well water, roof runoff, subsurface drainage, deionized water, and unpolluted industrial wastewater, unless specifically authorized by the WPCB ~~e~~**C**hief.

~~(n)~~**N.** Nonbiodegradable cuttings oils, commonly called soluble oils, which form a persistent water

emulsion, and nonbiodegradable complex carbon compounds.

~~(+)O.~~ Any sludges, screenings, or other residues from the pretreatment of industrial wastes, unless specific written permission is given by the WPCB ~~d~~Division ~~e~~Chief.

~~(+)P.~~ Any medical wastes, unless specifically permitted by the WPCB ~~e~~Chief.

~~(+)Q.~~ Any material identified as hazardous waste in 40 CFR Part 261, except as may be specifically permitted by the WPCB ~~e~~Chief.

~~(+)R.~~ Any wastewater causing the treatment plant effluent to show a lethal concentration of fifty ~~percent~~ (50%) ~~percent~~ (LC50) as determined by a toxicity test of ninety-six (96) hours or less, using a percentage of the discharge and aquatic test species chosen by the WPCB ~~e~~Chief.

~~(+)S.~~ Any wastes containing detergents, surface active agents, or other substances which may cause excessive foaming in the sanitary sewage system.

~~(+)T.~~ Any pollutant, including oxygen demanding pollutants (BOD, etc.), released in a discharge at a flow rate or pollutant concentration, or both, which will cause interference at the POTW.

Wastes prohibited by this ~~S~~section shall not be processed or stored in such a manner that these wastes could be discharged to the sanitary sewage system. All floor drains located in process or materials storage areas must discharge to the industrial user's pretreatment facility before connecting with the system. (Ord. No. 92-25, 6-16-92; Ord. No. 98-3, 2-7-98; Ord. No. 04-25, 10-2-04)

#### § 26-36. Federal ~~e~~Categorical ~~p~~Pretreatment ~~s~~Standards.

Users subject to categorical pretreatment standards are required to comply with applicable standards as set out in 40 CFR Chapter I, Subchapter N, Parts 405--471 or successor provisions and incorporated herein. (Ord. No. 92-25, 6-16-92)

#### § 26-37. State ~~r~~Requirements.

Users are required to comply with applicable state pretreatment standards and requirements as set out in 9 VAC 25-31-730 to 25-31-900 or successor provisions. These standards and requirements are incorporated herein. (Ord. No. 92-25, 6-16-92; Ord. No. 98-3, 2-7-98)

#### § 26-38. Specific ~~p~~Pollutant ~~l~~Limitations.

The WPCB ~~e~~Chief may impose maximum mass or concentration discharge limits, or BMP's for any pollutant to protect the Water Pollution Control Plant from pass-through or interference, or to protect worker health and safety, to protect against damage to the sanitary sewer collection system, or to protect the quality of the Water Pollution Control Plant products (plant effluent, biosolids, off gasses, etc.). Concentrations shall be determined at the point where the industrial waste is discharged to the sanitary sewage collection system. All concentrations for metallic substances are for "total" metal. Compliance with all parameters may be determined from a single grab sample. Where specific prohibitions or limits on pollutants are developed for the sanitary sewage collection system in accordance with this section, such limits are deemed pretreatment standards.

(Ord. No. 92-25, 6-16-92; Ord. No. 95-10, 4-29-95; Ord. No. 95-11, 4-29-95; Ord. No. 04-25, 10-2-04; Ord. No. 08-13, 6-17-08)

#### § 26-39. Special ~~a~~Agreement.

The ~~e~~County reserves the right to enter into special agreements with users setting out special terms under which the industrial user may discharge to the system. In no case will a special agreement waive compliance with a pretreatment standard. However, the industrial user may request a net gross adjustment to a categorical standard to reflect the presence of pollutants in their intake water in accordance with 40 CFR 403.15 or its successor provisions.

Industrial users may also request a variance from the categorical pretreatment standard. Such a request will be approved only if the user can prove to the satisfaction of the WPCB ~~e~~Chief, that factors relating to its discharge are fundamentally different from the factors considered by the U.S. EPA when establishing that pretreatment standard. An industrial user requesting a fundamentally different factor variance must comply with the procedural and substantive provisions of 40 CFR 403.13 or its successor provisions.  
(Ord. No. 92-25, 6-16-92; Ord. No. 98-3, 2-7-98; Ord. No. 04-25, 10-2-04)

**§ 26-40. Dilution.**

No user shall increase the use of water used in any process or operation which is discharged into the sanitary sewer or in any way attempt to dilute, a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable pretreatment standard.  
(Ord. No. 92-25, 6-16-92)

**§ 26-41. Inspection.**

Arlington County and Virginia Water Control Board personnel may inspect the facilities of any industrial user to ascertain whether or not the provisions of this article are being met. The industrial user shall allow authorized representatives:

~~(a)~~A. To have access to and copy any records required to be kept under the terms and conditions of this article.

~~(b)~~B. Access during hours of operation to all parts of the premises for the purpose of inspection or sampling in the performance of any of their duties.

~~(c)~~C. To set on the user's property such devices as are necessary to conduct sampling/metering operations.  
(Ord. No. 92-25, 6-16-92)

**§§ 26-42--26-44. Reserved.**

**DIVISION 3.**

**PRETREATMENT OF WASTEWATER**

**§ 26-45. Pretreatment ~~f~~Facilities.**

Industrial users shall provide wastewater treatment as required to comply with this article and shall achieve compliance with all categorical pretreatment standards, local limits, and the prohibitions set out in Division 2 of this article. Detailed plans showing the pretreatment facilities and operating procedures shall be submitted to the ~~e~~County for review, and shall be acceptable to the ~~e~~County before construction of the facility. The review of such plans and operating procedures will in no way relieve the user from the responsibility for modifying the facility as necessary to produce an acceptable discharge to the ~~e~~County under the provisions of this article.  
(Ord. No. 92-25, 6-16-92)

**§ 26-46. Additional ~~p~~Pretreatment ~~m~~Measures.**

~~(a)~~A. Whenever found necessary to protect the sanitary sewage system and to determine the industrial user's compliance, the WPCB ~~e~~Chief may require industrial users to restrict the industrial user's discharge during peak flow periods, designate that certain wastewater be discharged only into specific sewers, relocate and/or consolidate points of discharge, separate domestic sewage wastestreams from industrial wastestreams, and take such other measures as may be necessary.

~~(b)~~B. Grease, oil and sand interceptors shall be provided when, in the opinion of the WPCB ~~e~~Chief, they

are necessary for the proper handling of wastewater containing excessive amounts of grease, flammable substances, sand, or other harmful substances. Such interceptors shall not be required for domestic users. All interception units shall be of a type and capacity approved by the WPCB ~~e~~Chief and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired regularly as needed to maintain proper working condition by the industrial users at his expense.

~~(e)~~C. Industrial users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter.  
(Ord. No. 92-25, 6-16-92; Ord. No. 04-25, 10-2-04)

**§ 26-47. Spill ~~p~~Prevention ~~p~~Plans.**

Industrial users shall provide protection from accidental discharge of materials which may interfere with the sanitary sewage system by developing and implementing spill prevention plans. No industrial user shall implement a spill prevention plan, including the facilities and the operating procedures, until it has been approved by the ~~e~~County. The spill prevention plan shall include as a minimum the following:

~~(a)~~A. Description of discharge practices, including nonroutine batch discharges.

~~(b)~~B. Description of stored chemicals.

~~(c)~~C. Procedures for immediately notifying the WPCB ~~e~~Chief of any accidental or slug discharges. Such notification must also be given for any discharge which would violate any of the prohibited discharges in Division 2 of this article.

~~(d)~~D. Procedures to prevent adverse impact from any accidental or slug discharge. Such procedures shall include, but not be limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site run-off, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants (including solvents), and/or measures and equipment for emergency response.

Significant industrial users or industrial users that store hazardous substances shall not contribute to the sanitary sewage system after the effective date of this ordinance from which this article is derived unless a spill prevention plan has been approved by the ~~e~~County. Approval of such plans shall not relieve industrial users from complying with all other laws and regulations governing the use, storage, and transportation of hazardous substances.

(Ord. No. 92-25, 6-16-92; Ord. No. 04-25, 10-2-04)

**§ 26-48. Tenant ~~r~~Responsibility.**

Any industrial user who shall rent, lease, or otherwise occupy space which it does not own and is entitled to discharge based on a wastewater permit held by the property owner shall, together with the wastewater permit holder, be held jointly and severally responsible for any violation.

(Ord. No. 92-25, 6-16-92)

**§ 26-49. Hauled ~~w~~Wastewater.**

Septic tank waste (septage) will be accepted into the sanitary sewage system at a designated receiving structure within the treatment plant area at such times as are established by the WPCB ~~e~~Chief. The WPCB ~~e~~Chief may refuse to accept any septage which contains toxic or hazardous pollutants or which violates any other requirement established by the ~~e~~County. Permits for individual vehicles to use such facilities may be issued by the WPCB ~~e~~Chief.

~~(a)~~A. Commercial haulers of holding tanks wastes must obtain a septage hauler permit from the WPCB ~~e~~Chief prior to any discharge to the sanitary sewage system.

~~(b)~~**B.** The WPCB ~~e~~**C**hief shall have authority to prohibit the disposal of any hauled wastewater if such disposal has a potential for interfering with the treatment plant operation. Wastewater haulers shall be subject to all other sections of this article.

~~(c)~~**C.** Fees for discharging hauled wastewater will be established as part of the user fee system as authorized in Division 10 of this Article.  
(Ord. No. 92-25, 6-16-92; Ord. No. 04-25, 10-2-04)

#### § 26-50. Appeals.

Any decision made by the WPCB ~~e~~**C**hief pursuant to these provisions may be appealed to the ~~e~~**C**ounty ~~m~~**M**anager by the user within thirty (30) days of receiving written notice by the WPCB ~~e~~**C**hief. The ~~e~~**C**ounty ~~m~~**M**anager shall make a response within thirty (30) days of receiving the appeal and shall communicate his decision in writing.  
(Ord. No. 92-25, 6-16-92; Ord. No. 04-25, 10-2-04)

### DIVISION 4.

#### WASTEWATER PERMIT ELIGIBILITY

#### § 26-51. Wastewater ~~s~~**S**urvey.

When requested by the WPCB ~~e~~**C**hief, industrial users shall submit information on the nature and characteristics of their wastewater prior to commencing their discharge. The WPCB ~~e~~**C**hief is authorized to prepare a survey form for this purpose and shall periodically require industrial users to update the survey. Failure to complete this survey shall be reasonable grounds for terminating service to the industrial user and shall be considered a violation of this article.  
(Ord. No. 92-25, 6-16-92; Ord. No. 04-25, 10-2-04)

#### § 26-52. Wastewater ~~p~~**P**ermit ~~r~~**R**equirement.

It shall be unlawful for significant industrial users to discharge wastewater into the ~~e~~**C**ounty's sanitary sewer system without first obtaining a wastewater permit from the WPCB ~~e~~**C**hief. Any violation of the terms and conditions of the wastewater permit shall be deemed a violation of this article and subject the industrial user to the sanctions set out in Division 8 of this article. Obtaining a wastewater permit shall not relieve a user of its obligation to obtain other permits required by federal, state, or local laws.  
(Ord. No. 92-25, 6-16-92; Ord. No. 04-25, 10-2-04)

#### § 26-53. Permitting ~~n~~**N**ew ~~e~~**C**onnections.

Any significant industrial user proposing to begin or recommence discharging industrial wastes into the sanitary sewage system must obtain a wastewater permit for such discharge before any discharge or commencement of operations.  
(Ord. No. 92-25, 6-16-92)

#### § 26-54. Permitting ~~e~~**E**xtra-~~j~~**J**urisdictional ~~i~~**I**ndustrial ~~u~~**U**ser.

Any existing significant industrial user located outside of the ~~e~~**C**ounty shall submit a permit application, in accordance with ~~section §~~ 26-55 below, within ninety (90) days of the effective date of this ordinance from which this article is derived. New significant industrial users located outside of the ~~e~~**C**ounty limits shall submit such applications to the WPCB ~~e~~**C**hief ninety (90) days before any discharge into the sanitary sewage system. Upon review of such application, the WPCB ~~e~~**C**hief may enter into a contract with the industrial user which requires the industrial user to subject itself to and abide by this article, including all permitting, compliance monitoring, reporting, and enforcement provisions herein. However, if the WPCB ~~e~~**C**hief has entered into an agreement, before the time that a permit would otherwise be required with the jurisdiction in which the significant industrial user is located to provide for the implementation and enforcement of pretreatment program requirements, the industrial user

shall be subject to those requirements and no permit shall be required from the County.  
(Ord. No. 92-25, 6-16-92; Ord. No. 04-25, 10-2-04)

**§ 26-55. Wastewater Permit Application Contents.**

No permit shall be granted to an industrial user until it has submitted the information required by ~~section §~~ 26-67.A of this article on a form approved by the WPCB Chief. In addition, at the WPCB Chief's request, the following information shall be included.

~~(a)~~A. Description of activities, facilities, and plant processes on the premises, including a list of all raw materials and chemicals used or stored at the facility which are, or could accidentally or intentionally be, discharged to the POTW.

~~(b)~~B. Number and type of employees, hours of operation, and proposed or actual hours of operation.

~~(c)~~C. Each product produced by type, amount, process or processes, and rate of production.

~~(d)~~D. Type and amount of raw materials processed (average and maximum per day).

~~(e)~~E. The site plans, floor plans, mechanical and plumbing plans, detailed to show all sewers, floor drains, and appurtenances by size, location, and elevation, and all points of discharge.

~~(f)~~F. Time and duration of discharge by the user.

~~(g)~~G. Any other information as may be deemed necessary by the WPCB Chief to evaluate the wastewater discharge permit application.

~~(h)~~H. A statement reviewed and certified by an authorized representative of the user indicating whether or not the pretreatment standards are being met on a consistent basis, and if not, what additional pretreatment is necessary.

~~(i)~~I. If additional pretreatment or O&M will be required to meet the standards, then the industrial user shall prepare a schedule to indicate the shortest amount of time necessary to accomplish installation or adoption of such additional treatment or O&M. The following conditions apply to this schedule:

~~(1)~~ The schedule shall contain dates for the commencement and completion of additional pretreatment measures as required for the user to meet the applicable pretreatment standards. No increment shall exceed nine (9) months, nor shall the total compliance period exceed eighteen (18) months.

~~(2)~~ No later than fourteen (14) days following each date in the schedule and the final date for compliance, the user shall submit a progress report to the WPCB Chief including as a minimum whether or not the user complied with the requirements for incremental progress, the reason for any delay, and the steps being taken by the user to return to the established schedule. In no event shall more than nine (9) months elapse between such progress reports to the WPCB Chief.

Incomplete or inaccurate applications will not be processed and will be returned to the industrial user for revision.

(Ord. No. 92-25, 6-16-92; Ord. No. 04-25, 10-2-04)

**§ 26-56. Application Signatories and Certification.**

All permit applications and industrial user reports must contain the following certification statement and be signed by an authorized representative of the industrial user:

"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 fine and imprisonment for knowing violations."  
 (Ord. No. 92-25, 6-16-92)

§ 26-57. Wastewater ~~p~~Permit ~~d~~Decisions.

The WPCB ~~e~~Chief will evaluate the data furnished by the industrial user and may require the industrial user to submit additional information. Within ninety (90) days of receipt of a complete permit application, the WPCB ~~e~~Chief will determine whether or not to issue a wastewater permit. If no determination is made within this time period, the application will be deemed denied.  
 (Ord. No. 92-25, 6-16-92; Ord. No. 04-25, 10-2-04)

§§ 26-58, 26-59. Reserved.

DIVISION 5.

WASTEWATER PERMIT ISSUANCE PROCESS

§ 26-60. Wastewater ~~p~~Permit ~~d~~Duration.

Permits shall be issued for a time period specified by the WPCB ~~e~~Chief, not exceeding five (5) years. Each permit will indicate a specific date upon which it will expire.  
 (Ord. No. 92-25, 6-16-92; Ord. No. 04-25, 10-2-04)

§ 26-61. Permit ~~e~~Contents.

Wastewater permits shall include such conditions as are deemed necessary by the WPCB ~~e~~Chief to prevent pass through or interference, protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facilitate sludge management and disposal, protect ambient air quality, and protect against damage to the sanitary sewage system.

~~(a)~~A. Wastewater permits will contain the following:

- ~~(1.)~~ A statement that indicates the date of issuance, expiration, and effectiveness, which in no event shall the duration exceed five (5) years.
- ~~(2.)~~ A statement that the permit is nontransferable without prior notification to and written approval from the ~~e~~County and that the current owner or operator is responsible for furnishing the new owner or operator with a copy of the existing permit.
- ~~(3.)~~ Effluent limits and Best Management Practices, applicable to the user based on applicable standards in federal, state and local law.
- ~~(4.)~~ A statement of self-monitoring, sampling, reporting, notification and record-keeping requirements. These requirements shall include an identification of pollutants or Best Management Practice to be monitored, sampling location, sampling frequency, and sample type based on federal, state and local law.
- ~~(5.)~~ A statement of applicable penalties for violation of pretreatment standards and requirements and compliance schedules.
- ~~(6.)~~ Requirements for immediate reporting of any instance of noncompliance and for automatic resampling and reporting within thirty (30) days where self-monitoring indicates a violation(s).

- (7.) A requirement for development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or routine discharges.
- (b)B. Permits may contain, without limitation, the following:
  - (1.) Limits on the instantaneous, daily and monthly average and/or maximum concentration, mass, or other measure of identified wastewater pollutants or properties.
  - (2.) Requirements for the installation of pretreatment technology or construction of appropriate containment devices, etc., designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works.
  - (3.) Compliance schedules for meeting pretreatment standards and requirements.
  - (4.) A statement that compliance with permit terms does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards, including those which become effective during the term of the permit.
  - (5.) Any other conditions as found necessary by the WPCB eChief to ensure compliance with this article and state and federal laws, rules, and regulations.

(Ord. No. 92-25, 6-16-92; Ord. No. 04-25, 10-2-04; Ord. No. 08-13, 6-17-08)

§ 26-62. Wastewater pPermit aAppeals.

Any person, including the industrial user, may file a written petition with the County Manager to reconsider and change the terms of the permit within fifteen (15) days after the notice that the permit is denied or awarded is mailed to the industrial user.

- (a)A. Failure to submit a timely petition of review shall be deemed to be a waiver of the right to appeal.
- (b)B. In its petition, the appealing party must indicate which permit provisions objected to, the reasons for this objection, and the alternative condition, if any, it seeks to have included in the permit.
- (c)C. A permit and all conditions shall be effective pending the appeal.
- (d)D. If the County Manager fails to act on the appeal within thirty (30) days, the request for reconsideration shall be deemed to be denied. Decisions not to reconsider a permit, not to issue a permit, or not to modify a permit shall be considered final administrative action for purposes of judicial review.  
(Ord. No. 92-25, 6-16-92)

§ 26-63. Wastewater pPermit mModification.

The WPCB eChief may modify a permit at any time for good cause including, but not limited to, the following:

- (a)A. To incorporate any new or revised federal, state, or local pretreatment standards or requirements.
- (b)B. To address significant alterations or additions to the industrial user's operation, processes, or wastewater volume or character since the time of permit issuance.
- (c)C. A change in the sanitary sewage system that requires either a temporary or permanent reduction or elimination of a previously authorized discharge.
- (d)D. Information indicating that the permitted discharge poses a threat to the County's sanitary sewage system, County personnel, or the receiving waters.

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- | ~~(e)E.~~ Violation of any terms or conditions of the wastewater permit.
- | ~~(f)E.~~ Misrepresentation or failure to disclose fully all relevant facts in the permit application or in any required reporting.
- | ~~(g)G.~~ Revision of or a grant of variance from categorical pretreatment standards pursuant to 40 CFR 403.13.
- | ~~(h)H.~~ Typographical or other errors in the permit.
- | ~~(i)I.~~ Transfer of the permittee's facility ownership and/or operation to a new owner/operator.

The filing of a request by the permittee for a permit modification shall not stay or suspend any permit condition.  
(Ord. No. 92-25, 6-16-92; Ord. No. 04-25, 10-2-04)

| **§ 26-64. Wastewater ~~p~~Permit ~~t~~Transfer.**

Permits may be reassigned or transferred to a new owner and/or operator with prior written approval of the WPCB ~~e~~Chief. The permittee must give at least thirty (30) days advance notice to the WPCB ~~e~~Chief. The notice must include a written certification by the new owner which:

- | ~~(a)A.~~ States that the new owner has no immediate intent to change the facility's operations and processes.
- | ~~(b)B.~~ Identifies the specific date on which the transfer is to occur.
- | ~~(c)C.~~ Agrees to assume responsibility for complying with the existing permit.

Failure to provide advance written notice of a transfer shall be a violation of the wastewater permit as of the date of facility transfer.  
(Ord. No. 92-25, 6-16-92; Ord. No. 04-25, 10-2-04)

| **§ 26-65. Wastewater ~~p~~Permit ~~r~~Revocation.**

Wastewater permits may be revoked for the following reasons:

- | ~~(a)A.~~ Failure to notify the ~~e~~County of significant changes to the wastewater prior to the changed discharge;
- | ~~(b)B.~~ Falsifying self-monitoring reports;
- | ~~(c)C.~~ Tampering with monitoring equipment;
- | ~~(d)D.~~ Refusing to allow the ~~e~~County timely access to the facility premises and records;
- | ~~(e)E.~~ Failure to meet effluent limitations;
- | ~~(f)F.~~ Failure to pay fines;
- | ~~(g)G.~~ Failure to pay sewer charges;
- | ~~(h)H.~~ Failure to meet compliance schedules;
- | ~~(i)I.~~ Failure to complete a wastewater survey;

~~(j)~~L. Failure to provide advance notice of the transfer of a permitted facility;

~~(k)~~K. Violation of any pretreatment standard or requirement or any terms of the permit or the ordinance.

Permits shall be void upon nonuse for a period of one (1) year or longer, or upon permanent cessation of operations. In addition, all prior permits are void upon the issuance of a new wastewater permit. (Ord. No. 92-25, 6-16-92; Ord. No. 95-10, 4-29-95; Ord. No. 95-11, 4-29-95)

§ 26-66. Wastewater ~~p~~Permit ~~r~~Reissuance.

A significant industrial user shall apply for permit reissuance by submitting a complete permit application in accordance with ~~section §~~ 26-55 at least ninety (90) days before the expiration of the user's existing permit. (Ord. No. 92-25, 6-16-92)

**DIVISION 6.**

**REPORTING REQUIREMENTS**

§ 26-67. Baseline ~~m~~Monitoring ~~r~~Reports.

Within one hundred eighty (180) days after the effective date of a categorical pretreatment standard, or one hundred eighty (180) days after the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing significant industrial users subject to such categorical pretreatment standards and currently discharging to or scheduled to discharge to the municipal system shall be required to submit to the ~~e~~County a report which contains the information listed in paragraph ~~A~~(a) below. At least ninety (90) days prior to commencement of their discharge, new sources, including existing users which have changed their operation or processes so as to become new sources, shall be required to submit to the county a report which contains the information listed in paragraph ~~A~~(a) below. A new source shall also be required to report the method of pretreatment it intends to use to meet applicable pretreatment standards. A new source shall also give estimates of its anticipated flow and quantity of pollutants discharged.

~~(a)~~A. The information required by this section includes:

~~(1.)~~ *Identifying information.* The user shall submit the name and address of the facility including the name of the operator and owners.

~~(2.)~~ *Permits.* The user shall submit a list of any environmental permits held by or for the facility.

~~(3.)~~ *Description of operations.* The user shall submit a brief description of the nature, average rate of production, and standard industrial classifications of the operation(s) carried out by such industrial user. This description should include a schematic process diagram which indicates points of discharge to the system from the regulated processes.

~~(4.)~~ *Flow measurement.* The user shall submit information showing the measured average and maximum daily flow, in gallons per day, to the sanitary sewage system from regulated process streams and other streams as necessary to allow use of the combined wastestream formula set out in 40 CFR 403.6(e).

~~(5.)~~ *Measurement of pollutants.*

~~i~~a. The industrial user shall identify the categorical pretreatment standards applicable to each regulated process;

~~ii~~b. In addition, the industrial user shall submit the results of sampling and analysis identifying the nature and concentration (and/or mass, where required by the standard or

~~e~~CCounty local limit) of regulated pollutants in the discharge from each regulated process. Instantaneous, daily maximum, and long term average concentrations (or mass, where required) shall be reported. The sample shall be representative of daily operations. Sampling and analysis shall be performed in accordance with procedures set out in 40 CFR Part 136.

~~h~~c. A minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organics. All other pollutants will be measured by composite samples obtained through flow proportional sampling techniques. If flow proportional composite sampling is infeasible, samples may be obtained through time proportional sampling techniques or through four (4) grab samples if the user proves such a sample will be representative of the discharge.

~~(6.)~~ *Special certification.* A statement reviewed by an authorized representative of the industrial user and certified by a qualified professional indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional O&M and/or additional pretreatment is required in order to meet the pretreatment standards and requirements.

~~(7.)~~ *Compliance schedule.* If additional pretreatment and/or O&M will be required to meet the pretreatment standard, the industrial user shall provide the shortest possible schedule to provide such additional pretreatment and/or O&M. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this section must meet the requirements set out in ~~26-55.1~~(~~h~~) of this article.

~~(8.)~~ *Signature and certification.* All baseline monitoring reports must be signed and certified in accordance with ~~section §~~ 26-56.

(Ord. No. 92-25, 6-16-92)

§ 26-68. ~~Compliance d~~Deadline ~~r~~Reports.

Within ninety (90) days following the date for final compliance with applicable categorical pretreatment standards, or in the case of a new source, following commencement of the introduction of wastewater into the sanitary sewage system, any industrial user subject to such pretreatment standards and requirements shall submit to the county a report containing the information described in ~~section §~~ 26-67, ~~A.5(a)(5)~~ and ~~6(6)~~ of this article. For industrial users subject to equivalent mass or concentration limits established in accordance with the procedures in 40 CFR 403.6(c), this report shall contain a reasonable measure of the user's long term production rate. For all other industrial users subject to categorical pretreatment standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation) this report shall include user's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with ~~section §~~ 26-56.

(Ord. No. 92-25, 6-16-92)

§ 26-69. ~~Periodic e~~Compliance ~~r~~Reports.

All significant industrial users shall, at a frequency determined by the WPCB ~~e~~CChief, which shall not be less frequent than two (2) times per year, submit a written report indicating the nature, concentration and flow of pollutants in the discharge which are limited by pretreatment standards and the measured or estimated average and maximum daily flow for the reporting period. All periodic compliance reports must be signed and certified in accordance with ~~section §~~ 26-56.

~~(a)~~A. The user shall report all monitoring results collected at the proscribed monitoring point as specified in the wastewater permit.

~~(b)~~B. The industrial user shall be responsible for ensuring that all wastewater samples are representative of the industrial user's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of an industrial user to properly operate

and maintain its monitoring facility shall not be grounds for the industrial user to claim that sample results are unrepresentative of its discharge.

~~(c)~~C. In the event an industrial user's monitoring results indicate that a violation has occurred, the industrial user must immediately notify the WPCB ~~e~~Chief and resample its discharge. The industrial user must report the results of the resampling within thirty (30) days of discovering the first violation.

~~(d)~~D. In cases where the Pretreatment Standard or permit requires compliance with a Best Management Practice or pollution prevention alternative, the User must submit documentation required by the WPCB Chief or the Pretreatment Standard necessary to determine compliance status of the user.

~~(e)~~E. The WPCB ~~e~~Chief may authorize an industrial user subject to categorical pretreatment standards to forgo sampling of a pollutant regulated by a categorical standard if the industrial user has demonstrated through sampling and other technical factors that the pollutant is neither present nor expected to be present in the facility's discharge, or is present only at background levels from the intake water and without any increase in the pollutant due to activities of the industrial user. This authorization is subject to the following conditions:

- ~~(1.)~~ 1.) The waiver may be authorized where a pollutant is determined to be present solely due to sanitary wastewater discharged from the facility provided that the sanitary wastewater is not regulated by an applicable categorical ~~S~~Standard and otherwise includes no process wastewater.
- ~~(2.)~~ 2.) The monitoring waiver is valid only for the duration of the effective period of the individual wastewater discharge permit, but in no case longer than ~~five (5)~~ five (5) years. The ~~U~~User must submit a new request for the waiver before the waiver can be granted for each subsequent individual wastewater discharge permit.
- ~~(3.)~~ 3.) In making a demonstration that a pollutant is not present, the ~~I~~Industrial ~~U~~User must provide data from at least one sampling of the facility's process wastewater prior to any treatment present at the facility that is representative of all wastewater from all processes.
- ~~(4.)~~ 4.) The request for a monitoring waiver must be signed by an authorized representative as defined in ~~section § 26-1~~ section § 26-1 of this ~~C~~Chapter, and include the certification statement specified in ~~§ 26-56~~ § 26-56.
- ~~(5.)~~ 5.) Non-detectable sample results may be used only as a demonstration that a pollutant is not present if the EPA approved method from 40 CFR Part 136 with the lowest minimum detection level for that pollutant was used in the analysis.
- ~~(6.)~~ 6.) Any grant of the monitoring waiver by the WPCB Chief must be included as a condition in the ~~U~~User's permit. The reasons supporting the waiver and any information submitted by the User in its request for the waiver must be maintained by the WPCB Chief for ~~three (3)~~ three (3) years after expiration of the waiver.
- ~~(7.)~~ 7.) Upon approval of the monitoring waiver and revision of the User's permit by the WPCB Chief, the Industrial User must certify on each report with the statement in § 26-56 of this ~~C~~Chapter, that there has been no increase in the pollutant in its wastestream due to activities of the ~~I~~Industrial ~~U~~User.
- ~~(8.)~~ 8.) In the event that a waived pollutant is found to be present or is expected to be present because of changes that occur in the ~~U~~User's operations, the ~~U~~User must immediately notify the WPCB Chief and comply with the monitoring requirements of this ~~S~~Section, or other more frequent monitoring requirements imposed by the WPCB Chief.
- ~~(9.)~~ 9.) This provision does not supersede certification processes and requirements established in categorical Pretreatment Standards, except as otherwise specified in the categorical Pretreatment Standard.

(Ord. No. 92-25, 6-16-92; Ord. No. 95-10, 4-29-95; Ord. No. 95-11, 4-29-95; Ord. No. 04-25, 10-2-04; Ord. No. 08-

13, 6-17-08)

§ 26-70. Report of ~~e~~Changed ~~e~~Conditions.

Each industrial user shall notify the WPCB ~~e~~Chief of any planned significant changes to the industrial user's operations or pretreatment systems which might alter the nature, quality or volume of its wastewater including, but not limited to, increased potential for spills or slug loading, or, the listed or characteristic hazardous waste for which the industrial user has submitted initial notification under 40 CFR 403.12(p). In the event of any such changes:

~~(a)~~A. The WPCB ~~e~~Chief may require the industrial user to submit such information as the WPCB ~~e~~Chief may deem necessary to evaluate the changed condition, including the submission of a wastewater permit application under ~~section §~~ 26-55, if necessary.

~~(b)~~B. The WPCB ~~e~~Chief may issue a wastewater permit under ~~section §~~ 26-57 or modify the existing wastewater permit under ~~section §~~ 26-63.

~~(c)~~C. No industrial user shall implement the planned changed condition(s) until and unless the WPCB ~~e~~Chief has responded to the industrial user's notice in writing.

~~(d)~~D. For purposes of this requirement, flow increases of ten percent (10%) ~~percent~~ or greater and the discharge of any previously unreported pollutant shall be deemed significant.  
(Ord. No. 92-25, 6-16-92; Ord. No. 04-25, 10-2-04; Ord. No. 08-13, 6-17-08)

§ 26-71. Reports of ~~p~~Potential ~~p~~Problems.

Each industrial user shall provide protection from accidental or intentional discharges of prohibited materials or other substances regulated by this article. Detailed plans showing facilities and operating procedures which provide protection shall be submitted to the ~~e~~County for review and shall be approved by the ~~e~~County before construction of the facility. Review and approval of such plans and operating procedures shall not relieve the industrial user from the responsibility to modify the user's facility as necessary to meet the requirements of this article.

~~(a)~~A. In the case of an accidental or other discharge which may cause problems for the sanitary sewage system, it shall be the responsibility of the user to immediately telephone and notify the ~~e~~County of the incident. This notification shall include the location of discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.

~~(b)~~B. Within five (5) days following an accidental discharge, the user shall submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the user to prevent similar future discharges. 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 system, natural resources, or any other person or property; nor shall such notification relieve the user from liability for any fine, civil penalty, or other obligation which may be imposed by this article.

~~(c)~~C. Failure to notify the ~~e~~County of a discharge violation shall be deemed a violation separate from the actual discharge violation.

~~(d)~~D. A notice shall be permanently posted on a user's bulletin board or other prominent place advising the user's employees whom to call in the event of discharge described in paragraph ~~B~~(~~b~~) above. Employers shall ensure that all employees who may be present when such a discharge occurs are advised of the emergency notification procedure.  
(Ord. No. 92-25, 6-16-92)

§ 26-72. Reports from ~~n~~Nonsignificant ~~u~~Users.

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**UTILITIES**

All industrial users not subject to categorical pretreatment standards and not required to obtain a wastewater permit shall provide such reports to the eCounty as the WPCB eChief may require.  
(Ord. No. 92-25, 6-16-92; Ord. No. 04-25, 10-2-04)

**§ 26-73. Sample eCollection.**

Except for those samples included in subsection A(+) below, wastewater samples collected for purposes of determining industrial user compliance with pretreatment standards and requirements must be obtained using flow proportional composite collection techniques. In the event flow proportional sampling is infeasible, the WPCB eChief may authorize the use of time proportional sampling.

(+)A. Samples for oil and grease, temperature, pH, cyanide, phenols, toxicity, sulfides, and volatile organic chemicals must be taken using grab collection techniques.  
(Ord. No. 92-25, 6-16-92; Ord. No. 04-25, 10-2-04)

**§ 26-74. Analytical eRequirements.**

All pollutant analyses, including sampling techniques, to be submitted as part of a permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 or, if 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, in accordance with procedures approved by the EPA and the eCounty.  
(Ord. No. 92-25, 6-16-92)

**§ 26-75. Monitoring eCharges.**

The WPCB eChief may recover the eCounty's expenses incurred in collecting and analyzing samples of the industrial user's discharge by adding the costs to the industrial user's sewer charges.  
(Ord. No. 92-25, 6-16-92; Ord. No. 04-25, 10-2-04)

**§ 26-76. Timing.**

Written reports will be deemed to have been transmitted when received by the WPCB or sent by certified mail, postage prepaid, by the United States Postal Service.  
(Ord. No. 92-25, 6-16-92; Ord. No. 04-25, 10-2-04)

**§ 26-77. Record-~~k~~Keeping.**

Industrial users shall retain and make available for inspection and copying all records and information required to be retained under 40 CFR 403.12(a), including documents associated with required Best Management Practices. These records shall remain available for a period of at least three (3) years. This period shall automatically be extended for the duration of any litigation regarding the discharge of pollutants by the industrial user or concerning compliance with this article, or where the industrial user has been specifically notified of a longer retention period by the WPCB eChief or the EPA.  
(Ord. No. 92-25, 6-16-92; Ord. No. 04-25, 10-2-04; Ord. No. 08-13, 6-17-08)

**§ 26-78. Notice of ~~v~~Violation/~~R~~Repeat ~~s~~Sampling and ~~R~~Reporting.**

If sampling performed by an industrial user indicates a violation, the industrial user must notify the WPCB within twenty-four (24) hours of becoming aware of the violation. The industrial user shall also repeat the sampling and analysis and submit the results of the repeat analysis to the WPCB within thirty (30) days after becoming aware of the violation. The industrial user is not required to resample if the POTW performs sampling between the industrial users initial sampling and when the industrial user receives the results of this sampling.  
(Ord. No. 92-25, 6-16-92; Ord. No. 04-25, 10-2-04)

**DIVISION 7.**

## COMPLIANCE MONITORING

| § 26-79. Inspection and ~~s~~Sampling.

Industrial users shall allow the WPCB ~~e~~Chief or his representatives ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, ascertaining whether the requirements of this article are being met, and any other purposes related to the requirements of this article.

~~(a)~~A. Where a user has security measures in force which require proper identification and clearance before entry into their premises, the industrial user shall make necessary arrangements with its security guards so that upon presentation of suitable identification personnel from the County, state, and U.S. EPA will be permitted to enter, without delay, for the purpose of performing their specific responsibilities.

~~(b)~~B. The County, state, and U.S. EPA shall have the right to set up or require installation on the industrial user's property such devices as are necessary to conduct sampling and/or metering of the user's operations.

~~(c)~~C. The County may require the industrial user to install monitoring equipment, as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition. All devices used to measure wastewater flow and quality shall be calibrated periodically to ensure their accuracy.

~~(d)~~D. Any temporary or permanent obstruction to safe and easy access to the industrial facility to be inspected and/or sampled shall be promptly removed by the industrial user at the written or verbal request of the WPCB ~~e~~Chief and shall not be replaced. The costs of clearing such access shall be borne by the industrial user.

~~(e)~~E. Refusal to provide County personnel access to the industrial user's premises shall be a violation of this ~~A~~article.  
(Ord. No. 92-25, 6-16-92; Ord. No. 04-22, 10-2-04)

| § 26-80. Confidential ~~i~~Information.

Information and data on an industrial user obtained from reports, questionnaires, permit applications, permits, and monitoring programs, and from ~~e~~County inspection and sampling activities shall be available to the public without restriction unless the industrial user specifically requests and is able to demonstrate to the satisfaction of the ~~e~~County that the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets under applicable state law.

~~(a)~~A. Wastewater constituents and characteristics and other "effluent data" as defined by 40 CFR 2.302 will not be recognized as confidential information and will be available to the public without restriction.

~~(b)~~B. Upon request and demonstration to the ~~e~~County's satisfaction that such information should be confidential, the portions of the report which might disclose trade secrets or secret processes shall not be made available for inspection by the public but shall be made available immediately upon request to governmental agencies for uses related to this article, the Virginia Pollutant Discharge Elimination System (VPDES) program, and in enforcement proceedings involving the person furnishing the report.  
(Ord. No. 92-25, 6-16-92)

§§ 26-81--26-84. Reserved.

## DIVISION 8.

## ENFORCEMENT REMEDIES

In addition to any other remedies allowed by law, the County shall have the following remedies:

| § 26-85. Publication of ~~s~~Significant ~~v~~Violators.

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The eCounty shall annually publish, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the POTW, a list of the industrial users which during the previous twelve (12) months, were in significant noncompliance with applicable pretreatment standards and requirements. The term significant noncompliance shall mean:

(A) Sixty-six percent (66%) ~~percent~~ or more of wastewater pretreatment measurements taken during a six- (6) month period exceed the discharge limit for any one (1) pollutant, a numeric pretreatment standard, or requirement including instantaneous limits;

(B) Thirty-three percent (33%) ~~percent~~ or more of wastewater measurements taken during a six- (6) month period equals or exceeds the product of the numeric pretreatment standard or requirement including instantaneous limits, daily maximum limit or the average limit multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH);

(C) Any other discharge violation that the eCounty determines it has caused, alone or in combination with other discharges, interference or pass-through (including endangering the health of eCounty personnel or the general public);

(D) Any discharge of pollutants that has caused imminent danger to the public or to the environment, or has resulted in the eCounty's exercise of its emergency authority to halt or prevent such a discharge;

(E) The user has failed to meet, within ninety (90) days after the scheduled date, a compliance schedule milestone contained in a permit or enforcement order for starting construction, completing construction, or attaining final compliance;

(F) The user has failed to provide, within forty-five (45) days after the due date, any required reports, including baseline monitoring reports, ninety-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(G) The user has failed to accurately report noncompliance; or

(h) The user is responsible for any other violation(s), which may include a violation of Best Management Practices, which the eCounty has reason to believe will adversely affect the operation or implementation of the pretreatment program, or is otherwise significant.

(Ord. No. 92-25, 6-16-92; Ord. No. 98-3, 2-7-98; Ord. No. 08-13, 6-17-08)

**§ 26-86. Notice of ~~v~~iolation.**

Whenever the WPCB eChief finds that any industrial user has violated or is violating this article, a wastewater permit or order issued hereunder, or any other pretreatment requirement the WPCB eChief or his agent may serve upon the user a written notice of violation. Within ten (10) days of the receipt of this notice, the user must submit to the WPCB eChief an explanation of the violation and a plan for the satisfactory correction and prevention thereof to include specific required actions. Submission of this plan shall not relieve the user of liability for any violations occurring before or after receipt of the notice of violation. Nothing in this section shall limit the authority of the eCounty to take emergency action without first issuing a notice of violation.

(Ord. No. 92-25, 6-16-92; Ord. No. 04-25, 10-2-04)

**§ 26-87. Consent ~~o~~rders.**

The WPCB eChief may enter into consent orders, assurances of voluntary compliance, or other similar documents establishing agreements with industrial users responsible for noncompliance. Such orders may include specific action to be taken by the industrial user to correct the noncompliance within a time period also specified by the order. Consent orders shall have the same force and effect as compliance orders issued pursuant to ~~sections §§~~ 26-88 and 26-89 below and shall be judicially enforceable.

(Ord. No. 92-25, 6-16-92; Ord. No. 04-25, 10-2-04)

§ 26-88. Show ~~e~~Cause ~~h~~Hearing.

The WPCB ~~e~~C~~h~~ief may order any industrial user which causes or contributes to violation(s) of this article, wastewater permits, or orders issued hereunder, or any other pretreatment requirement to appear before the WPCB ~~e~~C~~h~~ief and show cause why a proposed enforcement action should not be taken. Notice shall be served on the industrial user specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user show cause why this proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any authorized representative of the industrial user. Whether or not the industrial user appears as noticed, immediate enforcement action may be pursued following the hearing date.

(Ord. No. 92-25, 6-16-92; Ord. No. 04-25, 10-2-04)

§ 26-89. Cease and ~~d~~Desist and ~~e~~C~~o~~mpliance ~~o~~Orders.

When the WPCB ~~e~~C~~h~~ief finds that an industrial user has violated or continues to violate this article, permits or orders issued hereunder, or any other pretreatment requirement the WPCB ~~e~~C~~h~~ief may issue an order to the industrial user directing it to cease and desist all such violations and directing the user to:

~~(a)~~A. Immediately comply with all requirements.

~~(b)~~B. Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatened violation, including halting operations and/or terminating the discharge.

~~(c)~~C. Take such action as might be reasonably necessary and appropriate to address the noncompliance, including additional self-monitoring, and management practices designed to minimize the amount of pollutants discharged to the sewer. Furthermore, the WPCB ~~e~~C~~h~~ief may continue to require such additional self-monitoring for at least ninety (90) days after consistent compliance has been achieved, after which time the self-monitoring conditions in the discharge permit shall control.

Such orders may also provide that sewer service shall be discontinued unless after a specific time period, adequate treatment facilities, devices, or other related appurtenances are installed and properly operated.

(Ord. No. 92-25, 6-16-92; Ord. No. 04-25, 10-2-04)

§§ 26-90, 26-91. Reserved.

§ 26-92. Emergency ~~s~~Suspensions.

The WPCB ~~e~~C~~h~~ief may suspend the wastewater permit of an industrial user, for a period of up to thirty (30) days, whenever such suspension is necessary in order to stop an actual or threatened discharge which reasonably appears to present or cause an imminent or substantial endangerment to the health or welfare of persons, interferes with the operation of the sanitary sewage system, or which presents or may present an endangerment to the environment.

~~(a)~~A. Any industrial user notified of the suspension of its wastewater permit shall immediately stop or eliminate its contribution. In the event of an industrial user's failure to immediately comply voluntarily with the suspension order, the WPCB ~~e~~C~~h~~ief shall take such steps as he deems necessary, including immediate severance of the sewer connection, to prevent or minimize damage to the system, its receiving stream, or endangerment to any individuals. The WPCB ~~e~~C~~h~~ief shall allow the industrial user to recommence its discharge when the user has demonstrated to the satisfaction of the ~~e~~C~~o~~unty that the period of endangerment has passed, unless the termination proceedings set forth in ~~section §~~ 26-93 are initiated against the user, in which case the discharge may not be recommenced.

~~(b)~~B. An industrial user which is responsible, in whole or in part, for any discharge presenting imminent endangerment to the health or welfare of persons or the environment shall submit a detailed written statement

describing the causes of the harmful contribution and the measures taken to prevent any future occurrence to the WPCB eChief prior to the date of any show cause or termination hearing under ~~sections §§~~ 26-88 and 26-93.

Nothing in this ~~S~~section shall be interpreted as requiring a hearing prior to any emergency suspension under this ~~S~~section.  
(Ord. No. 92-25, 6-16-92; Ord. No. 04-25, 10-2-04)

**§ 26-93. Termination of ~~p~~Permit.**

In addition to those provisions in ~~section §~~ 26-65 of this article, any industrial user which violates the following conditions of this article, wastewater permits, or orders issued hereunder is subject to permit termination:

~~(a)A.~~ Failure to accurately report the wastewater constituents and characteristics of its discharge.

~~(b)B.~~ Refusal to grant reasonable access to the user's premises for the purpose of inspection, monitoring or sampling. Noncomplying industrial users will be notified of the proposed termination of their wastewater permit and be offered an opportunity to show cause under ~~section §~~ 26-88 of this article why the proposed action should not be taken.  
(Ord. No. 92-25, 6-16-92)

**§ 26-94. Injunctive ~~r~~Relief.**

Whenever an industrial user has violated or continues to violate the provisions of this article, permits or orders issued hereunder, or any other pretreatment requirement, the WPCB eChief, may in addition to other remedies allowed by law petition the eCircuit eCourt for the issuance of a temporary or permanent injunction, as may be appropriate, which restrains or compels the specific performance of the wastewater permit, order, or other requirement imposed by this article on activities of the industrial user.  
(Ord. No. 92-25, 6-16-92; Ord. No. 04-25, 10-2-04)

**§ 26-95. Penalties.**

Any person who violates any provisions of this ~~A~~article, any orders or permits issued hereunder, or any other pretreatment requirement shall be guilty of a Class 1 misdemeanor, punishable by a fine of no more than one thousand dollars (\$1,000.00) per violation per day, or imprisonment for not less than thirty (30) days nor more than six (6) months, or both. Each day on which a violation exists shall be a separate violation. In addition to any other remedies allowed by law, the County shall have the following remedies:

~~(a)A.~~ The WPCB eChief may recover reasonable attorney's fees, court costs, and other expenses, and the cost of any actual damages incurred by the eCounty.

~~(b)B.~~ The County may recover any amount assessed against it as a civil penalty from any user whose acts proximately causes the violation which resulted in the civil penalty as provided in ~~Section §~~ 62.1-44.32 of the Virginia Code.  
(Ord. No. 92-25, 6-16-92; Ord. No. 04-25, 10-2-04)

**§ 26-96. False ~~s~~Statements.**

Any industrial user who knowingly makes any false statements, representations, or certifications in any application, record, report, plan or other documentation filed or required to be maintained pursuant to this article, or wastewater permit, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required under this article shall, upon conviction, be punished by a fine of not more than one thousand dollars (\$1,000.00) per violation per day or imprisonment for not more than six (6) months or both.  
(Ord. No. 92-25, 6-16-92)

**§§ 26-97--26-99. Reserved.**

## DIVISION 9.

## AFFIRMATIVE DEFENSES TO DISCHARGE VIOLATIONS

## § 26-100. Upset.

An upset shall be an affirmative defense to an enforcement action brought against a user for violating a categorical pretreatment standards if the following conditions are met:

(a)A. The user can identify the cause of the upset.

(b)B. The facility was operating in a prudent and workmanlike manner at the time of the upset and was in compliance with applicable O&M procedures.

(c)C. The user submits within twenty-four (24) hours of becoming aware of the upset a description of the discharge and its causes, the period of noncompliance (if not corrected, then time noncompliance is anticipated to end), and the steps being taken to reduce, eliminate, and prevent recurrence of the noncompliance.

(d)D. If this report is given orally, the user must also submit a written report containing such information within five (5) days after the oral report.

(e)E. Upset shall mean an exceptional incident in which there is unintentional and temporary noncompliance with categorical pretreatment standards and requirements because of factors beyond the reasonable control of the industrial user. Noncompliance caused by operational error, improperly designed pretreatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation does not constitute an upset.  
(Ord. No. 92-25, 6-16-92; Ord. No. 98-3, 2-7-98)

## § 26-101. General/sSpecific pProhibitions.

In determining what enforcement action will be brought for a violation of any section of this article except sections §§ 26-35 A(a) and D(d), the WPCB may, but is not required, to consider:

(a)A. Whether the user knew or should have known that its discharge, alone or in conjunction with discharges from other sources, would cause pass-through or interference, or

(b)B. A local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to and during the pass-through or interference, or

(c)C. No local limits exists but the discharge did not change substantially in nature or constituents from the user's prior discharge when the County was regularly in compliance with the VPDES permit, and in the case of interference, in compliance with applicable sludge use or disposal requirements.  
(Ord. No. 92-25, 6-16-92; Ord. No. 04-25, 10-2-04)

## § 26-102. Bypass.

The intentional diversion of wastestreams from any portion of an individual user's treatment facility shall be an affirmative defense to an enforcement action brought against the industrial user if the user can demonstrate to the WPCB Chief's satisfaction that such a bypass was unavoidable to prevent loss of life, personal injury, or severe property damage. In order to be eligible for the affirmative defense, the industrial user must demonstrate that there was no feasible alternative to the bypass and submit notice of the bypass as required by 40 CFR 403.17.

Additionally, an industrial user may allow a bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operations. This type of bypass shall comply with the requirements of 40 CFR 403.17(c)(1).

The County may approve an anticipated bypass if it meets the above criteria. In all other situations, bypass is prohibited. The County may take enforcement action against an industrial user for a prohibited bypass. (Ord. No. 92-25, 6-16-92; Ord. No. 98-3, 2-7-98; Ord. No. 04-25, 10-2-04)

§§ 26-103, 26-104. Reserved.

#### DIVISION 10.

#### MISCELLANEOUS PROVISIONS

##### § 26-105. Pretreatment ~~e~~Charges and ~~f~~Fees.

The following fees shall be charged for use of the County's pretreatment program:

~~(a)~~A. Each industrial user holding a valid wastewater permit shall pay an annual fee of one thousand five hundred sixty dollars (\$1,560.00) plus three thousand six hundred forty dollars (\$3,640.00) for each monitoring point specified by the user's permit.

~~(b)~~B. Each user holding a valid septage hauler permit shall pay an annual fee of two thousand eight hundred three dollars (\$2,803.00) for each individual vehicle used to deliver septage to the WPCB.

~~(c)~~C. A late charge of six percent (~~6%~~) ~~per~~cent per year shall be imposed on the outstanding balance of pretreatment fees unpaid thirty (30) days after the date payment of the bill is due. In addition to all other enforcement procedures permitted by law, if any pretreatment fees charged by Arlington County are not paid within thirty (30) days, and the person who incurred the debt is an occupant of such premises, the water and/or sewer service to the premises may be terminated. The County may proceed to recover the amount of any such delinquent rates, fees, or charges, with interest.

Annual fees shall be payable for each Arlington County fiscal year, or any part thereof, for which the user has been in operation. Annual fees are due and payable to the County on or before May 30 of each Arlington County fiscal year for which the fees are assessed. All other fees shall be invoiced to the user quarterly. (Ord. No. 92-25, 6-16-92; Ord. No. 93-5, 5-20-93; Ord. No. 95-10, 4-29-95; Ord. No. 95-11, 4-29-95; Ord. No. 99-13, 5-22-99; Ord. No. 04-25, 10-2-04)

##### § 26-106. Severability.

If any provision of this article is invalidated by any court of competent jurisdiction, the remaining provisions shall not be affected and shall continue in full force and effect. (Ord. No. 92-25, 6-16-92)

##### § 26-107. Conflicts.

In any case where a provision of this chapter is found to be in conflict with any other provision of the Arlington County Code existing on the effective date of this chapter, the provision which establishes the more stringent standard for the promotion and protection of the health and safety of the people shall prevail. (Ord. No. 92-25, 6-16-92)

#### ARTICLE III.

#### CROSS-CONNECTION CONTROL AND BACKFLOW PREVENTION

##### § 26-108. General.

This article provides for the protection of the ~~e~~County's drinking water supply from possible contamination caused by back pressure or back siphonage conditions, in accordance with the regulations of the Virginia Department of Health and Virginia Uniform Statewide Building Code (BOCA Plumbing Code). As defined in this

article, "premises" shall refer to property where there is a use or presence of a contaminant, as defined in this article, and the use of the contaminant on the premises may pose a risk to the waterworks through a backflow occurrence. (Ord. No. 92-38, 8-8-92)

§ 26-109. Administration and Enforcement.

(a) The Inspection Services Division shall be responsible for the administrative, inspections, and record-keeping functions required by this article.

(b) The Inspection Services Bureau shall notify the Water, Sewer and Streets Bureau of noncompliance with the backflow prevention requirements by a customer. The Water, Sewer and Streets Bureau may, as provided for in this article, deny water service to a customer if the backflow prevention requirements are not complied with. (Ord. No. 92-38, 8-8-92; Ord. No. 04-25, 10-2-04)

§ 26-110. Cross-Connection.

(a) No person shall install or maintain a water service connection to any premises where cross-connections to the County's water system or a customer's water system may exist unless such cross-connections are abated or controlled to the satisfaction of the County according to state law.

(b) No person shall install or maintain any connection to the waterworks whereby water from an auxiliary water supply may enter the County's or customer's water supply unless the auxiliary water system and the method of connection and use of such system shall have been approved by the County. (Ord. No. 92-38, 8-8-92)

§ 26-111. Where Protection is Required.

(a) An approved backflow prevention device shall be installed on each service line from the waterworks to a customer's water system where any of the following conditions exist:

- (1.) Premises having an auxiliary water system, unless such auxiliary water system is accepted as an additional water supply source by the County.
- (2.) Premises for which the Inspection Services Division determines that any substance is handled in a manner which creates a backflow hazard to the water system (including premises having sources or systems containing process fluids or an auxiliary water system).
- (3.) Premises having internal cross-connections or intricate plumbing arrangements which make it impractical for the Inspection Services Division to determine whether or not cross-connections exist.
- (4.) Premises where, because of security requirements or other prohibitions or restrictions, it is impossible or impractical for the inspection services division to make a complete cross-connection survey.
- (5.) Premises having a history of cross-connections, as shown in the records of the Inspection Services Division.
- (6.) Premises having fire protection systems utilizing combinations of sprinklers, fire loops, storage tanks, pumps, antifreeze protection, or auxiliary water system (fire loops and sprinkler systems with openings not subject to flooding, and containing no antifreeze or other chemicals, or separate fire storage, or auxiliary sources, will not normally require backflow prevention unless a potential hazard is found to exist).

(b) Premises where a booster pump is connected to the waterworks shall be equipped with a low-

pressure cutoff device to shut off the booster pump when the pressure in the waterworks drops to a minimum of ten (10) psi gauge.

~~(c)~~ An approved backflow prevention device shall be installed on each service line to a customer's water system serving the following types of facilities:

- ~~(1.)~~ Hospitals, mortuaries, clinics, veterinary establishments, nursing homes, and medical buildings;
  - ~~(2.)~~ Laboratories;
  - ~~(3.)~~ Piers, docks, or waterfront facilities;
  - ~~(4.)~~ Sewage treatment plants, sewage pumping stations, or stormwater pumping stations;
  - ~~(5.)~~ Food and beverage processing plants;
  - ~~(6.)~~ Chemical plants, dyeing plants, and pharmaceutical plants;
  - ~~(7.)~~ Metal plating industries;
  - ~~(8.)~~ Petroleum processing or storage plants;
  - ~~(9.)~~ Radioactive materials processing plants or nuclear reactors;
  - ~~(10.)~~ Car washes and laundries;
  - ~~(11.)~~ Facilities with lawn sprinkler systems or irrigations systems;
  - ~~(12.)~~ Fire service systems;
  - ~~(13.)~~ Slaughterhouses and poultry processing plants;
  - ~~(14.)~~ Farms where the water is used for other than household purposes;
  - ~~(15.)~~ Commercial greenhouses and nurseries;
  - ~~(16.)~~ Health clubs with swimming pools, therapeutic baths, hot tubs, or saunas;
  - ~~(17.)~~ Paper and paper products plants and printing plants;
  - ~~(18.)~~ Pesticide or exterminating companies and their vehicles with storage or mixing tanks;
  - ~~(19.)~~ Schools or colleges with laboratories;
  - ~~(20.)~~ Highrise buildings (four (4) or more stories);
  - ~~(21.)~~ Multi-use commercial, office, or warehouse facilities;
  - ~~(22.)~~ Others specified by the ~~i~~nspection ~~s~~ervices ~~d~~ivision or the division for a potential backflow or cross-connection hazard.
- (Ord. No. 92-38, 8-8-92)

§ 26-112. Installation and ~~m~~aintenance of ~~d~~evices.

~~(a)~~ Approval of backflow prevention devices and the type of protection required shall be in accordance with these requirements and the standards provided in Part II, Article 3, of the Virginia Department of

Health Waterworks Regulations.

~~(b)B.~~ Where backflow prevention and low-pressure cutoff devices are required, they shall be installed and maintained continuously in satisfactory and effective operation by the customer, at his expense.  
(Ord. No. 92-38, 8-8-92)

**§ 26-113. Initial ~~i~~nspection.**

The ~~e~~County shall make an initial inspection of the water systems of new commercial and multifamily residential developments and industrial piping customers to determine whether there is any hazard to the water system from backflow or cross-connection. Customers will be notified by mail of the date and time of the initial inspection.  
(Ord. No. 92-38, 8-8-92)

**§ 26-114. Testing and ~~i~~nspection of ~~d~~Devices.**

The ~~e~~County shall make inspections and operational tests at least annually of backflow prevention devices or low-pressure cutoff devices where customer use has been determined by the inspection services division to create a pollution hazard.  
(Ord. No. 92-38, 8-8-92)

**§ 26-115. Right of ~~e~~ntry to ~~e~~nforce ~~a~~Article.**

The ~~e~~County may inspect the facilities of any commercial, multifamily development, and industrial piping system customer to ascertain whether the purposes of this article are being met and all requirements are being complied with. Customers shall allow the County Manager or his duly authorized agent bearing proper credentials ready access at all reasonable times to those parts of the premises necessary to inspect, observe, and test in accordance with the provisions of this article.  
(Ord. No. 92-38, 8-8-92)

**§ 26-116. Notice of ~~v~~iolation of ~~a~~Article.**

If a violation of any provision of this article is found upon any inspection, the customer shall be notified in writing of the violations and be given thirty (30) days to correct the violations. At the end of the thirty-~~(30)~~ day period another inspection shall be made. If the violations have not been remedied, a letter of violation will be issued to the customer who must make repairs within ten (10) days, or further actions may be taken by the ~~e~~County.  
(Ord. No. 92-38, 8-8-92)

**§ 26-117. Denial or ~~d~~iscontinuance of ~~s~~Service.**

Upon finding a violation of any part of this article, the ~~e~~County may immediately disconnect a customer's water service if the violation poses a substantial threat to life and health as determined by the County Manager or his designee. Otherwise, water service to a customer may be denied or discontinued upon continuation of any violation beyond the time limit provided in the letter of violation provided for in ~~section §~~ 26-116.  
(Ord. No. 92-38, 8-8-92)

ARLINGTON COUNTY CODE

Chapter 27

MISCELLANEOUS ORDINANCES

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§§ 27-2, 27-2.1. Reserved.

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§ 27-24. Snow and **i**ce **r**emoval.

§ 27-25. Deposit of **s**now and **i**ce on **s**Streets or **s**Sidewalks.

§ 27-1. Recordation **£**Tax.

A **e**County recordation tax is hereby imposed in an amount equal to one-third (1/3) of the amount of the **s**State recordation tax collectable for the **s**State on the first recordation of such taxable instrument; provided, however, no tax shall be imposed under this section upon any instrument on which the **s**State recordation tax is fifty cents (\$0.50) specifically; and provided further, that where a deed or other instrument conveys, covers or relates to property located partly in Arlington County and partly in another county or city, or in other counties or cities, the tax imposed under the authority of this section shall be computed only with respect to the property located in Arlington County.

The **e**Clerk of the **e**Circuit **e**Court of Arlington County collecting the tax imposed under this section shall pay the same into the treasury of Arlington County.  
(10-1-58)

**§§ 27-2, Reserved.27-2.1.**

**Editors Note:** Ord. No. 85-39, adopted Nov. 16, 1985, repealed §§ 27-2 and 27-2.1. Section 27-2 pertained to the parking of vehicles for sale of merchandise and was derived from legislation adopted Aug. 30, 1958, as amended by Ord. No. 85-1, adopted Jan. 5, 1985; Ord. No. 85-4, adopted Jan. 18, 1985; Ord. No. 85-6, adopted Jan. 26, 1985; and Ord. No. 85-8, adopted Feb. 23, 1985. Section 27-2.1, pertains to the use by peddlers of streets and other public places and was derived from Ord. No. 85-1, adopted Jan. 5, 1985.

**§ 27-3. Interest on ~~d~~Delinquent ~~t~~Taxes and ~~r~~Refunds of ~~e~~Erroneously ~~a~~Assessed ~~t~~Taxes.**

Except as otherwise provided, interest shall be charged on all past due taxes. Beginning on October 24, 2009, interest shall accrue on all past due County taxes at a rate of ten ~~percent~~ (10%)~~percent~~ per annum.

Interest on any tax that is past due shall begin to accrue on the day after the tax is due, and such interest shall continue to accrue until the date on which payment is made.

Any person who is aggrieved by an assessment of the Commissioner of the Revenue or Director of Real Estate Assessment may apply to the assessing officer for correction of such assessment.

Should the assessing officer determine that such tax was erroneously assessed, the assessing officer shall certify to the Treasurer the amount erroneously assessed and the Treasurer shall refund the amount erroneously paid together with any penalties and interest paid thereon. No refund shall be made, in any case, if the application for correction of an assessment is made after the last day of the tax year for which such taxes were assessed plus the number of years allowed by the Code of Virginia for application to the Circuit Court for correction of erroneous assessments.

Interest payable on any such refund of taxes erroneously assessed shall begin to accrue on the later of (i) the date on which the tax being refunded was required to be paid and (ii) the date on which the tax being refunded was paid. Refunds of personal property vehicular taxes assessed in accordance with the Code of Virginia § 58.1-3516 shall be without interest. Pursuant to Virginia Code § 58.1-3916 no interest shall be paid on any refund in the amount of ten dollars (\$10.00) or less. (10-11-58; 3-1-61; 9-10-77; Ord. No. 92-31, 7-11-92; Ord. No. 92-32, 1-1-93; Ord. No. 09-07, 4-28-09; Ord. No. 09-21, 10-24-09)

**§ 27-4. Compulsory ~~s~~School ~~a~~Attendance.**

An act designated as Chapter 72, Acts of the General Assembly of Virginia, Extra Session 1959, providing for the compulsory attendance of children between the ages of seven (7) and sixteen (16) in the schools specified in said act, shall, from and after September 28, 1959, be in effect and in force within the County of Arlington. (9-28-59)

**§ 27-5. Local ~~e~~Enrollment or ~~p~~Placement of ~~p~~Pupils in the Arlington County Public School System.**

Upon the recommendation of Arlington County School Board, the County of Arlington hereby elects to be bound by provisions of Title 22, Chapter 12, Article 1.2 of the Code of Virginia of 1950, as amended, and the provisions of Title 22, Chapter 12, Article 1.2 are hereby adopted by reference as though set forth in full herein. (3-25-61)

**§ 27-6. Local ~~e~~County ~~s~~Sales ~~t~~Tax.**

~~(+)~~~~A.~~ *General retail sales tax for the County of Arlington.* Pursuant to Title 58, Chapter 8.1, ~~Section §§~~ ~~58-441,49~~~~58.1-605 and 58.1-3716~~ of the Code of Virginia, a local general retail sales tax at the rate of one ~~percent~~ (1%)~~percent~~ to provide revenue for the general fund for the County of Arlington, is hereby levied. Said tax shall be added to the rate of the ~~s~~State sales tax imposed by Chapter 8.1, Title 58 of the Code of Virginia. It shall be subject to all provisions of Chapter 8.1 of Title 58 of the Code of Virginia, all the amendments thereto, and the rules and regulations published with respect thereto.

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~~(2)B.~~ *Administration and collection.* Pursuant to Title 58, Chapter 8.1, ~~Section-§§ 58-441.49~~~~58.1-605 and 58.1-3716~~ of the Code of Virginia, the local general retail sales tax levied pursuant to this section shall be administered and collected by the ~~s~~State ~~t~~Tax ~~e~~Commissioner of the Commonwealth of Virginia in the same manner, subject to the same penalties as provided for the ~~s~~State sales tax, with the adjustments required by ~~Section-§~~ 58-441.50 and ~~Section-§~~ 58-441.51.

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~~(3)C.~~ *Effective date of this section.* Effective date of this section shall be the first day of September, 1966. The ~~e~~Clerk of the County Board of Arlington County shall forthwith forward to the ~~s~~State ~~t~~Tax ~~e~~Commissioner of the Commonwealth of Virginia a certified copy of this section, so that it will be received within five (5) days after its adoption.

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It is hereby further ordained pursuant to ~~Section-§ 58-829.4~~~~58.1-3504~~ of the Code of Virginia, 1950, as amended, household goods and personal effects located in Arlington County, Virginia, shall be and hereby are exempt from property taxation.

~~(4)D.~~ Nothing in this ~~section-§~~ 27-6 shall apply to artificial or propane gas, firewood, coal or home heating oil used for domestic consumption as defined in ~~Section-§§ 58-441.6(g-1)~~~~58.1-602 and 58.1-608~~ of the Code of Virginia as amended. This exemption shall be effective November 1, 1981.  
(9-1-66; 11-1-81)

**§ 27-7. Fee for ~~d~~Dishonored ~~e~~Check or ~~d~~Draft.**

The uttering, publishing or passing of any check or draft for payment of any sums due to any agency of the Arlington County Government, which is subsequently returned for insufficient funds or because there is no account or the account has been closed, shall be subject to a twenty-five dollar (\$25.00) fee for each occurrence.  
(3-23-74; Ord. No. 82-26, 7-1-82; Ord. No. 99-14, 6-12-99)

**§ 27-8. Going ~~e~~Out of ~~b~~Business ~~s~~Sales.**

It shall be unlawful for any person either as principal or as an officer or agent of another to advertise or conduct a sale for the purpose of discontinuing a retail business, or to modify the word "sale" in any advertisement with the words "going out of business" or any other words which tend to insinuate that the retail business is to be discontinued and the merchandise liquidated in Arlington County, Virginia, without having first made application to the County Manager of the said ~~e~~County and having received from him a permit to conduct such sale. In this section, the term "County Manager" shall mean and include the term "or his ~~authorized representative designee.~~"

Each application for such a permit shall contain a notarized statement that the retail business is to be discontinued and that the merchandise to be liquidated will not be sold at its present location by the applicant after one hundred and eighty (180) days from the effective date of the first permit issued for the sale.

Each application for such a permit shall be accompanied by an inventory list of all goods, including all goods on order but not yet in stock, which are to be offered for sale during the sale. Only the goods specified in the inventory list may be advertised at a reduced price or sold at a reduced price during the sale period. The County Manager shall inspect the advertisement and conduct of such sale to ensure that it is being advertised and conducted in accordance with the conditions set forth herein.

No special sale permit shall be issued until a fee of fifteen dollars (\$15.00) shall have been paid. Each permit shall be valid for a period of no longer than thirty (30) days, and any extension of that time shall constitute a new special sale and shall require an additional permit. The inventory list required for all additional permits shall consist of only the goods on the original inventory list which remain unsold. No more than six (6) permits shall be issued for discontinuation of a particular retail business at one (1) location.

Any person who shall violate the provisions of this section, or who makes any statement in applying for the permit provided for in this section, knowing such statement to be false, shall be guilty of a misdemeanor and shall be punished by a fine of not more than three hundred dollars (\$300.00) or by imprisonment for not more than thirty

(30) days, or both. Each day of violation of this section shall constitute a separate offense.  
(5-12-23)

§ 27-9. Disclosure of ~~f~~Financial ~~i~~Interests.

~~(A)~~A. The following persons shall file financial disclosure forms as required by ~~Section §~~ 2.1-639.14 of the Code of Virginia as amended:

~~(a)~~1. All members of the governing body of Arlington County;

~~(b)~~2. The following persons occupying positions of trust who are employees appointed by the County Board:

~~1-a~~ County ~~m~~Manager;

~~2-b~~ County ~~a~~Attorney;

~~3-c~~ Clerk of the County Board.

~~(e)~~3. Persons occupying such positions of employment as are described below:

~~1-a~~ The ~~d~~Deputy County Manager and ~~a~~Assistant County Managers;

~~2-b~~ All department directors;

~~3-c~~ All deputy department directors and the ~~d~~Deputy ~~e~~County ~~a~~Attorney;

~~4-d~~ All division chiefs;

~~5-e~~ Employees of the following offices and departments having substantive decision-making responsibilities and not otherwise designated in this section:

~~a-(1)~~ County ~~m~~Manager's ~~o~~Office;

~~b-(2)~~ Department of ~~m~~Management and ~~f~~Finance;

~~e-(3)~~ Retirement Office (employees of the Board of Trustees, Employees Supplemental Retirement System II ("Retirement Board")).

~~6-f~~ Assistant to County Board ~~e~~Chairman;

~~7-g~~ All employees who have substantive decision-making responsibilities in the following areas and functions:

~~a-(1)~~ Inspection functions including but not limited to inspectors of food establishments, child care facilities, and construction sites;

~~b-(2)~~ Investigation functions where there is authority, similar to that of inspectors, to affect the operation of a business or commercial establishment or operation;

~~e-(3)~~ Real estate assessment;

~~d-(4)~~ Real property valuation;

~~e-(5)~~ Economic development, housing, community and environmental or transportation planning, and engineering design;

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- ~~f~~(6) Procurement;
- ~~g~~(7) Purchase or disposal of property;
- ~~h~~(8) Management of construction contracts;
- ~~i~~(9) Management of capital projects;
- ~~j~~(10) Investment of funds, financial compliance, financial analysis, or auditing;
- ~~k~~(11) Tax auditing or assessment.

The County Manager shall maintain a list of all positions that the County Manager determines to have substantive decision-making authority in the areas and functions designated.

The Retirement Board shall maintain a list of all positions of employment with the Retirement Board that they determine to have substantive decision making authority.

~~(d)~~4. Persons appointed by the County Board or County Manager or by a selection process established by the County Board or otherwise named as members, alternates, officers or trustees to the bodies designated below, plus any others as may subsequently be designated by County Board resolution as groups whose members must file such statements:

- ~~1~~-a. Economic ~~d~~Development ~~e~~Commission;
- ~~2~~-b. Human ~~r~~Rights ~~e~~Commission;
- ~~3~~-c. Community ~~h~~Housing ~~f~~Finance ~~e~~Corporation ~~b~~Board of ~~d~~Directors;
- ~~4~~-d. Industrial ~~d~~Development ~~a~~Authority;
- ~~5~~-e. Planning ~~e~~Commission;
- ~~6~~-f. Board of ~~e~~Equalization of ~~r~~Real ~~e~~Estate ~~a~~Assessments;
- ~~7~~-g. Employees Supplemental Retirement System II ~~b~~Board of ~~t~~Trustees;
- ~~8~~-h. School ~~b~~Board;
- ~~9~~-i. Solid ~~w~~Waste ~~a~~Authority;
- ~~10~~-j. Alexandria/Arlington Waste Disposal Trust Fund;
- ~~11~~-k. Arlington Community Services Board;
- ~~12~~-l. Health ~~e~~Center ~~e~~Commission;
- ~~13~~-m. Finance ~~b~~Board;
- ~~14~~-n. Neighborhood ~~p~~Partnership ~~f~~Fund ~~g~~Grants ~~e~~Committee;
- ~~15~~-o. Commission for the ~~a~~Arts;
- ~~16~~-p. Park and ~~r~~Recreation ~~e~~Commission;

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~~17-q.~~ Citizens ~~a~~Advisory ~~e~~Commission on ~~h~~Housing;

~~18-r.~~ Historical ~~a~~Affairs and ~~l~~Landmark ~~r~~Review ~~b~~Board;

~~19-s.~~ Transportation ~~e~~Commission; and

~~20-t.~~ All boards, commissions, committees, and councils, or other advisory groups established by the County Board or County Manager that are composed of nonsalaried citizen members and that are designated at the time of their creation, or later, by County Board resolution as groups whose members must file such statements.

The office of the County Board shall maintain a list of all County Board and County Manager appointed bodies that have been designated by County Board resolution as groups whose members must file financial disclosure forms.

~~(2)B.~~ The ~~e~~Clerk to the County Board shall cause the forms provided by the ~~s~~Secretary of the ~~e~~Commonwealth to be distributed to all individuals required to file when appointed and annually thereafter no later than December 10 of each year. Individuals required to file shall file such statement annually on or before January 15 to the ~~e~~Clerk to the County Board.

~~(3)C.~~ The purpose of requiring the filing of financial disclosure forms is to provide information relating to any financial interest that may present an actual or potential conflict of interest. For the purpose of disclosing financial interests and actual or potential conflicts of interest, substantive decision-making responsibilities are those in which the decisions:

~~(a)1.~~ Are primarily independent in nature or not otherwise subject to extensive review;

~~(a)2.~~ Affect an outside business, operation, or party; and

~~(a)3.~~ Have a monetary value to outside businesses, operations, or parties that exceeds or can reasonably be anticipated to exceed a cumulative total of ten thousand dollars (\$10,000.00) per year for all such decisions.

(7-12-75; 7-29-78; Ord. No. 83-33, 12-10-83; Ord. No. 84-11, 4-28-84; Ord. No. 87-28, 12-12-87; Ord. No. 89-23, 8-12-89; Ord. No. 91-16, 5-14-91; Ord. No. 94-29, 11-22-94; Ord. No. 95-18, 10-17-95; Ord. No. 04-28, 10-2-04)

§ 27-10. Postponement of the ~~p~~Payment of ~~r~~Real ~~p~~Property ~~a~~Assessments for ~~l~~Local ~~i~~Improvements.

Payment of real property assessments for local improvements in Arlington County for those properties whose owners are eligible for and request postponement under the provisions of Chapter 211 of the 1973 Acts of Assembly (Chapter 230 of the Acts of Assembly of 1950 and ~~Section § 15-1-24215.2-2407~~ of the Code of Virginia) shall be postponed in accordance with said provision unless the owner elects to pay the same before the sale or transfer of the property or the death of the last eligible owner. This section shall apply to assessments imposed by the County Board after September 1, 1973. (10-13-73)

§ 27-11. Personal ~~p~~Property ~~t~~Tax on ~~b~~Business ~~t~~Tangible ~~p~~Personal ~~p~~Property and ~~m~~Machinery and ~~t~~Tools.

~~(a)A.~~ There shall be a personal property tax at the personal property tax rate established each year by the County Board on the assessed value of all tangible personal property, machinery, and tools employed in a trade or business, as defined by Virginia Code, located in Arlington County on and valued as of January 1 of each tax year which shall be paid on or before September 5 of that year.

~~(b)B.~~ Any person who fails to pay the taxes on or before September 5 shall incur a penalty of ten ~~percent~~ (10%) ~~percent~~ of the amount due, or ten dollars (\$10.00), whichever shall be greater, but not to exceed the amount of the tax, which shall become part of the tax due from the person assessed. Any tax remaining unpaid in whole or in part sixty (60) days after the payment due date, shall incur an additional penalty of fifteen ~~percent~~ (15%) ~~percent~~ of

the tax due and unpaid. Interest shall accrue as specified in ~~Section §~~ 27-3.

~~(e)C.~~ Returns of tangible personal property, machinery, and tools employed in a trade or business shall be filed on or before May 1 of each tax year on forms prescribed by the Commissioner of the Revenue. Any person liable for tax in Arlington County who fails to file a return of tangible personal property, machinery, and tools on or before May 1 of each year shall incur a penalty of ten percent (10%) ~~percent~~ of the tax assessed, which shall become part of the tax due for that year. This penalty shall be in addition to all other penalties and interest incurred for late payment of taxes or for filing a false tax return.

(10-23-76; 9-10-77; 4-7-79; 4-28-79; 5-31-80; 6-20-81; 7-11-81; Ord. No. 84-8, 4-7-84; Ord. No. 84-17, 6-2-84; Ord. No. 84-21, 7-7-84; Ord. No. 85-26, 7-13-85; Ord. No. 92-12, 4-25-92; Ord. No. 93-26, 1-1-94; Ord. No. 99-16, 7-10-99; Ord. No. 99-19, 8-14-99; Ord. No. 06-12, 10-14-06; Ord. No. 09-24, 11-17-09)

§ 27-11.1. Personal ~~p~~Property ~~t~~Tax on ~~m~~Motor ~~v~~Vehicles, ~~t~~Trailers and ~~b~~Boats.

~~(a)A.~~ *Tax liability.* There shall be a personal property tax at the rate established each year by the ~~e~~County ~~b~~Board on motor vehicles, trailers, semitrailers, and boats ("taxable property") which have a situs in the ~~e~~County on January 1 of each year or which acquire a situs in the ~~e~~County on or after January 2. When taxable property acquires a situs in the ~~e~~County on or after January 16 and before December 16, the personal property tax for that year shall be prorated on a monthly basis. When taxable property with a situs in the ~~e~~County is transferred to a new owner, personal property tax will be assessed to the new owner, prorated on a monthly basis for the portion of the tax year during which the new owner owns the taxable property. For purposes of proration, a period of more than one-half (-1/2) of a month shall be counted as a full month and a period of less than one-half (-1/2) of a month shall not be counted. The value of all taxable property shall be assessed as of January 1 of the tax year.

~~(b)B.~~ *Proration refunds.* When any taxable property loses its situs within the ~~e~~County or its title is transferred, the taxpayer shall be relieved from personal property tax and receive a refund of personal property tax, penalty and interest already paid, prorated on a monthly basis, upon application to the ~~e~~Commissioner of the ~~r~~Revenue, provided that application is made in the manner provided by ~~Sections §§~~ 58.1-3516 and 58.1-3980 of the Virginia Code; provided, however, no refund shall be made if the motor vehicle, trailer, or boat acquires a situs within the ~~e~~Commonwealth in a nonprorating locality during the tax year. No interest shall be paid on refunds of prorated taxes.

~~(e)C.~~ *Filing dates.*

~~(1.)~~ The owner of every motor vehicle, trailer, or boat taxable in the ~~e~~County shall file a tax return for the vehicle with the ~~e~~Commissioner of the ~~r~~Revenue sixty (60) days of the vehicle first acquiring situs or becoming taxable in the ~~e~~County. This tax return shall be the basis for the assessment of the motor vehicle, trailer, or boat in all subsequent years in which the ~~e~~Commissioner of the ~~r~~Revenue has not been informed of a change in the address or name of the owner of the motor vehicle, trailer, or boat or of a change in the situs or ownership of the motor vehicle, trailer, or boat. Such owners are required to file a new personal property tax return with the ~~e~~Commissioner of the ~~r~~Revenue within sixty (60) days of any (i) change in the name or address of the person or persons owning the vehicle; (ii) a change in the situs of the vehicle; (iii) any other change affecting the assessment of the personal property tax on the vehicle for which a tax return was previously filed; or (iv) any change in which a person acquires one (1) or more vehicles for which no personal property tax return has been filed with the ~~e~~County.

~~(2.)~~ Returns of all taxable semi-trailers with a situs within the ~~e~~County on January 1 shall be filed on or before May 1 of each tax year. Returns of all taxable semi-trailers which acquire a situs in the ~~e~~County or which have title transferred after January 1 shall be filed within sixty (60) days of the date on which situs is acquired or title transferred.

~~(d)D.~~ *Assessments.* Tax assessments for all taxable property for which tax returns are on file with the ~~e~~Commissioner of the ~~r~~Revenue from previous years or which have been filed on or before July 15 of the tax year shall be assessed on the personal property tax book prepared by the ~~e~~Commissioner of the ~~r~~Revenue and certified to the ~~t~~Treasurer on or before September 1 of the tax year. All taxable property for which tax returns are filed after July

15 of the tax year, but within the time required in subsection ~~C(4)~~ above, shall be assessed within thirty (30) days of receipt of the filed return by the ~~e~~Commissioner of the ~~r~~Revenue, which assessment shall be certified to the ~~t~~Treasurer for billing without penalty and interest.

~~(e)~~E. *Payment dates.* Assessments on all taxable property with a situs in the ~~e~~County on January 1 shall be paid on or before October 5 of each year. Assessments on all taxable property for which a return must be filed prior to July 15 of the tax year shall be paid on or before October 5 of each year. Taxes on all taxable property for which a tax return is timely filed after July 15 shall be paid without penalty or interest within thirty (30) days of billing by the ~~t~~Treasurer or by October 5 of the year for which the taxes are due, whichever date is later.

~~(f)~~E. *Late filing and payment penalties and interest.* Any person who fails to timely file a required personal property tax return pursuant to subsection ~~C(4)~~, above, shall incur a late filing penalty of ten ~~percent~~ ~~(10%)~~ percent of the amount of tax assessed or ten dollars (\$10.00) whichever is greater, but not to exceed the amount of the tax, which penalty shall become part of the tax. Any person that fails to pay personal property tax on or before the date due, as provided above, shall incur a penalty of ten ~~percent~~ ~~(10%)~~ percent of the tax assessed or ten dollars (\$10.00), whichever shall be greater, but not to exceed the amount of the tax, which penalty shall become part of the tax due. If, after sixty (60) days from the payment due date the taxes remain unpaid in whole or in part, there shall be added to the amount an additional penalty of fifteen ~~percent~~ ~~(15%)~~ percent of the unpaid tax assessed. Interest at the rate specified in ~~section § 27-3~~ from the first day of the month following the month in which taxes are due shall be paid upon the principal and penalties of such taxes remaining unpaid.

~~(g)~~G. *Proration or credit when taxes paid elsewhere in the eCommonwealth.* An exemption from this tax and any penalties arising therefrom shall be granted prorata for any tax year or portion thereof during which the property was legally assessed to the same taxpayer by another jurisdiction in the ~~e~~Commonwealth, and such tax on the assessed property was paid.

Any person who moves a motor vehicle from a nonprorating locality in Virginia into Arlington County in a single tax year shall be entitled to a property tax credit in Arlington if (i) the person was liable for personal property taxes on a motor vehicle and has paid those taxes to a nonprorating locality in Virginia and (ii) the taxpayer replaced, for any reason, the original vehicle upon which taxes were paid to the nonprorating locality for the same tax year. The Arlington County ~~t~~Treasurer shall provide a credit against the total personal property tax assessed by Arlington County on the replacement vehicle in an amount equal to the tax paid to the nonprorating Virginia locality for the period of time commencing with the disposition of the original vehicle and continuing through the close of the tax year in which the owner incurred tax liability to the nonprorating Virginia locality for the original vehicle. (7-11-81; Ord. No. 84-8, 4-7-84; Ord. No. 84-17, 6-2-84; Ord. No. 84-21, 7-7-84; Ord. No. 85-26, 7-13-85; Ord. No. 92-12, 4-25-92; Ord. No. 92-47, 9-12-92; Ord. No. 93-26, 1-1-94; Ord. No. 95-3, 3-18-95; Ord. No. 97-1, 2-8-97; Ord. No. 99-16, 7-10-99; Ord. No. 99-19, 8-14-99; Ord. No. 04-19, 7-10-04; Ord. No. 06-12, 10-14-06)

**§ 27-11.2. Imposition of ~~l~~icense ~~t~~Tax on ~~o~~wners of ~~e~~Certain ~~m~~Motor ~~v~~ehicles.**

A license tax of ~~one hundred dollars~~ (\$100.00) annually shall be imposed upon the owners of motor vehicles which do not display current license plates and which are not exempted from the requirements of displaying such license plates under the provisions of Article 6 (§ 46.2-662 et seq.) of Chapter 6 of Title 46.2, §§ 46.2-1554 and 46.2-1555, are not in a public dump, in an "automobile graveyard" as defined in § 33.1-348 or in the possession of a licensed junk dealer or licensed motor vehicle dealer. Such ordinance shall exempt from such tax any vehicles which are stored on private property for a period not in excess of sixty ~~(60)~~ days, for the purpose of removing parts for the repair of another vehicle. Nothing in this section shall be applicable to any vehicle being held or stored by or at the direction of any governmental authority, to any vehicle owned by a member of the armed forces on active duty or to any vehicle regularly stored within a structure. (Ord. No. 07-10, 9-8-07).

**§ 27-12. Display of ~~s~~Street ~~a~~Address ~~i~~dentification ~~n~~Number on ~~d~~welling ~~u~~Units and ~~b~~Buildings.**

~~(a)~~A. Every owner of a dwelling unit or building shall display the ~~e~~County assigned street address identification number on each front entrance to the dwelling unit or building in a manner as to be visible and distinguishable from the curblin or pavement edge of the opposite side of the street on which the dwelling unit or

building is located. If a dwelling unit or building is located on a parcel of land whose street frontage is at the end of a street such that there is no opposite side of the street, the street address identification number shall be clearly visible and distinguishable from a distance of thirty (30) feet into the street from the curbline or pavement edge of the street adjacent to the property line on which the dwelling unit or building is situated.

(b)B. In the event the location of the dwelling unit or building or other factors preclude compliance with the above requirement, an additional address identification number shall be displayed on, or in the vicinity of, the dwelling unit or building in such a manner as to be clearly visible and distinguishable as provided per above. (8-5-78)

§ 27-13. Creation of an Industrial Authority.

(a)A. There is hereby created a political subdivision of the Commonwealth of Virginia, the name of which shall be the "Industrial Development Authority of Arlington County, Virginia" (the Authority), pursuant to the Industrial Development and Revenue Bond Act (Chapter 33, Title 15.1, Code of Virginia of 1950, as amended) (the Act).

(b)B. The Authority shall have all public and corporate powers as set forth in the Act, including such powers as may hereinafter be set forth, from time to time, in the Act.

(c)C. The Authority shall be governed by a Board of Directors of seven (7) members to be appointed by the County Board by resolution.

(d)D. Following the appointment of the Directors, the Chairman of the County Board is hereby authorized to call the initial meeting of the Board of Directors of the Authority by written notice delivered to each member thereof at least four (4) days in advance or such meeting, stating the time, place and matters of business proposed to be conducted. At such meeting the Board of Directors shall organize and elect officers in the manner provided by law. (7-29-78; 1-19-80; 1-27-81; 4-25-81)

§ 27-14. Filing and Giving Notice of Conversion Condominium Information.

(a)A. The declarant of a conversion condominium pursuant to the Virginia Condominium Act shall file with the County Board two (2) copies of all the information which is required by the Virginia Real Estate Commission pursuant to ~~Section §~~ 55-79.89 of the Code of Virginia, 1950, as amended. This filing shall be simultaneous with the filing required by the Commission. There shall be no filing fee for this filing. The information which is filed with the County Board shall be available for examination at such County offices as the County Manager may designate during regular hours of operation. At the time of filing, the declarant shall notify the tenants of the subject dwellings of the filing and of the availability of the information at the two (2) locations designated by the County Manager.

(b)B. It shall be unlawful to fail to file as required by this section. (8-9-80)

§ 27-15. Stable and Reliable Source of Funds for Mass Transit.

(a)A. This Board declares its intent to fund any contribution for expenses to which it agrees by written contract by allocation of stable and reliable revenues as are or may become available, and does hereby designate the general revenue of this County as the source of funds which may be appropriated to pay for Metro transportation services for which this County has or may in the future contract with WMATA, it being understood that no money shall be drawn from the Treasury nor any obligation for the expenditure of money be incurred, except in pursuance of a legally enacted appropriation resolution.

(b)B. The County Board desires that the County Manager continue close coordination with WMATA to ensure that any contractual contribution of this County to which it agrees by written contract for operating expenses, less the amount thereof covered by the relevant tax on fuels or other payments by the Commonwealth of

Virginia, be included in the annual budget submissions and all proposed revisions thereto.  
(Ord. No. 82-31, 7-13-82)

§ 27-16. Payment of ~~o~~Taxes and ~~o~~Other ~~f~~Fees by ~~e~~Credit ~~e~~Card.

~~(a)~~A. The ~~t~~Treasurer is hereby authorized, pursuant to ~~Section §~~ 58.1-3013 of the Code of Virginia of 1950, as amended, to accept payment of local taxes and other fees, penalties, and interest by the use of a credit card. The ~~t~~Treasurer is authorized to investigate credit card entities and determine those that are responsible, efficient, and capable of cooperating with the ~~e~~County for the collection of local taxes and other fees and to establish a list of credit cards so determined which may be accepted for payment of local taxes and other fees, penalties, and interest. The ~~t~~Treasurer shall add to such payment a sum not to exceed four ~~percent~~ (4%) ~~percent~~ of the amount of tax or other fee, penalty, and interest paid as a service charge for the acceptance of such card. Such charge shall not exceed the service charge charged to Arlington County.

~~(b)~~B. If any credit card transaction tendered for payment of any tax or other fee, penalty, and interest due is not paid by the bank or credit card company, the taxpayer for whom such credit card transaction was tendered shall remain liable for the payment of the tax or other fee, penalty, and interest, the same as if such credit card transaction had not been tendered.

~~(c)~~C. The County Manager will provide to the ~~t~~Treasurer a list of fees eligible to be paid by credit card.  
(Ord. No. 85-28, 7-13-85; Ord. No. 91-2, 2-12-91)

§ 27-17. Establishment of ~~e~~County ~~l~~Law ~~l~~Library ~~f~~Fund.

~~(a)~~A. The clerks of the ~~e~~Circuit and ~~d~~District ~~e~~Courts of Arlington County shall collect from any person filing a civil action in their court a law library fund fee of four dollars (\$4.00). However, those persons exempted by law from paying filing fees shall also be exempt from this fee.

~~(b)~~B. The collected fees shall be transferred to the ~~t~~Treasurer who shall place them into a law library fund kept by the ~~t~~Treasurer.

~~(c)~~C. The County Board or its designee may use money from the fund to establish and maintain a ~~e~~County law library and for any purpose allowed by ~~s~~State law relating to the law library, including, but not limited to, purchasing books, materials and furnishings and paying for staff.

~~(d)~~D. The ~~e~~County law library shall be open to the public at hours reasonable to the need of the public.

~~(e)~~E. The clerks of the ~~e~~Circuit and ~~d~~District ~~e~~Courts shall begin assessing this fee when the law library is opened to the general public.  
(Ord. No. 90-24, 7-11-90; Ord. No. 90-29, 8-11-90; Ord. No. 90-30, 9-15-90)

§ 27-18. Establishment of ~~e~~Courthouse ~~m~~Maintenance ~~f~~Fund.

~~(a)~~A. The clerks of the ~~e~~Circuit and ~~d~~District ~~e~~Courts of Arlington County shall collect, as part of the fees taxed as costs in each criminal or traffic case and in addition to any other costs, a sum of two dollars (\$2.00).

~~(b)~~B. The collected fees shall be transferred to the ~~t~~Treasurer who shall place them into a courthouse maintenance fund kept by the ~~t~~Treasurer.

~~(c)~~C. The County Board or its designee may use money from the fund for any purpose allowed by ~~s~~State law relating to the ~~e~~County ~~e~~Courthouse, including, but not limited to, the construction, renovation or maintenance of the ~~e~~Courthouse, ~~j~~Jail or any ~~e~~Courthouse-related facility and the payment of increases in the cost of heating, cooling and electricity.  
(Ord. No. 90-24, 7-11-90; Ord. No. 90-29, 8-11-90; Ord. No. 90-30, 9-15-90)

§ 27-19. Local ~~e~~County ~~t~~Tax on ~~w~~Wills and ~~a~~Administration.

*Levy and rate of tax.* A tax on the probate of every will or grant of administration in an amount equal to one-third (1/3) of the ~~s~~State tax imposed by Virginia Code ~~Section §~~ 58.1-1712 or its successor is hereby levied. The tax shall be collected by the clerk of the court in whose offices wills are admitted to probate or grants of administration are issued. The tax shall be imposed and collected in the same manner that the ~~s~~State tax is imposed and collected. The tax collected under this section shall be paid to the ~~e~~County ~~†~~Treasurer.  
(Ord. No. 91-10, 4-27-91)

§ 27-20. ~~Local †Tax for eEnhanced eEmergency †Telephone (E-911) sService.~~

~~(a)A.~~ *Definitions.* The following words and ~~phrases terms,~~ when used in this section, shall have the following ~~respective meanings, except where unless~~ the context clearly indicates ~~otherwise a different meaning:~~

~~E-911 system.—The phrase “E-911 system” shall means~~ a telephone service which utilizes a computerized system to automatically route emergency telephone calls placed by dialing the digits "911" to the proper public safety answering point serving the jurisdiction from which the emergency telephone call was placed. An E-911 system includes selective routing of telephone calls, automatic telephone number identification, and automatic location identification performed by computers and other ancillary control center communications equipment.

~~Local telephone service.—The phrase “†Local telephone service” shall means~~ switched local exchange access service.

~~Person.—The word “pPerson” shall includes~~ individuals, partnerships, associations, corporations, and combinations of individuals of whatever form and character.

~~Purchaser.—The word “pPurchaser” shall means~~ every person who purchases local telephone service.

~~Seller.—The word “sSeller” shall includes~~ every person who sells or furnishes local telephone service.

~~Telephone line.—The phrase “†Telephone line” shall means~~ each access line from a purchaser to a local telephone service.

~~Treasurer.—The word “†Treasurer” shall means~~ the ~~†~~Treasurer of Arlington County.

~~(b)B.~~ *Levy and rate; effective date; exemptions.* There is hereby imposed and levied by the ~~e~~County upon every purchaser of local telephone service a tax in the amount of three dollars (\$3.00) per telephone line per month. This tax shall be paid by the purchaser to any seller of local telephone service for the use of Arlington County to pay the initial capital, installation, and maintenance costs of its E-911 system; and to offset recurring maintenance, repair, and system upgrade costs, and salaries of dispatchers directly attributable to the E-911 program. The levy shall apply to all bills rendered to purchaser on or after July 1, 1997. The United States of America, the Commonwealth of Virginia, and the political subdivisions, boards, commissions, and authorities thereof are hereby exempted from the payment of the taxes imposed and levied by this section.

~~(c)C.~~ *Collection and payment; records to be kept by seller.* It shall be the duty of every seller of local telephone service to purchasers of such service within the County of Arlington to bill and collect this levy on each telephone line rendered by it. The seller shall report and pay over all tax collected in any calendar month to the ~~†~~Treasurer on or before the last day of the first calendar month thereafter. The seller shall, upon payment of the tax collected hereunder, report to the ~~†~~Treasurer the name and address of all purchasers of local telephone services who have failed to pay the tax imposed by this section. The seller shall keep complete records showing all purchases of telephone service to consumers in the ~~e~~County, which records shall show the date of service, the date of billing, the date of payment thereof, and the amount of tax imposed hereunder. Such records shall be available for inspection by the duly authorized agents of Arlington County at reasonable times.

~~(d)D.~~ *Penalties, interest and collection fees.*

~~(1.)~~ If a seller or purchaser required to collect taxes or pay taxes pursuant to this section fails or refuses

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to remit, pay, or report the taxes collected or due within the time and in the amount specified by this section, there shall be added to such tax due a penalty of ten percent ~~(10%) percent~~ of the tax due.

~~(2.)~~ In addition to all penalties, interest at the rate prescribed in ~~section §~~ 27-3 shall be charged on taxes and penalties assessed on or after July 1, 1999, not paid or remitted when due. For unpaid taxes assessed prior to July 1, 1999, interest shall accrue through June 30, 1999, at ten percent ~~(10%) percent~~ during the first year of delinquency and thereafter at the rate of interest established in ~~Section §~~ 6621 of the Internal Revenue Code of 1984, as amended, and shall be assessed at the rate prescribed in ~~section §~~ 27-3 after June 30, 1999.

~~(3.)~~ The assessment or payment of penalties and interest pursuant to this section shall not be deemed a defense to any criminal prosecution for failure to comply with any of the requirements of this section.

~~(e)E.~~ *Penalty for violation of section.* Any purchaser failing, refusing, or neglecting to pay the tax hereby imposed or levied, and any seller violating the provisions hereof, and any officer, agent, or employee of any seller violating the provisions hereof shall, upon conviction, be subject to a fine of not more than one hundred dollars (\$100.00). Each failure, refusal, neglect, or violation and each day's continuance shall constitute a separate offense.

~~(f)E.~~ *Compensation for seller.* For the purpose of compensating the seller which accounts for and remits to Arlington County the tax levied by this section, the seller shall be allowed three percent ~~(3%) percent~~ of the amount of the tax remitted and accounted for to the ~~e~~County in the form of a deduction in paying the amount due by it to the ~~e~~County.

~~(g)G.~~ *Tax severability clause.* It is hereby declared to be the intention of the Arlington County Board that the paragraphs, sentences, clauses and phrases of this section are severable, and if any phrase, clause, sentence, or paragraph of this section shall be declared unconstitutional or invalid by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, and paragraphs of this section.

~~(h)H.~~ *Effective date.* The tax levied or imposed under this section shall become effective on the later of July 15, 1991, or on the day immediately after one hundred twenty (120) days' written notice by certified mail to the registered agent of the seller required to collect the tax.  
(Ord. No. 91-15, 5-11-91; Ord. No. 92-12, 4-25-92; Ord. No. 95-5, 4-29-95; Ord. No. 97-3, 4-12-97; Ord. No. 99-16, 7-10-99; Ord. No. 99-19, 8-14-99; Ord. No. 00-12, 4-13-00; Ord. No. 04-12, 4-24-04)

**§ 27-21. Payment of ~~a~~Administrative ~~f~~Fees, ~~a~~Attorney's ~~f~~Fees, and ~~e~~Collection ~~a~~Agency's ~~f~~Fees to ~~e~~Cover the ~~e~~Costs ~~a~~Associated with the ~~e~~Collection of ~~d~~Delinquent ~~t~~Taxes or ~~o~~ther ~~d~~Delinquent ~~e~~Charges.**

Any person liable for local taxes or other delinquent charges who fails to pay the taxes or other charges on or before the due date shall, in addition to all penalties and interest, as authorized in ~~sections §§~~ 27-3 and 27-11.1 of the Arlington Code, pay a fee to cover the administrative costs associated with the collection of delinquent taxes or other delinquent charges. Such fee shall be added to all penalties and interest authorized and shall be equal to the maximum amounts allowed by ~~Section §~~ 58.1-3958 of the Virginia Code, as amended, or such other Virginia statute regulating the amount of such fees or covering the subject of fees in such cases. Additionally, collection agency's fees or attorney's fees actually contracted for not to exceed twenty percent ~~(20%) percent~~ of the delinquent tax bill or other delinquent charges bill, may be recovered from any such person whose taxes or other delinquent charges are thereafter collected by a private collection agent or attorney. For purposes of this section, local taxes shall mean any tax which falls on a taxpayer as a result of action by the Arlington County Board or whose rate is determined by action of the Arlington County Board or both.

(Ord. No. 92-12, 4-25-92; Ord. No. 96-12, 6-29-96; Ord. No. 99-14, 6-12-99; Ord. No. 99-16, 7-10-99; Ord. No. 99-19, 8-14-99; Ord. No. 04-21, 7-10-04)

**§ 27-22. Processing ~~f~~Fee for ~~i~~ncarceration of ~~p~~Persons in Arlington County Jail.**

There shall be imposed a processing fee of twenty-five dollars (\$25.00) on any individual admitted to the Arlington County jail following conviction. The fee shall be ordered as a part of court costs collected by the appropriate clerk of the court, and shall be deposited into the account of the Arlington County Treasurer to be used by the Arlington County Sheriff to defray the costs of processing arrested persons into the jail.  
(Ord. No. 02-21, 7-20-02)

**Editors Note:** Ord. No. 02-21, adopted July 20, 2002, amended the Code by adding provisions designated as §§ 27-22(a) and (b). For ease of use and indexing, said provisions have been included herein as §§ 27-22 and 27-23 at the discretion of the editor.

**§ 27-23. Court Security Fee for Persons Convicted in Arlington County District or Circuit Court.**

There shall be imposed a court security fee of ten dollars (\$10.00) on any defendant convicted of any statute or ordinance in each criminal or traffic case in Arlington County District or Circuit Court. The fee shall be ordered as a part of court costs collected by the appropriate clerk of the court and shall be remitted to the Arlington County Treasurer subject to appropriation by the County Board to the Arlington County Sheriff's Office for the funding of providing courthouse security personnel.  
(Ord. No. 02-21, 7-20-02; Ord. No. 07-09, 5-8-07)

**Note:** See the editor's note at § 27-22.

**§ 27-24. Snow and Ice Removal.**

The County Board of Arlington County hereby finds that the unabated accumulation of snow and ice on public property threatens the public health, safety and welfare of the community, and constitutes a public nuisance unless abated in accordance with the requirements of this section.

**(A).** It shall be the duty of the owner, occupant or other person or entity in charge of any occupied property in the County which is adjacent to any public sidewalk to remove or cause to be removed snow or ice from the entire width of such sidewalk, including any adjacent curb-cut, up to a maximum width of thirty-six inches, and if the same cannot be wholly removed, shall apply thereon sand or other proper substance so that such sidewalk shall be safe for public travel.

**(B).** Snow or ice below six (6) inches shall be removed within twenty-four (24) hours, and six (6) inches or above shall be removed within thirty-six (36) hours of the cessation of such snow fall or freezing.  
(Snowfall as measured by the National Oceanic and Atmospheric Administration at National Airport.)

**(C).** Any person who violates subsections A and B may be assessed a civil penalty of fifty dollars (\$50.00) for sidewalk less than two hundred linear feet in length; for sidewalk greater than two hundred linear feet in length, one hundred dollars (\$100.00).

**(D).** Notwithstanding the assessment of a penalty under subsection C, the County may remove any snow or ice which has not been removed pursuant to subsections A and B, and recover abatement costs against the property owner or other person or entity in charge of maintenance of the property, in addition to issuance of penalties under subsection C.  
(Ord. No. 10-15, 6-12-10)

**§ 27-25. Deposit of Snow and Ice on Streets or Sidewalks.**

The County Board of Arlington County hereby finds that the unabated accumulation of snow and ice on public property threatens the public health, safety and welfare of the community, and constitute a public nuisance unless abated in accordance with the requirements of this article.

**(A).** No person shall plow, shovel or blow any snow or ice from private property onto a public street, crosswalk, transit stop, sidewalk or any public property.

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| ~~(B)~~ Any person convicted of violating this section shall be guilty of a class 4 misdemeanor. Every day's continuance of the violation shall be deemed a separate offense.

| ~~(C)~~ Notwithstanding subsection B, the County may remove any snow or ice which has been moved into the public right-of-way pursuant to subsection A, and recover abatement costs against the owner or other person or entity in charge of maintenance of the property, in addition to the criminal penalty under subsection B. (Ord. No. 10-15, 6-12-10)

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Chapter 28

BANK STOCK TAX

- § 28-1. Meaning of **w**Word "**b**Bank" as **u**Used in **†**This **e**Chapter.
- § 28-2. Determination of **†**Taxable **v**Value of **s**Shares of **s**Stock.
- § 28-3. Report **f**Forms.
- § 28-4. Rate of **†**Taxation of **b**Bank **s**Stock **†**Tax.
- § 28-5. Assessment **n**Notice by the **e**Commissioner of **r**Revenue.
- § 28-6. Time and **m**Manner of **p**Payment by **b**Banks of **†**Taxes **a**Assessed; **r**Receipts **†**Therefor.
- § 28-7. County **†**Tax on **s**Stock **w**When **b**Bank **H**located in **e**County **o**Outside **a**Any **i**Incorporated **†**Town **†**Therein.
- § 28-8. County **†**Tax on **s**Stock **w**When **b**Branch **H**located in **e**County **o**Outside **a**Any **i**Incorporated **†**Town **†**Therein.
- § 28-9. Record of **d**Deposits **†**Through **b**Branches; **s**Submission of **r**Reports.
- § 28-10. Penalty **u**Upon **b**Bank for **f**Failure to **e**Comply **w**With **†**This **e**Chapter.

§ 28-1. Meaning of **w**Word "**b**Bank" as **u**Used in **†**This **e**Chapter.

For the purpose of this chapter the word "bank" shall mean any incorporated bank, banking association or trust company organized by or under the authority of the laws of this **s**State and any bank or banking association organized by or under the authority of the laws of the United States, doing business or having an office in this State or having a charter which designates any place within this **s**State as the place of its principal office, whether such bank or banking association be authorized to transact business as a trust company or not, and any joint stock, land bank or any other bank organized by or under the authority of the laws of the United States upon the stock of which this **s**State is authorized to impose a tax. The word "bank" as used in this chapter shall exclude all corporations organized under the laws of other states and doing business in this **s**State; it shall exclude corporations organized not as banks under the laws of this **s**State and it shall exclude all natural persons and partnerships.

(1-16-61)

§ 28-2. Determination of **†**Taxable **v**Value of **s**Shares of **s**Stock.

The taxable value of the shares of stock shall be determined in the same manner as provided by Title 58, Chapter 10 of the Code of Virginia, and as from time to time amended hereafter.

§ 28-3. Report **f**Forms.

The **e**Commissioner of the **r**Revenue shall make his assessment of the local bank stock tax from the State of Virginia bank stock tax returns which are required to be filed with his office not later than the first day of March of each year, said report being prepared on the basis of taxable value of the shares of stock in such bank as of the preceding January first.

(1-16-61; 6-4-77)

§ 28-4. Rate of **†**Taxation of **b**Bank **s**Stock **†**Tax.

The rate of taxation shall be eighty percent (80%) ~~percent~~ of the tax rate imposed by the State of Virginia.

(1-16-61)

§ 28-5. Assessment **n**Notice by the **e**Commissioner of **r**Revenue.

The eCommissioner of the rRevue as soon as he receives the sState bank stock tax reports shall make his assessment upon the taxable value of the shares of stock for each bank located in this eCounty and each branch located in this eCounty of a bank or banking institution whose principal office is located outside of Arlington County, such assessment roster being prepared in an original and duplicate copy, transmitting the original to the tTreasurer and retaining the duplicate copy. Simultaneously the eCommissioner of the rRevue shall forward a notice of the assessment to the bank.

(1-16-61)

**§ 28-6. Time and mManner of pPayment by bBanks of tTaxes aAssessed; rRceipts tTherefor.**

Every bank, on or before the first day of June in each year, shall pay into the eCounty tTreasury the eCounty taxes assessed under the provisions of this chapter. The tTreasurer shall give to such bank duplicate receipts upon forms prescribed by the dDepartment of tTaxation of the State of Virginia.

(1-16-61)

**§ 28-7. County tTax on sStock wWhen bBank lLocated in eCounty oOutside aAny iIncorporated tTown tTherein.**

If any such bank has any branch or branches located in any other county in this sState or in any incorporated town anywhere in this sState or in any city in this sState, the tax imposed by this chapter shall be upon only such proportion of the taxable value of the shares of stock in such bank as the total deposits of the bank, minus deposits through any branch or branches so located in any other eCounty in this sState and/or in any incorporated town anywhere in this sState and/or in any city anywhere in this sState, bear to the total deposits of the bank as of the beginning of the tax year.

(1-16-61)

**§ 28-8. County tTax on sStock wWhen bBranch lLocated in eCounty oOutside aAny iIncorporated tTown tTherein.**

Any such bank having a branch or branches, whose principal office is located in some other county in this sState or in any incorporated town anywhere in this sState or in any city anywhere in this sState, the tax imposed by this chapter shall be only on such proportion of the taxable value of the shares of stock in such bank as deposits through such branch or branches so located in this eCounty, outside any incorporated town therein, bear to the total deposits of the bank as of the beginning of the year.

(1-16-61)

**§ 28-9. Record of dDeposits tThrough bBranches; sSubmission of rReports.**

Each bank in this sState, whether located in a county outside any incorporated town therein or in an incorporated town or in a city, that has as of the beginning of any tax year a branch located in Arlington County, shall maintain a record of the deposits through each branch as of the beginning of the tax year; and each such bank shall, on or before March ~~first~~ 1st of each year, deliver to the eCommissioner of the rRevue of Arlington County a copy of the report which such bank is required by Title 58, Chapter 10 of the Code of Virginia to furnish the eCommissioner of the rRevue of the county, city or incorporated town in which the principal office of the bank is located.

(1-16-61)

**§ 28-10. Penalty uUpon bBanck for fFailure to eComply wWith tThis eChapter.**

Any bank which shall fail or neglect to comply with any provision of this chapter shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00), which fine shall be recovered upon motion, after five (5) days' notice in the circuit, corporation or hustings court of the county or city in which the bank is located. The motion shall be in the name of the County of Arlington and be presented by the aAttorney for the eCommonwealth.

(1-16-61)

ARLINGTON COUNTY CODE

Chapter 29

BUILDING MAINTENANCE STANDARDS\*

\* **Editors Note:** Ordinance No. 86-28, adopted Oct. 18, 1986, amended and reenacted Ch. 29 in its entirety to read as herein set forth. Prior to such amendment, Ch. 29 consisted of §§ 29-1--29-16 which pertained to housing standards and derived from legislation of Jan. 1, 1972; March 22, 1972; May 31, 1977; July 10, 1979; and Dec. 13, 1980; and Ord. No. 82-42, enacted Dec. 4, 1982.

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ARTICLE I.

IN GENERAL

§ 29-1. Short ~~¶~~**T**itle.

This chapter shall be known and may be cited as the "Building Maintenance Standards ~~e~~**C**hapter of Arlington County, Virginia."  
(Ord. No. 86-28, 10-18-86)

§ 29-2. Definitions.

For the purpose of this chapter, the words "used for" include "designed for," and vice-versa; words used in the present tense include the future; words in the singular number include the plural number and vice-versa; the word "building" includes the word "structure"; the word "dwelling" includes the word "residence"; and the word "lot" includes the word "plot"; the word "shall" is mandatory and not directory; "premises" shall mean lot and "appurtenances thereon"; and the words "dwelling," "dwelling unit," "rooming house," and "premises," when they are used in this chapter, shall be construed as though they were followed by the words "or any part thereof"; the following ~~phrases, and~~ words ~~and terms~~ shall have the ~~following~~ meanings ~~assigned below, except in those instances where the context clearly indicates a different meaning unless the context clearly indicates otherwise:~~

(1) ~~“County mManager” shall means and include the eCounty mManager of Arlington County, or any of his duly authorized deputies or agents designees.~~

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(2) ~~“Reasonable hours” shall means the time of day between the hours of 8:00 a.m. and 5:00 p.m.~~

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(3) ~~“Code Official” shall means the eCounty mManager or his duly authorized representative designee who shall be responsible for the enforcement of Volume II, Building Maintenance Code, relating to health and sanitary matters, heat, hot water, security locks, air conditioning, painting, and maintenance and care of buildings and structures. The bBuilding eOfficial shall be the Code eOfficial who is responsible for technical decisions for building, electrical, plumbing, and mechanical systems and equipment; unsafe structures; and annual inspection of elevators, boilers and the five-year electrical preventive maintenance program. The bBuilding eOfficial and fFire mMarshal shall be responsible for annual full Code inspections of commercial and highrise buildings. The fFire mMarshal shall be the person responsible for enforcement of the fFire pPrevention eCode.~~

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(Ord. No. 86-28, 10-18-86)

§ 29-3. Adoption.

(a)A. There is hereby adopted the Virginia Uniform Statewide Building Code, Volume II, Building Maintenance Code/current edition. The enforcement of this Code shall be carried out in the manner described in section § 29-7.

(b)B. Copies of said eCode are on file in the eCommunity iInspections eOffices and may be viewed there between the hours of 8:00 a.m. and 5:00 p.m. on regular business days. (Ord. No. 91-6, 3-16-91; Ord. No. 93-25, 12-14-93)

Editors Note: Ord. No. 91-6, adopted Mar. 16, 1991, amended this chapter by adding a new § 29-3 and renumbering former §§ 29-3--29-7 as §§ 29-4--29-8.

§ 29-4. Requirement for eOccupancy or lLease.

(1)A. No owner or other person shall occupy or lease to another person any dwelling or dwelling unit unless it and the premises comply with the requirements of this chapter and all other applicable laws and regulations of Arlington County and the Commonwealth of Virginia.

(2)B. Unless otherwise specified, the owner shall be responsible for compliance with the requirements of this chapter. (Ord. No. 86-28, 10-18-86)

Note: See the editor’s note following § 29-3.

§ 29-5. Removal of eEquipment or aAppurtenances.

No owner or occupant shall alter the physical design of a building or remove permanently installed equipment or appurtenances in order to avoid effecting compliance with this chapter by eliminating the need to repair the altered or removed parts.

(Ord. No. 86-28, 10-18-86)

Note: See the editor’s note following § 29-3.

§ 29-6. Minimum sStandards for lLocks and wWindow lLatches.

(1)A. No person shall lease to another, for occupancy, any dwelling unit in a multiple dwelling building unless all exterior doors, other than balcony doors two (2) or more stories above the grade of the dwelling unit, are equipped with a vertical bolt, deadlocks or deadbolts with not less than five-eighths (5/8) inch minimum throw. In addition, the lock on the main entrance door in each of these dwelling units shall be capable of being locked or unlocked by key from the outside and by turn-knob from the inside. Alternate devices providing at least equal security may be substituted subject to prior approval by the eCounty mManager. In addition, provisions will be

made for visual detection to permit inspection before allowing entry. Exterior doors to all individual apartment units which are one (1) story or less above grade shall be provided with operative security devices determined to be adequate by the eCounty mManager. Window latches shall be provided on windows which are less than ten (10) feet from the adjoining ground level, or otherwise accessible from the outside.

~~(a)1.~~ Lock cylinders for entry doors to individual units in multiple dwelling buildings shall be changed or re-keyed whenever a tenant vacates the premises and whenever a tenant or the landlord loses a key. The landlord may charge the tenant for costs incurred in replacing or re-keying the lock cylinder due to the loss of a key by a tenant.

~~(b)2.~~ Lock cylinders on doors to common areas in multiple dwelling buildings such as laundry rooms and storage facilities shall be changed or re-keyed a minimum of once every three (3) years.

~~(2)B.~~ Owners who lease to another, for occupancy, any dwelling unit in a multiple dwelling building shall comply with the provisions of ~~section § 29-5(4)~~ within one (1) year from the effective date of this chapter.

~~(3)C.~~ No person shall lease to another, for occupancy, any dwelling containing less than three (3) dwelling units unless all exterior doors are equipped with operative latching or locking devices. Window latches shall be provided on windows which are less than ten (10) feet from the adjoining ground level, or are otherwise accessible from the outside.

(Ord. No. 86-28, 10-18-86)

Note: See the editor's note following § 29-3.

**§ 29-7. Inspections; pPowers and dDuties of the eCounty mManager.**

~~(4)A.~~ The eCounty mManager or his ~~duly authorized agent designee~~ shall enforce the provisions of this chapter and is hereby authorized and directed to make inspections in response to a complaint that an alleged violation of the provisions of this chapter or of applicable rules or regulations pursuant thereto may exist, as part of a systematic inspection program of the area, or when he has valid reason to believe that a violation of this chapter has been or is being committed.

~~(2)B.~~ The eCounty mManager or his ~~duly authorized agent designee~~ shall have authority with the consent of the owner or tenant to enter and inspect all dwellings and dwelling units, subject to the provisions of this chapter for the purpose of determining whether there is compliance with its requirements.

~~(3)C.~~ If any owner, occupant or other person in charge of a building or of a multiple dwelling or a rooming house, fails or refuses to permit free access and entry to the structure or premises under his control, or any part thereof, with respect to which an inspection authorized by this chapter is sought to be made, the eCounty mManager may, upon a showing that probable cause exists for the inspection, petition and obtain an order from a court of competent jurisdiction authorizing such inspection.

~~(4)D.~~ Every occupant of a building or building unit or premises shall give the owner thereof, or his agent or employee, access to any part of such building, or its premises, at any reasonable hours for the purpose of making such repairs and alterations as are necessary to effect compliance with any lawful order issued pursuant to the provisions of this chapter.

~~(5)E.~~ The eCounty mManager or ~~a duly authorized agent his designee~~ may declare a public emergency when a public nuisance, dangerous, unsafe, or unsanitary conditions exist in any building and present an imminent and immediate threat to life or property, and may order the eCounty to abate or remove the conditions or to raze the building.

~~(6)F.~~ Authority to require removal or repair of unsafe buildings and structures and recovery of costs.

~~(a)1.~~ The owner of property shall at such time or times as the bBuilding eOfficial may prescribe, remove, repair, or secure any building, wall, or any other structure which might endanger the public health or safety of other residents. The bBuilding eOfficial, through its own agents or

employees, may remove, repair, or secure any building, wall, or any other structure which might endanger the public health or safety of other residents and the eCounty, when the owner and lien holders of property, after reasonable notice and a reasonable time to do so, have failed to remove, repair, or secure said building, wall, or other structure.

~~(2)~~ In the event the eCounty, through its own agents or employees, removes, repairs, or secures any building, wall, or any other structure after complying with the notice provisions of the Virginia Uniform Statewide Building Code, Building Maintenance Code, the cost or expenses thereof shall be chargeable to and paid by the owners of such property and may be collected by the eCounty as taxes and levies are collected.

~~(3)~~ Every charge authorized by this section with which the owner of any such property shall have been assessed and which remains unpaid shall constitute a lien against such property ranking on a parity with liens for unpaid local taxes and enforceable in the same manner as provided in Articles 3 and 4 of Chapter 39 of Title 58.1 of the Code of Virginia.

~~(4)~~ If a public nuisance presents an imminent and immediate threat to life or property, then the eCounty may abate, raze, or remove such public nuisance and recover from the responsible party the necessary costs incurred for the provision of public emergency services reasonably required to abate any such public nuisance.

~~(7)G.~~ The term "nuisance" shall include, but not be limited to, dangerous or unhealthy substances which have escaped, spilled, been released, or which have been allowed to accumulate in or on any place, and all unsafe, dangerous, or unsanitary public or private buildings, walls, or structure which constitute a menace to the health and safety of the occupants thereof or the public. The term "responsible party" shall include, but not be limited to, the owner, occupier, or possessor of the premises where the nuisance is located, the owner or agent of the owner of the material which escaped, spilled, or was released, and the owner or agent of the owner who was transporting or otherwise responsible for such material and whose acts or negligence caused such public nuisance.  
(Ord. No. 86-28, 10-18-86; Ord. No. 90-26, 8-11-90; Ord. No. 93-25, 12-14-93)

Note: See the editor's note following § 29-3.

#### § 29-8. Energy ~~s~~Shortage ~~e~~Emergencies.

~~(A)~~ Whenever appropriate federal or state authorities, pursuant to lawful authority, declare an energy emergency and prescribe mandatory thermal standards which conflict with the minimal thermal standards set forth in this chapter, the eCounty ~~m~~Manager shall forthwith suspend those provisions of this chapter and prescribe standards consistent with federal and state requirements. Such suspension shall not extend beyond the date on which such federal or state standards are modified or terminated.

~~(2)B.~~ Whenever, in the judgment of the eCounty ~~m~~Manager, an energy shortage emergency exists which requires temporary suspension of the minimal thermal standards set forth in this chapter, the eCounty ~~m~~Manager may by order, following public hearing, prescribe emergency minimum thermal standards to supersede those standards set forth in this chapter. The eCounty ~~m~~Manager shall state, and report to the eCounty ~~b~~Board, the reasons for such suspension, which shall not extend beyond sixty (60) days from the date on which the order is issued. The eCounty ~~m~~Manager may revoke the suspension at any time. Any renewal of a suspension beyond the sixty-~~(60)~~ day period above shall be made only in accordance with the foregoing procedures. The eCounty ~~m~~Manager shall revoke a suspension at such time as he determines that the suspension is no longer necessary.

~~(3)C.~~ Whenever, in the judgment of the eCounty ~~m~~Manager, an energy shortage emergency exists which requires immediate action to protect the public health, safety or welfare, the eCounty ~~m~~Manager shall prescribe emergency minimum thermal standards to supersede those standards set forth in this chapter. Such standards shall remain in effect for a period not to exceed fifteen (15) days unless prior to the expiration of the fifteen-~~(15)~~ day period the requirements of subsection ~~B(2)~~ have been satisfied.

(1-1-72)

Note: See the editor's note following § 29-3.

Sec. 29-9. Reserved.

## ARTICLE II.

### DECLARATION OF BLIGHT

#### § 29-10. Purpose.

The County Board of Arlington County hereby finds that deteriorating properties, including the improvements and the land on which they are built, have a deleterious effect on property values and the quality of life in the area surrounding them. This spot blight threatens the health, safety, morals and welfare of the community. (Ord. No. 03-21, 9-13-03)

#### § 29-11. Blight ~~a~~Abatement ~~a~~Authorized.

The ~~e~~CCounty may acquire or repair any blighted property, as defined in ~~section §~~ 29-12, by exercise of the powers of eminent domain and further, shall have the power to hold, clear, repair, manage or dispose of such property for purposes consistent with this ~~ordinance article~~. In addition, the ~~e~~CCounty may recover the costs of any repair or disposal of such property from the owner and until recovered, such costs shall constitute a lien upon the property. (Ord. No. 03-21, 9-13-03)

#### § 29-12. Blighted ~~p~~Property ~~d~~Defined.

A. To be blighted a property must have a building or improvement that by reason of dilapidation, overcrowding, lack of ventilation, light and sanitary facilities or any combination of these or other factors, is detrimental to the safety, health, morals or welfare of the community. In addition, any property that has been determined by the Arlington County Code Official to meet the definition of unsafe building shall also be blighted.

B. In determining whether a property meets the definition of blighted set forth above, the ~~e~~CCounty may consider any pertinent factors including by way of illustration and not limitation the following:

1. ~~"~~Condemned structure~~"~~ ~~— means~~ ~~A~~a structure on the property ~~that~~ has been continuously vacant for at least one year, has been condemned as unfit for human occupancy by the ~~b~~BBuilding ~~e~~Official in accordance with the Virginia Uniform Statewide Building Code, but has neither been demolished nor repaired by the owner as directed by the ~~b~~BBuilding ~~e~~Official;
2. ~~"~~Rat and rodent infestation~~"~~ ~~— means~~ ~~F~~there is evidence of rat or rodent infestation or harborages caused by conditions on the property;
3. ~~"~~Previous citations~~"~~ ~~— means~~ ~~F~~the property has been used or maintained in a condition which has resulted in the following actions:
  - a. The owner has been cited on a least three (3) separate occasions because activities or conditions on the property violate ~~s~~State or ~~e~~CCounty laws or ordinances governing the use or maintenance of property, and those activities or conditions threaten the public health, safety and welfare of the community; or
  - b. The owner has refused to abate one or more violations as ordered by the court or has repeated conduct involving the use or maintenance of property for which the owner has been convicted of violating ~~s~~State laws or ~~e~~CCounty ordinances in the past.
4. ~~"~~Inadequate facilities~~"~~ ~~— means~~ ~~F~~the property has inadequate sewage septic, plumbing, well or heating facilities;
5. ~~"~~Potential trespass~~"~~ ~~— means~~ ~~H~~if the property is vacant, the owner has failed to take adequate

precautions to prevent the use of or access to the property by trespassers;

- 6. "Nuisance to children"—means ~~A~~a potential attractive nuisance to children exists on the property, including, but not limited to, abandoned wells, basements, excavations or broken fences;
- 7. "Fire hazard"—means ~~A~~any condition exists on the property that has been specifically identified as a fire hazard by the ~~f~~Fire ~~d~~Department or the ~~b~~Building ~~e~~Official; and
- 8. "Substantial dilapidation of buildings or structures" as evidenced by either:
  - a. Collapse of either interior or exterior structural elements such as floors, walls, roofs, porches, decks and similar appendages which do not pose a danger to the public;~~;~~
  - b. Removal or rotting of exterior siding, roofing or sheathing exposing structural members to the weather.

(Ord. No. 03-21, 9-13-03)

**§ 29-13. Procedures for ~~d~~Declaring ~~b~~Blight; ~~n~~Notification of ~~e~~Owner, ~~p~~Public ~~h~~Hearing.**

A. The County Manager or his designee shall make a preliminary determination that a property is blighted in accordance with ~~section §~~ 29-12 and shall notify the owner by regular and certified mail, specifying the reasons why the property is considered blighted. The notice mailed to the owner also shall be posted on the property. The owner shall have thirty (30) days within which to respond with a plan that would cure the blight within a reasonable time. Such plan shall include a site plan delineating blighted condition(s) and specifying measures to be taken for the removal of each.

B. Upon approval by the County Manager of the plan to cure blight the owner shall have ninety (90) days to complete all work approved in the plan. The County Manager, or his designee, upon acceptance of a performance bond in the amount of the estimated cost of the work, may grant extensions of time to complete work where the County Manager determines that the owner has completed substantial portions of the work in compliance with the plan and is diligently pursuing completion of all work.

C. If the owner fails to respond within the thirty (30)-day period set forth in ~~section 29-11A, § 29-13.A~~ with a plan that is acceptable to the County Manager or his designee, or fails to complete the work approved in the plan to cure blight and has not been granted an extension of time to complete such, the County Manager or his designee may~~;~~ (i) request the ~~p~~Planning ~~e~~Commission to conduct a public hearing and make findings and recommendations that shall be reported to the County Board concerning the repair or other disposition of the property in question, and (ii) if a public hearing is scheduled, shall prepare a plan for the repair or other disposition of the property.

D. Not less than three weeks prior to the date of the public hearing before the ~~p~~Planning ~~e~~Commission, the ~~e~~Commission shall provide, by regular and certified mail, notice of such hearing to: (i) the owner of the blighted property or the agent designated by him for receipt of service of notices concerning the payment of real estate taxes on the property; (ii) the abutting property owners in each direction, including those property owners immediately across the street or road from the property; and (iii) the representative neighborhood association, if any for the immediate area. The notice shall include a description of the plan for the intended repair or other disposition of the property. The notice of the public hearing shall be published at least twice, with not less than six (6) days elapsing between the first and second publication, in a newspaper published or having general circulation in the ~~e~~County. The notice also shall be posted on the property. The notice shall specify the time and place of the hearing at which persons affected may appear and present their views, not less than six (6) days nor more than twenty-one (21) days after the second publication.

- E. The ~~p~~Planning ~~e~~Commission shall determine whether:
  - 1. The property is blighted;

2. The owner has failed to cure the blight or present a reasonable plan to do so;
3. The plan for the repair or other disposition of the property is in accordance with the eCounty's comprehensive plan, zoning ordinance, and other applicable land use regulations; ~~and~~
4. The property is located within an area listed on the National Register of Historic Places, or is located in an area designated an historic district, or is a designated landmark pursuant to 31A of the Arlington County Zoning Ordinance. In such instances, the pPlanning eCommission shall consult with the Historical Affairs Landmark Review Board regarding the proposed repair or other disposition of the property; ~~and~~

F. The pPlanning eCommission shall report its findings and recommendations concerning the property to the County Board. The County Board, upon receipt of such findings and recommendations may, after an advertised public hearing, affirm, modify, or reject the pPlanning eCommission's findings and recommendations. If the repair or other disposition of the property is approved, the eCounty may carry out the approved plan to repair or acquire and dispose of the property in accordance with the approved plan, the provisions of this ~~Ordinance article~~ and applicable law. The eCounty shall have a lien on all property so repaired or acquired under an approved plan to recover the cost of (i) improvements made by the eCounty to bring the blighted property into compliance with applicable building codes and (ii) disposal, if any. The lien authorized by this subsection shall be filed in the eCircuit eCourt and shall be subordinate to any prior liens of record. The eCounty may recover its costs of repair from the owner of record of the property when the repairs were made at such time as the property is sold or disposed of by such owner. If the property is acquired through eminent domain, the cost of repair may be recovered when the eCounty sells or disposes of the property. In either case, the costs of repair shall be recovered from the proceeds of any such sale.

(Ord. No. 03-21, 9-13-03)

**§ 29-14. Occupied for ~~r~~Residential ~~p~~Purposes.**

Unless otherwise provided for in Title 36 of the Code of Virginia, if the blighted property is occupied for personal residential purposes, the eCounty, in approving the plan, shall not allow for an acquisition of such property if it would result in a displacement of the person or persons living in the premises. The provisions of this subsection shall not apply to acquisitions, under an approved plan, by the eBounty of property which has been condemned for human habitation for more than one (1) year. In addition, the eCounty in exercising the powers of eminent domain in accordance with Title 25 of the Code of Virginia, may provide for temporary relocation of any person living in the blighted property provided the relocation is within the financial means of such person.

(Ord. No. 03-21, 9-13-03)

**§ 29-15. Declaration of ~~n~~Nuisance.**

In lieu of the acquisition of blighted property by the exercise of the powers of eminent domain as herein provided and in lieu of the exercise of other powers granted in ~~section §~~ 29-11, the County Board, by ordinance, may declare any blighted property to constitute a nuisance and thereupon abate the nuisance pursuant to sState law. Such ordinance shall be adopted only after written notice by certified mail to the owner or owners at the last known address of such owner as shown on the current real estate tax assessment books or current real estate tax assessment records.

(Ord. No. 03-21, 9-13-03)

**§ 29-16. Provisions eCumulative.**

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

(Ord. No. 03-21, 9-13-03)

ARLINGTON COUNTY CODE

Chapter 30

PEDDLERS, VENDORS AND CANVASSERS

- § 30-1. Permit ~~r~~Required.
- § 30-2. Definitions.
- § 30-2.1. Exemption ~~f~~From ~~p~~Permit ~~r~~Requirements.
- § 30-3. Application for ~~p~~Permit or ~~e~~Exemption.
- § 30-4. Investigation and ~~i~~Issuance.
- § 30-5. Transfer.
- § 30-6. Renewal.
- § 30-7. Reserved.
- § 30-8. Use of the ~~s~~Streets and ~~e~~Other ~~p~~Public ~~p~~Places--Vending or ~~e~~Canvassing from a ~~s~~Stationary ~~l~~Location.
- § 30-9. Same--Vending from ~~v~~Vehicles.
- § 30-10. Same--Designation of ~~s~~Street ~~v~~Vending ~~z~~Zones.
- § 30-11. Door-to-~~d~~oor ~~s~~Sales ~~h~~Hours.
- § 30-12. Exhibition of ~~p~~Permit or ~~e~~Exemption ~~l~~etter.
- § 30-13. Records.
- § 30-14. Revocation of ~~p~~Permit.
- § 30-15. Appeal.
- § 30-16. Penalty for ~~v~~Violation of ~~e~~Chapter.
- § 30-17. Severance ~~e~~Clause.

§ 30-1. Permit ~~r~~Required.

It shall be unlawful for any person to engage in the business of peddler, vendor or canvasser as defined in this ~~ordinance chapter~~, within the limits of Arlington County, Virginia, without first obtaining a permit as provided herein.  
(7-15-61; Ord. No. 85-39, 11-16-85)

§ 30-2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

- (a) ~~“Canvasser” is means~~ one who travels from place to place seeking orders for merchandise, goods, food or services with or without samples by traveling from place to place within the County.
- (b) ~~“County” shall~~ means Arlington County, Virginia.
- (c) ~~“County Manager” shall~~ means the County Manager of Arlington County, Virginia or ~~a duly authorized agent of the County Manager his designee~~.
- (d) ~~“Kiosk”~~ is as defined and regulated by the Arlington County Zoning Ordinance.
- (e) ~~“Peddler” is means~~ one who moves from place to place within the County and offers merchandise, goods, food or services for sale or barter.
- (f) ~~“Service road (frontage road)” is means~~ a roadway contiguous to and generally paralleling a street or highway designed to collect and distribute traffic desiring to cross, enter, or leave such street or highway, and to furnish access to property which would otherwise be isolated due to the controlled

**Comment [LH1]:** These terms have been alphabetized

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access design of the street or highway.

~~(e)~~ "Vehicle" shall mean every device in, upon or by which any person or property is or may be transported or drawn including any wheeled conveyance.

~~(h)~~ "Vendor" means one who offers merchandise, goods, food or services for sale or barter from a stationary but temporary site or from a kiosk within the County. "Vending" is the act of offering merchandise, goods, food or services for sale or barter from a stationary but temporary site or from a kiosk within the County.

(7-15-61; 10-9-61; 5-28-78; 6-27-78; 9-29-79; Ord. No. 85-39, 11-16-85; Ord. No. 08-16, 7-21-08)

**§ 30-2.1. Exemption from ~~p~~Permit ~~r~~Requirements.**

~~(a)~~A. The following shall be exempt from the permit requirements of this chapter:

- ~~(1.)~~ Persons selling fresh farm products;
- ~~(2.)~~ Persons selling newspapers;
- ~~(3.)~~ Persons selling for wholesale concerns who only solicit orders from or sell to retail dealers in Arlington County for resale or other commercial purposes or to manufacturers for manufacturing or other commercial purposes;
- ~~(4.)~~ Peddlers or vendors of religious, political or written materials; and
- ~~(5.)~~ Persons participating in an open-air market as defined and permitted in the Arlington County Zoning Ordinance.

~~(b)~~B. All persons qualifying for exemptions from this section must present proof of such qualification and be granted exemption from the permit requirements of this chapter as provided in ~~Section § 30-3.B(b)~~. Such persons shall not be exempt from the provisions of ~~Sections §§ 30-7 through 30-11~~ of this chapter. (Ord. No. 85-39, 11-16-85; Ord. No. 91-35, 9-28-91; Ord. No. 08-16, 7-21-08)

**§ 30-3. Application for ~~p~~Permit or ~~e~~Exemption.**

A. Applicants for permits under this ~~ordinance chapter~~ must file with the County Manager a sworn application in writing (in duplicate) on a form to be furnished by the County, which shall give the following information:

- ~~(1.)~~ Name, social security number (optional), and description of the applicant.
- ~~(2.)~~ Address.
- ~~(3.)~~ Name and address of Virginia registered agent, if there is a registered agent for the business.
- ~~(4.)~~ A brief description of the nature of the business and the goods to be sold.
- ~~(5.)~~ If employed, the name and address of the employer, federal employment identification number (optional), together with a written employment contract or other written document from the employer establishing the exact relationship.
- ~~(6.)~~ The length of time during the current year when the peddling, vending, or canvassing will take place in the County.
- ~~(7.)~~ If a vehicle is to be used, a description of the same, together with the license number or other means of identification.

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- ~~(8.)~~ Proof of Virginia retail sales tax registration and the retail sales tax number issued, if applicable:
- ~~(9.)~~ The finger and thumb prints of the applicant shall be taken at the time of application.
- ~~(10.)~~ The names of at least two (2) persons who will certify as to the applicant's good character and business responsibility, or in lieu of the names of references, any other available evidence as to the good character and business responsibility of the applicant as will enable an investigator to promptly evaluate such character and business responsibility.
- ~~(11.)~~ A statement as to whether or not the applicant has been convicted of any crime, misdemeanor or violation, the nature of the offense and the penalty affixed therefor.
- ~~(12.)~~ The application shall provide two (2) recent front facing passport size photographs which accurately depict the applicant's appearance at the time of application.
- ~~(13.)~~ All permits issued after March 1, 2002, shall expire on February 28th of the following year.

B. At the time of filing of the application, a fee of twenty dollars (\$20.00) shall be paid to the County Manager, to cover the cost of investigation and processing of the application.  
(7-15-61; Ord. No. 82-32, 8-7-82; Ord. No. 85-39, 11-16-85; Ord. No. 99-25, 12-15-99; Ord. No. 02-13, 5-18-02)

**§ 30-4. Investigation and issuance.**

Upon receipt of such application, the original shall be referred to the County Manager, who shall make an investigation of the applicant's business responsibility and character.

~~(A.)~~ Unless the County Manager determines otherwise after his investigation, he shall, within forty-five (45) days following the date of the filing of the application, issue the applicant a license.

~~(B.)~~ After investigation and finding that the health, safety, and welfare of the public so demands, the County Manager may refuse to issue a license to an applicant for reasons including, but not limited to, the following:

- ~~(1.)~~ ~~e~~Conviction of any felony or crime of moral turpitude (including, by way of illustration and not limitation, crimes of sexual misconduct and distribution of controlled substances or paraphernalia) within the five (5) years immediately preceding the date of filing of the application.
- ~~(2.)~~ ~~F~~raud, misrepresentation or intentional false statement of material or relevant facts contained in the application.
- ~~(3.)~~ ~~L~~ack of necessary permits or licenses to conduct the business proposed to be conducted.

~~(C.)~~ The County Manager shall endorse on the application his approval, execute a permit addressed to the applicant for the carrying on of the business applied for and deliver to the applicant his permit. Such permit shall contain the signature of the issuing officer and shall show the name, address and photograph of said applicant, the kind of goods to be sold thereunder, the date of issuance and the length of time the same shall be operative, as well as the license number and other identifying description of any vehicle used in such peddling, vending or canvassing. The County Manager shall keep a permanent record of all permits issued.

~~(D.)~~ In determining whether the applicant's character and business responsibility is satisfactory, the ~~e~~County ~~m~~anager, or his ~~authorized agent designee~~, shall consider evidence revealed by the investigation which shows honesty, reliability, and knowledge of the business to be engaged-in. A license shall be denied or revoked if the applicant is shown to be dishonest, immoral or substantially lacking in business reliability and responsibility. In the event the results of the initial investigation are unclear as to the nature of the applicant's character and business responsibility, an additional investigation of the applicant shall be made.  
(7-15-61; Ord. No. 82-32, 8-7-82; Ord. No. 85-39, 11-16-85; Ord. No. 90-1, 1-16-90)

§ 30-5. Transfer.

No permit or exemption letter issued under the provisions of this ordinance shall be used by any person other than the one to whom it was issued.  
(7-15-61; Ord. No. 85-39, 11-16-85; Ord. No. 90-1, 1-16-90)

§ 30-6. Renewal.

Permits issued under the provisions of this chapter shall be valid for the period requested, which shall in no event exceed one (1) year. All permits renewed after March 1, 2002, shall expire on February 28th of the following year, unless sooner revoked or suspended as provided. The holder of any permit may seek renewal thereof upon the filing of a written renewal application. The renewal application shall reflect any information changed from the previous year's application and it shall be approved upon verification by the ~~e~~C~~o~~u~~n~~t~~y~~ ~~m~~a~~n~~a~~g~~e~~r~~ that the applicant for renewal has complied with the laws of Arlington and the ~~e~~C~~o~~m~~m~~o~~n~~w~~e~~l~~t~~h.  
(7-15-61; Ord. No. 85-39, 11-16-85; Ord. No. 90-1, 1-16-90; Ord. No. 99-25, 12-15-99; Ord. No. 02-13, 5-18-02)

§ 30-7. Reserved.

**Editors Note:** Ord. No. 00-32, adopted Dec. 10, 2000, repealed § 30-7, which pertained to loud noises and speaking devices.

§ 30-8. Use of the ~~s~~Streets and ~~o~~Other ~~p~~Public ~~p~~Places--Vending or ~~e~~Canvassing from a ~~s~~Stationary ~~l~~ocation.

No peddler, vendor, or canvasser shall have any exclusive right to any location on public property, unless operating from an established kiosk; nor shall he or she:

- ~~(a)~~A. Be permitted a stationary location on any sidewalk unless at least ten (10) feet of the sidewalk remains clear for pedestrian traffic;
- ~~(b)~~B. Be permitted a stationary location closer than ten (10) feet from any crosswalk, intersection, entrance to a building, Metro entrance, bus stop, taxi stand, or other vendor's stationary location;
- ~~(c)~~C. Be permitted to occupy a space greater than eight (8) feet long, five (5) feet wide, and seven (7) feet six (6) inches high on a sidewalk, excluding umbrellas, unless operating from an established kiosk;
- ~~(d)~~D. Display any sign visible to vehicular traffic if operating from a stationary location on a street, sidewalk, or other public place, except for signs that are actually imprinted on the exterior body of a licensed motor vehicle;
- ~~(e)~~E. Make any sale or delivery to any person while such person is standing in the roadway;
- ~~(f)~~F. Make any sale, offer or delivery to any driver or passenger in a motor vehicle while the motor vehicle is stopped at a red light or while in a moving traffic lane;
- ~~(g)~~G. Conduct business from any highway service road or center median strip of any boulevard street;
- ~~(h)~~H. Restrict access to any legally parked vehicle;
- ~~(i)~~I. Operate in any other way that would restrict the flow of pedestrian or vehicular traffic;
- ~~(j)~~J. Conduct any business on any public street or sidewalk between the hours of 8:00 p.m. and 6:30 a.m.; however, a vendor operating from an established kiosk may conduct business until 10:00 p.m.;
- ~~(k)~~K. Leave any cart or table unattended on any public street or sidewalk between the hours of 8:00 p.m. and 6:30 a.m.; or

~~(d)L.~~ Display any kiosk items for sale or have any display racks (or similar items) more than two (2) feet from the kiosk between the hours of 10:00 p.m. and 6:30 a.m. or during any non-business hours; or

Each peddler, vendor, or canvasser shall provide receptacles for the disposal of waste materials or other litter created in the immediate area of any stationary location from which sales, offers of sales or deliveries are taking place, and they shall request customers to place all waste and litter in the receptacles and they shall remove and dispose of the waste materials and litter.

(9-29-79; Ord. No. 85-1, 1-5-85; Ord. No. 85-39, 11-16-85; Ord. No. 87-14, 5-16-87; Ord. No. 90-1, 1-16-90; Ord. No. 99-25, 12-15-99; Ord. No. 08-16, 7-21-08)

**§ 30-9. Same--Vending from ~~v~~Vehicles.**

It shall be unlawful for peddlers, vendors, or canvassers or any other person to park or stop a vehicle on or alongside the roads, highways and streets of Arlington County for the purpose of selling, soliciting the sale of, displaying or offering for sale any goods, wares or other merchandise in or from the vehicles except under the following conditions:

~~(a)A.~~ ~~t~~The vehicle is parked or stopped only for the purpose of making house to house sales; or

~~(b)B.~~ ~~t~~The vehicle is stopped to make sales to persons, in which case the vehicle must remain stopped for no longer than five (5) minutes for vehicles stopped within one hundred (100) feet of any public school between the hours of 11:00 a.m. and 2:00 p.m. on days the school is open for student instruction, and no longer than sixty (60) minutes for all other vehicles, and must stop only in a space where motor vehicle parking is permitted pursuant to Chapter 14.2 of this Code; or

~~(c)C.~~ ~~t~~The vehicle is stopped in an area that the County Manager has designated as temporary parking areas for the Arlington County Farmer's Market adjacent to land zoned so as to permit a farmer's market, provided that no parking spaces may be designated for this purpose for more than twenty (20) hours in any week;

~~(d)D.~~ ~~t~~The vehicle is stopped in an area designated by the County Manager as a Sstreet Vending Zzone pursuant to Section § 30-10 herein. No vehicle parked in a Sstreet Vending Zzone may exceed eighteen (18) feet in length, seven (7)<sup>2</sup> feet in width and ten (10) feet in height, excluding umbrellas; or

~~(e)E.~~ Sales are made between the hours of 7:00 a.m. and 8:00 p.m.  
(Ord. No. 85-39, 11-16-85; Ord. No. 90-1, 1-16-90; Ord. No. 99-25, 12-15-99; Ord. No. 08-16, 7-21-08)

**§ 30-10. Same--Designation of ~~s~~Sstreet ~~v~~Vending ~~z~~Zones.**

~~(a)A.~~ Whenever it appears, after a survey of land use activity, parking resources and a traffic engineering study, that there is a need to do so, the eCounty manager may designate street vending zones within the eCounty for use by peddlers and vendors in compliance with the following criteria:

~~(1.)~~ A zone or zones may be created in any area of the eCounty that lies within twelve hundred (1,200) feet of a Metro station and contains at least one million (1,000,000) square feet of office space or in any commercial or industrial area of the eCounty, as defined by the Arlington County General Land Use Plan;

~~(2.)~~ The total area designated as street vending zones or zone in each area may not exceed one hundred thirty-five (135) feet in length and eight (8) feet in width; and

~~(3.)~~ A zone shall only be located adjacent to sidewalks at least ten (10) feet in width.

~~(b)B.~~ The hours of operation within each street vending zone shall be set by the eCounty manager so as not to interfere with pedestrian and vehicle traffic, but in no case shall vending in street vending zones be permitted between 7:30 a.m. and 9:00 a.m. on weekday mornings nor between 4:00 p.m. and 6:00 p.m. on weekday

afternoons.

~~(c)C.~~ Street vending zones designated by the ~~e~~County ~~m~~Manager shall be subject to review and renewal at least every two (2) years after each designation and the ~~e~~County ~~m~~Manager may renew, remove or alter the site or size of zones after such review unless removal or alteration is required sooner by a change in conditions in the area where the zone is designated.

(Ord. No. 85-39, 11-16-85; Ord. No. 90-1, 1-16-90; Ord. No. 08-16, 7-21-08)

§ 30-11. Door-to-door ~~d~~Door ~~s~~Sales ~~h~~Hours.

Door-to-door sales or canvassing shall only take place between the hours of 9:00 a.m. and 8:00 p.m.

(Ord. No. 85-39, 11-16-85; Ord. No. 90-1, 1-16-90)

§ 30-12. Exhibition of ~~p~~Permit ~~e~~Exemption ~~l~~Letter.

Peddlers, vendors, or canvassers are required to conspicuously display their permits at their vehicles or temporary stands or if they have none, to exhibit their permits or exemption letter upon request.

(7-15-61; Ord. No. 85-1, 1-5-85; Ord. No. 85-39, 11-16-85; Ord. No. 90-1, 1-16-90)

§ 30-13. Records.

The County Manager shall maintain a record for each permit issued, and record the reports of violation thereon.

(7-15-61; Ord. No. 85-39, 11-16-85; Ord. No. 90-1, 1-16-90)

§ 30-14. Revocation of ~~p~~Permit.

~~(a)A.~~ Permits issued under the provision of this ~~ordinance chapter~~ may be revoked by the County Manager after notice and hearing for any of the following causes:

~~(1.)~~ ~~f~~Fraud, misrepresentation or intentional false statement contained in the application for permit.

~~(2.)~~ ~~e~~Conviction of any felony or crime of moral turpitude (including, by way of illustration and not limitation, crimes of sexual misconduct and distribution of controlled substances or paraphernalia).

~~(3.)~~ ~~e~~Conviction of any crime involving fraud in the conduct of his or her business.

~~(4.)~~ ~~a~~Any violation of this ~~ordinance chapter~~ or of Chapter 11 of the Arlington County Code.

~~(b)B.~~ Notice of the hearing for revocation of a permit shall be given in writing, setting forth specifically the grounds of the revocation and the time and ~~P~~place of hearing. Such notice shall be mailed, postage prepaid, to the permit holder at his last known address at least five (5) days prior to the date set for hearing.

(7-15-61; Ord. No. 85-39, 11-16-85; Ord. No. 90-1, 1-16-90)

§ 30-15. Appeal.

~~(a)A.~~ Any person aggrieved by the action of the County Manager, or his ~~authorized agent designee~~, in the denial of an application for a permit or in the decision with reference to the revocation of a permit shall have the right of appeal. Such appeal shall be taken by filing with the Clerk of the County Board within ten (10) days after the notice of action complained of has been mailed to such person's last known address, a written statement setting forth fully the grounds of appeal.

~~(b)B.~~ The Clerk of the County Board shall notify the County Manager of the filing of an appeal.

~~(c)C.~~ Upon filing an appeal, the party aggrieved shall be entitled to a hearing by a hearing examiner who

shall be a lawyer admitted to practice in the Commonwealth of Virginia employed for the purpose of conducting such hearings by the County Board. The time and place of the hearing shall be scheduled by the hearing examiner at any time after the filing of an appeal upon notice by the hearing examiner mailed to the party to the action at the address required to be stated by the appellant at the time of the filing of the appeal. Such appeals may be continued by the hearing examiner from time to time and place to place at the time of any hearing by an order made sua sponte, on motion of the party to the action, or on motion of the County Attorney.

~~(d)~~D. The party shall have the right to present his case in person or by counsel licensed to practice law in the ~~State Commonwealth~~ of Virginia.

~~(e)~~E. The hearing examiner shall consider the case record as well as statements offered by an interested party and shall determine whether the County Manager abused his discretion under the rules and standards set forth in this chapter. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence in civil actions.  
(7-15-61; Ord. No. 85-35, 8-17-85; Ord. No. 85-39, 11-16-85; Ord. No. 86-12, 5-17-86; Ord. No. 90-1, 1-16-90)

§ 30-16. Penalty for ~~v~~Violation of Chapter.

Any person violating any provision of this ~~C~~chapter shall be guilty of a Class 1 misdemeanor.  
(7-15-61; 9-29-79; Ord. No. 85-39, 11-16-85; Ord. No. 90-1, 1-16-90; Ord. No. 91-34, 9-18-91)

§ 30-17. Severance ~~e~~Clause.

The provisions of this chapter are hereby declared to be severable, and if any section, sentence, clause or phrase of this chapter shall, for any reason, be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses or phrases of this chapter, but they shall remain in effect, it being the legislative intent that this chapter shall stand, notwithstanding the invalidity of any part.  
(7-15-61; Ord. No. 90-1, 1-16-90)

ARLINGTON COUNTY CODE

Chapter 31

HUMAN RIGHTS

- § 31-1. Statement of pPolicy.
- § 31-2. Definitions.
- § 31-3. Prohibited aActs.
- § 31-4. Human rRights eCommission eCreated; eComposition; eTerms; eChairman; eCompensation.
- § 31-5. Human rRights dDirector.
- § 31-6. Functions and pPowers of the eCommission.
- § 31-7. Enforcement pProceedings iInitiated by the eFiling of a eComplaint.
- § 31-8. Enforcement by the eCourt.
- § 31-9. Exemptions.
- § 31-10. Enforcement by eCounty aAgencies.
- § 31-11. Inspections, rRecords and nNotices.
- § 31-12. Savings pProvisions and nNonabatement of mMatters.
- § 31-13. Nonexclusive rRemedy.
- § 31-14. Notices; sService.
- § 31-15. Time lLimitations.
- § 31-16. Severability.

§ 31-1. Statement of pPolicy.

Arlington County is a community richly diverse and valued for the heterogeneity of its residents. It is in the public interest of the eCounty to assure that each citizen is treated fairly, provided equal protection of the law and equal opportunity to participate in the benefits, rights and privileges of community life. Discrimination deprives the citizenry of the bare essentials of life and is detrimental to the public welfare, safety and health of the community. This chapter is an expression of the commitment and support at the local level to continue working towards the improvement of the quality of life in the eCounty. This chapter is established to ensure the protection and enforcement of human and civil rights for all people living or working in Arlington County by the elimination of and provision of remedies for discriminatory practices. The provisions of this chapter shall be construed liberally for the accomplishment of the policies herein.  
(Ord. No. 89-3, 7-1-89)

§ 31-2. Definitions.

~~For the purpose of this chapter:~~The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

(+) ~~\_\_\_\_\_~~ “Bona fide occupational qualification” ~~shall mean~~ a bona fide occupational qualification as defined and interpreted under the Civil Rights Act of 1964, 42 United States Code § 2000e et seq., or other applicable federal statute.

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(=) ~~\_\_\_\_\_~~ “Commercial real estate” means any land or improvements, or both, or interest in such land or improvements, that is offered for sale or lease and that can be used for business, trade, or professional purposes under existing law or by changes in law contemplated under the offering, and which is not a dwelling. The fact that some adaptation of land or improvements, or both, must be made after the sale or lease is completed or that licenses or approvals are necessary to put it into use shall not mean that the land or improvements cannot be used for business, trade, or professional purposes, so long as those adaptations, licenses, and approvals are within the range that persons engaged in a business, trade, or profession are able to foresee in buying or leasing such property.

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securing legal custody of any individual who has not attained the age of eighteen (18) years.

(17) "Family" shall mean a group living together as a unit and includes an individual.

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(18) "Handicap" shall mean any condition or characteristic that renders a person a handicapped person.

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(19) "Handicapped person" shall mean any person who:

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a.(1) Has a physical or mental impairment which substantially limits one (1) or more major life activities or has a record of such impairment, and which is unrelated to a person's ability to perform the duties of a particular job or position or is unrelated to the individual's qualification for employment or promotion or is unrelated to a person's ability to utilize or benefit from a service or program provided by an educational institution or place of public accommodation, or is unrelated to a person's ability to acquire, rent, or maintain property; or

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b.(2) Is regarded as having such a physical or mental impairment.

(20) "Housing" shall mean the same thing as dwelling.

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(21) "Labor organization" shall mean any association organized for mutual benefit and operating as a labor union, association, committee or organization for the purpose of collective bargaining and other lawful functions of labor unions, or any employee representation committee, any of whose members are employed in the County whether or not having a duly authorized charter as a local labor union from either a state or national labor organization, and whether or not registered with the State Department of Labor.

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(22) "Lending institution" shall mean any bank, insurance company, savings and loan association, credit union, finance company or any other person regularly engaged in the business of lending money, guaranteeing loans, or furnishing consumer credit or other credit-related services; any person who regularly extends, renews or continues credit; or any assignee of an original creditor who participates in the decision to extend, renew or continue credit; or any person who regularly arranges for the extension, renewal or continuation of credit.

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(23) "Major life activities" means functions such as, but not limited to, caring for one's self, performing manual tasks, walking, seeing hearing, speaking, breathing, learning or working.

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(24) "Marital status" shall mean the status of being married, divorced, single or widowed. The term "marital status" also includes any person whose marriage has been dissolved through annulment, and any person seeking a divorce or an annulment.

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(25) "Mental impairment" means:

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a.(1) A disability attributable to mental retardation, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals; or

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b.(2) An organic or mental impairment that has substantial adverse effects on an individual's cognitive or volitional functions, including central nervous system disorders or significant discrepancies among mental functions of an individual.

For the purposes of this chapter, the term "mental impairment" does not include active alcoholism or current drug addiction and does not include any mental impairment, disease or defect that has been successfully asserted by an individual as a defense to any criminal charge.

(26) "Notice of investigation" shall mean any formal statement issued by the Commission, on a form to be prepared by the commission, alleging that any person has committed a violation of this chapter and initiating an investigation of such alleged violation.

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- (27) ~~\_\_\_\_\_~~ ~~“Party” shall means~~ any complainant or respondent.
 

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- (28) ~~\_\_\_\_\_~~ ~~“Person” shall means~~ any individual or individuals, partnership, association, organization, company, corporation, joint-stock company, labor union, mutual company, trustee in bankruptcy, receiver or other fiduciary, or the agent, legal representative or employee thereof. For purposes of ~~section § 31-3.A(a)~~, the term person shall include any owner, lessor, assignor, builder, manager, broker, salesman, agent, employee or lending institution.
 

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- (29) ~~\_\_\_\_\_~~ ~~“Person in the business of selling or renting dwellings” shall means~~ any person who, within the preceding twelve (12) months, has participated as principal, real estate broker, real estate sales person or agent in three (3) or more transactions involving the sale, lease or rental of housing or who owns any dwelling designed or intended for occupancy by or occupied by five (5) or more families.
 

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- (30) ~~\_\_\_\_\_~~ ~~“Physical impairment” means~~ any physical condition, anatomic loss, or cosmetic disfigurement which is caused by bodily injury, birth defect, or illness. "Physical impairment" does not include active alcoholism or current drug use.
 

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- (31) ~~\_\_\_\_\_~~ ~~“Public accommodation” shall means~~ and includes every business, professional or commercial enterprise, hospital or nursing home, place of lodging, refreshment, entertainment, sports, recreation or transportation facility located in the eCounty, whether licensed or not, public or private, or transportation facility located in the eCounty, whether licensed or not, public or private, whose goods, services, facilities, privileges, advantages or accommodations are extended, offered, sold or otherwise made available in any manner to the public. "Public accommodation" does not include a bona fide private club or other establishment not in fact open to the public.
 

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- (32) ~~\_\_\_\_\_~~ ~~“Qualified handicapped person” shall means:~~

a.(1) With respect to employment, a handicapped person who, with reasonable accommodation as set out in Virginia Code ~~Section § 51.5-41~~ or its successor, can perform the essential functions of the job in question.

b.(1) With respect to other goods, public accommodations, housing or services, means any handicapped person who meets the essential nondiscriminatory eligibility requirements for the receipt of such goods or services.

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- (33) ~~\_\_\_\_\_~~ ~~“Real estate broker” shall means~~ a person doing business in the County of Arlington who is the holder of a real estate broker's license issued pursuant to applicable laws of the Commonwealth of Virginia.
 

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- (34) ~~\_\_\_\_\_~~ ~~“Real estate sales person” shall means~~ a person doing business in the County of Arlington who is the holder of a real estate license issued pursuant to applicable laws of the Commonwealth of Virginia.
 

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- (35) ~~\_\_\_\_\_~~ ~~“Real estate transaction” shall means~~ any sale, exchange, rental, lease, assignment, sublease, or other transfer of housing.
 

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- (36) ~~\_\_\_\_\_~~ ~~“Religious organization” shall means~~ any bona fide organization, association or society organized or operated for exclusively religious, purposes or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society, unless membership in such organization, association or society is restricted on account of race, color, national origin or sex.
 

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- (37) ~~\_\_\_\_\_~~ ~~“To rent” means~~ to lease, to sublease, to let or otherwise in any way to grant for a consideration the right to occupy premises not owned by the occupant.
 

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- (38) ~~\_\_\_\_\_~~ ~~“Respondent” shall means~~ any person alleged in any complaint filed with the eCommission, or any notice of investigation issued by the eCommission, to have violated this chapter.
 

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~~(39)~~ ~~\_\_\_\_\_~~ ~~“Restrictive covenant” shall~~ means any specification purporting to restrict or affect the holding, occupancy, ownership, rental, lease or transfer of any interest in land or housing on the basis of race, color, religion, sex, national origin or handicap.

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~~(40)~~ ~~\_\_\_\_\_~~ ~~“Sexual orientation”~~ means a tendency to either heterosexuality, bisexuality or homosexuality; having a history of such a tendency or being identified as having such a tendency. Heterosexuality means sexual desire for others of the opposite sex from one's own sex. Bisexuality means sexual desire for others of both the male and female sex. Homosexuality means sexual desire for others of one's own sex.  
(Ord. No. 89-3, 7-1-89; Ord. No. 89-17, 7-1-89; Ord. No. 91-25, 6-22-91; Ord. No. 92-51, 11-14-92)

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§ 31-3. Prohibited ~~a~~Acts.

~~(a)~~ ~~A.~~ *Housing:*

~~(1.)~~ Except as otherwise provided, it shall be an unlawful housing practice:

- a. To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise to make unavailable or deny, a dwelling to any person because of race, color, sex, sexual orientation, elderliness, marital status, familial status, religion, handicap or national origin.
- b. To discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, sex, sexual orientation, elderliness, marital status, familial status, religion, handicap or national origin.
- c. To make, print, or publish, or cause to be made, printed or published, any notice, statement or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on race, color, sex, sexual orientation, elderliness, marital status, familial status, religion, handicap or national origin, or an intention to make any such preference, limitation or discrimination.
- d. To represent to any person because of race, color, sex, sexual orientation, elderliness, marital status, familial status, religion, handicap or national origin that any dwelling is not available for inspection, sale or rental when such dwelling is in fact so available.
- e. To interfere with, interrupt or terminate any person's ownership, rental, possession or occupancy of a dwelling because of race, color, sex, sexual orientation, elderliness, marital status, familial status, religion, handicap or national origin.
- f. To include in the terms or conditions of any sale, rental or other transfer of a dwelling any provision that purports to forbid or discourages, or attempts to discourage, the ownership, rental, possession, occupancy or use of such dwelling by persons because of their race, color, sex, sexual orientation, elderliness, marital status, familial status, religion, handicap or national origin.
- g. To engage in economic reprisal or otherwise retaliate or to cause or coerce or attempt to cause or coerce another person to engage in economic reprisal or otherwise retaliate against any person because such person has opposed an unlawful housing practice or has filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding or hearing under this chapter.
- h. To discriminate in lending money, guaranteeing loans, accepting mortgages or otherwise making available money for the purchase, acquisition, construction, alteration, repair or maintenance of any housing or to discriminate in the fixing of the rates, terms or conditions of any such financing or in the extension of service in connection therewith

because of race, color, sex, sexual orientation, elderliness, marital status, familial status, religion, handicap or national origin.

~~(2)~~ Discrimination in the provision of brokerage services:

- a. It shall be an unlawful housing practice to deny to any person access to or membership or participation in any multiple listing service, real estate brokers' organization or other service, organization or facility relating to the business of selling or renting dwellings or to discriminate against any person in the terms or conditions of such access, membership or participation on account of race, color, sex, sexual orientation, elderliness, marital status, familial status, religion, handicap or national origin.
- b. It shall be an unlawful housing practice for any real estate broker, real estate salesman or other person in the business of selling or renting dwellings:

~~(1)~~ To solicit or discourage the sale, rental or other transfer of a dwelling by representations regarding the existing or potential proximity of real property owned, used or occupied by a person or persons of any particular race, color, sex, sexual orientation, elderliness, marital status, familial status, religion, handicap or national origin.

~~(2)~~ To display a sign or any other device representing that a dwelling is available for inspection, sale, rental or other transfer when in fact it is not so available.

- c. Every real estate broker and every other person in the business of selling or renting dwellings shall post in a conspicuous location in that portion of his housing business normally used by him for negotiating the sale or rental of dwellings a notice that contains the following or substantially similar language as may be approved by the Human Rights Commission, clearly visible in not less than fourteen-~~(14)~~ point type:

"IT IS A VIOLATION OF THE HUMAN RIGHTS ORDINANCE OF THE COUNTY OF ARLINGTON, VIRGINIA, TO:

- (1) Deny housing accommodations to any person because of his race, color, sex, sexual orientation, elderliness, marital status, familial status, religion, handicap or national origin.
- (2) Discriminate against any person because of his race, color, sex, sexual orientation, elderliness, marital status, familial status, religion, handicap or national origin with respect to the terms, conditions or privileges of housing accommodations or in the furnishing of facilities or services in connection therewith."

It shall be an unlawful housing practice to fail to post such a sign.

~~(3)~~ Restrictive covenants:

- a. Any restrictive covenant purporting to restrict occupancy or ownership of property on the basis of race, color, sex, sexual orientation, elderliness, marital status, familial status, religion, handicap or national origin included in an instrument affecting the title to real or leasehold property is null, void and of no effect, and contrary to the public policy of Arlington County.
- b. Any person who delivers a deed, mortgage, deed of trust or other instrument affecting title to any interest in land to the grantee of such interest shall attach to said instrument a statement advising the grantee of the provisions of paragraph ~~(a)~~ of this subsection.

c. After July 1, 1974, the Clerk of the Arlington County Circuit Court shall:

(1)- Not comply with any request to copy any deed, mortgage, deed of trust or other instrument affecting title to or any interest in land, or declaration of covenants filed or recorded in the Clerk's office, unless the clerk imprints on or affixes to such copy a clear and conspicuous statement that any provision therein which purports to restrict or affect, on the basis of race, color, sex, sexual orientation, elderliness, marital status, familial status, religion, handicap or national origin, the holding, occupancy or transfer of any interest in land is invalid and unenforceable.

(2)- Post in a conspicuous location in the Clerk's office a notice that contains the following language, printed in black on a light-colored background, in not less than fourteen-~~(14)~~ point type:

"It is a violation of the Human Rights Ordinance of the County of Arlington, Virginia, for any person to include any provision in a deed, mortgage, deed of trust, or other instrument affecting title to or any interest in land which purports to restrict or affect on the basis of race, color, sex, sexual orientation, elderliness, marital status, familial status, religion, handicap or national origin, the holding, occupancy, or transfer of any interest in land, and any such provisions are invalid and unenforceable."

This language shall also be imprinted or affixed to every liber volume in the custody of the Clerk of the Court.

d. Nothing in ~~section § 31-3.A.1(a)(1)~~, other than subsection c-, shall apply to:

(1)- Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four (4) families living independently of each other, if the owner actually maintains and occupies one (1) of such living quarters as his residence.

(2)- A religious organization, association or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society, in connection with the sale or rental to, or occupancy by, persons of the same religion of dwellings which it owns or operates for other than a commercial purpose, unless membership in such religion is restricted on account of race, color, sex, elderliness, handicap, familial status or national origin.

(3)- A private club not in fact open to the public which, as an incident to its primary purpose or purposes, provides lodgings which it owns or operates for other than a commercial purpose in connection with the rental to or occupancy of such lodgings by its members.

(4)- Any educational institution, religious or correctional institution which requires that persons of both sexes not occupy any single dwelling or room therein which it owns or operates.

e. Nothing in this chapter shall be construed to affect those provisions of the zoning or housing standards ordinances which limit the number of unrelated individuals who may occupy a dwelling unit. Nothing in this chapter shall be construed to impose stricter requirements on any person than are set out in Code of Virginia ~~Section § 51.5-45~~, or its successor, or to impose stricter requirements than are set out in applicable building codes.

- | ~~(B.)~~ *Employment:*
- | ~~(1.)~~ It shall be unlawful for any employer, on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, handicap or age:
  - a. To refuse to hire an individual for employment.
  - b. To discharge or otherwise discipline an employee.
  - c. To deny an employee any opportunity with respect to hiring, promotion, tenure, apprenticeship, compensation, terms, upgrading, training programs, or other conditions, benefits or privileges of employment.
  - d. To prevent an individual from taking a competitive examination or otherwise deny any benefits pertaining to the grading or processing of applications with respect to any aspect of employment.
- | ~~(2.)~~ It shall be unlawful for any employment agency, on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, handicap or age:
  - a. To refuse or fail to accept, register, properly classify, refer for employment or otherwise discriminate against any person, unless such discrimination is justified by a bona fide occupational qualification,
  - b. To comply with any request by an employer for a referral of applicants if the request indicates, directly or indirectly, that the employer desires any illegal discriminatory limitation of applicants.
- | ~~(3.)~~ It shall be unlawful for a labor organization, on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, handicap or age:
  - a. To deny full and equal rights to membership to an applicant for membership.
  - b. To deny a member or an applicant an opportunity with respect to hiring, seniority, tenure, referral, apprenticeship, compensation, terms, upgrading, training programs, or other conditions or privileges of membership or employment.
  - c. To expel a member from membership.
- | ~~(4.)~~ It shall be unlawful for any employer, labor organization, employment agency, or joint labor management committee controlling apprenticeship or other training programs to circulate or publish any notice or advertisement related to employment or membership in a labor organization which indicates, directly or indirectly, any preference, limitation, specifications or discrimination based upon race, color, religion, sex, sexual orientation, marital status, national origin, handicap or age.
- | ~~(5.)~~ It shall be unlawful for any member of a joint labor-industry apprenticeship committee or board to discriminate on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, handicap or age.
- | ~~(6.)~~ It is not an unlawful act for an employer to observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this chapter, except that no such employee benefit plan shall excuse the failure to hire any individual, and no such seniority system or employee benefit plan shall require or permit the involuntary retirement of any individual because of the age of such

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individual.

(7.) With respect to actions on the basis of handicap, this section applies only to otherwise qualified handicapped persons.

(8.) With respect to actions on the basis of age, this section applies only to persons at least forty (40) years of age.

(9.) For violations of §\_31-3.B(b) of this Chapter on the basis of race, color, religion, sex, marital status or national origin, a court may award such relief as a court could award under Section 706(g) of the Civil Rights Act of 1964, as amended. For violations of §\_31-3.B(b) on the basis of age, a court may award such relief as a court could award under Section 7(b) of the federal Age Discrimination in Employment Act, except that liquidated damages and attorney's fees shall not be allowed. For violations of §\_31-3.B(b) of this Chapter on the basis of handicap, a court may award such relief as a court could award under applicable State law. For violations of §\_31-3.B(b) of this Chapter on the basis of sexual orientation, a court may award such relief as if sexual orientation was a protected category under the Civil Rights Act of 1964, as amended.

(C) Public accommodations:

(1.) It shall be unlawful for any person or public accommodation to discriminate against any person, on the basis of race, color, religion, sex, sexual orientation, marital status, national origin, age or handicap, with respect to the access, use, benefit or enjoyment of goods, services, facilities, privileges or any other advantages of any public accommodation, or to make or publish any statement evidencing an intent to do so.

(2.) Nothing herein shall be construed to limit, restrict, or expand the rights of handicapped persons as established by applicable state or federal law.

(3.) Nothing in this section shall be construed to override, restrict or limit any laws relating to the dispensing of alcoholic beverages.

(4.) Nothing in this section shall be construed to make unlawful any program, service or benefit of any type, established and intended for the benefit of elderly or handicapped persons or minors.

(D) Credit: It shall be unlawful for any lending institution, on the basis of race, color, religion, sex, sexual orientation, national origin, marital status, age (provided that the person has the capacity to contract) or handicap, to:

(1.) Discriminate against any person in the furnishing or arranging of credit or other credit-related services, including but not limited to the lending of money, guaranteeing of loans or accepting of mortgages.

(2.) Deny or terminate credit or credit-related services or to affect adversely a person's credit rating or standing.

(3.) Nothing herein shall be construed to make illegal any action which is permitted in the Virginia Equal Credit Opportunity Act, or its successor, or to otherwise restrict the rights of any person under the Virginia Equal Credit Opportunity Act or its successor.

(E) Education:

(1.) It shall be an unlawful act for any educational institution or its agents, employees or officers, on the basis of race, national origin, sex, sexual orientation or color:

a. To discriminate against any person with respect to the terms, conditions,

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accommodations, advantages, facilities, benefits, privileges or services of that institution.

- b. To require, or cause to be required, that a photograph of any applicant for admission to an educational institution, or information regarding the race, national origin or color of such applicants, be submitted with any form of application for admission, unless such information is sought solely for the purpose of:

- (1)- Implementing a bona fide affirmative action program designed to include enrollment of qualified members of minority racial, national origin or color groups; or

- (2)- Obtaining grants or other funds from a public or private institution or agency.

- c. To comply with any request by a potential employer that indicates, directly or indirectly, that the employer desires any unlawful discriminatory limitation in its efforts to recruit students on the educational institution's premises or in the employer's use of placement facilities for referral of students for employment or in such employer's participation in any job-training or work-study program operated by or in conjunction with the educational institution.

- (2.) It shall be an unlawful act under this chapter for any educational institution to discriminate against otherwise qualified handicapped persons in a manner which would constitute a violation of any state or federal law.

- (3.) Nothing contained in this chapter shall be construed to prohibit any single-sex educational institution from restricting admission to persons of a single sex.

- (4.) Discrimination on the basis of sex in contact sports programs shall not fall within the purview of this chapter. For purposes of this chapter, contact sports shall include sports such as boxing, wrestling, rugby, ice hockey, football, basketball and other sports the purpose or major activity of which involves bodily contact.

~~(F)~~ *Commercial real estate:* It shall be unlawful for any person, on the basis of race, color, sex, sexual orientation, age (provided that the person has the capacity to contract), marital status, religion, handicap or national origin, to:

- (1.) Refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise to make unavailable or deny commercial real estate to any person.

- (2.) Discriminate against any person in the terms, conditions, or privileges of sale or rental of commercial real estate, or in the provision of services or facilities in connection therewith.

- (3.) Make, print, or publish, or cause to be made, printed, or published, any notice, statement, or advertisement, with respect to the sale or rental of commercial real estate that indicates any preference, limitation, or discrimination.

- (4.) Represent to any person that any commercial real estate is not available for inspection, sale, or rental when such commercial real estate is, in fact, so available.

- (5.) Interfere with, interrupt, or terminate any person's ownership, rental, possession, or occupancy of commercial real estate.

- (6.) Include in the terms or conditions of any sale, rental, or other transfer of commercial real estate any provision that purports to forbid or discourages, or attempts to discourage, the ownership, rental, possession, occupancy, or use of such commercial real estate.

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(7.) Discriminate in lending money, guaranteeing loans, accepting mortgages, or otherwise making available money for the purchase, acquisition, construction, alteration, repair or maintenance of any commercial real estate, or to discriminate in the fixing of the rates, terms, or conditions of any such financing or in the extension of service in connection therewith.

(G.) Retaliation: It shall be unlawful for any person:

(1.) To directly or indirectly cause or coerce, or attempt to cause or coerce, any person to do any act declared to be an unlawful act under this chapter.

(2.) To directly or indirectly engage in economic reprisal or intimidation to do, threaten to do, or attempt to do harm to any person or property or to otherwise retaliate against any person because such person has opposed any practice based on a good faith belief that it is unlawful under this chapter, or has complied with or encouraged others to comply with the terms of this chapter, or has had a complaint filed in his or her behalf, or has filed a complaint or has testified, assisted or participated in any manner in any investigation, proceeding or hearing under this chapter or exercised or attempted to exercise any right conferred herein.

(3.) To directly or indirectly cause or coerce, or attempt to cause or coerce, another person to engage in economic reprisal or intimidation, or to harm or threaten harm to any person, or to retaliate against or to interfere with any person because the person has opposed any practice made unlawful by this chapter, or has complied or encouraged others to comply with any provision in this chapter, or has filed a complaint or has testified, assisted or participated in any manner in any investigation, proceeding or hearing under this chapter, or has exercised or attempted to exercise any right conferred in this chapter.

(Ord. No. 89-3, 7-1-89; Ord. No. 89-17, 7-17-89; Ord. No. 91-25, 6-22-91; Ord. No. 92-51, 11-14-92)

§ 31-4. Human Rights Commission Created; Composition; Terms; Chairman; Compensation.

There is hereby created the Arlington Human Rights Commission, hereinafter referred to as the Commission.

(A.) The Commission shall consist of nine (9) members, all of whom shall reside in the County of Arlington. The members shall be appointed by the County Board and shall be broadly representative of the community, to the extent practicable, with respect to race, sex, sexual orientation, color, ethnicity, age, disabilities and marital status and with respect to areas of expertise pertinent to the areas of coverage of this Chapter gained through education and/or paid, volunteer or life experience.

(B.) Of the members first appointed, three (3) shall be appointed for terms of one (1) year, three (3) shall be appointed for terms of two (2) years, and three (3) shall be appointed for terms of three (3) years. Thereafter, members shall be appointed for terms of three (3) years each. Any vacancy shall be filled by the County Board for the unexpired portion of a term. The County Board may, in its discretion, remove members during such members' terms for good cause.

(C.) The County Board shall designate one (1) member to act as chairman and shall give consideration each year to continuation of its previous designation of the chairman of the Commission. Five (5) members of the Commission shall constitute a quorum for the transaction of business. Decisions of the Commission shall be made by a majority of the members present and voting.

(D.) Members of the Commission shall serve without compensation, but funds may be provided by the County Board in the annual budget for reasonable and necessary expenses incurred by the Commission. (Ord. No. 89-3, 7-1-89; Ord. No. 89-17, 7-1-89; Ord. No. 92-51, 11-14-92)

§ 31-5. Human Rights Director.

The County Manager shall appoint an Executive Director of the Commission and such staff as may

be authorized.  
(Ord. No. 89-3, 7-1-89; Ord. No. 89-17, 7-1-89)

§ 31-6. Functions and ~~p~~Powers of the ~~e~~CCommission.

In addition to other powers and duties as set out in this chapter, the ~~e~~CCommission shall have the following functions and powers:

- ~~(1)~~A. To meet and function at times it deems appropriate;
- ~~(2)~~B. To adopt rules and regulations, subject to the approval of the ~~e~~County ~~b~~Board, needed to carry out its functions and purposes, including but not limited to rules governing hearings and meetings of the ~~e~~CCommission;
- ~~(3)~~C. To receive complaints from any person alleging violations of this chapter and investigate or cause to be investigated such complaints;
- ~~(4)~~D. To conciliate and attempt to resolve individual complaints of violations of this chapter;
- ~~(5)~~E. To request that any party produce for examination any books, records, papers, or other tangible and relevant evidence, or that any party answer written or oral questions relating to any complaint under investigation by the ~~e~~CCommission;
- ~~(6)~~F. In the event conciliation fails, conduct hearings or take other appropriate action concerning violations of this chapter;
- ~~(7)~~G. To request the attendance of witnesses at public hearings and to take testimony at hearings under oath or affirmation;
- ~~(8)~~H. To make findings and recommendations upon complaints alleging violations of this chapter;
- ~~(9)~~I. To seek, with the approval of the County Board, through appropriate enforcement authorities, prevention of or relief from violations of this chapter;
- ~~(10)~~J. To refer, to the appropriate state or federal agency, complaints of discrimination which are within the jurisdiction of the state or federal agency;
- ~~(11)~~K. To accept public grants or private gifts, bequests, or other payments as appropriate and subject to the approval of the ~~e~~County ~~b~~Board;
- ~~(12)~~L. To gather, discuss and disseminate information about discrimination and human rights problems affecting community life in Arlington County;
- ~~(13)~~M. On its own motion, to authorize investigations by the ~~e~~Executive ~~d~~irector of possible violations of this chapter and to attempt, through conciliation or similar means, to bring to an end any violations of this chapter which may be thought to exist as a result of such investigations, and to seek, with the prior approval of the ~~e~~County ~~b~~Board, through appropriate enforcement authorities, prevention of or relief from violations of this chapter which may be thought to exist as a result of such investigations;
- ~~(14)~~N. To enter into workshare or other agreements with appropriate federal or state agencies, subject to the approval of the ~~e~~County ~~b~~Board;
- ~~(15)~~O. To make studies to effectuate the purposes and policies of this chapter when requested by the ~~e~~County ~~b~~Board; and
- ~~(16)~~P. To make, at least annually, a written report of its activities to the ~~e~~County ~~b~~Board under the provisions of this chapter along with its recommendations concerning measures to be taken to further the purposes

of this chapter.  
 (Ord. No. 89-3, 7-1-89; Ord. No. 89-17, 7-1-89; Ord. No. 91-7, 3-16-91)

§ 31-7. Enforcement proceedings initiated by the filing of a complaint.

~~(A)~~A. *Complaints.* A complaint may be filed with the eCommission by any person alleging that a violation of this chapter has been committed against such person. In order for a complaint to become formal, the complaint must be filed on a form supplied by the eCommission and sworn to or affirmed, except that a written complaint not initially made on a form supplied by the eCommission and sworn to or affirmed must be so formalized within seven (7) days of receipt by the eCommission. The eExecutive dDirector shall promptly serve a copy of the formal complaint upon each respondent named therein. The complaint shall state the name and address of the complainant and the person or persons against whom the complaint is made, and shall also state the facts upon which the complaint is based, including the date the violation was allegedly committed and such other information as the eCommission may require. A complaint may be withdrawn at any time by the complainant. Such withdrawal shall terminate all action by the eCommission with respect to that complaint.

Failure of a complainant to formalize his or her complaint within the time allowed shall result in automatic dismissal of the complaint unless, for good cause shown, the eCommission grants an extension of time for this purpose.

~~(B)~~B. *Investigation and determinations by the eExecutive dDirector:*

~~(1)~~ Upon the filing of a complaint as set forth in subsection ~~A~~(A) of this section, the eExecutive dDirector shall make such investigation as the dDirector deems appropriate to ascertain the facts, provided that the complaint may be dismissed by the eExecutive dDirector without investigation if it fails to allege adequately a violation of this chapter or is otherwise facially deficient. Except as set forth in ~~section § 31-7.B.4(b)(4)~~ below, upon completion of the investigation the eExecutive dDirector shall render a determination in writing as to whether there are reasonable grounds to believe a violation of this chapter has occurred, and the facts supporting such determination. Reasonable grounds to believe means that the dDirector believes, after investigation, that it is more likely than not that a violation of this chapter has occurred. This determination shall promptly be served on the parties.

~~(2)~~ If the eExecutive dDirector determines that there are reasonable grounds to believe a violation has occurred, or at any other time prior to a formal eCommission hearing, the dDirector may attempt to conciliate and resolve the complaint. The dDirector may attempt to conciliate the matter by methods of conference and persuasion with all interested parties and such representatives as the parties may choose to assist them. Conciliation conferences shall be informal, and nothing said or done during such conferences shall be made public or otherwise used as evidence by the eCommission, its members or any of its staff, or the parties unless the parties agree thereto in writing. Nothing said in such conferences shall be deemed to be an admission of any sort. The eExecutive dDirector may attempt conciliation by any means deemed appropriate. Conciliation shall not be attempted if the eExecutive dDirector determines that it would be futile or if enforcement of the chapter would best be served by referring the matter directly to the eCommission for a determination as to whether to hold a public hearing.

- a. If conciliation is attempted and the eExecutive dDirector determines that it is successful, the terms of the conciliation agreed to by the parties may be reduced to writing and incorporated into a conciliation agreement to be signed by the parties, which agreement is for conciliation purposes only and does not constitute an admission by any party that the law has been violated. It shall be a violation of this chapter to violate or fail to adhere to any provision contained in any conciliation agreement, and the eCommission shall have the right to pursue appropriate legal remedies to enforce any such agreement after consulting with and receiving a recommendation from the eCounty aAttorney and receiving authorization from the eCounty bBoard.

b. If conciliation is attempted and the ~~e~~Executive ~~d~~Director determines that it is unsuccessful, he or she shall promptly refer the matter to the ~~e~~Commission for a determination as to whether to hold a public hearing.

~~(3.)~~ If the Executive Director determines that the complaint lacks reasonable grounds to believe a violation of this ~~C~~chapter has occurred, the Director shall dismiss the complaint and advise the complainant in writing that such dismissal shall become final unless, within ten (10) business days of receipt of notice of the dismissal, the complainant files with the Commission a request for a review of the determination of the Executive Director. Upon request for such a review, the Commission shall afford the complainant an opportunity to appear before the Commission in person or by representative or by letter, as the complainant may desire, so that the complainant may show that the Director's determination was an abuse of discretion. The Commission may, in its discretion, request a response from the respondent. After such review, the Commission may, in its discretion, dismiss such complaint if it finds that the Executive Director's determination was not an abuse of discretion. If the Commission determines that the complaint should not be dismissed, it shall direct the Executive Director to continue the investigation or proceed with conciliation efforts, or the Commission may determine to hold a public hearing on the allegations in the complaint. For purposes of this paragraph only, the term Commission may mean, at the discretion of the Chairman, a panel of three (3) or more members of the Commission designated by the Chairman.

~~(4.)~~ If the ~~e~~Executive ~~d~~Director determines, after investigation, that the available evidence does not permit a determination as to whether there are reasonable grounds to believe a violation of this chapter has occurred, he or she shall:

- a. Send a written notice to this effect to be served on the parties and include in such notice a statement of the reasons for such determination; and
- b. Refer the matter to the ~~e~~Commission for a determination as to whether to hold a public hearing.

~~(e)C.~~ *Determinations by the ~~e~~Commission as to whether to hold a public hearing:*

~~(1.)~~ The ~~e~~Commission shall determine whether to hold a public hearing in all matters referred to it by the ~~e~~Executive ~~d~~Director in the following circumstances:

a. When there is a determination by the ~~e~~Executive ~~d~~Director that there are reasonable grounds to believe that a violation of this chapter has occurred, and:

- ~~(1)-~~ There is a determination by the ~~d~~Director that conciliation should not be attempted; or
- ~~(2)-~~ There is a determination by the ~~d~~Director that conciliation has been attempted and has been unsuccessful.

b. When there is a determination by the ~~e~~Executive ~~d~~Director that there are not reasonable grounds to believe that a violation of this chapter has occurred, but:

- ~~(1)-~~ The complainant has filed a proper request for review of such determination; and
- ~~(2)-~~ The ~~e~~Commission has concluded, upon reviewing such determination, that the complaint should not be dismissed and that the complaint should not be referred to the ~~e~~Executive ~~d~~Director for further investigation or conciliation.

c. When there is a determination by the ~~e~~Executive ~~d~~Director that the available evidence

does not permit a determination as to whether there are reasonable grounds to believe that a violation of this chapter has occurred.

- (2.) The eCommission shall base its determination as to whether to hold a public hearing in any of the matters described in subsection C.1(e)(1) above in its sole discretionary judgment as to how enforcement of this chapter would be best served, and other considerations deemed relevant, such as the time and expense to the parties if a hearing is held and the seriousness of the alleged violation.
- (3.) If the eCommission determines not to hold a public hearing, it shall either dismiss the complaint or take such action as it deems appropriate and consistent with the purposes of this chapter and the powers of the eCommission hereunder.
- (d) *Hearings held by the commission:*
- (1.) If the eCommission determines to hold a public hearing, it may consider all of the allegations and issues set forth in the complaint or, in its discretion, it may limit the scope of the hearing to one (1) or more of the allegations or issues set forth in the complaint. If a hearing is to be held, the eCommission shall notify the parties of the time, date and location of the hearing and serve upon them a statement of the charges against the respondent and the issues to be considered at the hearing. Such notice and statement shall be served at least fourteen (14) calendar days before the date of the hearing. The parties shall have the right to file written statements or arguments with the eCommission before the hearing. The eCommission may request the parties to file written statements or arguments before or after the hearing. The hearing shall be open to the public. The eCommission may adopt rules for the conduct of hearings before it, including but not limited to rules pertaining to the admission of documents or other evidence. Oral or documentary evidence may be received, but the eCommission may exclude irrelevant, immaterial, incompetent, or repetitious evidence. The eCommission may also, in its discretion, exclude documents or other evidence for good cause. The eCommission shall not be bound by the strict rules of evidence prevailing in the courts of law or equity.
- (2.) The eCommission may, upon proper motion, order the exclusion of witnesses while testimony is being given at any such hearing.
- (3.) At any public hearing held by the eCommission, each party shall be entitled:
- a. To be represented by privately retained counsel of his or her choice;
  - b. To present his or her case or defense by oral or documentary evidence, to be given under oath or by affirmation;
  - c. To submit rebuttal evidence; and
  - d. To conduct such cross-examination as may be permitted by the eCommission for a full and true disclosure of the relevant facts.
- (4.) The eExecutive eDirector shall be responsible for assuring the development of the evidentiary record before the eCommission and may introduce evidence, examine or cross-examine witnesses, or make argument if the eDirector deems it advisable in order to fully apprise the eCommission of the facts or the applicable law.
- (5.) The eCommission shall keep a full record of the hearing, which record shall be open for inspection and copying pursuant to the applicable provisions of the Virginia Freedom of Information Act.
- (e) *Decisions by the eCommission:*

- (1.) The burden of persuasion is upon the complainant to prove by a preponderance of the evidence that the respondent has committed or is committing violation(s) of this chapter.
- (2.) If, after the hearing, the eCommission determines by a preponderance of the evidence that the respondent has committed or is committing the alleged violation(s) of this chapter, the eCommission shall state its findings and may issue recommendations, to be served promptly on the parties, requesting the respondent to cease and desist from such violation(s) and to take such action as may be indicated to effectuate the purpose of this chapter, including but not limited to the payment by respondent of compensatory damages to any person or persons found by the eCommission to be so entitled by reason of respondent's violation(s) of this chapter, or the placement or restoration of any person in or to such status in which the eCommission finds he or she would be but for respondent's violation(s) of this chapter.
- (3.) If, after receiving the evidence presented at the hearing, the eCommission finds that the respondent has not engaged in the alleged violation(s) of this chapter, the eCommission shall state its findings and shall dismiss the complaint. Prompt notice of such action shall be given to the parties.

(Ord. No. 89-3, 7-1-89; Ord. No. 89-17, 7-1-89; Ord. No. 91-25, 6-22-91)

**§ 31-8. Enforcement by the eCourt.**

(a)A. If the eCommission finds that a respondent has committed a violation of this chapter and determines that appropriate remedial measures have not been taken, the eCommission, after consulting with and receiving a recommendation from the eCounty aAttorney and receiving authorization from the eCounty bBoard, may bring an appropriate action in any court of competent jurisdiction to: prove, de novo, that the person violated this chapter; secure compliance with this chapter; and/or obtain appropriate redress or relief for any person injured as a result of a violation of this chapter.

(b)B. Whenever the eCommission has probable cause to believe that any person has engaged in or is engaging in any unlawful discriminatory practice, and the eCommission, after a good faith effort to obtain, voluntarily, the data and information necessary to determine whether a violation has occurred, has been unable to obtain such information, it may request the eCounty aAttorney, with the approval of the eCounty bBoard, to apply to the judge of the eCircuit eCourt of the jurisdiction in which the respondent resides or is doing business for a subpoena duces tecum against any person refusing to produce such data and information. The judge of the court, upon good cause shown, may cause the subpoena to be issued. Any person failing to comply with such subpoena shall be subject to punishment for contempt by the court issuing the subpoena. For purposes of this section "person" includes any individual, partnership, corporation, association, legal representative, mutual company, joint stock company, trust, unincorporated organization, employee, employment agency, labor organization, joint labor-management committee, or an agent thereof, or other "person" as defined by this chapter.

(c)C. If, at any time after a complaint has been filed, or after initiation of any investigation on the eCommission's own initiative, the eCommission determines that a court order requiring a party to refrain from any conduct is necessary to prevent irreparable harm to any person, the eCommission, after consulting with and receiving a recommendation from the eCounty aAttorney and receiving authorization from the eCounty bBoard, may bring appropriate action to prevent such irreparable harm, including but not limited to petitioning a court of competent jurisdiction for a temporary restraining order or preliminary injunction.

(Ord. No. 89-3, 7-1-89)

**§ 31-9. Exemptions.**

(a)A. *Exemption on religious organizations.* It is not a violation of this chapter for a religious organization to:

- (1.) Limit admission to or give preference in its accommodations, facilities or services to persons of the same religion or denomination, or to make a selection of applicants or individuals that is reasonably calculated to promote the religious principles for which it is established or maintained.

**ARLINGTON COUNTY CODE**

**HUMAN RIGHTS**

~~(2.)~~ Reserved.

~~(b)B.~~ *Nothing contained in this chapter shall be construed to:*

~~(1.)~~ Bar bona fide housing for the elderly or handicapped persons from limiting admission or giving preference to persons of a given age or persons with handicapping conditions;

~~(2.)~~ Bar a person from maintaining an establishment which provides sleeping accommodations exclusively to persons of the same sex;

~~(3.)~~ Make it an unlawful act to require that a person have legal capacity to enter into an irrevocable contract; or

~~(4.)~~ Require any person or group of persons selling, renting or leasing property to exercise a higher degree of care for a person with a handicap than for a person without a handicap.

~~(c)C.~~ *Employment practices:*

~~(1.)~~ Notwithstanding any other provision of this ~~C~~chapter, it shall not be an unlawful employment practice to:

- a. Restrict employment to persons of a particular religion, sex, sexual orientation, national origin or age, where such religion, sex, sexual orientation, national origin or age is a bona fide occupational qualification;
- b. Take actions on the basis of a handicap, pursuant to law or regulation governing any employment or training program which is designed to benefit handicapped persons;
- c. Advertise and offer employment only to handicapped persons when other employment compatible with their ability would not be available to handicapped persons because of their handicaps; or
- d. To engage in affirmative action programs permitted by state or federal law.

~~(2.)~~ Nothing in this chapter shall prohibit an employer from refusing to hire or promote, from disciplining, transferring or discharging or taking any other personnel action pertaining to an applicant or an employee who, because of his disability, is unable adequately to perform his duties, or cannot perform such duties in a manner which would not endanger his health or safety or the health or safety of others. Nothing in this section shall subject an employer to any legal liability resulting from the refusal to employ or promote or from the discharge, transfer, discipline of, or the taking of any other personnel action pertaining to a person with a disability who, because of his disability, is unable adequately to perform his duties or cannot perform such duties in a manner which would not endanger his health or safety or the health or safety of others.

(Ord. No. 89-3, 7-1-89; Ord. No. 89-17, 7-1-89; Ord. No. 92-51, 11-14-92)

**§ 31-10. Enforcement by ~~e~~County ~~a~~Agencies.**

~~(a)A.~~ *Public contractors.* Upon publication or receipt of the findings and recommendations of the ~~e~~Commission declaring the respondent to be in violation of this chapter, and with the approval of the ~~e~~County ~~b~~Board, the purchasing agent of Arlington County may deem the respondent ineligible for award of a public contract until the ~~e~~County ~~b~~Board is satisfied that the respondent will comply with those recommendations of the ~~e~~Commission which the ~~e~~County ~~b~~Board feels are proper and appropriate.

~~(b)B.~~ *County financial assistance.* Upon publication or receipt of a copy of the findings and recommendations of the ~~e~~Commission declaring the respondent to be in violation of this chapter, the ~~e~~County ~~b~~Board may take appropriate action to terminate or refuse to grant or continue any public financial assistance to a

program or activity of respondent until the eCounty bBoard is satisfied that the respondent will comply with those recommendations of the eCommission which the eCounty bBoard feels are proper and appropriate.

(e)C. Any respondent adversely affected by the provisions of this section shall retain all rights of appeal provided for by the applicable rules, regulations or laws of Arlington County.  
(Ord. No. 89-3, 7-1-89; Ord. No. 89-17, 7-1-89; Ord. No. 92-51, 11-14-92)

§ 31-11. Inspections, rRecords and nNotices.

(a)A. Every person subject to this chapter shall post such notices, make and keep such records relevant to the determination of whether discriminatory acts have been or are being committed, preserve such records for such periods, and make such reports therefrom as the eCommission shall prescribe in order to assure the enforcement of this chapter.

(b)B. The eCommission, or any designated representative of the eCommission, may request access at any reasonable time to premises, records and documents relevant to a complaint or notice of investigations and may request the opportunity to examine, photograph and copy evidence upon presenting written authorization of the eChairman of the eCommission or the eExecutive dDirector, duly executed by the eChairman or eExecutive dDirector in accordance with the eCommission's rules or procedures.

(e)C. When a complaint or notice of investigation has been filed against a person under this chapter, the respondent shall preserve all records relevant to the allegations until final disposition of the complaint or notice of investigation.  
(Ord. No. 89-3, 7-1-89; Ord. No. 89-17, 7-1-89; Ord. No. 92-51, 11-14-92)

§ 31-12. Savings pProvisions and nNonabatement of mMatters.

(a)A. The provisions of this chapter, so far as they are the same as those of chapters repealed by this chapter, are intended as a continuation of such chapters and not as new enactments.

(b)B. The provisions of this chapter shall take effect on July 1, 1989. Any amendments to this chapter shall apply to all matters pending before the eCommission on the effective date of the amendment, unless a contrary intention is clearly expressed.

(e)C. Nothing contained in this chapter shall be construed to conflict with any applicable state or federal law, rule or regulation; and insofar as this chapter does so conflict, it shall be superseded thereby.  
(Ord. No. 89-3, 7-1-89; Ord. No. 89-17, 7-1-89; Ord. No. 92-51, 11-14-92)

§ 31-13. Nonexclusive rRemedy.

Any person who is aggrieved by any act prohibited herein may bring an appropriate action in a court of competent jurisdiction to seek damages, redress of injury, or injunctive relief arising out of any act prohibited herein as provided for by applicable law. Nothing herein shall prevent any person from exercising any right or seeking any remedy to which he or she might otherwise be entitled, nor shall any person be required to pursue any remedy set forth herein as a condition of seeking relief from any court or other agency, except as is otherwise provided by applicable state or federal laws.  
(Ord. No. 89-3, 7-1-89; Ord. No. 89-17, 7-1-89; Ord. No. 92-51, 11-14-92)

§ 31-14. Notices; sService.

All notices required under the provisions of this chapter shall be served either in person or by mailing to the last-known address appearing in the eCommission's records. Counsel of record shall be entitled to a copy of any notices served upon his or her client which shall be mailed to him or her at his or her last-known address as it appears in the records of the eCommission. It is the duty of the parties to advise the eCommission of any changes in address.  
(Ord. No. 89-3, 7-1-89; Ord. No. 89-17, 7-1-89; Ord. No. 92-51, 11-14-92)

§ 31-15. Time ~~H~~imitations.

~~(a)A.~~ A complaint filed under the provision of this chapter shall be dismissed by the ~~e~~Executive ~~d~~Director if the alleged violation of this chapter ended more than one hundred eighty (180) days before the date of filing of the complaint.

~~(b)B.~~ Any complaint filed under the provisions of this chapter shall be deemed dismissed after the passage of one (1) year from the date of the filing of the complaint, unless:

~~(1.)~~ A conciliation agreement between the parties has been reached;

~~(2.)~~ The ~~e~~Commission, after a public hearing, has issued findings and recommendations;

~~(3.)~~ The ~~e~~Commission has previously dismissed the complaint; or

~~(4.)~~ The ~~e~~Commission, having determined before or after the expiration of this one-~~(1)~~ year period that there was good cause for extending this time limitation, has, by majority vote, so extended it, provided that in no event may the ~~e~~Commission extend any case beyond a date that is two (2) years from the date of the filing of the complaint, and provided further that, in computing the time under the provisions of this section, there shall be excluded those days which elapse between the filing and final conclusion of any legal proceedings pertaining to the validity of, or seeking to enforce or prohibit the enforcement of, any of the provisions of this chapter.

(Ord. No. 89-3, 7-1-89; Ord. No. 89-17, 7-1-89; Ord. No. 92-51, 11-14-92)

§ 31-16. Severability.

The provisions of this chapter are severable, and if any provision, word, sentence, clause, section or part thereof is held illegal, invalid, unconstitutional or inapplicable to any person or circumstance, such illegality, invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, words, sentences, clauses, sections or parts of this chapter, or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this chapter would have been adopted if such illegal, invalid or unconstitutional provision, word, sentence, clause, section or part had not been included therein, and if the person or circumstances to which the chapter or any part thereof is inapplicable had been specifically exempted therefrom.

(Ord. No. 89-3, 7-1-89; Ord. No. 89-17, 7-1-89; Ord. No. 92-51, 11-14-92)

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Chapter 32

BANK FRANCHISE TAX

§ 32-1. Definitions.

§ 32-2. Imposition of eCounty bBank fFranchise tTax.

§ 32-3. Filing of rReturn and pPayment of tTax.

§ 32-4. Effective dDate of eChapter.

§ 32-5. Penalty upon bBank for fFailure to eComply with eChapter.

§ 32-1. Definitions.

For the purposes of this chapter, the following words and terms, when used in this chapter, shall have the following meanings ascribed to them by this section unless the context clearly indicates otherwise:

"Bank" shall be is as defined in Section § 58.1-1201 of the Code of Virginia.

"Net capital" shall means a bank's net capital computed pursuant to Section § 58.1-1205 of the Code of Virginia.  
(1-1-80; Ord. No. 09-08, 4-28-09)

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§ 32-2. Imposition of eCounty bBank fFranchise tTax.

(a)A. Pursuant to the provisions of Chapter 12 of Title 58.1 of the Code of Virginia and subject to such provisions, there is hereby imposed upon each bank located within this eCounty a tax on net capital equaling eighty percentum (80%) pereentum of the sState rate of franchise tax set forth in Section § 58.1-1204 of the Code of Virginia; provided, however, in no event shall the tax imposed hereunder be less than the minimum amount specified in § 58.1-1210.

(b)B. In the event that any bank located within the boundaries of this eCounty 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 Section § 58.1-1211 of the Code of Virginia.  
(1-1-80; Ord. No. 09-08, 4-28-09)

§ 32-3. Filing of rReturn and pPayment of tTax.

(a)A. On or after the first day of January of each year, but not later than March 1 of any such year or within fifteen (15) days of adoption of this section, whichever is later, all banks whose principal offices are located within this eCounty shall prepare and file with the eCommissioner of the rRevenue a return as provided by Section § 58.1-1207 of the Code of Virginia in duplicate which shall set forth the tax on net capital computed pursuant to Chapter 12 of Title 58.1 of the Code of Virginia. The eCommissioner of the rRevenue shall certify a copy of such filing of the bank's return and schedules and shall forthwith transmit such certified copy to the sState dDepartment of tTaxation.

(b)B. In the event that the principal office of a bank is located outside the boundaries of this eCounty and such bank has branch offices located within this eCounty, in addition to the filing requirements set forth in subsection A(a) hereof, any bank conducting such branch business shall file with the eCommissioner of the rRevenue of this eCounty a copy of the real estate deduction schedule, apportionment and other items which are required by Sections §§ 58.1-1207, 58.1-1211 or 58.1-1212 of the Code of Virginia.

(c)C. Each bank, on or before the first day of June of each year or within fifteen (15) days of the

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**BANK FRANCHISE TAX**

adoption of this section, whichever is later, shall pay into the ~~f~~Treasurer's ~~e~~Office of this ~~e~~County all taxes imposed pursuant to this chapter.  
(1-1-80; Ord. No. 09-08, 4-28-09)

**§ 32-4. Effective ~~d~~Date of ~~e~~Chapter.**

The provisions of this chapter shall be effective for the year beginning January 1, 2009.  
(1-1-80; Ord. No. 09-08, 4-28-09)

**§ 32-5. Penalty upon ~~b~~Bank for ~~f~~ailure to ~~e~~Comply with ~~e~~Chapter.**

Any bank which fails to file a return or pay the tax required by this article or fails to comply with any provision of this article shall be subject to a penalty of five percent (5%) ~~percent~~ of the tax due. If the ~~e~~Commissioner of the ~~r~~Revenue is satisfied that such failure is due to providential or other good cause, such return and payment of tax shall be accepted exclusive of such penalty, but with interest determined in accordance with ~~section~~ § 58.1-15 of the Code of Virginia.  
(1-1-80; Ord. No. 09-08, 4-28-09)

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Chapter 33

SECURITY ALARMS\*

\* **Editors Note:** Ord. No. 00-27, adopted Nov. 1, 2000, repealed former Ch. 33, §§ 33-1--33-5, and enacted provisions designated as a new Ch. 33 to read as herein set out as §§ 33-1--33-17.

Article I. In General

- § 33-1. Declaration of findings and Policy.
- § 33-2. Severability.
- § 33-3. Administration and Enforcement.

Article II. Definitions

- § 33-4. Definitions.

Article III. Security Alarm Systems

- § 33-5. Intentional False Alarm Prohibited.
- § 33-6. Automatic Dialing Device Restrictions.
- § 33-7. Automatic Dialing Service Restrictions.
- § 33-8. Alarm Company Registration and Licensing.
- § 33-9. Required Equipment.
- § 33-10. Alarm System Registration.
- § 33-11. Alarm System Registration-Apartment Complexes
- § 33-12. Alarm Company Procedures to Request Police Assistance.
- § 33-13. Police Response to Alarms; Determination of Validity; Appeals
- § 33-14. Excessive False Alarms Prohibited; Penalties
- § 33-15. Inspection of Alarm Systems.

Article IV. Administrative Appeal Hearing

- § 33-16. Administrative Appeal Hearing.
- § 33-17. Grounds for Rescinding, Waiving or Reduction Service Fees.

ARTICLE I.

IN GENERAL

§ 33-1. Declaration of findings and Policy.

It is hereby declared that false alarm calls within Arlington County results in an inefficient use of police resources, reduces faith in security alarm signals, and promotes complacency in police investigation of alarm signals. This creates a general safety hazard detrimental to protection of property and to the health, safety and welfare of citizens, and to the police personnel responsible for the investigation of alarm signals. (Ord. No. 00-27, 11-1-00)

§ 33-2. Severability.

If any of the articles, sections, paragraphs, sentences, clauses or phrases of this Chapter shall be declared

unconstitutional or invalid by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect the validity of the Chapter in its entirety, or any of the remaining articles, sections, paragraphs, sentences, clauses and phrases.  
(Ord. No. 00-27, 11-1-00)

§ 33-3. Administration and enforcement.

The Arlington County Police Department shall be responsible for the administration and enforcement of this Chapter.  
(Ord. No. 00-27, 11-1-00)

ARTICLE II.

DEFINITIONS.

§ 33-4. Definitions.

For the purpose of this Chapter, the following words and phrases, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

(1) "Alarm company" means any corporation, partnership, business or individual, operated for profit, engaged in the business of the installation, maintenance, alteration, servicing, or monitoring of an alarm system or which responds to such alarm systems.

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(2) "Alarm registration" means a registration issued by the County to an alarm user allowing the operation of an alarm system within the County.

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(3) "Alarm response" means any response to a premise by the Police Department as a result of an alarm signal.

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(4) "Alarm signal" means the activation of an alarm system resulting in a request for an alarm response regardless of cause.

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(5) "Alarm system" means any assembly of equipment, mechanical or electrical, designed to signal an occurrence of robbery, burglary, unauthorized entry, or any other circumstance requiring urgent attention and to which police are expected to respond. Alarm system does not include fire alarms, or alarms installed in motor vehicles, boats, or aircraft, except those motor vehicles permanently located at a site such as office or storage trailers.

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(6) "Alarm user" means any person, firm, partnership, association, corporation, company or organization of any kind who or which purchases, leases, contracts for, or otherwise obtains an alarm system, or the servicing, maintenance or monitoring of an alarm system from an alarm company.

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(7) "Automatic dialing device" means a device which is interconnected to a telephone line and is programmed to a predetermined telephone number and which automatically transmits by recorded voice message or signal the existence of a hazard requiring urgent attention and to which police or fire fighters are expected to respond.

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(8) "County Manager" shall mean the County Manager or his designee.

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(9) "False alarm" means any alarm signal:

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(a) Which elicits a response by police personnel; and

(b) For which there is no evidence of criminal activity to justify a police response.

ARLINGTON COUNTY CODE

SECURITY ALARMS

False alarm shall not include police response to an alarm signal that is canceled by the alarm user or his agent prior to the arrival of police personnel at the alarm location.

(40) "Person" means any individual, group of persons, firm, partnership, association of any kind, company or corporation. Formatted: No bullets or numbering

(41) "Police Department" means the Arlington County Police Department. Formatted: No bullets or numbering

(42) "Protected premise" shall mean the premises upon which an alarm system has been placed for the purpose of detecting a hazard as described in Section 33-4.(4). Formatted: No bullets or numbering

(43) "Twelve Month Calculation Period" shall mean the twelve (12) month period of time, commencing with the date of registration issuance, or for non-registered alarm systems, the date of the first false alarm response, that shall be used for calculating violations of Sections §§ 33-14 and 33-15. (Ord. No. 00-27, 11-1-00) Formatted: No bullets or numbering

ARTICLE III.

SECURITY ALARM SYSTEMS

§ 33-5. Intentional False Alarm Prohibited.

Any person who knowingly and willfully activates a security alarm system to summon police or fire fighters when there is no actual or threatened emergency or criminal activity shall be deemed guilty of a Class 1 misdemeanor. (Ord. No. 00-27, 11-1-00)

§ 33-6. Automatic Dialing Device Restrictions.

Any person who installs, operates or maintains an automatic dialing device which is programmed to transmit a prerecorded message or code signal directly to a 911 telephone number shall be deemed guilty of a Class 4 misdemeanor. (Ord. No. 00-27, 11-1-00)

§ 33-7. Automatic Dialing Service Restrictions.

Any person who possesses or controls an automatic dialing device which transmits a prerecorded message or code signal directly to a 911 telephone number where there is no actual or threatened emergency or criminal activity shall be deemed guilty of a Class 2 misdemeanor. (Ord. No. 00-27, 11-1-00)

§ 33-8. Alarm Company Registration and Licensing.

All alarm companies operating in Arlington County shall be licensed to do business within Arlington County and shall comply with all the licensing, registration, certification, and training requirements established by the Commonwealth of Virginia Department of Criminal Justice Services pursuant to Sections §§ 9-182 and 9-183 of the Code of Virginia. (Ord. No. 00-27, 11-1-00)

§ 33-9. Required Equipment.

- (a) Alarm systems installed after January 1, 2001, shall meet the following installation standards.
1. An alarm system operated within the County shall be equipped in such a manner so as to prevent false alarms due to interruptions in electrical power.

2. An alarm system within the County which is equipped with a horn, bell, siren or other noise device audible beyond the confines of the premise shall be adjusted in such a manner that it will not sound for longer than fifteen (15) minutes before silencing itself.

(b)B. Alarm systems installed after July 1, 2001, shall meet the following additional installation standards.

1. Every alarm system must have secondary or back-up power sufficient to operate the system in a non-alarm status for a minimum of four (4) hours. An alarm activation shall not occur during switchovers between primary and secondary power.
2. All alarm system equipment must be UL listed, used only for the purpose intended by the manufacturer, and installed per manufacturer's specification.
3. Every alarm system must be installed under National Electric Code (NEC) and manufacturers standards.
4. Any hold-up alarm requiring push button activation must use simultaneous two-button activation, or conform to UL standards.

(e)C. Any alarm system that is required to be upgraded pursuant to Section § 33-15 shall be brought into compliance with the provisions of this Section regardless of installation date.  
(Ord. No. 00-27, 11-1-00)

**§ 33-10. Alarm sSystem ~~r~~Registration.**

(a)A. Every alarm user shall, on a form provided by the Police Department, register the alarm with the Police Department before the user begins using the system, and must pay the alarm registration fee established by this ordinance. The registration form shall contain the name of two (2) persons who are able to respond to the alarm site within one (1) hour, grant access to the alarm site, and deactivate the alarm system if such becomes necessary. If at any time there is a change in the information provided on the registration form, the correct information must be provided to the Police Department within thirty (30) days of the change.

(b)B. An alarm company that installs, causes to be installed, permits to be installed, alters, maintains, repairs, replaced, services or monitors any alarm system shall meet the following requirements:

1. An alarm company shall ensure that an alarm user has registered the alarm system with the Police Department or designee before the alarm system is activated or placed into service. An alarm company must provide the alarm user registration form to all of its current and future residential and non-residential alarm users, collect the form and registration fee from the alarm user and deliver the completed alarm registration form and registration fee to the Police Department or designee in the required format before the system is activated or placed into service.
2. An alarm company shall provide to the Police Department, when requested to do so, a list which contains the name, address, telephone number and registration number of all of its current alarm users in Arlington County.
3. An alarm company shall notify the Police Department or designee of any alarm user, who has a service contract with or is monitored or maintained by the alarm business, who has canceled or otherwise terminated their alarm services with the alarm company.

(e)C. A separate registration is required for each tenant of a multi-tenant residential or commercial building using an alarm system. This section shall not apply to systems in apartment complexes registered pursuant to Section § 33-11.

(d)D. Registration of an alarm system is not intended to, nor will it, create a contract, duty or obligation,

either expressed or implied, of response. Any and all liability and consequential damage resulting from the failure to respond to a notification is hereby disclaimed and governmental immunity as provided by law is retained. By registering an alarm system, the alarm user acknowledges that police response may be based on factors such as availability of police units, staffing levels, priority of pending requests for police services, weather conditions, traffic conditions, emergency conditions, and the recent activation history of the alarm in question.

~~(e)~~E. Each registration remains in effect until the registrant relinquishes control of the alarm site or the registration is suspended or revoked.

~~(f)~~F. A registration is valid only for the premises registered and is not transferable to another alarm user or premises. A separate registration must be obtained for each premise that a single alarm user protects with an alarm system, and a new alarm user must obtain a new registration upon acquiring an alarm system previously registered by a different alarm user, in accordance with this section.

~~(g)~~G. All information submitted to a third party administrator in compliance with this regulation must be held in strict confidence and must not be disclosed without approval of the Arlington County Police Department and the alarm company of record. Any person found guilty of the unauthorized release of such information shall be guilty of a Class 1 misdemeanor.

~~(h)~~H. Alarm users with alarm systems installed prior to January 1, 2001 shall comply with this ~~S~~section prior to July 1, 2001.

~~(i)~~I. Any alarm user who allows an alarm response to an alarm signal initiated by an alarm system which is not in compliance with the registration requirements for this ~~S~~section shall be in violation of this ~~S~~section and subject to an administrative service fee of fifty dollars (\$50.00).

~~(j)~~J. Prior to January 1, 2001, the Police Department shall make registration forms available to alarm companies and alarm users.

~~(k)~~K. All nonresidential alarm users shall pay a registration fee of thirty dollars (\$30.00). A ten dollar (\$10.00) fee shall be assessed against any alarm user to reinstate a suspended registration.

~~(l)~~L. The twelve (12) month period used to calculate violations of ~~Section §§~~ 33-14 and 33-15 shall commence with the date of registration issuance.  
(Ord. No. 00-27, 11-1-00)

#### **§ 33-11. Alarm System Registration-Apartment Complexes.**

~~(a)~~A. If the owner ~~or~~ property manager of an apartment complex provides alarm systems in each residential unit as an amenity, the owner or property manager shall obtain a separate alarm registration for each individual unit in the complex. The owner or property manager shall be considered the alarm user, except for the purposes of ~~Section §~~ 33-5. The fee shall be one dollar (~~\$1.00~~) per unit, but in no case shall be less than thirty dollars (\$30.00). The registration procedure shall be as described in ~~Section §~~ 33-10.

~~(b)~~B. For purposes of assessing fees and enforcing this ~~C~~chapter, the owner or property manager is responsible for payment of fees resulting from false alarm dispatches to individual apartments.  
(Ord. No. 00-27, 11-1-00)

#### **§ 33-12. Alarm Company Procedures to Request Police Assistance.**

~~(a)~~A. Before requesting a police response to an alarm signal, an alarm company shall attempt to verify every alarm signal, except a hold-up alarm activation, by a telephone call to the alarm user or other person(s) designated by the alarm user. In the case of a hold-up alarm activation, the alarm company shall not attempt to verify the alarm signal, but shall instead provide the ~~p~~Police ~~d~~Department with the appropriate phone number for the alarm user and allow the ~~p~~Police ~~d~~Department to verify the signal.

~~(b)B.~~ An alarm company shall not request a police response to an alarm signal until the alarm system has been properly registered with ~~the Arlington County~~ Police Department or designee.

~~(c)C.~~ An alarm company shall provide the following information when contacting the Police Department Emergency Communications Center (ECC), to report an activated alarm signal and to request a police response.

1. Name and Virginia Department of Criminal Justice Services license number of the alarm company reporting the activated alarm, name or employee number of the alarm company, employee making the report, and a call-back telephone number.
2. Registration number issued to the alarm user.
3. Location of the activated alarm, including complete business or homeowner's name, street address and telephone number
4. Type of alarm (such as audible or silent, robbery, hold-up, duress, panic, burglary), and if the alarm system is zoned, the specific location of the alarm activation (such as interior, perimeter, vault, motion detection).
5. The results of the verification procedure, i.e. person without code on the premises.
6. For activation at nonresidential premises, any available information regarding whether the business is open or closed, if guards or guard dogs are on site, and if dangerous or special conditions exist within the location.
7. For activation at residential premises, any available information regarding presence of pets, handicapped individuals, or unusual or special conditions.
8. If a representative of the alarm user or alarm company is responding and their estimated time of arrival.

~~(d)D.~~ An alarm company shall not request a police response to an alarm signal if the alarm business has been notified by the ~~Arlington County~~ Police Department or designee that the alarm user registration has been suspended or revoked:

- ~~(1.)~~ Due to unpaid alarm response fee due under ~~Section §~~ 33-14; or
- ~~(2.)~~ Because the alarm user did not comply with the inspection requirements under ~~Section §~~ 33-15.

~~(e)E.~~ An alarm company shall cancel any request for police response immediately when the alarm company determines that the alarm signal is a false alarm.  
(Ord. No. 00-27, 11-1-00)

**§ 33-13. Police ~~r~~Response to ~~a~~Alarm; ~~d~~Determination of ~~v~~Validity; ~~a~~Appeals.**

~~(a)A.~~ Whenever an alarm is activated in the County and the Police Department does respond, a police officer on the scene of the activated alarm shall inspect the premises and shall determine whether the police response was in fact necessary or whether the alarm was a false alarm. If the officer determines that the alarm activation was caused by electrical storm, hurricane, tornado, blizzard or other acts of God, the alarm activation shall not be considered a false alarm.

~~(b)B.~~ The ~~Arlington County~~ Police Department shall provide written notice to alarm users when responses are determined to be false alarms. The notice will provide the following information:

- 1. \_\_\_\_\_ Date and time of alarm response.

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- 2. Officer's name and business telephone number.

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- 3. Brief synopsis of the alarm ordinance, including a statement urging the alarm user to ensure that the alarm system is properly operated, inspected, and serviced in order to avoid fines.

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Such notice shall be delivered to the user in a manner to be determined by the Police Department.

~~(c)~~C. The alarm user may, within ten (10) business days of the receipt of the false alarm notification make a written request for a review by the Chief of Police or his designee of the determination that an alarm was false. The request shall include the following information:

1. Alarm user name;

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2. Alarm user registration number;

3. Address at which the alarm is installed;

4. Date of false alarm that is being contested; and

5. The facts upon which the request for review of the false alarm determination is made.

~~(d)~~D. The Chief of Police or his designee shall consider the circumstances of the contested false alarm determination and provide a written response to the alarm user.

~~(e)~~E. Response to alarm activations shall not be counted as false for the purpose of calculating violations of ~~Section §~~ 33-14 until the expiration of the ten-~~(10)~~ day appeal period. (Ord. No. 00-27, 11-1-00)

**§ 33-14. Excessive ~~f~~False ~~a~~Alarm ~~r~~Responses ~~p~~Prohibited; ~~p~~Penalties.**

~~(a)~~A. It shall be unlawful for any alarm user in the ~~e~~County to allow an excessive number of false alarm responses to occur at a protected premise for which they are responsible. It is hereby found and determined that false alarm responses to a protected premise in excess of two (2) in a twelve-~~(12)~~ month calculation period are deemed to be an excessive number and shall be a violation of this chapter. When involving apartment complexes, a protected premise shall be determined on a "per unit" basis. The first twelve-~~(12)~~ month period shall commence on the date of original registration issuance. Subsequent twelve ~~(12)~~ month periods shall be established successively.

~~(b)~~B. A false alarm response fee shall be assessed against the alarm user for false alarm responses in excess of two ~~(2)~~ in a twelve-~~(12)~~ month calculation period, in accordance with the following false alarm response fee schedule:

~~(1)~~ Third response . . . . . \$100.00

~~(2)~~ Fourth response . . . . . \$150.00

~~(3)~~ Fifth response . . . . . \$200.00

~~(4)~~ Sixth response . . . . . \$250.00

~~(5)~~ Seventh response . . . . . \$300.00

~~(6)~~ Eighth response. . . . . \$400.00

~~(7)~~ Ninth response and each response thereafter . . . . . \$500.00

(e)C. The failure of an alarm user to make payment of any fee imposed under this section within sixty (60) days from the date of receipt may result in the suspension of the alarm user registration and a discontinuance of police response to alarms that may occur at the protected premises described in the alarm user's registration until such time that payment is received.

(e)D. To ensure that the assessed amounts are representative of the costs incurred by the eCounty to provide alarm responses and to administer this chapter, the amounts contained in the false alarm response fee schedule shall be evaluated and amended, as necessary, on an annual basis.  
(Ord. No. 00-27, 11-1-00; Ord. No. 08-06, 4-19-08, effective 7-1-08)

§ 33-15. Inspection of ~~a~~Alarm ~~s~~Systems.

(e)A. In the event that three (3) or more false alarms occur at a protected premises within any twelve (12) month calculation period, the Chief of Police or his designee may require that the alarm user, at the alarm user's expense, cause their alarm system to be inspected by an alarm company licensed to conduct business in Arlington County. The inspection shall entail a complete examination of the alarm system including, but not limited to, satisfactory design and installation of the equipment, proper functioning of the equipment, and user education in the operation of the equipment. The alarm company shall record the details of the inspection and certify that the alarm system is operating properly and that the appropriate persons have been re-educated in the proper operations of the system on a form provided by the Police Department for this purpose. The completed inspection report shall be returned to the Police Department within thirty (30) days of the initial notification to the alarm user.

(e)B. In the event that eight (8) or more false alarms occur at a protected premise within any twelve (12) month calculation period, the Chief of Police or his designee may require that the alarm user cause their alarm system to be upgraded to be in compliance with equipment installation standards. An alarm company licensed to do business in Arlington County shall certify that the system has been upgraded to meet the standards listed in [Section § 33-9](#) of this ordinance. Such certification shall be made on a form provided by the Police Department for this purpose. The completed certification form shall be returned to the Police Department within thirty (30) days of initial notification to the alarm user.

(e)C. If the Police Department does not receive the completed inspection report or upgrade certification report within thirty (30) days of notification, an administrative fee of one hundred dollars (\$100.00) shall be assessed against that alarm user. The alarm user registration may be suspended for failure to comply with the inspection or upgrade requirements or pay the administrative fee. The Police Department may discontinue response to alarm activations that may occur at the premises described in the alarm user's registration until such time as the inspection report, upgrade certification report and/or administrative fees are received by the Police Department.  
(Ord. No. 00-27, 11-1-00)

#### ARTICLE IV.

#### ADMINISTRATIVE APPEAL HEARING

§ 33-16. Administrative ~~a~~Appeal ~~h~~earing.

(e)A. In the event an inspection order is issued to an alarm user, administrative fees are assessed, or the registration of an alarm user is suspended, the alarm user may request an appeal hearing to determine whether there is just cause for such action.

(e)B. The hearing shall be held before a hearing officer who shall have been appointed by the County Manager. The hearing shall be held within seventy-two (72) hours after the request is filed with the Police Department unless an extension has been agreed upon by both the alarm user and the Police Department.

(e)C. The alarm user shall have the right to appear and present witnesses and other evidence, but there shall be no formal rules of procedure required for the conduct of the hearing and the hearing officer shall not have the power to compel the attendance of witnesses or the production of other evidence.

~~(d)~~D. The hearing officer shall proceed forthwith to hear the matter and to determine by a preponderance of the evidence whether there is probable cause to believe that the provision of this ~~C~~chapter have been applied, fairly and impartially. The hearing officers shall have authority, if he determines that there is insufficient evidence to fully support imposition of an inspection requirement, registration suspension, or administrative service fees, to order that any inspection requirements, registration suspension, or fees imposed under this ~~C~~chapter be waived or rescinded in whole or in part.

~~(e)~~E. The provisions of this ~~S~~section shall not apply to the imposition of false alarm response fees assessed pursuant to ~~Sections §§~~ 33-13 and 33-14 of this ~~C~~chapter. (Ord. No. 00-27, 11-1-00)

§ 33-17. Grounds for ~~R~~escinding, ~~W~~aiving or ~~R~~eduction ~~s~~Service ~~F~~ees.

~~A~~. Administrative hearing officers shall consider the following factors in reaching a determination as to the modification or waiving of an administrative fee, inspection order, or registration suspension order:

~~(a)~~1. Evidence of attempts by the alarm user to eliminate the cause of false alarms, such as:

- ~~a~~. Installation of new equipment
- ~~b~~. Replacement of defective equipment
- ~~c~~. Inspection and repair of the system by an alarm technician
- ~~d~~. Specific formal training of alarm users.

~~(b)~~2. Written evidence that the alarm system which caused the alarm responses has been disconnected and removed from the protected premises.

~~B~~. Nothing in this ~~S~~section shall be interpreted to require that all appeals which meet any or all of these circumstances will be granted. These are intended as guidelines for the hearing officer and shall not prevent the hearing officer from granting appeals for additional reasons. (Ord. No. 00-27, 11-1-00)

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**ARLINGTON COUNTY CODE**

**Chapter 34**

**RESERVED\***

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\* **Editors Note:** Former Ch. 34, which pertained to fair housing, was repealed by Ord. No. 89-18, adopted June 24, 1989 and effective July 1, 1989. The repealed provisions derived from legislation of July 22, 1968; April 10, 1971; July 8, 1972; April 20, 1974; November 22, 1975, and Ord. No. 82-35, Sept. 11, 1982 and Ord. No. 84-36, Nov. 17, 1984.

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ARLINGTON COUNTY CODE

Chapter 35

ARLINGTON COUNTY SCHOOL BOARD EMPLOYEES' SUPPLEMENTAL  
RETIREMENT SYSTEM

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- § 35-2. Arlington County School Board Employees' Supplemental Retirement System **eE**stablished.
- § 35-3. Duties of the **eE**mployer.
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- § 35-5. Fraud and **dD**eceit.
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- § 35-16. Same--Data.
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Article VI. Contributions

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- § 35-40. Benefits ~~a~~U~~p~~on ~~w~~W~~i~~thdrawal from ~~e~~E~~m~~ployment or ~~d~~D~~e~~ath.
- § 35-41. Joint and ~~s~~S~~u~~rvivorship ~~o~~O~~p~~tions.
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- § 35-46. Maximum ~~p~~P~~e~~rmissible ~~b~~B~~e~~nefit.

ARTICLE I.

IN GENERAL

§ 35-1. Definitions.

The following words and ~~phrases, terms, as when~~ used in this chapter, shall have the following meanings ~~unless the context clearly indicates otherwise~~:

~~“Accumulated contributions”~~ means the sum of all amounts contributed by a member and credited to his individual account in the members' contribution account, and any other amounts he shall have contributed, or transferred thereto, including interest credited as provided in ~~section § 35-33.C(e)~~.

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~~“Average final compensation”~~ means the average annual creditable compensation of a member during the thirty-six (36) consecutive months of creditable service in which such compensation was at its greatest amount or during the entire period of his creditable service if less than thirty-six (36) months.

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If a member's creditable service exceeds thirty-six (36) months, but does not contain a period of thirty-six (36) consecutive months, the thirty-six (36) months of creditable service which would have been consecutive but for an interceding period or periods of other than creditable service, in which such compensation was at its greatest amount, shall be the period on which the determination of his average final compensation shall be based.

~~“Beneficiary”~~ means any person entitled to receive benefits as provided by the ~~s~~S~~y~~stem.

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~~“Board”~~ means the ~~b~~B~~o~~ard of ~~t~~T~~r~~ustees of the ~~s~~S~~y~~stem.

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~~“County Manager”~~ means the County Manager or ~~his~~ designee.

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~~“Creditable compensation”~~ means the full compensation, including pickup contributions and any elective employer contributions under the flexible benefits plan, payable to an employee. In cases where the compensation includes maintenance and other perquisites, the ~~b~~B~~o~~ard shall fix the value of that part of the compensation not paid

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ARLINGTON COUNTY CODE

ARLINGTON COUNTY SCHOOL BOARD EMPLOYEES' SUPPLEMENTAL RETIREMENT SYSTEM

in money. Other provisions notwithstanding, except in the case of an employee who first became a member before July 1, 1996, annual creditable compensation shall not exceed the amount established pursuant to Internal Revenue Code § 401(a)(17) as indexed annually.

"Creditable service" means membership service plus prior service credit.

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"Employee" means any person regularly employed prior to February 8, 1981 by the eCounty sSchool bBoard or by the dDepartment of hHuman rResources.

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"Employer" means the eCounty sSchool bBoard or the dDepartment of hHuman rResources.

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"Fiscal year" means each twelve-(12) month period ending June thirtieth.

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"Member" means any person included in the membership of the sSystem as provided in section-§ 35-25 who has not ceased to be a member as provided in section-§ 35-26.

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"Membership service" means service as a member for which credit is allowable as provided in section-§ 35-29.

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"Normal retirement date" means the first day of the month following the sixty-second birthday of a member.

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"Prior service credit" means the years and months of continuous service prior to the effective date of this chapter as an employee of eCounty sSchool bBoard provided the employee was covered by and participating in the Virginia Retirement System.

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"Retiree" means any prior member or beneficiary who is receiving a retirement payment, or has elected to receive a deferred vested retirement allowance.

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"Retirement allowance" means the retirement payments to which a member is entitled.

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"Service" means service as an employee for which compensation is paid by the employer.

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"System" means the Arlington County School Board Employees' Supplemental Retirement System. (1-1-69; 7-1-70; 10-21-70; 6-25-77; 2-8-81; Ord. No. 84-18, 6-2-84; Ord. No. 87-24, 9-26-87; Ord. No. 96-13, 6-29-96; Ord. No. 00-34, 11-1-00; Ord. No. 04-26, 11-16-04, effective 12-12-04; Ord. No. 05-10, 7-12-05)

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§ 35-2. Arlington County School Board Employees' Supplemental Retirement System eEstablished.

There is hereby established a retirement system for professional and clerical employees of the Arlington County School Board, to be known as the Arlington County School Board Employees' Supplemental Retirement System, by and in which name it shall transact all of its business. Provisions and benefits of this chapter are limited to and will be revised to the extent that the provisions of Virginia Retirement Plan for public employees approaches the provisions and benefits of Chapter 21, Code of the County of Arlington, Virginia. (1-1-69; 5-24-75)

§ 35-3. Duties of the eEmployer.

The employer shall keep such records and furnish such information as the bBoard or County Manager may require in the discharge of their duties. Upon employment of a member, the employer shall inform the member of his duties and obligations in connection with the sSystem as a condition of employment. (1-1-69; Ord. No. 04-26, 11-16-04, effective 12-12-04)

§ 35-4. Effect of aAcceptance of eEmployment.

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Upon acceptance of employment, every member shall be deemed to consent and agree to any deductions from his compensation required by this chapter, and to all other provisions thereof.  
(1-1-69)

**§ 35-5. Fraud and ~~e~~Deceit.**

Any person who shall knowingly make any false statement or shall falsify or permit to be falsified any record of the ~~s~~System in any attempt to defraud the ~~s~~System shall be guilty of a misdemeanor, and shall be punished accordingly.  
(1-1-69)

**§ 35-6. Assignments.**

The right of any member to a retirement allowance, to the return of contributions, or any other right or moneys accrued or accruing to any person under the provisions of this chapter shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency law or any other process of law whatsoever, and shall be unassignable except that a member may, upon leaving employment and withdrawal of contributions, assign and make payable his contributions, or any portion thereof, to the ~~e~~County, or its units and organizations operated for the benefit of the employees.  
(1-1-69)

**§ 35-7. Correction in ~~e~~Errors in ~~p~~Payments.**

Should any member or beneficiary receiving benefits from the ~~s~~System receive more or less than he would have been entitled to receive, the County Manager to correct such error, and shall, as far as practicable, adjust the payments including future payments in such as manner that the benefit to which the member or beneficiary was correctly entitled shall be paid. Whenever any member or beneficiary receives less than he or she would have been entitled to receive, the County Manager may authorize the payment of interest on the unpaid balance owed to the member or beneficiary at a rate to be determined by the County Manager provided that the error in payment was discovered after January 1, 2001.  
(1-1-69; 11-6-71; Ord. No. 00-33, 12-18-00; Ord. No. 04-26, 11-16-04, effective 12-12-04)

**§ 35-8. Amendments.**

The ~~e~~County ~~b~~Board shall have the continuing right and power to amend or supplement this chapter at any time. No amendment shall be made unless the actuary has filed with the ~~e~~County ~~b~~Board a report as to its effect upon the ~~s~~System, and no amendment shall be adopted which will reduce the then accrued benefits of employees or beneficiaries below the extent they are then covered by accumulated reserves, which reserves shall constitute a trust fund for the payment of such benefits.  
(1-1-69)

**ARTICLE II.**

**ADMINISTRATION**

**§ 35-9. Board of ~~t~~rustees and County Board--Powers and ~~d~~Duties.**

The responsibilities regarding sound management and investment of the System's funds are hereby vested in the ~~b~~Board of ~~t~~rustees of the ~~s~~System. The responsibility for setting the size and type of benefits rests with the Arlington County Board, which shall be responsible for paying the costs of any actuarial studies relating to the size and type of benefits.  
(1-1-69; Ord. No. 04-26, 11-16-04, effective 12-12-04)

**§ 35-10. Same--Accountability.**

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The **b**Board of **t**rustees shall be accountable to the **e**County **b**Board.  
(1-1-69)

§ 35-11. Same--Composition; **e**Organization and **t**Terms of **e**Office.

The **b**Board shall consist of six (6) trustees as follows: The **e**County **t**reasurer, who shall be treasurer of the **b**Board; two (2) trustees appointed by the **s**School **b**Board; two (2) trustees appointed by the **e**County **b**Board, one (1) of whom shall be designated president; and one (1) trustee elected by the employees of the **s**School **b**Board who are members of the **s**System. The election of the trustees by the employees of the **s**School **b**Board shall be conducted under procedural rules approved by the **e**County **b**Board. When such **b**Board shall be so created and constituted it shall at its first meeting, and annually thereafter, elect one (1) of its members as vice-president and one (1) as secretary. The **t**reasurer shall hold office for his term as **e**County **t**reasurer. The term of office of the employee-elected member shall be four (4) years. The term of office for the **s**School **b**Board and the **e**County **b**Board appointees shall be four (4) years except for the first appointment by both the **s**School **b**Board and the **e**County **b**Board after November 1, 1976, which shall be for a two-**(2)** year term. Their successors shall be elected thirty (30) days before the expiration of the four-**(4)** year term. Provided that when the **b**Board established pursuant to ~~section § 46-12~~ has been created and constituted, it shall be the **b**Board of **t**rustees for this **s**System.  
(1-1-69; 12-18-76; 2-8-81)

§ 35-12. Same--Vacancies.

If a vacancy occurs in the office of a **t**rustee of the **b**Board, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled.  
(1-1-69)

§ 35-13. Same--Compensation.

The **t**rustees of the **b**Board shall serve as such without compensation.  
(1-1-69)

§ 35-14. Same--Rules and **r**Regulations.

Subject to the limitations of this chapter, the **b**Board shall establish such rules and regulations for the transaction of its business, copies of which shall be made available to interested parties.  
(1-1-69; Ord. No. 04-26, 11-16-04, effective 12-12-04)

§ 35-15. Same--Employment of **a**ssistants.

The **b**Board shall employ the assistants authorized by ~~section § 21-16~~ and pay out of the **s**System fund for all services as shall be required.  
(1-1-69)

§ 35-16. Same--Data.

The **b**Board and the County Manager shall keep in convenient form such data as shall be necessary for actuarial valuation of the **s**System and for checking the experience of the **s**System.  
(1-1-69; Ord. No. 04-26, 11-16-04, effective 12-12-04)

§ 35-17. Same--Proceedings; **f**inancial **e**Condition of **s**System.

The **b**Board shall keep minutes of all its proceedings, which shall be open to public inspection. It shall submit to the **e**County **b**Board annually an independent audit showing the fiscal transactions of the **s**System for the preceding fiscal year, the amount of accumulated cash and securities of the **s**System, and the last balance sheet indicating the financial condition of the **s**System.  
(1-1-69)

§ 35-18. Same--Actuarial ~~i~~Investigations and ~~v~~Valuations.

At least once in each five-~~(5)~~ year period, the ~~b~~B~~o~~ard shall cause an actuarial study to be made of all the experience of the ~~s~~S~~y~~stem. At least once in each two-~~(2)~~ year period, the ~~b~~B~~o~~ard shall cause an actuarial valuation to be made. Pursuant to such valuations, the ~~e~~C~~o~~unty ~~b~~B~~o~~ard may revise the rates of employee and/or employer contributions.

(1-1-69; Ord. No. 87-29, 12-12-87)

§ 35-19. Same--Responsibilities under ~~p~~P~~r~~ior ~~o~~Ordinances.

The County Manager shall assume the responsibility to provide for the payment of vested rights and return of accumulated contributions under all prior ordinances.

(1-1-69; Ord. No. 04-26, 11-16-04, effective 12-12-04)

§ 35-20. Same--Legal ~~a~~A~~d~~visor.

The ~~e~~C~~o~~unty ~~a~~A~~t~~torney shall be legal advisor of the ~~b~~B~~o~~ard.

(1-1-69; 5-31-80)

ARTICLE III.

MANAGEMENT OF FUNDS

§ 35-21. Investment and ~~r~~R~~e~~investment of ~~a~~A~~s~~sets.

The members of the ~~b~~B~~o~~ard shall be the trustees of all assets of the ~~s~~S~~y~~stem. The ~~b~~B~~o~~ard shall have full power and authority to invest and reinvest such assets, and to change such investments and reinvestments. The ~~b~~B~~o~~ard shall invest the assets of the ~~s~~S~~y~~stem with care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. The ~~b~~B~~o~~ard, in its discretion, may take the necessary steps to establish a trust for the administration of the assets of the ~~s~~S~~y~~stem. The ~~b~~B~~o~~ard may employ an investment ~~r~~ advisor or advisors to invest and reinvest assets of the ~~s~~S~~y~~stem in accordance with the provisions of this chapter and regulations established by the ~~b~~B~~o~~ard.

(1-1-69; 1-5-80; Ord. No. 00-34, 11-1-00; Ord. No. 05-10, 7-12-05)

§ 35-22. Types of ~~i~~Investments.

The ~~b~~B~~o~~ard shall have full power in its sole discretion to invest and reinvest all funds and property of the ~~s~~S~~y~~stem in accordance with § 21-23 and shall diversify such investments so as to minimize the risk of large losses unless under the circumstances it is clearly not prudent to do so.

(1-1-69; 8-18-79; 9-13-80; Ord. No. 05-10, 7-12-05)

§ 35-23. Powers and ~~d~~D~~u~~ties of the ~~t~~T~~r~~asurer of the ~~b~~B~~o~~ard; ~~b~~B~~o~~nd; ~~w~~W~~a~~rrants.

~~(a)~~A. Except as provided in paragraph ~~B~~(~~b~~), the ~~t~~T~~r~~asurer of the ~~b~~B~~o~~ard shall be the custodian of all of its funds and securities. He shall give bond, payable to the ~~b~~B~~o~~ard, in such amounts and with such surety as the ~~b~~B~~o~~ard requires, conditioned upon the faithful performance of his duties and the proper accounting of all funds and securities coming into his hands, the cost of the bond to be paid out of funds of the ~~s~~S~~y~~stem. He shall deposit all moneys in the name of the ~~b~~B~~o~~ard and disburse the same only on warrants signed by such person as is designated for the purpose by the ~~b~~B~~o~~ard or the County Manager, as appropriate. No warrant shall be signed unless it has previously been authorized by the ~~b~~B~~o~~ard, on either blanket approval by class of expenditure or approval by specific item, which authorization shall be recorded on the records of the ~~b~~B~~o~~ard.

~~(b)~~B. The ~~b~~B~~o~~ard may designate one (1) or more banks or trust companies to act as custodian of its

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funds and securities. In such event, registered securities in the custody of such custodian may be registered in the name of the nominee of such custodian, or a nominee of Depository Trust Company in the case of securities eligible for such registration.

(1-1-69; 9-13-80; Ord. No. 04-26, 11-16-04, effective 12-12-04)

**§ 35-24. Personal ~~i~~Interest of ~~b~~Board ~~m~~Members and ~~e~~Employees.**

No ~~b~~Board member or ~~b~~Board employee shall have any direct or indirect personal interest in the gains or profits of any investments made by the ~~b~~Board other than as a member of the ~~s~~System. No member or employee of the ~~b~~Board shall, directly or indirectly, for himself or as an agent in any manner use the funds of the ~~s~~System, except to make disbursements as are authorized by the ~~b~~Board, or the payment of benefits.

(1-1-69; Ord. No. 04-26, 11-16-04, effective 12-12-04)

**ARTICLE IV.**

**MEMBERSHIP IN THE SYSTEM**

**§ 35-25. Eligibility ~~r~~Requirements.**

~~(a)~~A. All employees who are covered by and participating in the Virginia Retirement System are eligible for membership.

~~(b)~~B. Persons who become employees after the effective date of this chapter who, at the time of becoming an employee, have attained an age which is within five (5) years of their normal retirement date are ineligible for membership.

~~(c)~~C. Regular employees of the Arlington County School System who were members of the Virginia Retirement System and who retired prior to April 1, 1969 are eligible for membership upon payment in full of the member contribution.

(1-1-69; 12-1-73; Ord. No. 00-34, 11-1-00)

**§ 35-26. Cessation of ~~m~~Membership.**

The membership of any person in the ~~s~~System shall cease:

~~(a)~~A. If he ceases to be an employee for a period of five (5) years, unless he is eligible to receive a deferred vested retirement allowance as provided in ~~section § 35-40.E(e)~~.

~~(b)~~B. Upon separation and withdrawal of his accumulated contributions.

~~(c)~~C. Upon retirement.

~~(d)~~D. Upon death.

(1-1-69; Ord. No. 84-18, 6-2-84)

**ARTICLE V.**

**CREDITABLE SERVICE**

**§ 35-27. Creditable ~~s~~Service.**

Creditable service at retirement on which the retirement allowance is based shall consist of:

~~(a)~~A. Membership service credit.

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~~(b)B.~~ Prior service credit.  
(1-1-69)

§ 35-28. Year of ~~s~~Service.

The County Manager shall determine by appropriate rules and regulations what periods of service in any year qualify as periods of creditable service, but in no case shall it allow credit for more than one (1) year of service rendered in any period of twelve (12) consecutive months.  
(1-1-69; Ord. No. 04-26, 11-16-04, effective 12-12-04)

§ 35-29. Membership ~~s~~Service ~~e~~Credit.

~~(a)A.~~ Each member shall receive membership service credit for all service rendered while a member of the ~~s~~System after he becomes a member, or after he last became a member in the event of a break in his membership, and provided he is receiving credit for such service under the Virginia Retirement System, for the period he is absent due to a service-connected disability. Each member shall receive membership service credit for military leave to the extent such credit is granted under the Virginia Retirement System. Notwithstanding any other provision in this chapter to the contrary, contributions, benefits and creditable service with respect to qualified military service will be provided in accordance with Internal Revenue Code § 414(u), effective October 13, 1996.

~~(b)B.~~ An employee who becomes a member after reemployment and after having withdrawn the accumulated contributions contributed during his prior membership may reestablish his membership service credit for the period of his prior membership by repayment to the ~~s~~System of the amount of his withdrawn contributions, with interest at the rate of six ~~percent (6%)~~ ~~percent~~ per annum from date of withdrawal, which shall be a lump sum payment.  
(1-1-69; Ord. No. 00-34, 11-1-00)

ARTICLE VI.

CONTRIBUTIONS

§ 35-30. Member ~~e~~Contributions.

~~(a)A.~~ Each employee who becomes a member as of the effective date of this chapter and who elects to be credited with the prior service retirement allowance as specified in ~~section § 35-37, B(b)~~ must contribute an amount equal to one and one-half ~~percent (1.5%)~~ ~~(1 1/2) percent~~ of his creditable compensation for the calendar year 1968 multiplied by his years of prior service credit and provided further that those members who retired prior to April 1, 1969, must contribute an amount equal to one and one-half ~~percent (1.5%)~~ ~~(1 1/2) percent~~ of his creditable compensation for the last full year (contract year) employed prior to retirement multiplied by his years of prior service credit.

The election to be credited with the prior service retirement allowance must be made within ninety (90) days following the effective date of the adoption of the chapter in the manner prescribed by the ~~b~~Board. The payment of the amount specified above shall be paid within three (3) years following adoption of this chapter or before retirement, whichever comes first and provided further, however, that those who retired prior to April 1, 1969, must make the payment of the amount specified in full on or before June 30, 1976.

~~(b)B.~~ Members shall be neither required nor permitted to make a contribution with respect to the retirement allowance which is based on membership service credit commencing on or after the effective date of this chapter, or after the effective date of the department's or unit's entrance into this ~~s~~System, whichever is later.

~~(e)C.~~ Each employee of a department or unit that becomes a part of this ~~s~~System by ~~e~~County ~~b~~Board action subsequent to the effective date of this chapter and who elects to be credited with the prior service retirement allowance as specified in ~~section § 35-37, B(b)~~ must contribute an amount equal to an actuarially determined percentage of his creditable compensation for the full calendar year, or contract year if applicable immediately

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preceding the effective date of his department's or unit's entrance into this ~~s~~System, multiplied by his years of prior service credit.

~~(d)~~D. The election to be credited with the prior service retirement allowance must be made within ninety (90) days following the effective date of entrance of the department or unit into the ~~s~~System. Payment by employee contributions must be made in full within fifteen (15) months from the date of the department or unit's entrance into the ~~s~~System.

~~(e)~~E. The ~~d~~Department of ~~h~~Human ~~r~~Resources employees who are members of the ~~s~~System, shall be authorized to purchase prior service in the manner outlined for new departments or units in ~~section § 35-30.C~~(~~e~~).

The election to be credited with the prior service retirement allowance must be made within ninety (90) days of enactment of ~~section § 35-30.E~~(~~e~~). Payment by employee contributions must be made within fifteen (15) months from the date of such enactment.

~~(f)~~F. For employees who became members as of the effective date of this chapter and failed to make the election to be credited with the prior service retirement allowance within ninety (90) days following the effective date of the adoption of the chapter or who made the election but failed to make payment of the amount specified within three (3) years following adoption of the chapter, the option for purchase of pre-effective-date service credits shall be open to allow members with unpurchased pre-effective-date service credit to purchase it by contributing the employer normal cost percent in effect as of the date of the purchase multiplied by the employee's current compensation multiplied by the years of service credit sought.

~~(g)~~G. Effective July 1, 1976, members who exercised the foregoing election and make the appropriate contribution shall have their contribution account so credited and may use said account for any benefits currently provided by the ~~s~~System.

~~(h)~~H. A member, who is a member of the Virginia Retirement System (V.R.S.), may purchase membership credit for leave, provided he is receiving credit for such leave under the V.R.S., by contributing the employer's normal cost in effect as of the date of purchase multiplied by the employee's current compensation multiplied by the years of service credit sought.  
(1-1-69; 10-12-74; 5-24-75; 2-21-76; 6-24-78; Ord. No. 84-18, 6-2-84; Ord. No. 89-15, 7-1-89; Ord. No. 00-34, 11-1-00)

§ 35-31. Employer ~~e~~Contributions.

~~(a)~~A. The employer shall contribute a percentage of the creditable compensation of the members.

~~(b)~~B. Employer contributions shall be determined by the ~~e~~County ~~b~~Board in accordance with § 46-33.

~~(c)~~C. Notwithstanding anything in this chapter to the contrary, the amount of annual additions of a member for any limitation year for purposes of Internal Revenue Code § 415 shall not exceed the maximum permissible amount determined pursuant to the provisions of such section applicable to governmental plans, as defined for purposes of such section. If the member's annual additions for any limitation year (as defined for purposes of such section) would exceed such maximum permissible amount, the amount contributed or allocated shall be reduced so that the annual additions for such limitation year will equal such maximum permissible amount.

~~(d)~~D. Any forfeiture arising from severance of employment or deaths shall be used to reduce the employer contribution under the plan.

~~(e)~~E. Notwithstanding anything in this chapter to the contrary, the amount of annual additions of a member for any limitation year for purposes of Internal Revenue Code § 415 shall not exceed the maximum permissible amount determined pursuant to the provisions of such section applicable to governmental plans, as defined for purposes of such section. If the member's annual additions for any limitation year (as defined for purposes of such section) would exceed such maximum permissible amount, the amount contributed or allocated

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shall be reduced so that the annual additions for such limitation year will equal such maximum permissible amount.  
(1-1-69; 11-6-71; 7-1-75; Ord. No. 86-33, 1-1-87; Ord. No. 00-34, 11-1-00; Ord. No. 05-10, 7-12-05)

ARTICLE VII.

ASSETS OF SYSTEM

§ 35-32. Assets to be eCredited to oOne of ~~t~~Two aAccounts.

All assets of the sSystem shall be credited, according to the purpose for which they are held, to one (1) of two (2) accounts, namely, "the members' contribution account," and "the retirement allowance account."  
(1-1-69)

§ 35-33. Members' eContribution aAccount.

~~(a)~~A. The members' contribution account shall be the account to which members' contributions and interest allowances shall be credited. From this account shall be paid the accumulated contributions of a member required to be returned to him upon withdrawal, or paid in the event of his death before retirement.

~~(b)~~B. Each member's contribution provided for in ~~section-§~~ 35-30 shall be credited to the individual account of the contributing member.

~~(c)~~C. Each individual account of the members' contribution account shall be credited with interest at a rate set annually by the ~~b~~Board of ~~t~~Trustees based upon the interest earned by the sSystem's assets during the preceding year, provided that such interest shall not exceed six ~~percent~~ (6%) ~~percent~~; and provided further that interest shall accrue on any such contribution beginning at the end of the calendar year in which each such contribution was made; and further provided that interest shall not be accredited or accumulated to the individual accounts of persons who have ceased to be members as defined in ~~section-§~~ 35-26.

~~(d)~~D. Upon the retirement of a member, his accumulated contributions shall be transferred from the members' contribution account to the retirement allowance account.  
(1-1-69; Ord. No. 84-18, 6-2-84)

§ 35-34. Retirement aAllowance aAccount.

~~(a)~~A. The retirement allowance account shall be the account in which all employer contributions shall be accumulated, amounts transferred from the members' contribution account, and to which all income from the invested assets of the sSystem shall be credited. This account shall pay retirement allowances, other benefits payable after a member's retirement, and necessary expenses of the sSystem.

~~(b)~~B. The amount of interest allowances provided for in ~~section-§~~ 35-33 ~~C~~(~~e~~) shall be transferred each year from the retirement allowance account to the members' contribution account.  
(1-1-69)

§ 35-35. Cash ~~d~~Deposits.

For the purpose of meeting disbursements for retirement allowances and other payments there may be kept available cash, not exceeding ten ~~percent~~ (10%) ~~percent~~ of the total amount in the accounts of the sSystem, on deposit in one (1) or more banks or trust companies that are approved as depositories for eCounty funds.  
(1-1-69)

ARTICLE VIII.

TYPES OF RETIREMENT, OTHER BENEFITS AND CONDITIONS THEREOF

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§ 35-36. Service ~~R~~Retirement.

~~(a)A.~~ *Normal retirement.* Any member of the ~~s~~Ssystem at his or her normal retirement date, age sixty-two (62), may retire or elect to participate in the DROP at any time then or thereafter upon written notification to the County Manager, made by such member, setting forth at what time the retirement is to become effective, provided that such effective date shall be after his last day of service but shall not be more than ninety (90) days subsequent to the filing of such notice.

~~(b)B.~~ *Compulsory retirement.* Any member who has attained the age of seventy (70) shall be retired forthwith on a service retirement allowance.

~~(c)C.~~ *Early retirement.*

~~(1.)~~ Any member of the ~~s~~Ssystem may retire at any time within the seven-~~(7)~~ year period immediately preceding his or her normal retirement date.

~~(2.)~~ Any member of the ~~s~~Ssystem who is a County employee may also retire or elect to participate in the DROP at any time when years of service added to age equal at least eighty (80).

For purposes of this ~~section-§ 35-36.C(b),~~ in cases where the period of creditable service is pertinent in determining a member's normal retirement date, such date shall be determined on the assumption that the member would have continued to be an employee until his normal retirement date. Such assumed period of employment shall be counted in determining the normal retirement date, but for no other purpose.

Written application for early retirement is required. The application shall set forth the effective date of retirement which shall be after the member's last day of service but not more than ninety (90) days subsequent to the filing of the application.

~~(d)D.~~ *Service Retirement – Special Conditions.* The County Manager may, once every fiscal year for period of time not to exceed sixty (60) days, offer to: ~~(i)1~~ general employees whose age plus service equals or exceeds seventy-eight (78), and ~~(ii)2~~ public safety employees who are fifty (50) or more years old and have completed five (5) years of service or have completed twenty-three (23) years of service, regardless of age, service credit for an additional one (1) year of service and/or an additional one (1) year of age, provided the employee submits an application for retirement within the timeframe prescribed by the County Manager.

The County Manager may do so only after the Manager determines that there is a business necessity to reduce the workforce for budgetary reasons.  
(1-1-69; 11-6-71; 6-25-77; 9-13-80; Ord. No. 00-34, 11-1-00; Ord. No. 03-23, 10-18-03; Ord. No. 04-16, 6-26-04, effective 7-1-04; Ord. No. 04-26, 11-16-04, effective 12-12-04; Ord. No. 05-10, 7-12-05; Ord. No. 09-26, 11-17-09)

§ 35-37. Service ~~R~~Retirement ~~a~~Allowance.

~~(a)A.~~ Upon service retirement prior to July 1, 1975, a member shall receive an annual retirement allowance, payable monthly to him for life, equal to five-eighths ~~percent (0.625%) (5/8) percent~~ of his average final compensation multiplied by his years of member service credit plus, if applicable, the amount specified in ~~section-§ 35-37.B(b)~~ below.

~~(b)B.~~ Upon service retirement prior to July 1, 1975, of a member who has made the election and the contribution provided for in ~~section-§ 35-30,~~ he shall receive an annual retirement allowance, payable monthly to him for life, equal to five-eighths ~~percent (0.625%) (5/8) percent~~ of his average final compensation multiplied by his years of prior service credit.

~~(c)C.~~ Upon service retirement on or after July 1, 1975, a member shall receive an annual retirement allowance, payable to him for life, equal to two and one-eighth ~~percent (2.125%) (2-1/8) percent~~ of his average final compensation multiplied by his years of member service credit and reduced by that part of the annual early or

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normal retirement allowance for which the member is eligible under formula A of the Virginia Retirement System as it exists on July 1, 1975, for such years of member service credit plus, if applicable, the amount specified in ~~section § 35-37.D~~ below. As used in this section "eligible" refers to retirement allowances which members could receive if application were made whether or not the member, in fact, applies. In the event that the Virginia Retirement System retirement age or ages is reduced below that specified as of July 1, 1975, with the result that members of the ~~e~~County ~~s~~System are eligible to receive additional benefits as members of the ~~s~~State ~~s~~System, their allowances under this section shall be reduced by the amount of such additional benefits. However, his allowance under this section shall not be reduced as a result of any other increase in benefits under the ~~s~~State ~~s~~System.

~~(d)~~D. Upon service retirement on or after July 1, 1975, of a member who has made the election and the contribution provided for in ~~section § 35-30~~, he shall receive an annual retirement allowance, payable monthly to him for life, equal to two and one-eighth ~~percent (2.125%)~~ ~~(2 1/8) percent~~ of his average final compensation multiplied by his years of prior service credit and reduced by that part of the annual early or normal retirement allowance for which the member is eligible under formula A of the Virginia Retirement System as it exists on July 1, 1975, for such years of prior service credit. As used in this section "eligible" refers to retirement allowances which members could receive if application were made whether or not the member, in fact, applies. In the event that the Virginia Retirement System retirement age or ages is reduced below that specified as of July 1, 1975, with the result that members of the ~~e~~County ~~s~~System are eligible to receive additional benefits as members of the ~~s~~State ~~s~~System, their allowances under this section shall be reduced by the amount of such additional benefits. However, his allowance under this section shall not be reduced as a result of any other increase in benefits under the ~~s~~State ~~s~~System.

~~(e)~~E. *Early retirement.* Upon the service retirement of a member prior to his normal retirement date as provided in ~~section § 35-36.B~~ ~~(b)~~, he shall receive an annual retirement allowance, payable monthly to him for life, determined as provided in subsection ~~A~~ ~~(a)~~ or ~~C~~ ~~(c)~~, whichever is applicable, of this section based on his average final compensation and his accredited service as of his early retirement date, and shall be payable, at the option of the member:

- ~~(1.)~~ Commencing on his early retirement date but reduced by one-half of one ~~percent (0.5%)~~ ~~(1/2 of 1) percent~~ for each full month that his early retirement date precedes his normal retirement date;
- ~~(2.)~~ Commencing at his normal retirement date without such reduction;
- ~~(3.)~~ Commencing at his early retirement date but without the one-half ~~percent (0.5%)~~ ~~(1/2) percent~~ per month reduction if the member has attained age fifty-five (55) and completed thirty (30) years of service; or
- ~~(4.)~~ Commencing at his early retirement date but reduced by one-half ~~of one percent (0.5%)~~ ~~(1/2) of one (1) percent~~ for each full month his retirement date precedes the date on which he would have attained age fifty-five (55) and completed thirty (30) years of service; or
- ~~(5.)~~ Commencing at his early retirement date but without the one-half ~~percent (0.5%)~~ ~~(1/2) percent~~ per month reduction if the member's years of service plus age equal at least eighty (80), provided he is an employee of the County.

~~(f)~~F. The retirement allowance for service retirement under the provisions of ~~section § 35-37~~ shall be reduced by any compensation awarded to the member or retiree under the Virginia Workers' Compensation Act, whether such award is paid to the member or retiree in a lump sum or otherwise. Such reduction shall be made only for compensation awarded to cover any period of time for which the member or retiree is or will be receiving benefits under ~~section § 35-37~~. For purposes of this section, compensation awarded does not include reimbursement for medical expenses.

Nothing herein shall be construed to require any person to pay back into the ~~s~~System any money received before the effective date of this section. No person who has begun to receive an allowance under ~~section § 35-37~~ before June 23, 1990, shall be subject to this reduction.

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(1-1-69; 3-6-76; Ord. No. 84-18, 6-2-84; Ord. No. 87-22, 8-15-87; Ord. No. 90-12, 7-1-90; Ord. No. 00-34, 11-1-00; Ord. No. 04-16, 6-26-04, effective 7-1-04)

§ 35-38. Disability ~~Retirement~~.

Any member in service or on authorized leave without pay who has five (5) or more years of service may, at any time before his normal retirement date, retire on account of disability upon written application to the County Manager, made by the member or his appointing authority, setting forth at what time the retirement is to become effective, provided that such effective date shall be after the last day of service, but shall not be more than ninety (90) days prior to the execution and filing of such application. The County Manager shall accept the determination of the ~~Medical Examining Board~~ of the V.R.S.

(1-1-69; Ord. No. 83-6, 2-26-83; Ord. No. 84-18, 6-2-84; Ord. No. 00-34, 11-1-00; Ord. No. 04-26, 11-16-04, effective 12-12-04)

§ 35-39. Disability ~~Retirement~~ ~~Allowance~~.

Upon retirement as provided in ~~section §~~ 35-38, a member shall receive an annual retirement allowance payable monthly during his lifetime and continued disability which shall consist of five-eighths percent (0.625%) ~~(5/8) percent~~ of his average final compensation, multiplied by his number of years of creditable service.

(1-1-69; 6-25-77)

§ 35-40. Benefits ~~Upon~~ ~~Withdrawal from~~ ~~Employment or~~ ~~Death~~.

~~(a)A.~~ If a member has ceased to be an employee, other than by death or retirement under the provisions of this chapter, he shall be paid, on demand or as soon as practicable, the total amount of his contribution account unless he is eligible for a deferred vested retirement allowance as provided in subsection ~~E(e)~~.

~~(b)B.~~ Should a member die, the amount of his accumulated contributions shall be paid in a lump sum to a designated beneficiary or, in the absence of a designated beneficiary, to ~~his~~ estate.

~~(c)C.~~ Should a person on retirement die, the amount of his accumulated contributions, reduced by the amount of any retirement allowance previously received by him, shall be paid in a lump sum to a designated beneficiary or, in the absence of a designated beneficiary, to his estate.

~~(d)D.~~ Beneficiary or change of beneficiary shall be designated by written notice by the member, or person, signed and filed with the County Manager.

~~(e)E.~~ If a member has ceased to be an employee after completion of five (5) or more years of service, the member will be eligible to receive a deferred vested retirement allowance commencing on the member's normal retirement date or at any earlier date pursuant to ~~section §~~ 35-37 as they existed at the date of the member's withdrawal from service. Written application for payment of the allowance should be filed with the County Manager not earlier than sixty (60) days prior to the former member's retirement date. If a former member is reemployed by the employer and becomes a member of this ~~s~~System after having qualified for a deferred vested retirement allowance under this ~~section §~~ 35-40 ~~E(e)~~, such former member shall have reinstated his service and compensation records in effect when service was broken.

~~(f)F.~~ This section applies to distributions other than the ~~L~~ine of ~~D~~uty death benefit in ~~section §~~ 35-45 herein made on or after January 1, 1993.

~~(1.)~~ Notwithstanding any provision of this chapter to the contrary that would otherwise limit a distributee's election under this part, a distributee may elect, at the time and in the manner prescribed by the County Manager, to have any portion of an eligible rollover distribution that is equal to at least five hundred dollars (\$500.00) paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

~~(2.)~~ Definitions. The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise:

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"Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Internal Revenue Code § 401(a)(9); and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and any other distribution(s) that is reasonably expected to total less than two hundred dollars (\$200.00) during a year.

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"Eligible retirement plan" means an individual retirement account described in Internal Revenue Code § 408(a), an individual retirement annuity described in Internal Revenue Code § 408(b), an annuity plan described in Internal Revenue Code § 403(a), or a qualified plan described in Internal Revenue Code § 401(a), that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

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"Distributee" includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse who is the alternate payee under a qualified domestic relations order, as defined in Internal Revenue Code § 414(p), are distributees with regard to the interest of the spouse or former spouse.

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"Direct rollover" means a direct rollover or payment by this chapter to the eligible retirement plan specified by the distributee.

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(1-1-69; 6-25-77; 6-24-78; Ord. No. 84-18, 6-2-84; Ord. No. 00-34, 11-1-00; Ord. No. 04-26, 11-16-04, effective 12-12-04)

**§ 35-41. Joint and ~~s~~Survivorship ~~o~~Options.**

A member may nominate a beneficiary and may elect by written application filed with the ~~b~~Board any time prior to his normal, early, ordinary or service-connected disability retirement, a joint life and survivorship pension of actuarial value equivalent to that of the annual retirement allowance to which he would otherwise be entitled as determined by the actuary. Such joint life and survivorship benefit shall be on the basis of a lifetime annual retirement allowance to the retired member with either a like amount of pension, two-thirds (2/3) or one-half (1/2) thereof being continued to his beneficiary if said beneficiary survives him. The annual retirement allowance payable monthly shall be determined on the basis of equivalent actuarial values according to the ages, at the member's actual retirement date, of the member and of his beneficiary, and shall be payable as long as either lives. If so elected, the allowance shall be paid as long as:

~~(a)~~A. The retired member lives, with either a like amount of pension, two-thirds (2/3) or one-half (1/2) thereof continued for as long as the beneficiary lives after the death of the retired member. The election shall remain in effect if the member dies subsequent to his normal retirement date even though prior to this actual retirement date.

~~(b)~~B. The beneficiary lives, but upon the death of the beneficiary prior to the death of the member, the option will be cancelled and the amount of the unreduced pension will become payable. If the beneficiary dies before the member has actually retired, the election will be void and the member will be treated as though he has made no election.

~~(c)~~C. Notwithstanding any other provision to the contrary, any retired member who elects the joint and survivorship pension option may, with the consent of the person nominated to receive the option, cancel such option. Such option may also be cancelled pursuant to court order in a case in which the person nominated is a party. In the

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event of either cancellation, the retirement allowance paid to the member in the period after the effective date of the cancellation will be the same as if the member had not elected a joint life and survivorship pension option.

The provisions of this chapter are to become effective as of January 1, 1969, and the benefits hereunder to begin as of April 1, 1969. (1-1-69; 6-20-81; Ord. No. 90-12, 7-1-90; Ord. No. 04-26, 11-16-04, effective 12-12-04; Ord. No. 05-10, 7-12-05)

§ 35-42. Nonreversion.

It shall be impossible at any time prior to satisfaction of all liabilities with respect to employees and benefits under the trust for any part of the corpus or income to be used for, or diverted to, purposes other than the exclusive benefit of the employees and their beneficiaries. (1-1-69; 11-6-71)

§ 35-43. Minimum Retirement Allowance.

(a)A. Except as provided in subparagraph B(b), any beneficiary who receives benefits pursuant to this chapter shall after February 8, 1981, receive a retirement allowance which shall be the greater amount of: (ia) the allowance determined in accordance with the provisions of this chapter together with the allowance payable to the member pursuant to the Virginia Retirement System, or (iib) the allowance such member would have received had he been a member of the Arlington County Supplemental Retirement System--II (Chapter 46), provided that the retirement allowance adjustment determined pursuant to section-§ 46-49.B(b) shall be five percent (5%) percent for each year prior to 1974 for which an adjustment is required.

(b)B. A beneficiary who receives benefits pursuant to section-§ 35-37.E(e) shall, after February 8, 1981, receive a retirement allowance which shall be the greater amount of: (ia) the allowance determined in accordance with the provisions of section-§ 35-37.E(e), or (iib) the allowance determined in accordance with the provisions of sections-§§ 46-38.B(b) and 46-49.B(b), provided that in determining the reduction to be used in section-§ 46-38.B(b), the reduction shall be one-half of one percent (0.5%) (1/2 of 1) percent for each full month by which his actual retirement date preceded his normal or unreduced early retirement date. (1-1-69; 10-21-70; 2-8-81; Ord. No. 84-18, 6-2-84; Ord. No. 00-34, 11-1-00)

§ 35-44. Effect on Retirement Allowance of Returning to Work.

(a)A. Should a beneficiary of a retirement allowance return to service, he shall become a member of the System and shall thereafter contribute. Any service on the basis of which his retirement allowance was computed shall thereafter be counted as creditable service. Upon return to service, such member's retirement allowance shall cease.

(b)B. Any excess accumulated contribution of such beneficiary over the retirement allowances received by him shall be transferred from the retirement allowance account to the member's contribution account.

(c)C. If the amount of retirement allowances received by him exceeds his accumulated contributions, the excess allowances over contributions shall not be transferred to the contribution account. (Ord. No. 82-33, 8-7-82)

§ 35-45. Line of Duty Death Benefit.

(a)A. Definitions: The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise:

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"Base salary" shall mean an employee's base rate of pay according to the County Board adopted pay plan, including any market adjustments under the pay plan.

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"Beneficiary" means, for purposes of section-§ 35-45, that person or persons designated by the member to

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receive life insurance proceeds from the life insurance policy provided or made available by the employer.

"Direct and proximate result" means that result which is the natural and probable consequence of the antecedent events.

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"Line of duty" means on the job in the service of the member's employers. Line of duty does not mean going to or from work (including between any parking lot or transportation terminal and the employee's work place), going to or from meals or breaks, or time spent while "on call" or on stand-by status unless the employee is involved in a specific work-related duty during such period.

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"Personal injury" means any traumatic injury as well as diseases which are caused by or result from such an injury, excluding occupational diseases and diseases of ordinary life. The term personal injury excludes any personal injury caused or contributed to by the intentional misconduct or negligence of the member or beneficiary as well as suicide. The term personal injury also excludes any injury caused or contributed to by the member's consumption of alcohol or illegal drugs.

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"Traumatic injury" means a wound or other condition of the body caused by external force, including injuries inflicted by bullets, explosives, smoke inhalation, sharp or blunt instruments or objects, physical blows, chemicals, electricity, climatic conditions, infectious diseases, radiation, and bacteria, but excluding stress and strain. Death from heart attacks, strokes and similar diseases resulting from chronic, congenital or progressive cardiac and/or pulmonary conditions are not compensable unless a traumatic injury was a substantial factor in the death. Heart attacks and stroke shall be presumed to be caused by a traumatic injury where such heart attacks and stroke were substantially caused by arduous and strenuous physical work-related activity.

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~~(b)~~B. The beneficiary of any member who dies in the line of duty shall receive a payment of four (4) times the member's base salary at the time of death, up to a maximum of two hundred fifty thousand dollars (\$250,000.00). Such payment may be received by the beneficiary only after the payment is approved by the County Manager as set forth below. Following approval by the County Manager, the beneficiary may elect to receive the payment either in one (1) lump sum or in four (4) equal installments; the first installment to be made after approval of the application for payment by the County Manager and the remaining three (3) installments annually thereafter. In the event that there is more than one (1) beneficiary, no election by beneficiaries is allowed and payment shall be of the full payment only, divided between or among the beneficiaries in the same manner which the member has designated for the life insurance policy provided by or made available by the employer.

The beneficiary(ies) may apply for payment within one hundred eighty (180) days of the member's death by making application to the County Manager. The County Manager may adopt procedures for making and evaluating applications for this benefit. The County Manager shall approve payment under this section only after finding that the member has died as the direct and proximate result of a personal injury sustained in the line of duty.

Before approving any application, the County Manager must receive a written certification from the medical advisor that the member has died as the direct and proximate result of a personal injury identified by the medical advisor and the County's legal advisor certifies that all the requirements of this section have been met.

The two hundred fifty thousand dollar (\$250,000.00) maximum established under this section shall be increased by the same amount as the annual cost of living adjustment made by the Arlington County Board for the Arlington County Employees' Pay Plan, beginning with the adjustment made effective July 1, 1991.\*

The benefit payable under this section shall be reduced by any amount awarded for an accidental death occurring in the line of duty by the V.R.S., whether by an insurance policy or otherwise.

Notwithstanding any of the foregoing, where the County Manager finds that an employee's death, as the direct and proximate result of a personal injury, was intentionally caused by a third party because the third party was motivated to cause the employee's death because the employee performed a particular duty within the employee's scope of employment, such death shall be considered to have occurred in the line of duty whether or not it occurred on the job.

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\*Effective July 1, 2000, the two hundred fifty thousand dollar (\$250,000.00) line of duty benefit increased by the annual cost of living adjustment equaled two hundred ninety thousand three hundred sixty-three dollars (\$290,363.00).  
(Ord. No. 90-12, 7-1-90; Ord. No. 90-36, 1-1-91; Ord. No. 00-34, 11-1-00; Ord. No. 04-26, 11-16-04, effective 12-12-04)

**§ 35-46. Maximum Permissible Benefit.**

Notwithstanding anything in this chapter to the contrary, the annual benefit otherwise payable at any time to a member under this chapter shall not exceed the maximum permissible amount determined pursuant to the provisions of Internal Revenue Code § 415 applicable to governmental plans, as defined for purposes of such section. If the benefit the member would otherwise accrue in a limitation year (as defined for purposes of such section) would produce an annual benefit in excess of such maximum permissible amount, the rate of accrual shall be reduced so that the annual benefit will equal such maximum permissible amount.  
(Ord. No. 00-34, 11-1-00)

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Chapter 36

PUBLIC DANCE HALLS

§ 36-1. Definitions.

§ 36-2. Fee.

§ 36-3. Issuance of ~~p~~Permits.

§ 36-4. Requirements for ~~p~~Permit ~~i~~ssuance.

§ 36-5. Application for ~~p~~Permit.

§ 36-6. Period of ~~p~~Permit; ~~r~~Renewal.

§ 36-7. Revocation of ~~p~~Permit.

§ 36-8. Procedure for ~~r~~Revocation of ~~p~~Permits for ~~p~~Public ~~d~~Dance ~~h~~Halls.

§ 36-9. Appeals from ~~a~~Actions of the ~~e~~County ~~m~~Manager.

§ 36-10. Rules and ~~r~~Regulations for ~~e~~Operation of ~~p~~Public ~~d~~Dance ~~h~~Halls.

§ 36-11. Penalties.

§ 36-1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

~~(1)A.~~ A “~~p~~Public dance hall” ~~within the meaning of this chapter shall be construed to~~ means any place open to the general public where dancing is permitted to which an admission fee is charged, or for which compensation is in any manner received, either directly or indirectly, by cover charge or otherwise, or where refreshments or food, or any form of merchandise is served for compensation before, during, or after dancing. The sale of any refreshments, food, or any form of merchandise at any such place or the exhibiting of such for sale shall be deemed direct compensation for any such dance hall within the meaning of this chapter.

~~(2)B.~~ This chapter, however, shall not apply to dances held for beneficial or charitable purposes, or when the same are conducted under the auspices of religious, educational, civic or military organizations.

~~(3)C.~~ A “~~p~~Permit,” ~~as cited in this chapter, shall~~ means a public dance hall permit. Permits shall be separate and distinct from licenses required under the Arlington County Business Privilege License Ordinance, and in addition to permits for public dance halls, licenses for all related activities shall be obtained as required under Chapter 11 of the Code of Arlington County.  
(5-28-69)

§ 36-2. Fee.

The fee for a public dance hall permit shall be six hundred dollars (\$600.00).  
(5-28-69; Ord. No. 89-7, 7-1-89; Ord. No. 92-13, 4-25-92; Ord. No. 95-9, 4-29-95; Ord. No. 98-11, 7-1-98)

§ 36-3. Issuance of ~~p~~Permits.

~~(1)A.~~ A permit to operate a public dance hall is required.

~~(2)B.~~ The issuing authority shall be the ~~e~~County ~~m~~Manager of Arlington County.

~~(3)C.~~ Permits to operate a public dance hall shall be issued by the ~~e~~County ~~m~~Manager after the granting of a use permit as required by the zoning for site plan buildings, and upon the finding of the facts as required by this chapter.

(5-28-69; 3-3-73)

**§ 36-4. Requirements for ~~p~~Permit ~~i~~ssuance.**

A permit shall be issued by the ~~e~~County ~~m~~Manager upon his finding of fact that there is compliance with the following requirements:

~~(A)~~A. The premises where the public dance hall is proposed to be located are in conformance with all ordinances and regulations of Arlington County and laws and regulations of the Commonwealth of Virginia.

~~(B)~~B. The proposed operation of the public dance hall is in conformance with all ordinances and regulations of Arlington County and laws and regulations of the Commonwealth of Virginia.

~~(C)~~C. The operation of the public dance hall in the proposed location, when considered with other existing public dance hall permits in the same general area, is not detrimental to the health, safety, or welfare of the public.

~~(D)~~D. On all permits issued for premises where an ABC license has not been issued, or has been revoked, the ~~e~~County ~~m~~Manager shall consider the criteria set forth under Title 4, Section 31 of the Code of Virginia, 1950, as amended.

(5-28-69)

**§ 36-5. Application for ~~p~~Permit.**

~~(A)~~A. Application for a permit shall be made to the ~~e~~County ~~m~~Manager, or his designee.

~~(B)~~B. The ~~e~~County ~~m~~Manager shall prescribe the procedures and forms required for application for a permit.

(5-28-69)

**§ 36-6. Period of ~~p~~Permit; ~~r~~Renewal.**

A permit shall be issued for a period of three hundred sixty-five (365) days from the date of issuance, and shall be renewed in the same manner as the obtaining of a new permit. Application for renewal shall be made no less than thirty (30) days prior to the expiration of the current permit. Notice to show cause for a denial of the renewal shall be given no less than twenty (20) days prior to the expiration of the current permit. Anyone having reasons for denial of the permit shall state their reasons in writing to the ~~e~~County ~~m~~Manager no less than ten (10) days prior to the expiration of the current permit.

(5-28-69; 3-3-73)

**§ 36-7. Revocation of ~~p~~Permit.**

The ~~e~~County ~~m~~Manager may revoke any permit previously issued upon the finding of reasonable cause to believe one or more of the following:

~~(A)~~A. That the premises for which the permit was issued does not conform with all applicable ordinances and regulations of Arlington County and laws and regulations of the Commonwealth of Virginia.

~~(B)~~B. That the operation of the public dance hall under a permit issued has been detrimental to the health, welfare, or safety of the community or the people of the community, or that the behavior at the public dance hall has resulted in breaches of the peace or that the operation of the dance hall has been in a disorderly manner.

~~(C)~~C. That inspection on the direction of the ~~e~~County ~~m~~Manager or the police of Arlington County has been hampered or obstructed in any way at any time during the day whether the dance hall was in operation or not, during the night when the dance hall is in operation.

~~(4)D.~~ In revoking a permit at any premises where an ABC license has not been issued or has been revoked, the ~~e~~County ~~m~~Manager shall consider the criteria set forth under Title 4, Section 31 of the Code of Virginia, 1950, as amended, and may revoke for a violation thereof.

~~(5)E.~~ Upon revocation of a permit by the ~~e~~County ~~m~~Manager, further application by the original holder shall not be considered for a period of three hundred sixty-five (365) days from the effective date of revocation.  
(5-28-69)

**§ 36-8. Procedure for ~~r~~Revocation of ~~p~~Permits for ~~p~~Public ~~d~~Dance ~~h~~Halls.**

~~(1)A.~~ The ~~e~~County ~~m~~Manager shall not revoke a permit for a public dance hall until the holder of the permit has been given notice as herein provided and the ~~e~~County ~~m~~Manager has held a public hearing on the issue of revocation.

~~(2)B.~~ Such hearing shall not be conducted prior to the service of a ten-~~(10)~~ day notice of such hearing by certified mail, return receipt requested, on the holder of the permit at the address indicated on the application for the permit.

~~(a)1.~~ Failure of the U.S. Post Office to serve certified mail on the applicant at the address on the application when no change of address has been filed with the ~~e~~County ~~m~~Manager is considered sufficient notice for the conduct of the hearing.

~~(b)2.~~ Personal service by an agent of the ~~e~~County ~~m~~Manager on the holder of the permit or his agent or employee at the premises for which the permit is granted, shall be deemed sufficient notice.

~~(3)C.~~ The notice of the hearing shall set forth the grounds to be relied upon by the ~~e~~County ~~m~~Manager for the determination of the question of revocation, but need not set forth the details of the evidentiary matter in support thereof.

~~(4)D.~~ The ~~e~~County ~~m~~Manager shall conduct the hearing as an informal administrative hearing and may hear new and additional evidence beyond that set forth in the notice, and the applicant may be given, if requested, ten (10) days to file affidavits of rebuttal to such new changes which will not, however, prejudice the ~~e~~County ~~m~~Manager from calling before him the affiants and subjecting them to expiration.  
(5-28-69)

**§ 36-9. Appeals from ~~a~~Actions of the ~~e~~County ~~m~~Manager.**

~~(1)A.~~ Every applicant or holder of a permit for a public dance hall who is aggrieved by the decision of the ~~e~~County ~~m~~Manager in refusing to issue a permit or in revoking an existing permit, shall be entitled within ten (10) days of such decision to file an appeal with the ~~e~~County ~~b~~Board of Arlington County for a review of the decision of the ~~e~~County ~~m~~Manager.

~~(2)B.~~ Any citizen aggrieved by the action of the ~~e~~County ~~m~~Manager in the issuance of a permit may, within ten (10) days of the issuance of such permit, appeal to the ~~e~~County ~~b~~Board for a review of the decision of the ~~e~~County ~~m~~Manager.  
(5-28-69)

**§ 36-10. Rules and ~~r~~Regulations for ~~e~~Operation of ~~p~~Public ~~d~~Dance ~~h~~Halls.**

~~(1)A.~~ It is the responsibility of the holder of a permit to see that all rules and regulations are obeyed on the premises for which a permit is issued, and to see that unobstructed admittance is provided at all times for agents of the ~~e~~County ~~m~~Manager or law enforcement officers for observation of compliance with all applicable ordinances and regulations of Arlington County and laws and regulations of the Commonwealth of Virginia.

~~(2)B.~~ Dancing shall be stopped at such times as person participating therein become disruptive of the public peace or good order of the establishment.

~~C~~ Dancing shall be permitted only between the hours of 5:00 p.m. and 2:00 a.m. Use of the public dance hall area for the purpose of dancing shall not be permitted between the hours of 2:00 a.m. and 5:00 p.m. (5-28-69; Ord. No. 91-3, 3-2-91)

**§ 36-11. Penalties.**

In addition to the procedures set forth for revocation of a permit and independent thereof, any person violating any of the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than fifty dollars (\$50.00), nor more than five hundred dollars (\$500.00) for each offense. (5-28-69)

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Chapter 37

RELOCATION ASSISTANCE IN REAL PROPERTY ACQUISITIONS\*

\* **Editors Note:** Ord. No. 83-30, adopted Nov. 19, 1983 enacted Ch. 37, §§ 37-1--37-11, to read as herein set forth. The former provisions of Ch. 37, § 37-1, relative to the keeping of inoperative automobiles and parts thereof on residential property, have been deemed by the editors to be superseded by provisions of Ord. No. 85-43, adopted Dec. 7, 1985, and effective Feb. 1, 1986, codified as § 10-22. Said former section 37-1 was derived from legislation adopted and effective May 28, 1969.

§ 37-1. How eChapter eCited.

§ 37-2. Purpose and dDeclaration of pPolicy.

§ 37-3. Application of eChapter.

§ 37-4. Definitions.

§ 37-5. Payments for mMoving and rRelocation eExpenses.

§ 37-6. Additional pPayments to eEnable dDisplaced pPersons to aAcquire dDwellings.

§ 37-7. Additional pPayments to eCertain pPersons nNot eEligible for pPayments under section § 37-6.

§ 37-8. Administration of rRelocation aAssistance pPrograms and pPayments.

§ 37-9. Funds for eCarrying oOut pProvisions of this eChapter.

§ 37-10. Authority of aAgency wWhere rReplacement hHousing nNot aA available;

rRequiring pPerson to mMove.

§ 37-11. Rules and rRegulations.

§ 37-1. How eChapter eCited.

This chapter may be cited as the "rRelocation Assistance in Real Property Acquisitions Ordinance."  
(Ord. No. 83-30, 11-19-83)

§ 37-2. Purpose and dDeclaration of pPolicy.

The purpose of this chapter is to establish a policy to provide relocation assistance to certain persons who are displaced as a result of locally funded eCounty programs or projects involving the acquisition of real property.  
(Ord. No. 83-30, 11-19-83)

§ 37-3. Application of eChapter.

~~(A)~~ The provisions of this chapter shall be applicable to the acquisition of real property by the County in projects or programs in which only eCounty funds are used and for which a resolution to acquire said real property by eminent domain proceedings has been adopted by the eCounty.

~~(B)~~ This chapter shall not apply to acquisitions by the County which are voluntarily initiated or negotiated by the seller under no threat of condemnation, where property is dedicated pursuant to the provisions of eChapter 11 of Title 15.1, Virginia Code Annotated (1950), or where property is voluntarily dedicated or donated for no consideration; provided, however, that the provisions of this chapter shall apply for the benefit of persons, other than the owner, who are actually and lawfully occupying the real property to be acquired and who have been occupants thereof for at least ninety (90) days prior to the initiation of negotiations for acquisition notwithstanding that said real property was acquired without the eminent domain resolution required by ~~sub~~section ~~A~~(~~a~~) of this section.  
(Ord. No. 83-30, 11-19-83)

## § 37-4. Definitions.

~~As used in this chapter the term~~The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

“County” means ~~T~~the County Board of Arlington County, Virginia.

“Person” means any individual, partnership, corporation, or association.

“Displaced person” means any person, who, on or after March 25, 1983, moves from real property, or moves such person's personal property from real property, as a result of the acquisition of such real property, in whole or in part, or as the result of the written order of the County to vacate real property, for any program or project undertaken by the County; and solely for the purposes of § 37-5 ~~A~~(~~a~~) and ~~B~~(~~b~~), as a result of the acquisition of or as the result of the written order of the County to vacate other real property on which such person conducts a business operation, for such program or project.

“Business” means any lawful activity conducted primarily:

- (1) For the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;
- (2) For the sale of services to the public;
- (3) By a nonprofit organization.

“Mortgage” means such classes of liens as are commonly given to secure advances on or the unpaid purchase price of, real property, together with the credit instruments, if any, secured thereby.  
(Ord. No. 83-30, 11-19-83)

§ 37-5. Payments for ~~m~~Moving and ~~r~~Relocation ~~e~~Expenses.

~~(a)~~A. Whenever the acquisition of real property for a program or project undertaken by the County will result in the displacement of any person, on or after March 25, 1983, the County shall make fair and reasonable relocation payments to displaced persons as required by this chapter for:

- ~~(1)~~ Actual reasonable expenses in moving himself, such person's family, business, or other personal property;
- ~~(2)~~ Actual direct losses of tangible personal property as a result of moving or discontinuing a business but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property as determined by the County; and
- ~~(3)~~ Actual reasonable expenses in searching for a replacement business.

~~(b)~~B. Any displaced person eligible for payments under subsection ~~A~~(~~a~~) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection ~~A~~(~~a~~) of this section may receive a moving expense allowance, determined according to a schedule established by the County, not to exceed ~~three hundred dollars~~ (\$300.00); and a dislocation allowance of ~~two hundred dollars~~ (\$200.00).

~~(c)~~C. Any displaced person eligible for payments under subsection ~~A~~(~~a~~) of this section who is displaced from such person's place of business and who elects to accept the payment authorized by this subsection in lieu of the payment authorized by subsection ~~A~~(~~a~~) of this section, may receive a fixed payment in the amount equal to the average annual net earnings of the business except that such payment shall not be less than ~~twenty-five hundred dollars~~ (\$2,500.00) nor more than ~~ten thousand dollars~~ (\$10,000.00). No payment shall be made under this subsection unless the County is satisfied that the business:

(1.) cannot be relocated without a substantial loss of its existing patronage, and

(2.) is not a part of a commercial enterprise having at least one (1) other establishment not being acquired by the County which is engaged in the same or similar business.

For purposes of this subsection, the term "average annual net earnings" means one-half (1/2) of any net earnings of the two (2) taxable years immediately preceding the taxable year in which such business moves from the real property acquired for such project, or during such other period as the County determines to be more equitable for establishing such earnings, and includes any compensation paid by the business to the owner, or the owner's spouse or dependents during such period.  
(Ord. No. 83-30, 11-19-83)

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§ 37-6. Additional Payments to Enable Displaced Persons to Acquire Dwellings.

(a)A. In addition to payments otherwise authorized by this chapter, the County shall make an additional payment not in excess of fifteen thousand dollars (\$15,000.00) to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than one hundred eighty (180) days prior to the initiation of negotiations for the acquisition of the property. Such additional payment shall include the following elements:

(1.) The amount, if any, which when added to the acquisition cost of the dwelling acquired, equals the reasonable cost of a comparable replacement dwelling which is a decent, safe, and sanitary dwelling adequate to accommodate such displaced person, reasonably accessible to public services and places of employment and available on the private market.

(2.) The amount, if any, which will compensate such displaced person for any increased interest costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the County was encumbered by a bona fide mortgage which was a valid lien, on such dwelling for not less than one hundred eighty (180) days prior to the initiation of negotiations for the acquisition of such dwelling. Such amount shall be equal to the excess in the aggregate interest and other debt service costs of that amount of the principal of the mortgage on the replacement dwelling which is equal to the unpaid balance of the mortgage on the acquired dwelling, over the remainder term of the mortgage on the acquired dwelling, reduced to discounted present value. The discount rate shall be the prevailing interest rate paid on savings deposits by commercial banks in the general area in which the replacement dwelling is located.

(3.) Reasonable expenses incurred by such displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

(b)B. The additional payment authorized by this section shall be made only to such a displaced person who purchases and occupies a replacement dwelling which is decent, safe, and sanitary not later than the end of the one (1) year period beginning on the date on which such person receives final payment of all costs for the acquired dwelling, or on the date on which such person moves from the acquired dwelling, whichever is the later date.  
(Ord. No. 83-30, 11-19-83)

§ 37-7. Additional Payments to Certain Persons Not Eligible for Payments under § 37-6.

In addition to amounts not otherwise authorized by this chapter, the County shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under § 37-6 which dwelling was actually and lawfully occupied by such displaced person for not less than ninety (90) days prior to the initiation of negotiations for acquisition of such dwelling. Such payment shall be either:

(a)A. The amount necessary to enable such displaced person to lease or rent for a period not to exceed four (4) years, a decent, safe, and sanitary dwelling of standards adequate to accommodate such

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person in areas not generally less desirable in regard to public utilities and public and commercial facilities, and reasonably accessible to such person's place of employment but not to exceed four thousand dollars (\$4,000.00), or

~~(2)B.~~ The amount necessary to enable such person to make a down payment, including incidental expenses described in § 37-6.A.3-~~(a)(3)~~, on the purchase of a decent, safe, and sanitary dwelling of standards adequate to accommodate such person in areas not generally less desirable in regard to public utilities and public and commercial facilities, but not to exceed four thousand dollars (\$4,000.00), except that if such amount exceeds two thousand dollars (\$2,000.00), such person must equally match any such amount in excess of two thousand dollars (\$2,000.00) in making the down payment.

(Ord. No. 83-30, 11-19-83)

§ ~~37-8.~~ Administration of ~~r~~Relocation ~~a~~Assistance ~~p~~Program and ~~p~~Payments.

The County Manager shall administer the relocation assistance and payments program.

(Ord. No. 83-30, 11-19-83)

§ ~~37-9.~~ Funds for ~~e~~Carrying ~~o~~ut ~~p~~Provisions of this ~~e~~Chapter.

Funds appropriated or otherwise available to the County for the acquisition of real property or any interest therein for a particular program or project shall be available also for obligation and expenditure to carry out the provisions of this chapter as applied to that program or project.

(Ord. No. 83-30, 11-19-83)

§ ~~37-10.~~ Authority of ~~a~~Agency ~~w~~Where ~~r~~Replacement ~~h~~Housing ~~n~~Not ~~a~~Available; ~~r~~Requiring ~~p~~Person to ~~m~~Move.

~~(a)A.~~ If a project cannot proceed to actual construction because comparable replacement sale or rental housing is not available, and it is determined by the County Manager that such housing cannot otherwise be made available, the County Manager may take such action as is necessary or appropriate to provide such housing by use of funds authorized for such project.

~~(b)B.~~ No person shall be required to move from such person's dwelling on or after March 25, 1983, on account of any project unless the ~~e~~County is satisfied that replacement housing is available to such person.

(Ord. No. 83-30, 11-19-83)

§ ~~37-11.~~ Rules and ~~r~~Regulations.

The County Manager shall promulgate such rules and regulations as are necessary to carry out the provisions of this chapter.

(Ord. No. 83-30, 11-19-83)

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**Chapter 38**

**RESERVED\***

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\* **Editors Note:** Former Ch. 38, in its entirety, was repealed by Ord. No. 02-5, enacted April 20, 2002, which also enacted, in lieu thereof, a new Ch. 38.1 as herein set forth. The repealed provisions pertained to water supply emergency. The user is directed to current Ch. 38.1 for provisions pertaining to water supply emergency.

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ARLINGTON COUNTY CODE

Chapter 38.1

WATER SUPPLY EMERGENCIES\*

\* **Editors Note:** Ord. No. 02-5, adopted April 20, 2002, repealed Ch. 38, in its entirety, which pertained to the water supply emergency and enacted provisions designated as Ch. 38.1 to read as herein set out.

Article I. General

- § 38.1-~~1~~.1. Title.
- § 38.1-~~1~~.2. Purpose.

Article II. Definitions

- § 38.1-~~32~~.1. Water ~~s~~Shortage ~~e~~Condition.
- § 38.1-~~42~~.2. Water ~~s~~Supply ~~e~~Emergency.

Article III. Water Shortage Conditions

- § 38.1-~~53~~.1. Declaration of a ~~w~~Water ~~s~~Shortage ~~e~~Condition.
- § 38.1-~~63~~.2. Issuance of ~~v~~Voluntary ~~r~~Restrictions or ~~r~~Recommended ~~w~~Water ~~e~~Conservation ~~p~~Practices.
- § 38.1-~~73~~.3. Rescission of a ~~w~~Water ~~s~~Shortage ~~e~~Condition.

Article IV. Water Supply Emergencies

- § 38.1-~~84~~.1. Declaration of a ~~w~~Water ~~s~~Supply ~~e~~Emergency.
- § 38.1-~~94~~.2. Application of ~~w~~Water ~~s~~Supply ~~e~~Emergency ~~r~~Restrictions.
- § 38.1-~~104~~.3. Exemption of ~~e~~Essential ~~u~~Uses for ~~p~~Public ~~h~~Health, ~~s~~Safety or ~~w~~Welfare.
- § 38.1-~~114~~.4. Restrictions or ~~p~~Prohibitions to ~~a~~Address a ~~w~~Water ~~s~~Supply ~~e~~Emergency.
- § 38.1-~~124~~.5. Rescission of ~~r~~Restrictions or ~~p~~Prohibitions.
- § 38.1-~~134~~.6. Notification of ~~p~~Promulgation or ~~r~~Rescission of ~~m~~Mandatory ~~r~~Restrictions and ~~p~~Prohibitions.
- § 38.1-~~147~~.7. Waiver of ~~r~~Restrictions or ~~p~~Prohibitions.
- § 38.1-~~154~~.8. Violations of this ~~e~~Chapter.
- § 38.1-~~164~~.9. Penalties.

ARTICLE I.

GENERAL

§ 38.1-~~1~~.1. Title.

This chapter shall be referred to as the "Water Supply Emergency Ordinance of Arlington County, Virginia."  
(Ord. No. 02-5, § 1, 4-20-02)

§ 38.1-~~1~~.2. Purpose

The purpose of this chapter is to provide for the necessary curtailment of water usage through voluntary and/or mandatory restrictions or prohibitions during a water shortage condition or water supply emergency affecting the County and its citizens.

(Ord. No. 02-5, § 1, 4-20-02)

## ARTICLE II.

### DEFINITIONS

#### § 38.1-~~32~~-1. Water Shortage Condition.

A state wherein the Potomac River Basin is experiencing unusually dry weather, or a state wherein there exists the potential for a water supply emergency if water demands are not reduced.

(Ord. No. 02-5, § 1, 4-20-02)

#### § 38.1-~~42~~-2. Water Supply Emergency.

A condition wherein the present or expected future ability of the County to deliver adequate supplies of potable water to customers to enable normal levels of potable water usage is endangered due to an extended drought and/or disruption in the County's water supply system.

(Ord. No. 02-5, § 1, 4-20-02)

## ARTICLE III.

### WATER SHORTAGE CONDITIONS

#### § 38.1-~~53~~-1. Declaration of a ~~w~~Water ~~s~~Shortage ~~e~~Condition.

Whenever the County Manager determines that a water shortage condition exists, a water shortage condition may be declared by the County Manager. The County Manager, or his designee, shall give reasonable notice to the general public that the County is entering this condition, and notify the citizens of appropriate recommended voluntary restrictions and recommended conservation practices to conserve water and curtail water usage.

(Ord. No. 02-5, § 1, 4-20-02)

#### § 38.1-~~63~~-2. Issuance of ~~v~~Voluntary ~~r~~Restrictions or ~~r~~Recommended ~~w~~Water ~~e~~Conservation ~~p~~Practices.

Upon the declaration of a water shortage condition, the County Manager, or his designee, may issue voluntary restrictions or recommended water conservation practices to help preserve the supply of potable water to Arlington County. Such voluntary restrictions or conservation practices may include, but shall not be limited to, voluntary restriction of one (1) or more of the following:

~~(A)~~A. Watering of shrubbery, trees, lawns, grass, plants, or other vegetation;

~~(B)~~B. Washing of automobiles, trucks, trailers, or other mobile equipment, except in vehicle wash facilities operating with an effective and efficient water recycling system with a prominently displayed sign in public view so stating;

~~(C)~~C. Washing of streets, driveways, parking lots, service station aprons, the exterior of commercial or residential buildings, or any other outdoor surfaces unless such washing is required to eliminate a hazard;

~~(D)~~D. Operation of any ornamental fountain or other structure making similar use of water;

~~(E)~~E. Filling (from an empty or less than three-quarters (3/4) full condition) of swimming and/or wading pools;

~~(F)~~F. Service of drinking water in restaurants, except upon request;

~~(G)~~G. Use of water from fire hydrants, except for health and safety purposes;

~~(8)~~H. Use of water for outdoor recreation;

~~(9)~~I. Request water users to inspect all plumbing and repair all leaks;

~~(10)~~J. Suggestion of a maximum daily consumption goal for citizens to strive to achieve.  
(Ord. No. 02-5, § 1, 4-20-02)

§ 38.1-~~73~~-3. Rescission of a ~~w~~Water ~~s~~Shortage ~~e~~Condition.

At any time after the declaration of a water shortage condition, if the County Manager determines that such a condition no longer exists, then he may declare the rescission of the water shortage condition and the termination of all associated voluntary restrictions and recommended water conservation practices.  
(Ord. No. 02-5, § 1, 4-20-02)

#### ARTICLE IV.

#### WATER SUPPLY EMERGENCIES

§ 38.1-~~84~~-1. Declaration of a ~~w~~Water ~~s~~Supply ~~e~~Emergency.

Whenever the County Board finds that a water supply emergency exists, or is reasonably likely to occur if water conservation measures are not taken, the County Board may adopt an ordinance declaring an emergency and restricting or prohibiting the use of water by County citizens for the duration of such emergency or for a period of time necessary to prevent the occurrence of a water supply emergency. Such a condition may be determined from information obtained by the County Board through the water supplier(s) of the County, information obtained from a recognized authority, recommendations from the County Manager to the County Board, or from other sources as determined appropriate and prudent by the County Board.  
(Ord. No. 02-5, § 1, 4-20-02)

§ 38.1-~~94~~-2. Application of ~~w~~Water ~~s~~Supply ~~e~~Emergency ~~r~~Restrictions.

A water supply emergency may be declared by the County Board for the entire County water distribution system service area, or for portions thereof, as determined appropriate by the County Board.  
(Ord. No. 02-5, § 1, 4-20-02)

§ 38.1-~~104~~-3. Exemption of ~~e~~Essential ~~u~~Uses for ~~p~~Public ~~h~~Health, ~~s~~Safety or ~~w~~Welfare.

The provisions of any ordinance enacted by the County Board declaring a water supply emergency, and any restrictions or prohibitions implemented by the County Manager, shall not apply to any governmental, business, or industrial use which is deemed by the County Manager to be essential to the preservation of the public health, safety, or welfare.  
(Ord. No. 02-5, § 1, 4-20-02)

§ 38.1-~~114~~-4. Restrictions or ~~p~~Prohibitions to ~~a~~Address a ~~w~~Water ~~s~~Supply ~~e~~Emergency.

Upon the adoption of an ordinance by the County Board declaring a water supply emergency, the County Manager is authorized to promulgate and implement, in writing, voluntary or mandatory water consumption restrictions or prohibitions necessary to preserve the ability of the County to provide adequate and acceptable levels of potable water to preserve the public health, safety, and welfare. Water restrictions or prohibitions promulgated by the County Manager may include, but shall not be limited to, restriction or prohibition of one (1) or more of the following activities:

~~(11)~~A. Watering of shrubbery, trees, lawns, grass, plants, or other vegetation;

~~(12)~~B. Washing of automobiles, trucks, trailers, or other mobile equipment, except in vehicle wash

facilities operating with an effective and efficient water recycling system with a prominently displayed sign in public view so stating;

| ~~(13)~~C. Washing of streets, driveways, parking lots, service station aprons, the exterior of commercial or residential buildings, or any other outdoor surfaces unless such washing is required to eliminate a hazard;

| ~~(14)~~D. Operation of any ornamental fountain or other structure making similar use of water;

| ~~(15)~~E. Filling (from an empty or less than three-quarters (3/4) full condition) of swimming and/or wading pools;

| ~~(16)~~F. Service of drinking water in restaurants, except upon request;

| ~~(17)~~G. Use of water from fire hydrants, except for health and safety purposes;

| ~~(18)~~H. Use of water for outdoor recreation;

| ~~(19)~~I. Air conditioning with units requiring the use of water, with the exception of facilities with heat-sensitive materials or equipment, or where such prohibition would endanger the life or health of the occupants;

| ~~(20)~~J. Use of water for construction purposes, including filling or flushing of water mains for new developments;

| ~~(21)~~K. Use of automatic ice-making machines in hotels and motels;

| ~~(22)~~L. Production or bottling of beverages; and

| ~~(23)~~M. Temporary cessation of public water service.  
(Ord. No. 02-5, § 1, 4-20-02)

| § 38.1-~~124~~.5. Rescission of ~~r~~Restrictions or ~~p~~Prohibitions.

If, at any time after the County Board adopts an ordinance declaring a water supply emergency and the County Board finds that a water supply emergency no longer exists, then the County Board may, by ordinance, declare the water supply emergency ended. At any time during a water supply emergency, the County Manager may, by written declaration, declare the rescission, in whole or in part, of any restrictions or prohibitions promulgated and implemented under ~~Section §~~ 38.1-~~114~~.4. Such declarations by the County Board or the County Manager shall be based upon a factual finding that the ability of the County to deliver acceptable quantities of potable water is no longer limited, or that the extent of the declared emergency is reduced and that the existing restrictions or prohibitions, or some part thereof, are no longer required to protect the public health, safety, and welfare.  
(Ord. No. 02-5, § 1, 4-20-02)

| § 38.1-~~134~~.6. Notification of ~~p~~Promulgation or ~~r~~Rescission of ~~m~~Mandatory ~~r~~Restrictions and ~~p~~Prohibitions.

The County Manager shall notify the general public, and the County Board, when the County Manager promulgates, or rescinds, mandatory restrictions or prohibitions authorized by this chapter or by any ordinance adopted hereunder. Such notification shall describe the mandatory restrictions and prohibitions promulgated or rescinded by the County Manager, the effective date or dates thereof, and the penalties for noncompliance. Such notice to the general public shall be published in a newspaper of general circulation within the County and posted in a public place in the County Manager's office. Such notice shall be deemed due and proper notice to every customer supplied with water by the County.  
(Ord. No. 02-5, § 1, 4-20-02)

| § 38.1-~~14~~.7. Waiver of ~~r~~Restrictions or ~~p~~Prohibitions.

Upon receipt of a specific written request by an individual customer of water supplied by the County, the

County Manager, for good cause shown, including written evidence that the customer is adversely affected in a significant manner not common to other businesses or persons generally, may grant, at such times and upon such terms as the County Manager deems appropriate, a waiver to the customer, which waiver may permit less than full compliance with any of the restrictions or prohibitions promulgated hereunder. No waiver shall be granted unless the County Manager first determines that the public health, safety, and welfare will not be adversely affected by such waiver. All waivers granted by the County Manager shall be reported to the County Board prior to, or at, its next regularly scheduled meeting.

(Ord. No. 02-5, § 1, 4-20-02)

| § 38.1-~~154~~8. Violations of this ~~e~~Chapter.

After adoption by the County Board of an ordinance declaring a water supply emergency, and after promulgation of any mandatory restrictions or prohibitions authorized by this chapter, or by such ordinance, it shall be unlawful for any person to violate any provision of such ordinance, restrictions or prohibitions.

(Ord. No. 02-5, § 1, 4-20-02)

| § 38.1-~~164~~9. Penalties.

| ~~(A)~~A. Any person who violates or fails to comply with any of the provisions of this chapter, or any ordinance enacted hereunder, or any mandatory restrictions or prohibitions promulgated pursuant to this chapter, or pursuant to any ordinance enacted hereunder, may be charged with a Class 3 misdemeanor and, upon conviction, may be fined as provided in ~~Section §~~ 1-9 of this Code.

| ~~(B)~~B. A separate offense shall be deemed committed each day during which, or on which, a violation of, or noncompliance with, this chapter, or any ordinance enacted hereunder, or any such mandatory restrictions or prohibitions promulgated hereunder, occurs or continues. The imposition of a fine or penalty for a violation of any provision of this chapter, or any ordinance enacted hereunder, or any mandatory restrictions or prohibitions promulgated hereunder shall not excuse the violation or permit it to continue.

| ~~(C)~~C. The County Manager may seek suspension of water service to any violator of this chapter, or any ordinance enacted hereunder, or any mandatory prohibitions or restrictions promulgated hereunder, by injunction, abatement, or other appropriate legal remedy, if the County Manager determines that such action is necessary to prevent any continued or future violation.

(Ord. No. 02-5, § 1, 4-20-02)

ARLINGTON COUNTY CODE

Chapter 39

CIGARETTE TAX

- § 39-1. Short Title.
- § 39-2. Definitions.
- § 39-3. Levy and ~~r~~Rate.
- § 39-4. Methods of ~~e~~Collection.
- § 39-5. Registered Agents.
- § 39-6. Notice of Intention by Retail Dealers.
- § 39-7. Sale of Cigarettes in Vending Machines; Contraband.
- § 39-8. Illegal Acts.
- §§ 39-9, 39-10. Reserved.
- § 39-11. Jeopardy ~~a~~Assessment.
- § 39-12. Erroneous Assessment; Notices and Hearings in the Event of Sealing of Vending Machines or Seizure of Contraband Property.
- § 39-13. Disposal of Seized Property.
- § 39-14. Extensions.
- § 39-15. Penalty for ~~v~~Violations of Chapter.
- § 39-16. Each Violation a Separate Offense.
- § 39-17. Severability.

§ 39-1. Short ~~t~~Title.

This chapter shall be known and may be cited as the “Arlington County Cigarette Tax Ordinance.” (8-3-74; 7-1-78; Ord. No. 85-10, 2-23-85)

§ 39-2. Definitions.

~~For the purpose of this chapter, t~~The following words and ~~phrases terms, when used in this chapter,~~ shall have the following meanings ~~respectively ascribed to them by this section, unless the context clearly indicates otherwise:~~

~~§ 39-2.1 Repealed.~~

~~§ 39-2.2.~~ \_\_\_\_\_ “Carton” ~~shall~~ means s any container, regardless of material used in its construction, that contains packages of cigarettes.

~~§ 39-2.3.~~ \_\_\_\_\_ “Cigarette” ~~shall mean and include~~ means any roll of any size or shape for smoking, whether filtered or unfiltered, with or without a mouthpiece made wholly or partly of cut, shredded or crimped tobacco or other plant or substitute for tobacco, whether the same is flavored, adulterated or mixed with another ingredient, if the wrapper or cover is made of any material other than leaf tobacco or homogenized leaf tobacco, regardless of whether the roll is labeled or sold as a cigarette or by any other name.

~~§ 39-2.3.a.~~ \_\_\_\_\_ “Commissioner of the Revenue” ~~shall~~ means s the Commissioner of the Revenue of Arlington County, Virginia, and any of the Commissioner's ~~duly authorized deputies or agents~~ designees.

~~§ 39-2.4.~~ \_\_\_\_\_ “County” ~~shall~~ means s Arlington County, Virginia.

~~§ 39-2.5.~~ \_\_\_\_\_ “Dealer” ~~shall mean and include~~ means every manufacturer, manufacturer's representative, self-wholesaler, wholesaler, retailer, vending machine operator, public warehouseman or other person who shall sell,

receive, store, possess, distribute or transport cigarettes within or into the County.

~~§ 39-2.6.~~ \_\_\_\_\_ “Package” ~~shall~~ means any container, regardless of the material used in its constructions, in which separate cigarettes are placed without such cigarettes being placed into any container within the package. Packages are those containers of cigarettes from which individual cigarettes are ordinarily taken when they are consumed by their ultimate user. Ordinarily a package contains twenty (20) cigarettes; however, "package" includes those containers in which fewer or more than twenty (20) cigarettes are placed.

~~§ 39-2.7.~~ \_\_\_\_\_ “Person” ~~shall mean and include~~ means any individual, firm, unincorporated association, company, corporation, joint stock company, group, agency, syndicate, trust or trustee, receiver, fiduciary, partnership and conservator. The word "person" as applied to a partnership, unincorporated association or other joint venture means the partners or members thereof, and as applied to a corporation, shall include all the officers and directors thereof.

~~§ 39-2.8.~~ \_\_\_\_\_ “Place of business” ~~shall mean and include~~ means any place where cigarettes are sold, placed, stored, offered for sale or displayed for sale or where cigarettes are brought or kept for the purpose of sale, consumption or distribution, including vending machines, by a dealer within the County.

~~§ 39-2.9.~~ \_\_\_\_\_ “Registered agent” ~~shall mean and include~~ means every dealer and other person who shall be required to report and collect the tax on cigarettes under the provisions of the ~~C~~chapter.

~~§ 39-2.10.~~ \_\_\_\_\_ “Retail dealer” ~~shall mean and include~~ means every person who, in the usual course of business, purchases or receives cigarettes from any source whatsoever for the purpose of sale within the County to the ultimate consumer; or any person who, in the usual course of business, owns, leases, or otherwise operates within his own place of business, one (1) or more cigarette vending machines for the purpose of sale within the County of cigarettes to the ultimate consumer; or any person who, in any manner, buys, sells, stores, transfers, or deals in cigarettes for the purpose of sale within the County to the ultimate consumer, who is not licensed as a wholesaler, or vending machine operator.

~~§ 39-2.11.~~ \_\_\_\_\_ “Sale” or “~~S~~sell” ~~shall mean and include~~ means every act or transaction, regardless of the method or means employed, including barter, exchange, or the use of vending machines or other mechanical devices or a criminal or tortious act whereby either ownership or possession, or both, of any cigarettes shall be transferred within the County from a dealer as herein defined to any other person for a consideration.

~~§ 39-2.11.a.~~ \_\_\_\_\_ “Self-~~W~~wholesaler” ~~shall mean and include~~ means any person who owns and operates one (1) or more retail stores and purchases cigarettes directly from a dealer, as herein defined, and whose function it is to store or warehouse cigarettes for distribution to his several retail outlets for sale at retail.

~~§ 39-2.12.~~ \_\_\_\_\_ “Stamp” ~~shall mean and include~~ means a small, gummed piece of paper or decalcomania used to evidence payment of the tax levied under §§ 58.1-1000 et seq. of the Virginia Code as amended (1950) and officially designated as a Virginia revenue stamp.

~~§ 39-2.13.~~ \_\_\_\_\_ “Store” or “~~S~~storage” ~~shall mean and include~~ means the keeping or retention of cigarettes in this County for any purpose except sale in the regular course of business.

~~§ 39-2.13.a.~~ \_\_\_\_\_ “Treasurer” ~~shall~~ means the Treasurer of Arlington County and any of the Treasurer's ~~duly authorized deputies and agents designees~~.

~~§ 39-2.14.~~ \_\_\_\_\_ “Use” ~~shall mean and include~~ means the exercise of any right or power over any cigarettes or packages of cigarettes incident to the ownership or possession of those cigarettes or packages of cigarettes including any transaction where possession is given or received or otherwise transferred, other than a sale.

~~§ 39-2.15.~~ \_\_\_\_\_ “User” ~~shall~~ means any person who exercises any right or power over any cigarettes or packages of cigarettes subject to the provisions of this ~~C~~chapter incident to the ownership or possession of those cigarettes or packages of cigarettes or any transaction where possession is given or received or otherwise transferred, other than a sale.

~~§ 39-2.15.a.~~ \_\_\_\_\_ “Wholesaler” ~~shall mean and include~~ means any person who sells cigarettes to dealers, as herein defined, for the purpose of resale only, or who sells at wholesale to institutions, commercial or industrial users. (8-3-74; 7-1-78; Ord. No. 85-10, 2-23-85)

**§ 39-3. Levy and ~~Rate~~.**

In addition to all other taxes of every kind now or hereinafter imposed by law, there is hereby levied and imposed by the eCounty upon every person who sells or uses cigarettes within the eCounty from and after the effective date of this chapter an excise tax equivalent to twenty cents (\$0.20) for each package containing twenty (20) cigarettes and ten (10) mills for each cigarette contained in packages of fewer or more than twenty (20) cigarettes sold or used within the eCounty effective September 1, 2004; and an excise tax equivalent to thirty cents (\$0.30) for each package containing twenty (20) cigarettes and fifteen (15) mills for each cigarette contained in packages of fewer or more than twenty (20) cigarettes sold or used within the eCounty effective July 1, 2005. The tax shall be paid and collected in the manner and at the time hereinafter prescribed; provided, that the tax payable for each cigarette or cigarette package sold or used within the eCounty shall be paid but once. The tax hereby levied shall not apply to free distribution of sample cigarettes in packages containing five (5) or fewer cigarettes. (8-3-74; 7-1-78; Ord. No. 85-10, 2-23-85; Ord. No. 04-22, 7-10-04)

**§ 39-4. Methods of eCollection.**

A. The tax imposed by this Chapter shall be paid by each dealer or other person liable for the tax under a reporting method deemed by the Commissioner to carry out the provisions of this Chapter. Each dealer or other person liable for the tax is hereby required, and it shall be his duty to collect and pay the tax and report separately for packages of twenty (20) cigarettes and packages of cigarettes which contain fewer or more than twenty (20) cigarettes on forms prescribed for this purpose by the Board Commissioner (1) the quantity of cigarettes sold and delivered to (a) each registered agent in the County appointed by the Commissioner for which no tax was collected, (b) each manufacturer's representative, and (c) each separate person and place of business within the County during the preceding calendar or fiscal month; and, (2) the quantity of cigarettes received during the preceding calendar or fiscal month for distribution in the County; and (3) the quantity of cigarettes for distribution in the County on hand; and (4) such further information as the ~~administrator of the~~ Commissioner may require for the proper administration and enforcement of this Chapter for the determination of the exact number of cigarettes in the possession of each dealer or user.

B. Each dealer or other person liable for the tax shall file such reports with the Commissioner and pay the tax due to the County between the first (1st) and twentieth (20th) day after the close of each calendar or fiscal month.

C. When, upon examination and audit of any invoices, records, books, canceled checks or other memoranda touching on the purchase, sale, receipt, storage, exchange or possession of tobacco products taxed herein, any dealer or other person liable for the tax is unable to furnish evidence to the eCommissioner of sufficient tax payments to cover cigarettes which were sold, used, stored, received, purchased or possessed by him, the prima facie presumption shall arise that such cigarettes were received, sold, used, stored, purchased or possessed by him without the proper tax having been paid. The eCommissioner shall, from the result of such examination and audit based upon the best information available, assess the tax due and unpaid and shall impose a penalty of ten percent (10%) ~~percent~~ of the gross tax due which shall be added to the tax due. Interest shall accrue on taxes due and delinquent prior to June 30, 1999, at the rate of three-quarters percent (0.75%) ~~(3/4) percent~~ per month of the gross tax and penalty due, up to June 30, 1999, and as prescribed in § 27-3 thereafter. Interest on taxes due and payable after July 1, 1999, shall accrue interest as prescribed in § 27-3.

D. When any dealer or other person liable for the tax files a false or fraudulent report or fails to file a report or fails to perform any act or performs any act to evade payment of the tax, the eCommissioner shall administratively assess the tax due and unpaid and impose a penalty of fifty percent (50%) ~~percent~~. The dealer or other person liable for the tax shall be notified by certified mail of such deficiency and such tax, penalty and interest assessed shall be due and payable within ten (10) days after notice of such deficiency has been issued. Every dealer or other person liable for the tax shall examine each package of cigarettes to ensure that the Virginia revenue stamp

has been affixed thereto prior to offering them for sale in Arlington County.

**E.** The dealer or other person liable for the tax shall be notified by certified mail of such deficiency and such tax, penalty and interest assessed shall be due and payable within ten (10) days after notice of such deficiency has been issued. No interest shall be imposed on such unpaid tax and penalty assessed on or after July 1, 1999. Every dealer or other person liable for the tax shall examine each package of cigarettes to ensure that the Virginia revenue stamp has been affixed thereto prior to offering them for sale in Arlington County.

**F.** Any dealer or other person liable for the tax found to have had untaxed cigarettes which have been lost whether by negligence, theft, or any other unaccountable loss, shall be liable for and shall pay the tax due thereon.

**G.** It shall be duty of each dealer or other person liable for the tax and he is hereby required to maintain and keep for a period of three (3) years, not including the current calendar year, records of cigarettes received, sold, stored, possessed, transferred or handled by him in any manner whatsoever, to make all such records available for audit, inspection and examination and to make available at all reasonable times, the means, facilities and opportunity for making such audit, inspection or examination upon demand of the Commissioner.  
(8-3-74; 7-1-78; Ord. No. 85-10, 2-23-85; Ord. No. 99-16, 7-10-99; Ord. No. 99-19, 8-14-99)

#### **§ 39-5. Registered Agents.**

Any dealer or other person liable for the tax who shall sell, buy, store, possess, distribute or transport cigarettes within, or into the County, shall first make application to the Commissioner to qualify as a registered agent. Such application blank, which shall be supplied upon request, shall require such information relative to the nature of the business engaged in by said applicant as the Commissioner deems necessary. Such applicant shall provide a surety bond to the County of one hundred and fifty percent (150%) of his average monthly tax liability or fifty thousand dollars (\$50,000.00), whichever is less, with a surety company authorized to do business in the ~~State~~ **Commonwealth** of Virginia. Such bond shall be so written that, on timely payment of the premium thereon it shall continue in force from year to year. Any applicant whose place of business is outside the County shall automatically, by filing his application, submit himself to the County's legal jurisdiction and appoint the Commissioner as his agent for any service of lawful process.

Upon receipt of the properly completed application, and the required surety bond executed, the Commissioner shall issue to said applicant a permit to qualify him as a registered agent to purchase, sell, use, store, possess, distribute or transport cigarettes within or into the County.

Registered agents shall agree to the reporting and payment requirements placed upon them by this ~~C~~chapter and the rules and regulations as from time to time may be promulgated by the Commissioner. When any registered agent's monthly report and payment of the tax is not received within the dates prescribed, the Commissioner shall impose a late reporting penalty of ten percent (10%) of the gross tax due or ten dollars (\$10.00) whichever is greater, but in no event more than five hundred dollars (\$500.00). The Commissioner may also require such registered agents to provide proof that they have complied with all applicable State laws to legally conduct such business and to file financial statements showing all assets and liabilities. The Commissioner may revoke any registered agent's permit if such bond, as required, is impaired for any reason.

After adoption of this ~~C~~chapter, dealers or other persons liable for that tax who shall sell, use, store, ~~precess~~ **possess**, distribute or transport tobacco products within or into the County, shall be allowed thirty (30) days to become qualified as a registered agent.  
(8-3-74; 7-1-78; Ord. No. 85-10, 2-23-85)

#### **§ 39-6. Notice of Intention by Retail Dealers.**

Retail dealers who shall sell, offer for sale, store, possess, distribute, purchase, receive or transport cigarettes in or into the County, shall notify the Commissioner, in writing, of the supplier of such cigarettes and the name and address and the Virginia Retail Sales and Use Certificate of Registration number for each separate place of business.

No retail dealer, as defined herein, who shall have complied with the provisions of this ~~C~~chapter and who purchases only tax paid cigarettes for each separate place of business shall be required to qualify as a registered agent.

(8-3-74; 7-1-78; Ord. No. 85-10, 2-23-85)

### § 39-7. Sale of Cigarettes in Vending Machines; Contraband.

Any cigarettes placed in any coin-operated vending machine shall be presumed for sale within the County. Any vending machine located within the County containing cigarettes upon which the Virginia ~~R~~revenue stamp has not been affixed or containing cigarettes placed so as to not allow visual inspection of the Virginia ~~R~~revenue stamp through the viewing area as provided for by the vending machine manufacturer shall be in violation of this ~~C~~chapter.

Any cigarettes, coin-operated vending machines, counterfeit stamps, or other property found in violation of this ~~C~~chapter shall be declared contraband goods and may be seized by the Commissioner. In addition to any tax due, the dealer or other person liable for the tax possessing such untaxed cigarettes shall be subject to civil and criminal penalties herein provided.

In lieu of seizure, the Commissioner may seal such vending machines to prevent continued illegal sale or removal of such cigarettes. The removal of such seal from a vending machine by an unauthorized person shall be a violation of this ~~C~~chapter. Nothing in this ~~C~~chapter shall prevent the seizure of any vending machine at any time after it is sealed.

(8-3-74; 7-1-78; Ord. No. 85-10, 2-23-85)

### § 39-8. Illegal Acts.

It shall be unlawful and a violation of this ~~C~~chapter for any dealer or other person liable for the tax:

A. To perform any act or fail to perform any act for the purpose of evading the payment of any tax imposed by this ~~C~~chapter or of any part thereof, or to fail or refuse to perform any of the duties imposed upon him under the provisions of this chapter or to fail or refuse to obey any lawful order which may be issued under this ~~C~~chapter; or

B. To falsely or fraudulently make, or cause to be made, any invoices or reports, or to falsely or fraudulently forge, alter or counterfeit any stamp, or to procure or cause to be made, forged, altered or counterfeited any such stamp, or knowingly and willfully to alter, publish, pass or tender as true any false, altered, forged or counterfeited stamp or stamps; or

C. To sell, offer for sale, or authorize or approve the sale of any cigarettes upon which the Virginia ~~R~~revenue stamp has not been affixed; or

D. To possess, store, use, authorize or approve the possession, storage or use of any cigarettes in quantities of more than sixty (60) packages upon which the Virginia ~~R~~revenue stamp has not been affixed; or

E. To transport, authorize or approve the transportation of any cigarettes, in quantities of more than sixty (60) packages into or within the County upon which the Virginia ~~R~~revenue stamp has not been affixed, if they are:

1. ~~a~~Not accompanied by a bill of lading or other document indicating the true name and address of the consignor or seller and the consignee or purchaser and the brands and quantity of cigarettes transported; or

2. ~~a~~Accompanied by a bill of lading or other documents which is false or fraudulent in whole or part; or

3. ~~a~~Accompanied by a bill of lading or other document indicating:

~~(i)a.~~ ~~a~~A consignee or purchaser in another state or the District of Columbia who is not authorized by the law of such other jurisdiction to receive or possess such tobacco

products on which the taxes imposed by such other jurisdiction have not been paid unless the tax of the state or district of destination has been paid and said cigarettes bear the tax stamps of that state or district; or

~~(b)~~ A consignee or purchaser in the Commonwealth of Virginia but outside the taxing jurisdiction who does not possess a Virginia Sales and Use Tax Certificate, a Virginia retail tobacco license and, where applicable, both a business license and a retail tobacco license issued by the local jurisdiction of destination; or

F. To reuse or refill with cigarettes any package from which cigarettes have been removed, for which the tax imposed has been theretofore paid; or

G. To remove from any package any stamp with intent to use or cause the same to be used after same have already been used or to buy, sell, or offer for sale or give away any used, removed, altered or restored stamps to any person, or to reuse any stamp which had theretofore been used for evidence of the payment of any tax prescribed by this Cchapter or to sell, or offer to sell, any stamp provided for herein.  
(8-3-74; 7-1-78; Ord. No. 85-10, 2-23-85)

**§§ 39-9, 39-10. Reserved.**

**Editors Note:** Ord. No. 85-10, adopted February 23, 1985, repealed § 39-9 and § 39-10 in their entirety. Section 39-9 pertained to the establishment of the Northern Virginia Cigarette Tax Board and was derived from legislation adopted Aug. 3, 1974, as amended by legislation adopted April 29, 1978, effective July 1, 1978, and by Ord. No. 82-4, adopted Feb. 16, 1982. Section 39-10 pertained to the powers of the NVCTB and was derived from legislation of April 29, 1978 and July 1, 1978.

**§ 39-11. Jeopardy ~~a~~Assessment.**

If the eCommissioner determines that the collection of any tax or any amount of tax required to be collected and paid under this chapter, will be jeopardized by delay, he shall make an assessment of the tax or amount of tax required to be collected and shall mail or issue a notice of such assessment to the taxpayer together with a demand for immediate payment of the tax or of the deficiency in tax declared to be in jeopardy including any penalties and interest provided by law. In the case of a current period, for which the tax is in jeopardy, the eCommissioner may declare the taxable period of the taxpayer immediately terminated and shall cause notice of such finding and declaration to be mailed or issued to the taxpayer together with a demand for immediate payment of the tax based on the period declared terminated and such tax shall be immediately due and payable, whether or not the terms otherwise allowed by the chapter for filing a return and paying the tax have expired.  
(8-3-74; 7-1-78; Ord. No. 85-10, 2-23-85; Ord. No. 99-16, 7-10-99; Ord. No. 99-19, 8-14-99)

**§ 39-12. Erroneous Assessment; Notices and Hearings in the Event of Sealing of Vending Machines or Seizure of Contraband Property.**

Any person assessed by the Commissioner with a cigarette tax, penalties and interest or any person whose cigarettes, vending machines and other property have been sealed or seized under processes of this Cchapter who has been aggrieved by such assessment, seizure, or sealing may file a request for a hearing before the Commissioner for a correction of such assessment and the return of such property seized or sealed.

Where holders of property interest in cigarettes, vending machines or other property are known at time of seizure or sealing, notice of seizure or sealing shall be sent to them by certified mail within twenty-four (24) hours. Where such holders of property interests are unknown at time of seizure or sealing, it shall be sufficient notice to such unknown interest holders to post such notice to a door or wall of the room or building which contained such seized or sealed property. Any such notice of seizure or scaling shall include procedures for an administrative hearing for return of such property seized or sealed as well as affirmative defenses set forth in this section which may be asserted.

Such hearing shall be requested within ten (10) days of the notice of such assessment, seizure, or sealing and shall set forth the reasons why said tax, penalties and interest and cigarettes, vending machines or other property

should be returned or released. Within five (5) days after receipt of such hearing request, the Commissioner shall notify the petitioner by certified mail of a date and time for the informal presentation of evidence at a hearing to be held within fifteen (15) days of the date notification is mailed. Any such request for hearing shall be denied if the assessed tax, penalties and interest have not been paid as required or if the request is received more than ten (10) days from first notice to the petitioner of such seizure or sealing. Within five (5) days after the hearing, the Commissioner shall notify the petitioner, by registered mail, whether his request for a correction has been granted or refused.

Appropriate relief shall be given by the Commissioner if he is convinced by the preponderance of the evidence that the illegal sale or use of such seized cigarettes or vending machines or other property was not intentional on the part of the petitioner, and that said seized cigarettes were in the possession of a person other than the petitioner without the petitioner's consent at the time said cigarettes, vending machines or other property were seized or sealed or that petitioner was authorized to possess such untaxed cigarettes. If the Commissioner is satisfied that the tax was erroneously assessed, he shall correct the assessment and the Treasurer shall refund the amount erroneously assessed together with any interest and penalties paid thereon and shall return any cigarettes, vending machines or other property seized or sealed to the petitioner. Any petitioner who is unsatisfied with the written decision of the Commissioner may, within thirty (30) days of the date of said decision, appeal such decision to the appropriate court in the jurisdiction where the seizure or sealing occurred.  
(8-3-74; 7-1-78; Ord. No. 85-10, 2-23-85)

#### **§ 39-13. Disposal of Seized Property.**

Any seized and confiscated cigarettes, vending machines or other property used in the furtherance of any illegal evasion of the tax may be disposed of by sale or other method deemed appropriate by the Commissioner after any petitioner has exhausted all administrative appeal procedures. No credit from any sale of cigarettes, vending machines, or other property seized shall be allowed toward any tax and penalties assessed.  
(8-3-74; 7-1-78; Ord. No. 85-10, 2-23-85)

#### **§ 39-14. Extensions.**

The eCommissioner, upon a finding of good cause, may grant an extension of time to file a tax report upon written application therefor, until the end of the calendar or fiscal month in which any tax report is due hereunder, for a period not exceeding thirty (30) days. In no case shall a request for extension of time to file a tax report be granted by the eCommissioner when such request is not received within the due date for filing such tax report. Where such extension is granted beyond the end of the calendar or fiscal month in which any tax report is due, hereunder, interest on the tax at a rate specified in § 27-3.  
(8-3-74; 7-1-78; Ord. No. 85-10, 2-23-85; Ord. No. 99-16, 7-10-99; Ord. No. 99-19, 8-14-99)

#### **§ 39-15. Penalty for vViolations of Chapter.**

Any person violating any of the provisions of this eChapter shall be guilty of a Class 1 misdemeanor. Such fine and/or imprisonment shall not relieve any such person from the payment of any tax, penalty, or interest imposed by this eChapter.  
(8-3-74; 7-1-78; Ord. No. 85-10, 2-23-85; Ord. No. 91-34, 9-18-91)

#### **§ 39-16. Each Violation a Separate Offense.**

The sale of any quantity or the use, possession, storage or transportation of more than sixty (60) packages of cigarettes upon which the tax has not been paid shall be and constitute a separate violation. Each continuing day of violation shall be deemed to constitute a separate offense.  
(8-3-74; 7-1-78; Ord. No. 85-10, 2-23-85)

#### **§ 39-17. Severability.**

If any section, phrase, or part of this eChapter should for any reason be held invalid by a court of competent jurisdiction, such decision shall not affect the remainder of the eChapter; and every remaining section, clause, phrase

or part thereof shall continue in full force and effect.  
(8-3-74; 7-1-78; Ord. No. 85-10, 2-23-85)

ARLINGTON COUNTY CODE

Chapter 40

TRANSIENT OCCUPANCY TAX

- § 40-1. Definitions.
- § 40-2. Levy and ~~r~~Rate.
- § 40-3. Exceptions.
- § 40-4. Collection.
- § 40-5. Reports.
- § 40-6. Interest and ~~p~~Penalties.
- § 40-7. Determination of ~~t~~Tax ~~d~~Due by ~~e~~County ~~m~~Manager.
- § 40-8. Cessation of ~~b~~Business; ~~r~~Report and ~~t~~ax ~~d~~Due ~~i~~Immediately.
- § 40-9. County ~~m~~Manager, ~~e~~Other ~~p~~Powers and ~~d~~Duties.
- § 40-10. Penalty.

§ 40-1. Definitions.

~~For the purposes of this chapter, t~~The following words and ~~phrases~~ terms, when used in this chapter, shall have the ~~following~~ meanings ~~respectively~~ ascribed to them by this section unless the context clearly indicates otherwise:

(a) ~~“County mManager” shall mean~~s the ~~e~~County ~~m~~Manager of Arlington County, Virginia, or any of his ~~duly authorized deputies or agents~~ designees.

(b) ~~“Hotel” shall mean~~s any public or private hotel, inn, apartment hotel, hostelry, tourist home or house, motel, rooming house or other lodging place within Arlington County offering lodging for four (4) or more persons at any one time, and the owner and operator thereof, who for compensation, furnishes lodging to any transients as hereinafter defined.

(c) ~~“Room rental” shall mean~~s the total charge made by any such hotel for lodging and/or space furnished any such transient. If the charge made by such hotel to such transient includes any charge for services or accommodations in addition to that of lodging, and/or the use of space, then such portion of the total charge as represents only room and/or space rental shall be distinctly set out and billed to such transient by such hotel as a separate item.

(d) ~~“Transient” shall mean~~s any natural person or individual who for any period of fewer than thirty (30) consecutive days occupies a lodging room in any hotel for which occupancy a charge is made whether such charge is paid by the occupant or by another. Transient shall also mean any natural person or individual who rents a meeting, banquet, or other hotel space for purposes other than lodging for any period of fewer than thirty (30) consecutive days. Contracting and paying for the occupancy of a lodging room or rooms for thirty (30) consecutive days or more, when the lodging room or rooms are occupied by different individuals or by different groups of individuals for fewer than thirty (30) consecutive days constitutes transient occupancy or use of the rooms and is subject to the tax provided by this chapter.  
(7-1-70; 6-4-77; Ord. No. 91-38, 10-26-91; Ord. No. 91-42, 12-7-91; Ord. No. 92-9, 4-4-92; Ord. No. 92-22, 5-16-92)

§ 40-2. Levy and ~~r~~Rate.

In addition to all other taxes of every kind now or hereafter imposed by law, there is hereby imposed and levied on each and every transient a tax equivalent to five and one-quarter ~~percent (5.25%)~~ ~~(5 1/4) percent~~ of the total amount paid for room rental by or for any such transient to any hotel.

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The difference between the receipts from a tax of five and one-quarter ~~percent (5.25%)~~ ~~(5 1/4)~~ and five percent (5%) ~~percent~~ of the total amount paid for room rentals taxed under the previous paragraph shall be designated and spent for the purpose of promotion of tourism and business travel in Arlington County in addition to the amount budgeted by the eCounty in fiscal year 1990 for the promotion of tourism and business travel.  
(7-1-70; 6-4-77; Ord. No. 91-9, 5-15-91)

#### § 40-3. Exceptions.

No tax shall be payable hereunder on room rental paid to any hospital, medical clinic, convalescent home or home for the aged.  
(7-1-70)

#### § 40-4. Collection.

Every person receiving any payment for room rental with respect to which a tax is levied under this chapter shall collect the amount of tax hereby imposed from the transient on whom the same is levied or from the person paying for such room rental, at the time payment for such room rental is made.  
(7-1-70)

#### § 40-5. Reports.

The person collecting any such tax shall make out a report upon such forms and setting forth such information as the eCounty mManager may prescribe and require, showing the amount of room rental charges collected, and the tax required to be collected, and shall sign and deliver the same to the eCounty mManager with a remittance of said tax.

Said reports and remittances shall be made on or before the twentieth (20th) day of the month following each month and covering the amount of tax collected during the preceding month. The first report must be filed not later than October 20, 1970.  
(7-1-70; 10-3-70)

#### § 40-6. Interest and pPenalties.

If any person shall fail or refuse to remit to the eCounty mManager the tax required to be collected and paid under this chapter within the time and in the amount specified in this chapter, there shall be added to such tax by the eCounty mManager a penalty of five percent (5%) ~~percent~~. Interest shall accrue on taxes that remain due and delinquent for a period of one month from the date same are due and payable, prior to June 30, 1999, at the rate of one-half percent (0.5%) ~~(1/2) percent~~ per month, up to June 30, 1999, and as prescribed in § 27-3 thereafter. Interest on taxes due and payable after July 1, 1999, shall accrue as prescribed in § 27-3.  
(7-1-70; Ord. No. 99-16, 7-10-99; Ord. No. 99-19, 8-14-99)

#### § 40-7. Determination of tTax dDue by eCounty mManager.

If any person required to collect and remit the tax imposed by this chapter fails to file a statement and a remittance, or if the eCounty mManager has reasonable cause to believe that an erroneous statement has been filed, the eCounty mManager may proceed to determine the amount due to the eCounty and in connection therewith shall make such investigations and take such testimony and other evidence as may be necessary; provided, however, that notice and opportunity to be heard be given any person who may become liable for the amount owing prior to any determination by the eCounty mManager.  
(7-1-70)

#### § 40-8. Cessation of bBusiness; rReport and tTax dDue iImmediately.

Whenever any person required to collect and pay to the eCounty a tax under ~~section §~~ 40-2 of this chapter, shall quit or otherwise dispose of his business, any tax under the provisions of this chapter shall become

immediately due, and such person shall immediately make a report and pay the tax due.  
(7-1-70)

**§ 40-9. County manager, other powers and duties.**

It shall be the duty of the eCounty manager to ascertain the name of every person operating a hotel in the eCounty, liable for the collection of the tax levied by ~~section §~~ 40-2 of this chapter. The eCounty manager shall have the power to adopt rules and regulations not inconsistent with the provisions of this chapter for the purpose of carrying out and enforcing the payment, collection and remittance of the tax herein levied; and a copy of such rules and regulations shall be on file and available for public examination in the eCounty manager's office. Failure or refusal to comply with any rules and regulations promulgated under this section shall be deemed a violation of this chapter.  
(7-1-70)

**§ 40-10. Penalty.**

Any person violating or failing to comply with any of the provisions of this chapter shall, upon conviction thereof, be fined not more than three hundred dollars (\$300.00), or may be imprisoned for a period not exceeding thirty (30) days, or by both such fine and imprisonment. Each such violation or failure shall constitute a separate offense. Such conviction shall not relieve any such person from the payment, collection or remittance of such tax, penalties and interests, as provided in this chapter.  
(7-1-70)

**ARLINGTON COUNTY CODE**

**Chapter 41**

**RESERVED\***

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\* **Editors Note:** Ord. No. 98-21, adopted June 20, 1998, repealed Ch. 41, in its entirety, which pertained to CATV regulation. The user is directed to new Ch. 41.2, Cable Television Communications.

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ARLINGTON COUNTY CODE

Chapter 41.2

CABLE TELEVISION COMMUNICATIONS

- § 41.2-1. General pProvisions.
- § 41.2-2. Definitions.
- § 41.2-3. Grant of fFranchise.
- § 41.2-4. Applications for iInitial gGrant, rRenewal, eExtension, or mModification of a fFranchise.
- § 41.2-5. Filing fFees.
- § 41.2-6. Provision of eCable sService, qQuality of eCable sService.
- § 41.2-7. Design and eConstruction.
- § 41.2-8. Channels and fFacilities for pPublic, eEducational and gGovernmental uUse, HLeased aAccess.
- § 41.2-9. Consumer pProtection.
- § 41.2-10. Rate rRegulation.
- § 41.2-11. Franchise fFee.
- § 41.2-12. Reports and rRecords.
- § 41.2-13. Indemnification of the eCounty and rResidents.
- § 41.2-14. Performance bBond, sSecurity fFund, rRevocation and tTermination eDue to bBankruptcy.
- § 41.2-15. Transfers.
- § 41.2-16. Open vVideo sSystems.
- § 41.2-17. Rights of iIndividuals pProtected.
- § 41.2-18. Administration.
- § 41.2-19. Miscellaneous pProvisions.

§ 41.2-1. General Provisions.

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~~(A)~~A. *Title.* This Cchapter shall be known and may be cited as the "County Cable Television Ordinance."

~~(B)~~B. *Purpose.*

~~(1.)~~ It is the policy of the Board to provide for the adequate, economical, and efficient delivery of Cable Service to Subscribers, and to protect Subscribers from excessive prices and unfair competition. The following purposes, among others, underlie the provisions set forth in this Cchapter:

~~(A)~~a. Cable Service should be available to as many County residents as possible.

~~(B)~~b. A Cable System should be capable of accommodating both present and reasonably foreseeable future cable-related needs of the County and its residents.

~~(C)~~c. A Cable System should be constructed and maintained during a Franchise term so that changes in technology may be integrated to the maximum extent possible into existing System facilities.

~~(D)~~d. A Cable System should be responsive to the needs and interests of the local community, and should provide the widest possible diversity of information sources and service to the public.

~~(E)~~e. A cable operator should pay fair compensation to the County for the use of local public

rights-of-way, and reimburse the County for costs and expenses incurred as a result of actions requested by a Franchisee for the benefit of the Franchisee.

(2) The County intends that all provisions set forth in this Chapter be construed to serve the public interest and the foregoing public purposes, and that any Franchise issued pursuant to this Chapter be construed to include the foregoing public purposes as integral parts thereof.

(C. Delegation of powers. To the extent permitted by law, the Board may delegate the performance of any act, duty, or obligation, or the exercise of any power, under this Chapter or under any Certificate issued pursuant hereto, to any County employee, officer, department or agency. (Ord. No. 98-21, 6-20-98)

§ 41.2-2. Definitions.

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(a) Definitions and Usage--General. For the purposes of this Chapter, the following terms, phrases, words, and abbreviations shall have the meanings given herein, unless otherwise expressly stated the context clearly indicates otherwise. When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number, words in the singular number include the plural number; and the masculine gender includes the feminine gender. The words "shall" and "will" are mandatory. The word "may" is permissive. Unless otherwise expressly stated, words not defined herein shall be given the meaning set forth in Title 47 of the United States Code, as amended, and, if not defined therein, words shall be given their common and ordinary meaning.

(b) "Access Channel" means Any Channel on a Cable System set aside by a Franchisee for public, educational, or governmental use.

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(c) "Administrator" means The County Manager of Arlington County or his duly appointed designee(s).

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(d) "Affiliate" means Any Person who owns or controls, is owned or controlled by, or is under common ownership or control with a Franchisee.

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(e) "Basic Service" means Any service tier that includes the retransmission of all signals of locally-received television broadcast stations provided to any Subscriber (except a signal secondarily transmitted by satellite carrier beyond the local service area of such station, regardless of how such signal is ultimately received by the Cable System), any public, educational and governmental access signals, and any additional video programming signals added to the basic tier by a Franchisee.

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(f) "Board" means The County Board of Arlington County, Virginia.

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(g) "Cable Act" means The Cable Communications Policy Act of 1984, 47 U.S.C. §§ 521 et seq., as amended from time to time.

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(h) "Cable Programming Service" means Any video programming provided over a Cable System, other than Basic Service and video programming offered on a pay-per-channel or pay-per-program basis.

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(i) "Cable Service" means:

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(1) The one-way transmission to Subscribers of video programming or other programming services; and

(2) Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service, including but not limited to Internet access.

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(j) "Cable System" or "System" means Aa facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable television service which includes video programming and which is provided to multiple Subscribers within the County, but such term

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does not include (i) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations; (ii) a facility that serves Subscribers without using any Public Rights-of-Way; (iii) a facility of a common carrier which is subject, in whole or in part, to the provisions of Title II of the Communications Act, except that such facility shall be considered a Cable System if such facility is used in the transmission of video programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services; (iv) an open video system that complies with 47 U.S.C. § 573; or (v) any facilities of any electric utility used solely for operating its electric utility system. A reference to a Cable System in this Chapter refers to any part of such System, including, without limitation, Converters. The foregoing definition of "Cable System" shall not be deemed to circumscribe or limit the authority of the County to regulate or franchise the activities of any other communications system or provider of communications services to the full extent permitted by law. Any Certificate issued to a Franchisee shall define the services which the Franchisee is authorized to provide using the Public Rights-of-Way.

~~(i)~~ "Certificate" means ~~A~~ certificate of public convenience and necessity entered into pursuant to this Chapter between the County or the Board and a Franchise holder that sets forth the terms and conditions under which a Franchise will be granted and exercised.

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~~(ii)~~ "Channel" means ~~A~~ band of frequencies six (6) megahertz wide in the electromagnetic spectrum, which is capable of carrying either one standard audio-video television signal, a number of audio, digital or other non-video signals, or some combination of such signals.

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~~(iii)~~ "Converter" means ~~A~~an electronic device which may serve as an interface between a System and a Subscriber's television receiver, and which may convert signals to a frequency not susceptible to interference within the television receiver of a Subscriber, permit a Subscriber to view all signals delivered at designated dial locations and perform a variety of functions, including signal security, descrambling, and electronic polling.

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~~(iv)~~ "County" means Arlington County, Virginia, and any agency or department thereof.

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~~(v)~~ "County Manager" means ~~T~~he administrative head of the County government or his designee.

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~~(vi)~~ "Customer" means ~~S~~ame as "Subscriber".

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~~(vii)~~ "Educational Access Channel" or "Educational Channel" means ~~A~~any Channel on a Cable System set aside by a Franchisee for Noncommercial educational use.

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~~(viii)~~ "Equitable Price" means Fair Market Value adjusted downward for any economic harm or property damage sustained by the County or Subscribers as a result of a Franchisee's breach of its Franchise or any violation of this Chapter, and as further adjusted to account for other equitable factors that may be lawfully considered by the County.

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~~(ix)~~ "Fair Market Value" means ~~T~~he price for a Cable System valued as a going concern, but with no value allocated to the Franchise itself.

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~~(x)~~ "FCC" means ~~F~~the Federal Communications Commission, its designee, or any successor governmental entity thereto.

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~~(xi)~~ "Franchise" means ~~A~~ non-exclusive authorization granted pursuant to this Chapter and applicable law to construct, operate, and maintain a Cable System within the Public Rights-of-Way to provide Cable Service within all or a specified area of the County. Any such authorization, in whatever form granted, shall not mean or include any license or permit required for the privilege of transacting and carrying on a business within the County as required by State or County laws, ordinances or regulations, or for attaching devices to poles or other structures, whether owned by the County or a private entity, or for excavating or performing other work in or along Public Rights-of-Way.

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~~(xii)~~ "Franchise Area" means ~~T~~he area of the County that a Franchisee is authorized to serve by its Certificate.

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ARLINGTON COUNTY CODE

CABLE TELEVISION COMMUNICATIONS

~~(w)~~ "Franchisee" means ~~A~~ natural Person, partnership, domestic or foreign corporation, stock or non-stock corporation, joint stock company, association, joint venture, limited liability company, professional limited liability company, or organization of any kind that has been granted a Franchise by the Board in accordance with the provisions of applicable law.

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~~(x)~~ "Governmental Access Channel" or "Governmental Channel" means ~~A~~ any Channel on a Cable System set aside by a Franchisee for Noncommercial government use.

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~~(y)~~ "Gross Revenues" means ~~A~~ any and all revenues, including cash, credits, property or other consideration of any kind or nature arising from, attributable to, or in any way derived directly or indirectly by a Franchisee, or its Affiliates, or by any other entity that is a cable operator of a Cable System, from the operation of a Franchisee's System (including the studios and other facilities associated therewith) to provide Cable Services. Gross Revenues include, by way of illustration and not limitation, monthly fees charged to Subscribers for any basic, optional, premium, per-channel, per-program service, or other Cable Service; including, without limitation, Internet access fees charged to Subscribers; installation, disconnection, reconnection, and change-in-service fees; Leased Access Channel fees; late fees and administrative fees; fees, payments, or other consideration received from programmers for carriage of programming on the System and accounted for as revenue under GAAP; revenues from rentals or sales of Converters or other equipment; any studio rental, production equipment, and personnel fees; advertising revenues; barter; revenues from program guides; revenues from the sale or carriage of other cable-related services; and revenues from home shopping, bank-at-home Channels and other revenue sharing arrangements. Gross Revenues shall include revenues received by an entity other than the Certificate Holder, an Affiliate, or another entity that operates the System where necessary to prevent evasion or avoidance of the obligation under this Chapter or a Franchise to pay the franchise fee. Gross Revenues shall not include: (i) to the extent consistent with generally accepted accounting principles, actual bad debt write-offs not to exceed two percent (2%) of annual revenues, provided, however, that all or part of any such actual bad debt that is written off but subsequently collected shall be included in Gross Revenues in the period collected; or (ii) any taxes on services furnished by a Franchisee which are imposed directly on any Subscriber or user by the Commonwealth of Virginia, the County, or other governmental unit and which are collected by the Franchisee on behalf of said governmental unit. A franchisee fee is not such a tax.

~~(z)~~ "Installation" means ~~T~~he connection of System services to Subscribers' television receivers or other Subscriber-owned or Subscriber-provided terminal equipment.

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~~(aa)~~ "Leased Access Channel" or "Commercial Access Channel" means ~~A~~ any channel on a Cable System designated or dedicated for use by a Person unaffiliated with a Franchisee pursuant to 47 U.S.C. § 532.

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~~(bb)~~ "Noncommercial" means ~~N~~ot engaged in the promotion of particular products and services. This term, however, shall not be interpreted to prohibit Public, Educational and Governmental Access Channel operators from soliciting and receiving financial support to produce and transmit video programming on a Public, Educational or Governmental Access Channel, or from acknowledging a contribution.

~~(cc)~~ "Normal Business Hours" means ~~T~~he hours from 8:00 a.m. to 8:00 p.m., Monday through Friday, and 12 p.m. to 6 p.m. on Saturday.

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~~(dd)~~ "Normal Operating Conditions" means ~~T~~hose service conditions that are within the control of a Franchisee. Conditions that are deemed to be within the control of a Franchisee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular or reasonable anticipatable peak or seasonal demand periods, and maintenance or upgrade of a Cable System. Conditions that are deemed not to be within the control of a Franchisee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions.

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~~(ee)~~ "Person" means ~~A~~n individual, partnership, association, joint stock company, joint venture, domestic or foreign corporation, stock or non-stock corporation, limited liability company, professional limited liability company, or organization of any kind, or any lawful successor thereto or transferee thereof. Such term does not include the County.

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~~(ff)~~ "Programmer" means Any Person or entity that produces or otherwise provides program material or information for transmission by video, audio, digital or other signals, either live or from recorded traces or other storage media, to Users or Subscribers by means of a Cable System.

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~~(gg)~~ "Public Access Channel" means Any Channel on a Cable System set aside by a Franchisee for Noncommercial use by the general public, including groups and individuals, and which is available for such use on a non-discriminatory basis.

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~~(hh)~~ "Public Rights-of-Way" means The surface, the air space above the surface, and the area below the surface of any public street, highway, lane, path, alley, sidewalk, avenue, boulevard, drive, concourse, bridge, tunnel, park, parkway, waterway, dock, bulkhead, wharf, pier, easement, or similar property or waters within the County in which the County now or hereafter holds any property interest, including, but not limited to, any riparian right, which, consistent with the purposes for which it was created, obtained or dedicated, may be used for the purpose of installing, operating and maintaining a Cable System. No reference herein, or in any Certificate, to a "Public Right-of-Way" shall be deemed to be a representation or guarantee by the County that its interest or other right to control the use of such property is sufficient to permit use of the property for the purpose of installing, operating and maintaining a Cable System. A Franchisee shall be deemed to gain only those rights to use the property as are properly in the County, in its sole determination, and as the County may have the right and power to give.

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~~(ii)~~ "Security Fund" means Aa performance bond, letter of credit, cash deposit, set aside letter, or other form of security acceptable to the Administrator.

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~~(jj)~~ "Service Interruption" means Lloss of picture or sound on one or more cable channels, or a reduction in the quality of sound or picture of one or more channels below the average level of over-the-air broadcasts received within a one mile radius of a Subscriber's location.

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~~(kk)~~ "State" means The Commonwealth of Virginia, its agencies and departments.

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~~(ll)~~ "Subscriber" means Any Person who legally receives any service delivered over a Cable System.

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~~(mm)~~ "System Outage" means Aa Service Interruption affecting more than ten (10) Subscribers.

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~~(nn)~~ "Transfer" means Any transaction in which (i) an ownership or other interest in a Franchisee, its Cable System, or any Person that is a cable operator of the Cable System is transferred from one Person or group of Persons to another Person or group of Persons so that control of a Franchisee is transferred; or (ii) the rights or obligations held by a Franchisee under a Certificate are transferred or assigned to another Person or group of Persons. The term "control," as used in this definition, means working control, in whatever manner exercised. By way of illustration, and not limitation, the addition, deletion, or other change of any general partner of a Franchisee, any Person who owns or controls a Franchisee, or a cable operator of a Cable System is such a change of control.

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~~(oo)~~ "User" means Aa Person or organization using a Channel or equipment and facilities for purposes of producing or transmitting signals. (Ord. No. 98-21, 6-20-98)

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§ 41.2-3. Grant of Franchise.

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~~(a)~~A. Grant.

~~(1)~~ The Board may grant one or more cable Franchises, and each such Franchise shall be awarded in accordance with and subject to the provisions of this Cchapter and applicable law.

~~(2)~~ No Person may construct or operate a Cable System within Arlington County without a Franchise. No Person may be granted a Franchise without having been issued a Certificate by the Board pursuant to this Cchapter.

~~(3.)~~ This ~~C~~chapter may be amended from time to time, and in no event shall this ~~C~~chapter be considered a contract between the ~~C~~county and a Franchisee or the Board and a Franchisee, such that the Board would be prohibited from exercising its legislative discretion to amend any provision of this ~~C~~chapter.

~~(b)B.~~ *Term of ~~F~~franchise.* No Franchise shall be granted for a period of more than fifteen (15) years, except that a Franchisee may apply at any time for renewal, extension, or modification pursuant to applicable law.

~~(c)C.~~ *Franchise ~~C~~characteristics.*

~~(1.)~~ A Franchise authorizes use of Public Rights-of-Way for installing cables, wires, lines, optical fiber, underground conduit, and other devices necessary and appurtenant to the operation of a Cable System to provide Cable Service within a Franchise Area, but does not expressly or implicitly authorize a Franchisee to provide service to, or install a Cable System on, private property without the owner's consent (except for use of compatible easements pursuant to ~~Section~~ § 621 of the Cable Act, 47 U.S.C. § 541(a)(2)), or to use publicly or privately owned conduits or any other public property without a separate agreement with the owners thereof.

~~(2.)~~ A Franchise shall constitute both a right and an obligation to provide the Cable Services regulated by the provisions of this ~~C~~chapter and a Certificate.

~~(3.)~~ A Franchise is non-exclusive and will not: explicitly or implicitly preclude the issuance of other Franchises to operate Cable Systems within the County; affect the County's right to authorize use of Public Rights-of-Way by other Persons to operate Cable Systems or for other purposes as the County deems appropriate; or affect the County's right to itself construct, operate, or maintain a Cable System, with or without a Franchise.

~~(4.)~~ All privileges prescribed by a Franchise shall be subordinate to (without limitation) the County's use and any prior lawful occupancy of the Public Rights-of-Way.

~~(5.)~~ The County reserves the right to reasonably designate where a Franchisee's facilities are to be placed within the Public Rights-of-Way and to resolve any disputes among users of the Public Rights-of-Way.

~~(d)D.~~ *Franchisee ~~S~~subject to ~~O~~ther ~~L~~aws, ~~P~~olice ~~P~~ower.*

~~(1.)~~ A Franchisee at all times shall be subject to and shall comply with all applicable federal, State, and local laws. A Franchisee at all times shall be subject to all lawful exercise of the police power of the County, including but not limited to all rights the County may have under 47 U.S.C. § 552. Nothing in a Certificate shall be deemed to waive the requirements of the various codes, ordinances, policies, rules, regulations, and practices of the County and the Board.

~~(2.)~~ No course of dealing between a Franchisee and the County, or any delay on the part of the County in exercising any rights hereunder, or any acquiescence by the County in the actions of a Franchisee that contravene any of the County's rights (except to the extent such rights are expressly waived by the County in writing), shall operate as a waiver of any such rights of the County.

~~(3.)~~ The County shall have the maximum authority to regulate Cable Systems, Franchisees, and Franchises as may now or hereafter be lawfully permissible; unless rights are expressly waived in a Certificate, they are hereby reserved, whether expressly enumerated or not.

~~(4.)~~ The County and the Board may, from time to time, issue such rules and regulations concerning Cable Systems as are consistent with, or authorized by, applicable law.

(5.) The County and the Board may do all things which are necessary and convenient in the exercise of its jurisdiction under this Chapter.

(E) *Interpretation of Franchise Terms.*

(1.) The provisions of this Chapter and any Certificate or Franchise shall be liberally construed to effectuate the purposes and objectives of this Chapter and the Franchise or Certificate, consistent with the public interest.

(2.) The terms of a Franchise or Certificate shall be subject to this Chapter. In the event of a clear conflict between this Chapter and a Certificate or Franchise, the terms of this Chapter shall control.

(3.) Subject to federal law or regulation, a Certificate will be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

(F) *Operation of a Cable System Without a Franchise.* Any Person occupying the Public Rights-of-Way of the County for the purpose of operating or constructing a Cable System, which Person does not hold a valid Franchise from the County, shall be subject to all provisions of this Chapter, including, but not limited to, those provisions regarding construction, technical standards and Franchise fees. The County at any time may require such Person to obtain a Certificate within thirty (30) days of receipt of a written notice from the County that a Certificate is required; require such Person to remove its property from the Public Rights-of-Way, and, at such Person's sole expense, restore the area to a condition satisfactory to the County within a reasonable time period as the County shall determine; remove the property itself and restore the area to a satisfactory condition and charge the Person the costs therefor; and/or take any other action permitted by law, including, but not limited to, filing for and seeking damages for trespass. In no event shall a Franchise be created unless it is issued by action of the Board and the Franchise terms are set forth in a Certificate.

(G) *Acts at Franchisee's Expense.* Any act that a Franchisee is or may be required to perform under this Chapter, a Certificate, or applicable law shall be performed at the Franchisee's expense, unless expressly provided to the contrary in this Chapter, a Certificate, or applicable law.

(H) *Eminent Domain.* Nothing herein shall be deemed or construed to impair or affect, in any way or to any extent, the County's rights of eminent domain to the extent to which such rights may apply to any Cable System.  
(Ord. No. 98-21, 6-20-98)

#### § 41.2-4. Applications for Initial Grant, Renewal, Extension, or Modification of a Franchise.

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(A) *Application Required.*

(1.) A written application shall be filed with the Administrator for the grant of an initial Franchise or modification of a Certificate pursuant to 47 U.S.C. § 545.

(2.) To be considered accepted for filing, a fully completed, signed original application, in a form prepared by or acceptable to the Administrator, shall be submitted as provided in this Section together with twelve (12) copies. The application shall be accompanied by any required filing fee, conform to any applicable request for proposals, and contain all information required by the County. All applications shall include the names and addresses of persons authorized to act on behalf of all applicants with respect to the application.

(3.) To the extent permitted by law, all applications accepted for filing shall be made available by the County for public inspection.

(B) *Application for Grant of an Initial Franchise.*

- (1.) A Person may apply for an initial Franchise by submitting an application containing the information required in ~~Section § 41.2-4.C(e)~~ to the Administrator. Upon receipt of such an application, the Administrator may either (i) evaluate the application pursuant to ~~Section § 41.2-4.B.4(b)(4)~~, conducting such investigations as deemed necessary; or (ii) issue a Request for Proposals ("RFP"), after conducting, if necessary, a proceeding to identify the future cable-related needs and interests of the community. Any such RFP shall be mailed to any Person requesting its issuance and made available to any other interested Person. The RFP may contain a proposed Certificate.
- (2.) An applicant shall respond to a RFP by filing a proposal with the Administrator within the time directed by the County, providing the information and material set forth in ~~Section § 41.2-4.C(e)~~. The procedures, instructions, and requirements set forth in the RFP shall be followed by each applicant. Any applicant that has already filed materials pursuant to ~~Section § 41.2-4.B.1(b)(1)~~ herein need not refile the same materials with its proposal, but shall clearly identify each portion of the previously filed materials that are intended to satisfy the RFP requirements. The applicant shall further amplify its application to include any additional or different materials required by the RFP. The Administrator may seek additional information from any applicant and establish deadlines for the submission of such information.
- (3.) Notwithstanding the provisions of ~~Section §§ 41.2-4.B.1(b)(1)~~ and ~~41.2-4.B.2(b)(2)~~, a Person may apply for an Initial Franchise by submitting an unsolicited application containing the information required in ~~Section § 41.2-4.C(e)~~ and requesting an evaluation of that application pursuant to ~~Section § 41.2-4.B.4(b)(4)~~. Prior to evaluating that application, the Administrator may conduct, or cause to be conducted, such investigations as are necessary to determine whether the application satisfies the standards set forth in ~~Section § 41.2-4.B.4(b)(4)~~ and may seek additional applications by RFP or otherwise.
- (4.) In evaluating an application for a Franchise, the Administrator shall consider, among other things, the following factors:
  - (A)a. The extent to which the applicant has substantially complied with applicable law and the material terms of any existing cable Franchise for the County;
  - (B)b. Whether the quality of the applicant's service under any existing Franchise or similar grant in the County, including signal quality, response to customer complaints, billing practices, and the like, has been reasonable in light of the needs and interests of the communities served;
  - (C)c. Whether the applicant has the financial, technical, and legal qualifications to provide Cable Service;
  - (D)d. Whether the application satisfies any minimum requirements established by the County and is otherwise reasonable to meet the future cable-related needs and interests of the community, taking into account the cost of meeting such needs and interests;
  - (E)e. Whether, to the extent not considered under ~~Section § 41.2-4.B.4.d(b)(4)(D)~~, the applicant will provide adequate Public, Educational, and Governmental Access Channel capacity, facilities, or financial support;
  - (F)f. Whether issuance of a Franchise is in the public interest considering the immediate and future effect on the Public Rights-of-Way and private property that would be used by the Cable System, including the extent to which installation or maintenance as planned would require replacement of property or involve disruption of property, public services, or use of the Public Rights-of-Way; the effect of granting a Franchise on the ability of cable to meet the cable-related needs and interests of the community; and the comparative superiority or inferiority of competing applications; and

~~(G)~~g. What effects a grant of the application may have on competition in the delivery of Cable Service in the County.

~~(5)~~5. After evaluating a fully-completed application, including all additional information requested by the County, the Administrator shall transmit recommendations to the Board.

~~(6)~~6. If the Board finds that it is in the public interest to issue a Franchise after considering the factors set forth in ~~Section § 41.2-4.B.4(b)(4)~~ and any other relevant factors permitted by law to be considered, and subject to the applicant's agreement to the terms of an appropriate Certificate, the Board shall issue a Franchise, after complying with the public hearing requirements of § 41.2-4.~~G(g)~~. If the Board denies the request for a Franchise, then the Board will issue a written decision explaining why the Franchise was denied. Prior to deciding whether or not to issue a Franchise, the Board may hold one (1) or more public hearings or implement other procedures under which comments from the public on an application may be received. The Board also may grant or deny a request for a Franchise based on its review of an application without further proceedings and may reject any application that is incomplete or fails to respond to an RFP. This ~~C~~chapter is not intended and shall not be interpreted to grant any applicant or existing Franchisee standing to challenge the denial of its application or the issuance of a Franchise to another.

~~(e)~~C. *Contents of Application.* An RFP for the grant of an initial Franchise shall require, and any such application shall contain, at a minimum, the following information:

~~(1)~~1. The name, address and form of business of the applicant, and an identification of the ownership and control of the applicant, including: the names and addresses of the ten (10) largest holders of an ownership interest in the applicant and Affiliates of the applicant, and all Persons with ~~percent (5%) percent~~ or more ownership interest in the applicant and its Affiliates; the Persons who exercise working control over the applicant and its Affiliates, and the Persons who control those Persons, to the ultimate parent; all officers and directors of the applicant and its Affiliates; and any other business affiliation and Cable System ownership interest of each named Person.

~~(2)~~2. A demonstration of the applicant's technical ability to construct and/or operate the proposed Cable System, including identification of key personnel.

~~(3)~~3. A demonstration of the applicant's legal qualifications to construct and/or operate the proposed Cable System, including but not limited to a demonstration that the applicant meets the following criteria:

~~(A)~~a. If the Board has lawfully denied an applicant's previous request for an initial Franchise or a Franchise renewal, then that applicant may not apply for an initial or renewal Franchise again until at least three (3) years have elapsed since the date of such lawful denial;

~~(B)~~b. The applicant shall not have had any cable television Franchise validly revoked by any franchising authority within three (3) years preceding the date of the submission of the application;

~~(C)~~c. The applicant shall have the necessary authority under Virginia law to operate a Cable System;

~~(D)~~d. The applicant shall have the necessary authority under federal law to hold the Franchise and operate a Cable System. An applicant shall have, or show that it is qualified to obtain, any necessary federal licenses or waivers required to operate the System proposed;

~~(E)~~e. The applicant is willing to enter into a Franchise, to pay required compensation, and to abide by the provisions of applicable law, including those relating to the construction,

operation or repair of its facilities, and has not entered into any agreement which would prevent the applicant from doing so;

- ~~(F)~~f. The applicant shall not be issued a Franchise if, at any time during the ten (10) years preceding the date of submission of the application, the applicant was convicted of any act or omission of such character that, in the sole opinion of the County, the applicant cannot be relied upon to deal truthfully with the County and the Subscribers of the Cable System, or to substantially comply with its lawful obligations under applicable law, including acts of moral turpitude, and obligations under consumer protection laws and laws prohibiting anticompetitive acts, fraud, racketeering, or other similar conduct;
- ~~(G)~~g. The applicant shall not be issued a Franchise if it files materially misleading information in its application or intentionally withholds information that the applicant lawfully is required to provide; and
- ~~(H)~~h. The applicant shall not be issued a Franchise if an elected official of the County has a personal interest in the Franchise, unless otherwise permitted by the Virginia State and Local Government Conflict of Interests Act, Va. Code §§ ~~2-1-639.42-2-3100~~ through ~~639.242.2-3131~~, or holds a controlling interest in the applicant or an Affiliate of the applicant.

Notwithstanding the foregoing, and to the extent permitted by applicable law, the Board shall provide an applicant with an opportunity to show that it would be inappropriate to deny it a Franchise by virtue of the particular circumstances surrounding the matter and the steps taken by the applicant to cure all harms flowing therefrom and prevent their recurrence, the lack of involvement of the applicant's principals, or the remoteness of the matter from the operation of Cable Systems.

- ~~(4.)~~ A demonstration of the financial qualifications of the applicant, including at least the following:
  - ~~(A)~~a. The applicant's proposed rate structure, including projected charges for each service tier, Installation, Converters, and all other proposed equipment or services for the ensuing five (5) years;
  - ~~(B)~~b. A certified statement prepared by a certified public accountant regarding the applicant's financial ability to complete the construction proposed, to meet the time frame proposed and to operate the Cable System proposed. If an applicant is a joint venture or partnership, the same information shall be provided for each participant in the joint venture or partnership; and
  - ~~(C)~~c. Pro Forma financial projections for the proposed franchise term, including a statement of projected income, and a schedule of planned capital additions, with all significant assumptions explained in notes or supporting schedules.
- ~~(5.)~~ A description of the applicant's prior experience in Cable System ownership, construction, and operation, and an identification of each locality in which the applicant or any of its principals have, or have had, a cable Franchise or any interest therein, including the name, address and phone number of each local franchising authority and references from each authority.
- ~~(6.)~~ A written description and a detailed map of the exact area or areas of the County to be served by the proposed Cable System, including a description of the proposed Franchise Area's boundaries.
- ~~(7.)~~ A detailed description of the physical facilities proposed to be provided within Arlington County, which description shall include at least the following:
  - ~~(A)~~a. A description of the channel capacity, technical design, performance characteristics,

headend, access (and institutional network) facilities and equipment;

~~(B)~~b. The location of the proposed System and System design, including a description of the miles of plant to be installed, and a description of the size of equipment cabinets, shielding and electronics that will be installed along the plant route, the power sources that will be used and a description of the noise, exhaust and pollutants, if any that will be generated by the operation of the same;

~~(C)~~c. A map of the route the Cable System will follow; a designation of the portions of the System that will be placed above-ground and portions that will be placed underground, and the construction techniques that the operator proposes to use in installing the System above-ground and underground; where applicable, a schedule for construction of the System, describing when and where construction will begin, how it will proceed, and when it will be completed; and the expected effect on right-of-way usage, including information on the ability of the Public Rights-of-Way to accommodate the proposed System, an estimate of the availability of space in conduits, and an estimate of the cost of any necessary rearrangement of existing facilities; and

d. A description, where appropriate, of how services will be converted from existing facilities to new facilities, and what will be done with existing facilities.

~~(8.)~~ A demonstration of how and when the applicant will reasonably meet the future cable-related needs and interests of the community, including descriptions of how the applicant will meet the needs described in any recent community needs assessment conducted by or for the County, and how and when the applicant will provide adequate Public, Educational, and Governmental Access Channel capacity, facilities, or financial support to meet the community's needs and interests.

~~(9.)~~ Copies of any agreements which an applicant has entered into or proposes to enter into with any other Person relating to the proposed System.

~~(10.)~~ If the applicant proposes to provide Cable Service to an area already served by an existing Cable Franchisee, a written description and a detailed map of the area where the overbuild would occur and the ability of the Public Rights-of-Way and other property that would be used by the applicant to accommodate an additional System.

~~(11.)~~ To the extent an applicant is in any respect relying on the financial or technical resources of another Person, including an Affiliate, the proofs required under ~~Sections §§ 41.2-4.C.2(e)(2) and 41.2-4.C.4(e)(4)~~ shall be provided for that Person.

~~(12.)~~ Any other information that the Administrator determines is reasonably necessary to demonstrate compliance by the applicant with the requirements of this ~~C~~chapter.

~~(13.)~~ Any additional information that the Administrator or the Board may request of the applicant that is relevant to the County's consideration of the application.

~~(14.)~~ An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, acknowledging the enforceability of application commitments, and certifying that the application meets all federal and State law requirements.

~~(15.)~~ A declaration that no Person not shown in the application has, or without the prior written consent of the Board, will have, any equity interest in the Franchise exceeding five ~~percent (5%) percent~~.

~~(16.)~~ A declaration that the applicant agrees to comply with this ~~C~~chapter, and will abide by the Board's decision to grant or deny a Franchise.

~~(d)~~D. Application for ~~G~~grant of a ~~R~~renewal ~~F~~franchise or ~~E~~extension.

- ~~(1.)~~ If neither a renewal applicant nor the County activates in a timely manner or can activate the renewal process set forth in 47 U.S.C. § 546(a)-(g) (including, for example, if the provisions are amended or repealed), and except as to applications submitted pursuant to 47 U.S.C. § 546(h), the provisions of ~~Sections §§ 41.2-4.A(a)-C(e)~~ shall apply and a renewal request shall be evaluated using the same criteria as any other request for a Franchise. The following requirements shall apply to renewal requests properly submitted pursuant to the Cable Act and this ~~C~~chapter.
- ~~(2.)~~ If the provisions of 47 U.S.C. § 546(a)-(g) are properly invoked, the County shall issue an RFP after conducting a proceeding to: (i) review the renewal applicant's past performance; and (ii) identify the County's future cable-related community needs and interests. The Administrator shall establish deadlines and procedures for responding to the RFP, may seek additional information from the applicant, and shall establish deadlines for the submission of that additional information. Following receipt of the application responding to the RFP (and such additional information as may be provided in response to requests by the County), the Board shall determine that the Franchise should be renewed, or make a preliminary assessment that the Franchise should not be renewed. This determination shall be made in accordance with the time limits established by the Cable Act. The preliminary determination shall be made by Resolution. If the Board determines that the Franchise should not be renewed, and the applicant that submitted the renewal application notifies the County, either in its RFP response or within thirty (30) days of the preliminary assessment, that the applicant wishes to pursue any rights to an administrative proceeding it has under the Cable Act, then the County shall commence an administrative proceeding after providing prompt public notice thereof, in accordance with the Cable Act. If the Board decides preliminarily to grant renewal, the Administrator shall prepare a final Certificate that incorporates, as appropriate, the commitments made by the applicant in the renewal application. If the applicant accepts the Certificate, and the final Certificate is ratified by the Board in accordance with applicable laws and procedures including, but not limited to, the public hearing requirements of § 41.2-4.~~G(e)~~, the Franchise shall be renewed. If the Certificate is not so accepted and ratified within the time limits established by 47 U.S.C. § 546(c)(1), renewal shall be deemed preliminarily denied, and an administrative proceeding commenced, if the applicant that submitted the renewal application requests a proceeding within thirty (30) days of the expiration of the time limit established by 47 U.S.C. § 546(c)(1).
- ~~(3.)~~ If an administrative proceeding is commenced pursuant to 47 U.S.C. § 546(c), the applicant's renewal application shall be evaluated considering such matters as may be considered consistent with federal law. The following procedures shall apply:
- ~~(A)a.~~ The Board shall, by Resolution, appoint an administrative hearing officer or officers (referred to hereafter as "hearing officer"). The Board may appoint itself as hearing officer. The hearing officer shall conduct a formal administrative hearing at which the County and the applicant shall have the right to present evidence.
- ~~(B)b.~~ The hearing officer shall establish a schedule for the hearing which allows for documentary discovery and interrogatory responses, production of evidence, and cross-examination of witnesses. Depositions shall not be permitted unless the party requesting the deposition shows that documentary discovery and interrogatory responses will not provide it with an adequate opportunity to require the production of evidence necessary to present its case. The hearing officer shall have the authority to require the production of evidence as the interests of justice may require, including the right to require the production of evidence by the applicant that submitted the renewal application and any entity that owns or controls or is owned or controlled by, or under common control with, such applicant directly or indirectly. The hearing officer may issue protective orders, but shall not prohibit discovery on the ground that evidence sought is proprietary or involves business secrets. Any order may be enforced by a court of competent jurisdiction or by imposing appropriate sanctions in the administrative hearing.

~~(C)c.~~ The hearing officer may conduct a prehearing conference and establish appropriate prehearing orders. Intervention by non-parties is not authorized, except to the extent required by the Cable Act.

~~(D)d.~~ The hearing officer shall require the County and the applicant to submit prepared testimony prior to the hearing. Unless the parties agree otherwise, the applicant shall present evidence first, the County shall present evidence second, and the applicant shall then have an opportunity for rebuttal.

~~(E)e.~~ Any reports or the transcript or summary of any proceedings conducted pursuant to 47 U.S.C. § 546(a) shall, for purposes of the administrative hearing, be regarded no differently than any other evidence. The County and the applicant shall be afforded full procedural protection regarding evidence related to these proceedings, including the right to refute any evidence introduced in these proceedings or sought to be introduced by the other party. Both parties shall have the opportunity to submit additional evidence related to issues raised in the proceeding conducted pursuant to 47 U.S.C. § 546(a).

~~(F)f.~~ Following completion of any hearing, the hearing officer shall require the parties to submit proposed findings of fact with respect to the matters that the County is entitled to consider in determining whether renewal ought to be granted. Based on the record of the hearing, the hearing officer thereafter shall prepare written findings with respect to those matters the County may consider, and submit those findings to the Board and to the parties (unless the hearing officer is the Board, in which case the written findings shall constitute the final decision of the County).

~~(G)g.~~ If the hearing officer is not the Board, the parties shall have thirty (30) days from the date the findings are submitted to the Board to file exceptions to those findings. The Board shall thereafter issue a written decision granting or denying the application for renewal, consistent with the requirements of the Cable Act and based on the record of the entire administrative proceeding, including, without limitation, the RFP, the response to the RFP, the formal hearing, the findings of fact, and any exceptions to the findings of fact. A copy of the final decision of the Board shall be provided to the applicant.

~~(H)h.~~ In conducting the proceedings, the hearing officer will apply such procedures and requirements as may be necessary in the interest of justice.

~~(4.)~~ Notwithstanding the above, a cable operator may submit an application for renewal of a Franchise pursuant to 47 U.S.C. § 546(h). Such a proposal may be submitted at any time and the Board may, after affording the public adequate notice and opportunity for comment, grant or deny such proposal at any time (including after proceedings have been commenced in accordance with 47 U.S.C. § 546(a)). An informal renewal application may be denied for any reason. If an informal renewal application is granted, then the steps specified in subsections ~~D.2(d)(2)~~ and ~~D.3.d(3)(a--g)~~ of this ~~S~~section need not be taken, notwithstanding the provisions of those subsections.

~~(5.)~~ The provisions of this ~~Section §~~ 41.2-4.~~D(d)~~ shall be read and applied so that they are consistent with Section 626 of the Cable Act, 47 U.S.C. § 546.

~~(e)E.~~ *Extension of a Franchise.* If a Franchisee is requesting a Franchise extension of more than twelve (12) months, the Franchisee shall submit an application to the Administrator that contains all of the information required by § 41.2-4.~~C(e)~~ of this Chapter. If a Franchisee is requesting a Franchise extension of twelve (12) months or less, the foregoing application requirement shall not apply, and the Franchisee shall only file a written request with the Administrator that (i) explains the reason(s) for the proposed extension and (ii) describes any proposed terms and conditions.

~~(f)E.~~ *Application for Modification of a Franchise.*

ARLINGTON COUNTY CODE

CABLE TELEVISION COMMUNICATIONS

- (1.) An application for modification of a Certificate shall include, at minimum, the following information:
  - (A)a. The specific modification requested;
  - (B)b. The justification for the requested modification, including the impact of the requested modification on Subscribers and others, and the financial impact on the applicant if the modification is approved or disapproved, demonstrated through, inter alia, submission of pro forma financial statements;
  - (C)c. A statement indicating whether the modification is sought pursuant to ~~Section §~~ 625 of the Cable Act, 47 U.S.C. § 545, and, if so, a demonstration that the requested modification meets the standards set forth in 47 U.S.C. § 545;
  - (D)d. Any other information that the applicant believes is necessary for the County to make an informed determination on the application for modification; and
  - (E)e. An affidavit or declaration of the applicant or authorized officer certifying the truth and accuracy of the information in the application, and certifying that the application is consistent with the requirements of applicable law.

(2.) A request for modification submitted pursuant to 47 U.S.C. § 545 shall be considered in accordance with the requirements of that section.

(G). *Public Hhearings.* An applicant for an initial Franchise, or modification or renewal of an existing Franchise, shall be notified of any public hearings held in connection with the evaluation of its application and shall be given an opportunity to be heard. In addition, prior to the issuance of a Franchise, the Board shall provide for the holding of a public hearing, following reasonable notice to the public, at which every applicant and its applications shall be examined and the public and all interested parties afforded a reasonable opportunity to be heard.

(H). *Acceptance of Ffranchise.* Following approval by the Board, any Franchise granted pursuant to this Cchapter, and the rights, privileges and authority granted by a Certificate, shall take effect and be in force from and after the first date on which both the Franchisee and the County have accepted and signed the Certificate. (Ord. No. 98-21, 6-20-98)

§ 41.2-5. Filing ffees.

To be acceptable for filing, an application for an initial Franchise, a renewal Franchise, a Transfer, a Franchise modification or a Franchise extension shall be accompanied by a nonrefundable filing fee, payable to the Treasurer of Arlington County, Virginia, in the following amount or the maximum amount permitted by law, whichever is greater, to cover costs incidental to the award, renewal, modification, or extension of a fFranchise, as appropriate:

- (A). For an initial Franchise:
  - (1). A request for issuance of an RFP: five thousand dollars (\$5,000.00)
  - (2). A Response to an RFP or an unsolicited application: five thousand dollars (\$5,000.00)
- (B). For an existing Franchise:
  - (1). For renewal of a Franchise: ten thousand dollars (\$10,000.00)
  - (2). For modification of a Certificate: five thousand dollars (\$5,000.00)
  - (3). For review of a Transfer: five thousand dollars (\$5,000.00)

~~(iv)4.~~ For extension of a Franchise for a period greater than twelve (12) months; seven thousand and five hundred dollars (\$7,500.00)

In addition to the foregoing initial filing fees, an applicant shall reimburse the County for the actual costs and expenses incurred by the County that are related to, or arise in the course of, reviewing and processing of each application described in subsections ~~A(a)~~ and ~~B(b)~~ above, including the costs of legal, engineering, accounting and other consultants retained by the County, or services obtained by the County, to assist in reviewing the application. The Franchisee shall reimburse the County for any such costs within thirty (30) days of receipt of an invoice from the County.

(Ord. No. 98-21, 6-20-98)

§ 41.2-6. Provision of Cable Service, Quality of Cable Service.

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~~(a)A.~~ *Provision of Service.* In addition to satisfying such requirements as may be established in a Franchise, every Franchisee shall operate its Cable System subject to the following conditions, except as prohibited by federal law:

~~(1.)~~ It is the policy of the County that every Franchisee shall provide service throughout its Franchise Area upon request to any Person. Service shall be provided within the time limits specified in ~~Section § 41.2-6.A.2(a)(2).~~

~~(2.)~~ Except as a Franchise otherwise provides, a Franchisee shall extend service to any Person or to any government building in the Franchise Area which requests it within seven (7) business days of the request.

~~(3.)~~ Upon the request of the County, every Franchisee shall provide the following, free of charge, to: (i) each floor of all buildings, or portions thereof, in its Franchise Area that are owned or leased by the County or the Arlington County Public Schools; (ii) all public institutions of higher education in the County; and (iii) all certified K--12 schools in the County:

~~(A)a.~~ aAt least one (1) service drop and outlet;

~~(B)b.~~ aAt least one (1) Converter, which shall be replaced with a digital Converter, as necessary, to receive Basic Service and Cable Programming Service; and

~~(C)c.~~ aActivated Basic Service and Cable Programming Service.

~~(b)B.~~ *Quality of Service.*

~~(1.)~~ To the extent permitted by law, a Franchisee's Cable System within the County shall meet or exceed the technical standards set forth in 47 C.F.R. § 76.601, et seq., and any other applicable technical standards.

~~(2.)~~ A Franchisee shall perform, at its sole cost, all tests necessary to demonstrate compliance with the requirements of a Certificate and other technical and performance standards established by applicable law. Unless a Certificate or applicable law provides otherwise, all tests shall be conducted in accordance with federal rules and in accordance with the most recent edition of the National Cable Television Association's "Recommended Practices for Measurements on Cable Television Systems," or such other manual as may be directed under FCC regulations. A written report of any test results shall be filed with the County within fourteen (14) days of a request by the Administrator. If a location fails to meet technical or performance specifications, the Franchisee, without requirement of additional notice or request from the County, shall promptly take corrective action, and retest the locations.

~~(e)C.~~ *Interconnection.*

- (1.) A Franchisee shall design its Cable System so that it may be interconnected with other Cable Systems or similar communications systems in the area. Interconnection of systems may be made by direct cable connection, microwave link, satellite or other appropriate methods. A Franchisee shall cooperate with any interconnection corporation, regional interconnection authority, or state or federal regulatory agency which may be hereafter established for the purpose of regulating, facilitating, financing or otherwise providing for the interconnection of communications systems beyond the boundaries of the County.
- (2.) Upon receiving the directive of the County to interconnect, a Franchisee shall immediately initiate negotiations with the other affected system or systems. The County may grant reasonable extensions of time to interconnect or rescind its request to interconnect upon petition by a Franchisee to the County.
- (3.) No interconnection shall take place without notice to the County, and a demonstration that all signals to be interconnected will comply with applicable FCC technical standards for all classes of signals.
- (4)D. *System Maintenance.* Scheduled maintenance shall be performed by a Franchisee so as to minimize the effect of any necessary interruptions of Cable Service.
- (e)E. *Continuity of Service.*
- (1.) It is the right of all Subscribers in a Franchise Area to continuously receive all available services from a Franchisee as long as their financial and other obligations to the Franchisee are satisfied.
- (2.) A Franchisee shall ensure that all Subscribers receive continuous and uninterrupted service. At the County's request, a Franchisee shall, as trustee for its successor in interest, operate its System for a temporary period (the "Transition Period") following the termination or revocation of its Franchise, as necessary to maintain service to Subscribers, and shall cooperate with the County to assure an orderly transition from the existing Franchisee to the successor Franchisee.
- (3.) During such Transition Period, a Franchisee shall neither sell any of the System assets, nor make any physical, material, administrative or operational change that would tend to reduce the quality of service to Subscribers, decrease the System's income, or materially increase expenses, without the express written permission of the County.
- (4.) The County may seek legal and/or equitable relief to enforce the provisions of this Section.
- (5.) The Transition Period shall be no longer than the reasonable period required to ensure that Cable Service will be available to Subscribers, and shall be no longer than thirty-six (36) months, unless extended by the Board for good cause. During the Transition Period, a Franchisee will continue to be obligated to comply with the terms and conditions of its Franchise, this Chapter, and applicable laws and regulations.
- (6.) If a Franchisee abandons its System during the Franchise term, or fails to operate its System in accordance with the terms of its Franchise during any Transition Period, the County, at its option, may (i) operate the System, (ii) designate another entity to operate the System temporarily until the Franchisee restores service under conditions acceptable to the County or until the Franchise is revoked and a new Franchisee designated by the Board is providing service, or (iii) obtain an injunction requiring the Franchisee to continue operations. If the County is required to operate or designate another entity to operate the Cable System, the Franchisee shall promptly reimburse the County or its designee for all reasonable costs and damages incurred that are in excess of the revenues from the Cable System.
- (7.) The County shall be entitled to injunctive relief under the preceding paragraph if:

~~(A)~~a. The Franchisee fails to provide Cable Service in accordance with its Franchise over a substantial portion of the Franchise Area for ninety-six (96) consecutive hours, unless the County authorizes a longer interruption of service or the failure is due to force majeure, as characterized in a Franchise ; or

~~(B)~~b. The Franchisee, for any period, willfully, and without cause refuses to provide Cable Service in accordance with its Franchise over a substantial portion of the Franchise Area.

(Ord. No. 98-21, 6-20-98)

§ 41.2-7. Design and Construction.

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~~(A)~~A. ~~System~~ ~~Construction~~ ~~S~~chedule. Every Certificate shall specify the construction schedule that will apply to any required construction, upgrade, or rebuild of the Cable System. The schedule shall provide for prompt completion of the construction, upgrade or rebuild, considering the amount and type of work required, and shall show areas of the County that will be affected.

~~(B)~~B. ~~Construction~~ ~~P~~rocedures.

~~(1)~~ The construction, operation and repair of Cable Systems are subject to, and shall be performed in strict compliance with, all federal, State and County laws, ordinances, rules and regulations, policies, and practices. In addition, the construction, operation and repair of Systems shall be performed in a manner consistent with high industry standards. Persons engaged in the construction, operation or repair of Cable Systems shall exercise reasonable care in the performance of all their activities, and use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property.

~~(2)~~ Every System, and all parts thereof, shall be subject to the right of periodic inspection and testing by the County to determine compliance with the provisions of this ~~C~~hapter, a Certificate, and other applicable law. The County shall have the right, upon request, to be notified and to be present when a System is tested by a Franchisee. Each Franchisee shall respond to requests for information regarding its System and its plans for the System as the County may from time to time issue, including requests for information regarding its plans for construction, operation, and repair, and the purposes for which the plant is being constructed, operated or repaired.

~~(3)~~ Construction, operation or repair of a Cable System shall not commence until written permits have been properly filed for and obtained from the proper County officials and required permit and associated fees are paid. In any permit so issued, the County may impose, as a condition of the granting of the permit, such conditions and regulations as may be necessary to the management of the Public Rights-of-Way, including, by way of example and not limitation, conditions and regulations for the purpose of protecting any structures in the Public Rights-of-Way, for the proper restoration of such Public Rights-of-Way and structures, and for the protection of the County, the public and the continuity of pedestrian and vehicular traffic. A Franchisee may immediately begin emergency repairs without a written permit; provided that the Franchisee notifies the County of such repairs no later than the next business day following the commencement of the repair work, and then applies for all necessary permits in accordance with applicable procedures. The notice provided to the County shall clearly identify the location of the emergency work, and explain why such work was necessary.

~~(4)~~ Cable System operators shall follow County requirements for placement of facilities in Public Rights-of-Way, including the specific location of facilities in the Public Rights-of-Way, and shall in any event install facilities in a manner that minimizes interference with the use of the Public Rights-of-Way by others, including others that may be installing Cable Systems, other communications facilities, or utilities. With respect to a particular construction, repair or maintenance project, the County may establish conditions on the time, place, and manner in which

work is done; may deny access if the operator is not willing to comply with the County's requirements; may remove any facility that is not installed in compliance with the requirements established by the County, or which is installed without prior County approval of the time, place, or manner of installation, and charge the operator for all the costs associated with removal; and may require a Person using the Public Rights-of-Way to cooperate with others to minimize adverse impacts on the Public Rights-of-Way through joint trenching and other arrangements. The County shall have the right to inspect all facilities being placed underground. A Franchisee shall provide notice to the appropriate County official that construction of underground facilities has been completed at least forty-eight (48) hours before they are covered. It shall be the operator's responsibility to comply with the terms of any applicable permit. The County shall have the right to require an operator to reopen a trench or other underground installation if any facilities are covered before the County has inspected them.

- (5.) Upon order of the Administrator, all work which does not comply with the permit, the approved plans or specifications for the work, or the requirements of this Chapter, the Franchise, or other applicable law, shall be promptly removed by the Franchisee at its expense.
- (6.) Every Franchisee shall make available to other Franchisees, at a reasonable, non-discriminatory rental rate, any conduit installed after the effective date of this Chapter for which the Franchisee has no present or reasonably foreseeable use. Any conduit provided to other Franchisees pursuant to this provision may be reclaimed upon sixty (60) days' notice that the Franchisee has a need for the conduit. In a Certificate, the County may require as a condition of issuing any Public Right-of-Way permit for underground conduit, the installation of which requires excavation of or along any traveled way, that the Franchisee emplace conduit, in excess of its present and reasonably foreseeable requirements, for the purpose of accommodating other franchisees for a reasonable charge.
- (7.) Each Franchisee that places facilities underground shall be a member of the One Call Notification System (otherwise known as "Miss Utility") and shall field mark the locations of its underground facilities upon request. Throughout the term of a Franchise, a Franchisee shall locate its facilities for the County at no charge to the County.
- (8.) To the extent possible, a Franchisee shall use existing poles and conduit in installing its Cable System. In no case may additional poles or other structures be installed in the Public Rights-of-Way or on any public property without the prior permission of the County. Any Person who is permitted to install poles shall lease capacity on those poles to others, at a rate not higher than the rate that would be permitted if 47 U.S.C. § 224 applied.
- (9.) No tree trimming shall be performed without the permission of the County and other affected authorities. Any tree trimming shall be performed in strict accordance with this Code and all County rules, regulations, policies and procedures.
- (10.) At the expiration of the term for which a Franchise is granted, or upon the expiration of any renewal or extension period which may be granted, or upon the termination or revocation of a Certificate, the County will have the right to require a Franchisee, at its sole expense: (i) to remove all portions of its Cable System from all Public Rights-of-Way within the County; and (ii) to restore affected sites to their original condition. Should a Franchisee fail, refuse, or neglect to comply with the County's directive, all portions of the Franchisee's Cable System, or any part thereof, may be removed, altered or relocated by the County at the cost of the Franchisee. The County will not be liable to a Franchisee for damages resulting from such removal, alteration or relocation.
- (11.) The County shall have the right to install and maintain, free of charge upon any poles or in any conduit or duct owned by a Franchisee, any wire and pole fixtures that do not unreasonably interfere with Cable System operations of a Franchisee. A Franchisee shall notify the County when the Franchisee enters into an agreement for the use of its poles, ducts and conduits. Such

notice shall specify the name, telephone number and address of the party that will be using the Franchisee's poles, ducts and conduits. Copies of agreements for the use of a Franchisee's conduits, ducts or poles in the Public Rights-of-Way or on other public property shall be available for review by the County upon request. A Franchisee shall not enter into such an agreement with a third party unless that person has represented that it has the requisite authority to occupy or otherwise use the affected Public Rights-of-Way or public property.

- (12.) Work by or on behalf of a Franchisee concerning installation, replacement or removal of a Cable System, or any part thereof, shall be publicized by the Franchisee, at its cost, in the manner and at the times the Administrator periodically may direct.
- (C.) Use of ~~P~~public and ~~P~~private ~~P~~property.
- (1.) Should the grades or lines of the Public Rights-of-Way that a Franchisee is authorized by a Franchise to use and occupy be changed at any time during the term of a Franchise, the Franchisee shall, if necessary, as determined by the County, relocate or change its System, at its own cost and expense, so as to conform with the new grades or lines.
- (2.) Any alteration to any water and sewage mains or lines, to any drainage system or to any structures in the Public Rights-of-Way, on public property, or on private property, which alteration is required on account of the presence of a Franchisee's System in the Public Rights-of-Way or on such public property or private property, shall be made at the sole cost and expense of the Franchisee. During any work of constructing, operating or maintaining of a System, a Franchisee shall protect all existing structures belonging to the County and any other Person. The County may prescribe the manner in which a Franchisee shall perform any such work performed within the Public Rights-of-Way, on public property, or on private property.
- (3.) Unless otherwise specified in a Franchise, all System facilities shall be constructed, installed, and located in accordance with all applicable laws, ordinances, regulations and policies, and in accordance with the following terms and conditions:
  - (A)a. Consistent with § 41.2-7.B.6(b)(6), System facilities shall be installed within an existing underground duct or conduit whenever excess capacity exists within such utility facility.
  - (B)b. Poles, underground conduits, ducts or other wireholding structures shall not be installed in the Public Rights-of-Way or on other County property without the written permission of the County, or on the property of any third party without the written permission of the owner, except when a Franchisee has a legal right to place facilities on private property without permission of the owner.
  - (C)c. Whenever any existing telephone, electric utility, Cable System, or other similar facilities are located underground within a certain portion of the Public Rights-of-Way, a Person installing another Cable System also shall place its facilities in that portion of the Public Rights-of-Way underground.
  - (D)d. Whenever all existing telephone, electric utility, or communications facilities are to be located or relocated underground within a portion of the Public Rights-of-Way specified by the County, Franchisees that then occupy that portion of the Public Rights-of-Way shall concurrently relocate their respective facilities underground, at their own expense, and shall not assess their Subscribers any direct charges for the costs of required construction outside the approved rate structure. The expenses incurred by a franchisee pursuant to this provision may be considered external costs under the FCC's rate regulation rules.
- (4.) All Public Rights-of-Way, public property, or private property that is disturbed or damaged during the construction, operation or repair of a Cable System shall be promptly repaired, at its own cost

and expense, by the franchisee that disturbed or damaged the Public Rights-of-Way, public property or private property.

~~(d)~~ *Interference with ~~P~~ublic ~~P~~rojects; ~~R~~elocation of ~~F~~acilities.*

~~(1.)~~ Nothing in this ~~C~~hapter or any Certificate shall be in preference to, or in hindrance of, the right of the County, the Board or any board, authority, commission or public service corporation to perform or carry on any public works or public improvements of any description. Should a Franchisee's System in any way interfere with the construction, maintenance or repair of any public works or public improvements, the Franchisee shall, at its sole cost and expense, protect or relocate its System, or part thereof, as directed by the County, the Board, the Administrator or any County official, board, authority, or commission.

~~(2.)~~ If any Person that is authorized to place facilities in the Public Rights-of-Way requests a Franchisee to protect, support, temporarily disconnect, remove, or relocate its facilities to accommodate the construction, operation, or repair of the facilities of such other Person, the Franchisee shall, after thirty (30) days' advance written notice, take action to effect the necessary changes requested. If the requested action is necessary to address an emergency that, in the opinion of the County, might affect the public health, safety or welfare, then the Franchisee shall take immediate action upon receipt of notice of the request to complete the requested action. Unless the matter is governed by a valid contract, a local ordinance, regulation or policy, or a State or federal law or regulation, or in other cases where the System that is being requested to move was not properly installed, the reasonable cost of the same shall be borne by the party requesting the protection, support, temporary disconnection, removal, or relocation and performed at no charge to the County.

~~(3.)~~ A Franchisee shall, at the request of any Person holding a valid permit issued by a governmental authority, temporarily raise or lower its wires to permit the temporary or permanent moving of buildings, structures, equipment of whatever nature, or other objects. With the exception of the County, the expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same. A Franchisee shall be given not less than forty-eight (48) hours' advance notice to arrange for such temporary wire changes.

~~(e)~~ *Permits.* A Franchisee shall be required to obtain permits for the installation of its facilities in the Public Rights-of-Way, as required by any applicable provision of the County Code. A Franchisee shall also be required to obtain any other applicable permits that may be required by the County or any other entity having jurisdiction.  
(Ord. No. 98-21, 6-20-98)

~~§ 41.2-8. Channels and Facilities for Public, Educational and Governmental Use, Leased Access.~~

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~~(a)~~ *Management of ~~C~~hannels.* The Board may designate one (1) or more entities, including a non-profit community access corporation, to perform any or all of the following functions:

~~(1.)~~ ~~T~~o manage any necessary scheduling or allocation of capacity on the institutional network; and/or

~~(2.)~~ ~~o~~n the County's behalf, to program any public, educational or governmental Access Channel. Until such entities have been designated, the Administrator shall be responsible for these functions.

~~(b)~~ *Public ~~A~~ccess ~~P~~rogramming ~~R~~ules.* For any Public Access Channel, the community access corporation managing such Channel shall prohibit the presentation of: any advertising material designed to promote the sale of commercial products or services (including advertising by or on behalf of candidates for public office); and lottery information, and shall establish rules to this effect as well as rules requiring first-come, nondiscriminatory access, and rules permitting the public inspection of the names and addresses of all persons and groups requesting access time. Records of such requests shall be retained by the entity managing the Public Access

Channel for a period of two (2) years.

~~(c)C.~~ *Leased Access.* A Franchisee shall provide Leased Access Channels as required by federal law. (Ord. No. 98-21, 6-20-98)

**§ 41.2-9. Consumer Protection.**

~~(a)A.~~ *General Provisions.*

~~(1.)~~ This ~~Section-§~~ 41.2-9 sets forth customer service standards that a Franchisee shall satisfy. In addition, a Franchisee shall at all times satisfy any additional or stricter requirements established by a Certificate or other applicable federal, State, or local law or regulation, as the same may be amended from time to time, including, without limitation, consumer protection laws.

~~(2.)~~ Nothing in this ~~C~~chapter shall be construed to prevent or prohibit the Board from waiving the requirements established in this ~~Section-§~~ 41.2-9, where such waiver is in the best interests of the County and its residents.

~~(3.)~~ Nothing in this ~~C~~chapter in any way relieves a Franchisee of its obligation to comply with other applicable consumer protection laws and its Certificate.

~~(b)B.~~ *Telephone and Office Availability.*

~~(1.)~~ Each Franchisee shall maintain an office at a convenient location in the County that shall be open at least during Normal Business Hours to allow Subscribers to request service, pay bills, and conduct other business. Each Franchisee shall perform service calls, installations, and disconnects during at least the hours 8:00 a.m. to 8:00 p.m. Monday through Saturday, provided that a Franchisee shall respond to System Outages twenty-four (24) hours a day, seven (7) days a week. Each Franchisee shall establish a publicly listed, local toll free telephone number. The phone shall be answered by customer service representatives at least Monday through Saturday, 8:00 a.m. to 8:00 p.m., for the purpose of receiving requests for service, inquiries, and complaints from Subscribers; after those hours, a Franchisee shall arrange for the phone to be answered so that customers can register complaints and report service problems on a twenty-four (24) hour per day, seven (7) day per week basis, and so that the Franchisee can respond to Service Outages as required herein.

~~(2.)~~ Telephone answering time shall not exceed thirty (30) seconds, and the time to transfer the call to a customer service representative (including hold time) shall not exceed an additional thirty (30) seconds. This standard shall be met ninety-five ~~percent~~ (95%) ~~percent~~ of the time, measured quarterly. Under Normal Operating Conditions a Subscriber will receive a busy signal less than three percent (3%) of the time. When the business office is closed, an answering service capable of receiving and recording service complaints and inquiries shall be employed. The after-hours answering service shall comply with the same telephone answer time standard set forth in this Section. Thirty (30) days after the end of each calendar quarter, a Franchisee shall supply the County statistical data to verify it has met the standards set forth herein.

~~(3.)~~ A Franchisee shall hire sufficient staff so that it can adequately respond to Customer inquiries, complaints, and requests for service in its office, over the telephone, and at the Subscriber's residence.

~~(c)C.~~ *Scheduling Work.*

~~(1.)~~ All appointments for service, installation, or disconnection shall be specified by date. Each Franchisee shall specify a specific time at which the work shall be done, or offer a choice of time blocks, which shall not exceed four (4) hours in length. If at any time an installer or technician believes it impossible to make a scheduled appointment time, an attempt to contact the Customer

will be made prior to the time of appointment and the appointment scheduled at a specific time between 8:00 a.m. and 8:00 p.m., seven (7) days a week, that is convenient to the Customer, if rescheduling is necessary. It is a Franchisee's burden to prove it met an appointment.

- (2.) With regard to mobility-limited Customers, upon a Subscriber's request, each Franchisee shall arrange for pickup and/or replacement of Converters or other Franchisee equipment at the Subscriber's address or by a satisfactory equivalent (such as the provision of a postage-prepaid mailer).
- (3.) Requests for service, repair, and maintenance shall be acknowledged by a trained customer service representative within twenty-four (24) hours, or prior to the end of the next business day, whichever is earlier. A Franchisee shall acknowledge all other inquiries (including billing inquiries) within five (5) business days of the inquiry or complaint.
- (4.) Repairs and maintenance for outages or Service Interruptions and other repairs not requiring work within a Subscriber's premises shall be completed within twenty-four (24) hours of the time the Subscriber reports a problem. Work on all other requests for service shall be begun by the next business day after notification of the problem or at a later time mutually agreeable to a Franchisee and a Subscriber. A Franchisee shall exercise its best efforts to complete such work within three (3) days from the date of the initial request, except installation requests, provided that a Franchisee shall complete the work in the shortest time possible where, for reasons beyond the Franchisee's control, the work could not be completed in those time periods even with the exercise of all due diligence; the failure of a Franchisee to hire sufficient staff or to properly train its staff shall not justify a Franchisee's failure to comply with this provision.
- (5.) A Franchisee shall not cancel a service or installation appointment with a Customer after the close of business on the business day preceding the appointment.
- (6.) The standards of Sections §§ 41.2-9.C.4(e)(4) and 41.2-9.C.5(e)(5) shall be met at least ninety-five percent (95%) percent of the time, measured on a quarterly basis.
- (7.) The installation time standard in Section § 41.2-6.A.2(a)(2), and below shall be met no less than ninety-five percent (95%) percent of the time, measured on a quarterly basis: requests for additional outlets, service upgrades or other connections (i.e., DMX, VCR, A/B Switch) separate from an initial installation shall be performed within seven (7) business days after an order has been placed.
- (D.) Notice to subscribers.
- (1.) A Franchisee shall provide each Subscriber at the time Cable Service is installed, and at least every twelve (12) months thereafter, the following materials:
  - (A)a. Instructions on how to use the Cable Service;
  - (B)b. Billing and complaint procedures, and written instructions for placing a service call, filing a complaint, or requesting an adjustment (including when a Subscriber is entitled to refunds for outages and how to obtain them);
  - (C)c. A notice showing the telephone number of the County office responsible for receiving Customer complaints;
  - (D)d. A schedule of rates and charges, channel positions, and a description of products and services offered;
  - (E)e. Prices and options for programming services and conditions of subscription to programming and other services; and

~~(F)~~ ~~A~~ description of the Franchisee's installation and service maintenance policies, delinquent Subscriber disconnect and reconnect procedures, and any other of its policies applicable to its Subscribers.

~~(2)~~ Copies of all Subscriber notices and publications shall be provided to the County at least ten (10) days before they are scheduled to be published or otherwise generated. Except as applicable federal, State and local rate regulations may provide to the contrary, a Franchisee shall provide the Administrator and all Subscribers with at least thirty (30) days' prior notice of any significant changes in the information required to be provided by this ~~Section §~~ 41.2-9 ~~D~~(~~d~~). Such notice shall be in writing and by announcement on the System.

~~(3)~~ All Franchisee promotional materials, announcements, and advertising of Cable Service to Subscribers and the general public, where price information is listed in any manner, shall clearly and accurately disclose price terms. In the case of pay-per-view or pay-per-event programming, all promotional materials shall clearly and accurately disclose price terms and in the case of telephone orders, a Franchisee shall take appropriate steps to ensure that customer service representatives clearly and accurately disclose price terms to potential Customers in advance of taking the order.

~~(4)~~ Each Franchisee shall maintain a public file containing all notices provided to Subscribers under these customer service standards, as well as all promotional offers made to Subscribers. The notices and offers shall be kept in the file for at least one (1) year from the date of such notice or promotional offer.

~~(5)~~ Upon request, a Franchisee shall work with Subscribers to provide the notices required by this § 41.2-9 ~~D~~(~~d~~) in formats accessible to disabled persons.

~~(E)~~ *Interruptions of Service.*

~~(1)~~ A Franchisee shall schedule maintenance on its Cable System at times that will minimize the likelihood of interruptions in service to Subscribers. A Franchisee may intentionally interrupt service on the Cable System only for good cause and for the shortest time possible and, except in emergency situations, only after a minimum of forty-eight (48) hours' prior notice to Subscribers, the Administrator and Public Educational and Governmental Access Channel operators of the anticipated Service Interruptions; provided, however, that planned maintenance that does not require more than two (2) hours' interruption of service that occurs between the hours of 12:00 midnight and 6:00 a.m., shall not require such notice to Subscribers, but shall require notice to the County no less than twenty-four (24) hours prior to the anticipated Service Interruption. Brief interruptions of service of less than five (5) minutes which are necessary to conduct planned maintenance shall not require notice to Subscribers, the County, or Public, Educational and Governmental Access Channel operators.

~~(2)~~ For any period in which a Subscriber suffers a Service Interruption for more than eight (8) hours in any ~~twenty-four (24)~~-hour period, other than a planned interruption pursuant to ~~Section §~~ 41.2-9 ~~E.1~~(~~e~~)(~~4~~), a Franchisee shall credit against the Subscriber's next bill an amount equal to ~~one-thirtieth~~ (1/30) of the monthly charge for any service or service tier affected, and shall pay a direct refund to any Subscriber who terminates service before all credits owed are applied. The charge for any per-program selection that is materially affected by the outage shall also be refunded or credited. A Franchisee shall be responsible for making such refunds or credits upon receipt of a complaint of a Service Interruption from a Subscriber, unless the Franchisee can show that the Service Interruption was insufficient in length or character to require a credit, or that the Subscriber was responsible for the Service Interruption.

~~(F)~~ *Billing.*

~~(1)~~ A Franchisee's first billing statement after a new installation or service change shall be prorated as

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appropriate and shall reflect any security deposit.

- | ~~(2.)~~ A Franchisee's billing statement shall be clear, concise and understandable, shall itemize each category of service and equipment provided to the subscriber and must state clearly the charge therefor.
- | ~~(3.)~~ A Franchisee's billing statement shall show a specific payment due date not earlier than twenty (20) days after the date the statement is mailed. Any balance not received by the due date may be assessed a late fee not exceeding a Franchisee's reasonable costs of collection or any other amount permitted by State law. The late fee shall appear on the following month's billing statement. Subscribers shall not be charged a late fee or otherwise penalized for any failure by a Franchisee, including failure to timely or correctly bill a Subscriber, or failure to properly credit a Subscriber for a payment timely made.
- | ~~(4.)~~ A Franchisee shall notify a Subscriber that he or she can remit payment in person at the Franchisee's office in the County and inform the Subscriber of the address of that office.
- | ~~(5.)~~ A Franchisee shall provide an initial response or acknowledgment to all written billing complaints from Subscribers within five (5) days of receipt of the complaint and a final written response within thirty (30) days of receipt of the complaint.
- | ~~(6.)~~ Refund checks to Subscribers shall be issued no later than the Subscriber's next billing cycle following resolution of the refund request, or thirty (30) days, whichever is later.
- | ~~(7.)~~ Credits for Cable Service shall be issued no later than the Subscriber's next billing cycle after the determination that the credit is warranted.
- | ~~(8.)~~ If a Subscriber terminates service before the end of a prepaid period, a pro rata portion of any prepaid service fee, using the actual number of days in the month as a basis, shall be refunded to the Subscriber.
- | ~~(g.)~~ *Disconnection/Downgrades.*
- | ~~(1.)~~ A Subscriber may terminate service at any time.
- | ~~(2.)~~ A Franchisee shall promptly disconnect from its System or downgrade any Subscriber who so requests. No period of notice prior to voluntary termination or downgrade of service may be required of Subscribers by any Franchisee. No charge may be imposed for any voluntary disconnection or downgrade that does not require a service call, except to the extent that federal law specifically provides that the Franchisee shall be permitted to so charge a Subscriber. So long as a Subscriber returns any equipment necessary to receive a service within five (5) business days of the disconnection, no charge may be imposed by any Franchisee for any Cable Service delivered after the date of the disconnect request. However, if a Subscriber does not return, or permit a Franchisee to retrieve, such equipment within five (5) business days after disconnection, a Franchisee may charge a Subscriber for any Cable Service delivered until the equipment is returned.
- | ~~(3.)~~ A Subscriber may be asked, but not required, to disconnect a Franchisee's equipment and return it to the business office.
- | ~~(4.)~~ Any security deposit and/or other funds due a Subscriber that disconnects or downgrades service shall be returned to the Subscriber within thirty (30) days or in the next billing cycle, whichever is later, from the date the disconnection or the downgrade was requested, except in cases where the Subscriber does not permit a Franchisee to recover its equipment, in which case the amounts owed shall be paid to Subscribers within thirty (30) days of the date the equipment was recovered, or in the next billing cycle, whichever is later.

~~(5.)~~ If a Subscriber fails to pay a monthly Subscriber fee or other fee or charge, a Franchisee may disconnect the Subscriber's service; however, such disconnection shall not be effected until after forty-five (45) days from the due date of the monthly Subscriber fee or other charge, plus at least ten (10) days advance written notice to the Subscriber in question of intent to disconnect, given after the ~~forty-five (45)~~ days have elapsed. If the Subscriber pays all amounts due, including late charges, before the date scheduled for disconnection, the Franchisee shall not disconnect service. After disconnection, upon payment by the Subscriber in full of all proper fees or charges, including the payment of a reconnection charge, if any, the Franchisee shall promptly reinstate service.

~~(6.)~~ A Franchisee may immediately disconnect a Subscriber if (i) the Subscriber is damaging or destroying the Franchisee's Cable System or equipment; or (ii) the Subscriber is not authorized to receive Cable Service, or is facilitating, aiding or abetting the unauthorized reception of Cable Service by others. A Franchisee may pursue criminal or civil action against said Subscriber as appropriate. After disconnection, a Franchisee shall restore service if the Subscriber provides adequate assurances, including monetary or legal assurances, that it has ceased the practices that led to disconnection, and paid all proper fees and charges, including any reconnect fees and amounts owed the Franchisee for damage to its Cable System or equipment.

~~(7.)~~ A Franchisee may disconnect a Subscriber without notice where signal leakage is detected originating from the Subscriber's premises in excess of federal limits, provided that the Franchisee shall immediately notify the Subscriber of the problem and, once the problem is corrected, reconnect the Subscriber without charge.

~~(8.)~~ With respect to home wiring, a Franchisee shall comply with 47 C.F.R. §§ 76.800-806 (Part 76, Subpart M of the FCC's rules), as amended from time to time, and any other applicable rules or requirements, or amendments thereto.

~~(H)~~ *Deposits.* A Franchisee may require a reasonable, non-discriminatory deposit on equipment provided to Subscribers, in addition to any allowable monthly fees. All deposits shall be returned to a Subscriber as soon as the Subscriber's account has not been in arrears for a period of six (6) consecutive months, or when the Subscriber returns all equipment in a condition as good as that in which it was received (excepting reasonable wear and tear) at time of disconnection of reception of service, whichever is sooner.

~~(I)~~ *Complaint Procedures.*

~~(1.)~~ Each Franchisee shall establish a clear procedure for resolving complaints filed by any interested party, providing that complaints may be made orally or in writing, at the complainant's option, and identifying a person responsible for handling complaints that are not already being handled by a customer service representative.

~~(2.)~~ Each Franchisee shall provide an initial response to a complaint within five (5) days of its receipt and a final written response within thirty (30) days after the complaint is made. The final written response shall include a notice stating that, if the complaint has not been resolved to the complainant's satisfaction, the matter may be referred to the Administrator.

~~(J)~~ *Parental Control Option.* A Franchisee shall make available to any Subscribers, upon request, the option of blocking the video and audio portion of any channel or channels of programming entering a Subscriber's home. This control option shall be provided at no charge, except to the extent that federal law specifically provides that a franchisee shall be permitted to so charge a Subscriber, provided that the Franchisee may require a reasonable deposit for the use of any customer premises device. The control option described herein shall be made available to all Subscribers requesting it when any Cable Service is provided, or within a reasonable time thereafter.

~~(K)~~ *Enforcement.* Within forty-five (45) days of the end of each calendar quarter during the term of a

Franchise, or any extension(s) thereof, a Franchisee shall submit a quarterly written report to the County, in a form reasonably satisfactory to the County, that shows whether the Franchisee is meeting all applicable customer service standards, including, but not limited to: telephone answering and transfer time requirements; the minimum busy signal percentage; appointment scheduling and response requirements; Subscriber notice and billing requirements; and disconnection procedures. A Franchisee shall keep such records as are reasonably required to enable the County to determine whether the Franchisee is complying with all such customer service standards, and shall maintain adequate procedures to demonstrate such compliance.

~~(L)~~ *Exclusive ~~C~~contracts and ~~A~~nticompetitive ~~A~~cts ~~P~~rohibited.*

~~(1.)~~ A Franchisee may not require a Subscriber or a building owner or manager to enter into an exclusive contract as a condition of providing or continuing Cable Service. However, nothing herein prevents a Franchisee from entering into an otherwise lawful, mutually desired exclusive arrangement with a building owner or manager of a multiple dwelling unit or commercial Subscriber.

~~(2.)~~ No Franchisee shall engage in acts prohibited by federal or State law that have the purpose or effect of limiting competition for the provision of Cable Service or services similar to Cable Service in the County.

(Ord. No. 98-21, 6-20-98)

§ 41.2-10. ~~R~~ate ~~r~~egulation.

~~(a)~~~~A.~~ *Scope and applicability.*

~~(1.)~~ *General authority.* The ~~e~~County may regulate all rates and charges to the extent permitted by law.

~~(2.)~~ *Applicability to franchisees.* The procedures in this chapter govern the regulation of rates within the ~~e~~County for any ~~f~~Franchisee subject to rate regulation by the ~~e~~County pursuant to applicable law.

~~(3.)~~ *Consistency with FCC regulations.* The provisions set forth herein are intended to be consistent with all FCC regulations governing the regulation of basic service rates and equipment. The county will regulate and interpret these provisions so that they are consistent with FCC regulations, as if those regulations were set forth in full herein.

~~(4.)~~ *Extension of deadlines.* For good cause, the ~~a~~Administrator may extend any deadline for filing or response, except where such an extension would violate FCC regulations.

~~(5.)~~ *Effect of delay or failure to enforce.* No delay or failure to enforce any provision in this ~~section-§~~ 41.2-10 shall operate against the ~~e~~County as an estoppel or waiver.

~~(6.)~~ *Definitions.* For purposes of this ~~section-§~~ 41.2-10, the term "basic service" or "basic cable service" has the same meaning as the term "basic service" as defined in 47 C.F.R. § 76.901, and the term "equipment" refers to all equipment and services subject to regulation under 47 C.F.R. § 76.923.

~~(b)~~~~B.~~ *Rate filings.*

~~(1.)~~ *Initial rate filings.* A ~~f~~Franchisee that is notified that its basic service and equipment rates are subject to regulation shall file a submission ("initial rate filing") within thirty (30) days of the notification, except to the extent otherwise specifically provided by governing law. The initial rate filing shall justify the ~~f~~Franchisee's basic service and equipment rates in accordance with FCC rules. All rates, for all customer classifications, shall be justified, except to the extent that such rates are specifically exempted from regulation by FCC regulations or other governing law.

~~(2.)~~ *Subsequent rate filings.*

~~(A)a.~~ Once a ~~f~~Franchisee has been notified by the ~~e~~County that its rates are subject to regulation, it may not thereafter increase its rates for basic service or equipment without making any rate filings required by applicable law and obtaining the prior approval of the ~~e~~County, in accordance with this chapter. This requirement applies in all cases, including to increases in rates announced prior to the date the operator was notified its rates were subject to regulation where the increases were not implemented prior to the date of notice, except insofar as governing law specifically permits a ~~f~~Franchisee to raise rates without prior approval.

~~(B)b.~~ A ~~f~~Franchisee shall submit a rate filing at any other time such a filing is required under FCC rules, or by the ~~e~~County in accordance with such rules.

~~(C)c.~~ For purposes of this ~~section-§~~ 41.2-10.~~B(b)~~, a "rate increase" occurs when there is either an increase in rates, a new basic service or equipment rate, or a reduction in program or customer services without a corresponding decrease in rates.

~~(D)d.~~ Rate filings proposing and supporting rate increases shall be filed with the ~~a~~Administrator for review at least thirty (30) days in advance of the proposed effective date of the increase. This requirement does not alter or eliminate any other notice requirement.

~~(E)e.~~ A ~~f~~Franchisee shall provide at least thirty (30) days prior written notice (or such longer period as may be specified in FCC regulations) to subscribers and to the ~~a~~Administrator of any proposed changes in rates, programming services, or channel positions, whether or not the ~~f~~Franchisee believes the affected rates are subject to regulation, except to the extent such notice requirement is specifically waived by governing law.

~~(3.)~~ *Rate filings: Where and how made.*

~~(A)a.~~ Every rate filing shall be submitted by the ~~f~~Franchisee to the ~~a~~Administrator. A rate filing shall be considered filed for review on the date the rate filing and all required copies are received by the ~~a~~Administrator. Five (5) copies of each rate filing (including all supporting materials) shall be submitted.

~~(B)b.~~ Information that the operator claims is proprietary under ~~section-§~~ 41.2-10.~~F(f)~~ herein shall be clearly identified and segregated from the remainder of the filing and clearly marked so that the ~~e~~County may determine where and how the proprietary information was used to determine rates.

~~(4.)~~ *Rate filings: contents.*

~~(A)a.~~ Subject to any FCC regulations governing the burden of proof, a rate filing submitted by a ~~f~~Franchisee shall show that the rates the ~~f~~Franchisee proposes to charge for basic service and equipment are reasonable under applicable FCC regulations.

~~(B)b.~~ The rate filing shall contain all applicable FCC forms and these forms shall be correctly and fully completed.

~~(C)c.~~ The pages of each rate filing shall be numbered sequentially.

~~(D)d.~~ Every rate filing shall clearly state in a cover letter:

~~(i)(1)~~ Whether the rate filing justifies existing rates, or proposes an increase in rates;

~~(i)(2)~~ Any changes the rate filing proposes, in the form of a brief, narrative description

of any proposed changes in rates or in service;

~~(iii)~~(3) The method on which any service rate is based (e.g., benchmark or cost-of-service); and

~~(iv)~~(4) Whether any pages of the rate filing contain information that the ~~F~~Franchisee claims is proprietary, and so indicate clearly on each page or portion thereof.

~~(e)C.~~ *Review of rate filings.*

~~(1.)~~ *Receipt and notice of rate filings.*

~~(A)a.~~ After receiving a rate filing, the ~~a~~Administrator shall give notice that a rate filing has been received and that the filing is available for public review to the extent permitted by law. The notice shall state that interested parties may comment on the filing, and shall provide interested parties a reasonable time, in light of the dates by which the ~~a~~Administrator shall issue his/her orders, to submit written comments on the filing to the ~~a~~Administrator.

~~(B)b.~~ A ~~F~~Franchisee shall notify the ~~a~~Administrator as soon as possible of any deficiencies it may discover in a rate filing, and shall submit an amended filing in accordance with the filing requirements of ~~section-§ 41.2-10.B(b)~~ as soon as possible (and in any event within five (5) business days) to cure such deficiencies, together with a full explanation of the deficiencies and the correction. However, the provisions of ~~section-§ 41.2-10.C.1.a(e)(1)(A)~~ shall not apply to any refilings or corrected filings made by a ~~F~~Franchisee to replace, amend, or supplement an initial rate filing. The ~~e~~County need not accept any amendment that is not filed in time for the ~~a~~Administrator to evaluate and consider in reaching a decision prior to the effective date of the rate. Any such amendment must be accompanied by an adequate explanation of the changes made to the rate filing.

~~(2.)~~ *Final rate order.*

~~(A)a.~~ After completing its review of a ~~F~~Franchisee's rate filing and any additional information submitted in response to information requests, the ~~a~~Administrator shall make any comments received and recommendations the ~~a~~Administrator's proposed actions available for public inspection. When the comments and proposed actions are made available for public inspection, the ~~a~~Administrator shall set a reasonable deadline by which a ~~F~~Franchisee may submit a response to public comments or to the ~~a~~Administrator's proposed actions. A ~~F~~Franchisee's response shall be considered by the ~~a~~Administrator only if it is submitted in a timely fashion.

~~(B)b.~~ After reviewing the ~~F~~Franchisee's response, if any, the ~~a~~Administrator shall issue a written order, which may be in any lawful form, approving the proposed rate in whole or in part, or denying the proposed rate in whole or in part and determining maximum permitted rates pursuant to applicable FCC regulations.

~~(C)c.~~ The ~~a~~Administrator may issue partial orders setting particular rates and ordering refunds and other appropriate relief with regard to such rates, unless specifically prohibited by FCC regulations, without prejudice to their/his/her right to issue further orders in accordance with applicable FCC regulations.

~~(3.)~~ *Refunds.* If a rate order determines that refunds should be provided to subscribers, the ~~F~~Franchisee shall file with the ~~a~~Administrator, within thirty (30) days of the date of the ~~a~~Administrator's order, a detailed calculation of the appropriate refunds, including interest, to all relevant classes of subscribers, and a description of its proposed refund methodology, together with all supporting

materials necessary to allow the ~~a~~Administrator to verify the ~~f~~Franchisee's calculations. The ~~f~~Franchisee's calculations shall also show, in detail, how the ~~f~~Franchisee proposes to calculate any portion of the refund properly attributable to ~~f~~Franchise fees. The ~~a~~Administrator may require further supporting information with regard to the ~~f~~Franchisee's calculations, and the ~~f~~Franchisee shall provide all such information reasonably necessary to determine the refund and ~~f~~Franchise fee amounts.

~~(d)~~D. *Provisions generally applicable to rate orders.*

~~(1)~~ *Form.* Orders relating to rate regulation ("rate orders") shall be written and may be issued in any lawful form.

~~(2)~~ *Authority to issue rate orders.* The ~~a~~Administrator shall have the authority to issue rate orders taking any action that the County is permitted to take by this ~~Section §~~ 41.2-10 including, without limitation: ~~(i)~~ rate orders that establish maximum permitted rates for basic cable service, equipment or installation, or require refunds to cable subscribers ("final rate orders"); ~~(ii)~~ orders that toll deadlines for review and (2) review; and ~~(iii)~~ orders that allow rates to take effect subject to refund and/or direct a cable operator to keep an accurate account of all amounts received and on whose behalf such amounts were paid, pursuant to 47 C.F.R. § 76.933(a)--(c).

~~(3)~~ *Notice of final rate orders.* Any final rate order shall be served on a ~~f~~Franchisee no later than the next business day after date it is released to the public. Public notice shall be given of any final rate order, including releasing the text of any written decision to the public.

~~(4)~~ *Actions regarding rates.* The ~~e~~County may take any actions that it is not prohibited by governing law from taking to protect the public interest as part of any rate order or by any other means. By way of illustration and not limitation, the ~~a~~Administrator may require refunds; set rates; impose forfeitures and penalties directly; enforce refund orders; apply to the FCC for determinations regarding the status of allegedly a la carte programming; investigate and respond to certifications by small systems; grant petitions for extension of time; participate in any appeals of rate decisions; seek clarification of FCC rules from the FCC, or by legal action; refer cost-of-service determinations to the FCC; issue default orders; reopen rate proceedings, or commence new proceedings, in the light of new information or new legal or administrative determinations (for example, modification of the FCC's regulations); or withdraw the ~~e~~County's certification to regulate rates. The ~~e~~County shall take such actions as are necessary or appropriate to achieve the goals of rate regulation and to serve the public interest, to the extent permitted by governing law, in accordance with any pertinent deadlines set by the FCC.

~~(5)~~ *Notice and opportunity to comment.* Before prescribing a rate or ordering a refund to subscribers, the ~~a~~Administrator shall ensure the ~~f~~Franchisee has had notice and an opportunity to comment on the proposed rate or refunds. If the proposed actions of the ~~a~~Administrator propose a refund or a rate, then mailing a copy of the proposed actions to the ~~f~~Franchisee at the time it is submitted to the ~~a~~Administrator shall be deemed to provide the ~~f~~Franchisee this notice, and the ~~f~~Franchisee shall comment on the refund or rate in its response to the proposed actions.

~~(6)~~ *Rate orders subject to amendment.* No order approving or setting a rate pursuant to FCC regulations shall be deemed to establish a just and reasonable rate to subscribers. Every such rate approved or established shall be subject to further reduction and refund to the extent permitted under applicable laws and regulations, as the same may be amended from time to time. By way of illustration and not limitation, should the FCC revise its rules for calculating maximum permitted rates, the ~~a~~Administrator shall have the right to reduce a ~~f~~Franchisee's rates and to require a ~~f~~Franchisee to refund any amounts collected above the benchmark, except to the extent prohibited by governing law.

~~(e)~~E. *Franchisees' duties.*

- (1.) *Books and records.* It is each franchisee's responsibility at all times to keep accurate and complete books and records of account so that it can refund any amounts owed to subscribers.
- (2.) *Completeness of filings.* It is each franchisee's duty to submit as complete a rate filing as possible. Knowingly withholding information or making a filing that is incomplete under applicable law shall be treated as a violation of this chapter, subject to any applicable sanctions and remedies under FCC regulations, ~~section § 41.2-10.C.1.b(e)(1)(B)~~ herein, and any other applicable law or contract.
- (3.) *Continuing accuracy and completeness.* Each franchisee is responsible for the continuing accuracy and completeness of information furnished to the County. Whenever information furnished by a franchisee is no longer accurate and complete in all significant respects, the franchisee shall correct such deficiencies as required in ~~section § 41.2-10.C.1.b(e)(1)(B)~~.
- (4.) *Information requests.* A franchisee and any other entity that has records of revenues or expenses that are allocated to the franchisee's system shall respond to requests for information from the Administrator by deadlines established by the Administrator (including requests that specified information be submitted at the time of future rate filings). A franchisee is responsible for ensuring that such other entity responds to the Administrator's requests.
- (5.) *Implementation.* A franchisee shall implement remedial requirements, including prospective rate reductions and refunds, as soon as possible after an order requiring such remedies is issued, but in any case within sixty (60) days of the date the Administrator issues an order mandating a remedy. However, if FCC regulations require the franchisee to implement a remedy more quickly, or require that the franchisee be allowed more time to implement a remedy, then the FCC requirement shall control.
- (6.) *Certification of compliance.* Within thirty (30) days after implementing a remedy, but in no event more than ninety (90) days after the date an order mandating a remedy is issued, a franchisee shall file a certification, signed by an authorized representative of the franchisee:
- (A)a. Stating whether the franchisee has complied fully with all provisions of the Administrator's order;
  - (B)b. Describing in detail the precise measures taken to implement the Administrator's order;
  - (C)c. Describing in detail any respects in which the franchisee has not complied fully with all provisions of the Administrator's order; and
  - (D)d. Showing how any applicable refunds (including interest) were calculated and distributed.
- (F)E. *Proprietary information.*
- (1.) *Submission of information deemed proprietary.* If these provisions, or any request for information, require the production of proprietary information, a franchisee shall produce the information. However, at the time the allegedly proprietary information is submitted, a franchisee may request that specific, identified portions of its response be treated as confidential and withheld from public disclosure. The request shall state the reason why the information should be treated as proprietary and the facts that support those reasons. Requests for confidential treatment, or for inspection of proprietary information, will be reviewed by the County based on FCC regulations, and applicable state and local law, including the Virginia Freedom of Information Act.
- (2.) *Identification of information deemed proprietary.* Information that the operator claims is proprietary shall be clearly identified. If it is part of a larger submission, such as a rate filing, the proprietary information shall be segregated from the remainder of the submission. It shall also be clearly marked so that the County may determine where the proprietary information belongs

within the submission, how it relates to the remainder of the submission, and the basis for the Franchisee's claim that the marked material is proprietary.

(3.) *Requests to inspect proprietary information.* Any request for public records containing information designated by the Franchisee as proprietary shall be governed by the Virginia Freedom of Information Act.

(G.) *Nondiscrimination.* Nondiscriminatory rates. Subject to applicable law, a Franchisee shall establish rates that are nondiscriminatory within the same general class of subscribers and which shall be applied fairly and uniformly to all subscribers in the Franchise area for all services. Nothing contained herein shall prohibit a Franchisee from offering, by way of illustration and not limitation, (i) discounts to senior citizens or economically disadvantaged groups; (ii) discounts to commercial and multiple-family dwelling subscribers billed on a bulk basis; (iii) promotional discounts; or (iv) reduced installation rates for subscribers who have multiple services. (Ord. No. 98-21, 6-20-98; Ord. No. 02-3, 3-9-02)

§ 41.2-11. **Franchise Fee.**

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(A.) *Finding.* The Board finds that Public Rights-of-Way to be used by a Franchisee for the operation of a Cable System are valuable public property acquired and maintained by the State and County at great expense to the taxpayers. The Board further finds that the grant of a Franchise to use Public Rights-of-Way is a valuable property right without which a Franchisee would be required to invest substantial capital.

(B.) *Payment of Franchise Fee.* Each Franchisee shall pay a Franchise fee of five percent (5%) of Gross Revenues, unless otherwise specified in a Certificate. Every Certificate shall reserve the right to increase this fee to the maximum that may be charged consistent with federal and State law.

(C.) *Not a Tax or in Lieu of Any Other Tax or Fee.*

(1.) Payment of the Franchise fee shall not be considered in the nature of a tax or in lieu of other taxes or fees imposed by the County.

(2.) The Franchise fee is in addition to all other taxes, fees and payments that a Franchisee may be required to pay under its Certificate or under any federal, State, or local law, except to the extent that such fees, taxes, or assessments shall be treated as a Franchise fee under Section § 622 of the Cable Act, 47 U.S.C. § 542.

(3.) A Franchisee shall not designate the Franchise fee as a tax in any communication to a Subscriber.

(D.) *No Accord or Satisfaction.* No acceptance by or payment to the County of a franchise fee, or any portion thereof, shall be construed as a release or an accord and satisfaction of any claim the County may have for further or additional sums due or for the performance of any other obligation of a Franchisee, or as an acknowledgment that the amount paid is the correct amount due. (Ord. No. 98-21, 6-20-98)

§ 41.2-12. **Reports and Records.**

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(A.) *Access to Books and Records.*

(1.) The County shall have the right, upon reasonable notice, to inspect and copy at any time during Normal Business Hours the documents, books, records, maps, plans, income tax returns, proof of performance tests, and other like materials of a Franchisee which the County deems appropriate in order to monitor compliance with a Franchise. Access to records and other materials shall not be denied by a Franchisee on the basis that said records and materials contain proprietary or confidential information. Documents, books, and records shall be maintained for a period of at least five (5) years, except that (i) any record that is a public record shall be maintained for the period required by State law; (ii) any contract shall be maintained until it expires; and (iii) a

Franchise may specify a shorter period for certain categories of voluminous documents, books and records where the information contained therein can be derived simply from other materials. Failure to provide any information required by this Chapter shall be grounds for appropriate remedies. All such information received by the County shall remain confidential insofar as permitted by applicable law.

~~(2.)~~ For purposes of this Chapter, the terms "records," "documents" and "books" shall be construed as such terms are defined in the Virginia Freedom of Information Act and shall be read expansively to include information in whatever format stored. Records, documents, and books requested shall be produced to the County at the Administrator's office, unless the County directs otherwise, or by agreement or pursuant to ~~Section § 41.2-12.A.3(a)(3)~~.

~~(3.)~~ If any documents, books and records are too voluminous, or for security reasons cannot be copied and moved, then a Franchisee may request that the inspection take place at some other location mutually agreed to by the County and a Franchisee, provided that (i) the Franchisee shall make necessary arrangements for copying documents, books and records selected by the County after its review; and (ii) the Franchisee shall pay all travel and additional copying expenses incurred by the County (above those that would have been incurred had the documents, books and records been produced in the County) in inspecting those documents, books and records or having those documents, books and records inspected by its designee.

~~(4.)~~ Without limiting the foregoing, a Franchisee shall provide the County with the following in accordance with the deadlines specified in § 41-12.~~C(e)~~:

~~(A)a.~~ ~~n~~Notices of deficiency or forfeiture related to the operation of the System; and

~~(B)b.~~ ~~e~~Copies of any request for protection under bankruptcy laws, or any judgment related to a declaration of bankruptcy by a Franchisee, or by any partnership or corporation that owns or controls the Franchisee directly or indirectly.

~~(b)B.~~ *Retention of Records; Relation to Privacy Rights.* Each Franchisee shall take all reasonable steps throughout the term of the Franchise to ensure that it is able to provide the County with all information which shall be provided or may be requested under this Chapter, a Franchise or applicable law, including by providing appropriate Subscriber privacy notices. Each Franchisee shall be responsible for redacting any data that applicable law prevents it from providing to the County. Nothing in this Section shall be read to require Franchisee to violate State or federal law protecting Subscriber privacy.

~~(c)C.~~ *Communications with Regulatory Agencies.*

~~(1.)~~ A Franchisee shall file with the County all reports and materials submitted to or received from the FCC, the Securities and Exchange Commission, or any other federal or state regulatory commission or agency having jurisdiction over any matter pertaining to any aspect of operations hereunder or the financial arrangements therefor. For purposes of this Subsection, reports and materials to be filed with the County include, by way of example and not limitation, proof of performance tests and results, Equal Employment Opportunity reports, and all petitions, applications and communications of all types regarding the Franchisee's Cable System, or a group of Cable Systems of which the Franchisee's System is a part, including any such material submitted by or received by a Franchisee, an Affiliate, or any other Person on behalf of the Franchisee.

~~(2.)~~ Materials filed with the County pursuant to ~~Section § 41.1-12.C.1(e)(1)~~ shall be submitted as follows: (i) materials submitted by a Franchisee, an Affiliate, or any other Person on behalf of a Franchisee shall be filed with the County at the time they are submitted to the receiving agency; and (ii) materials received by a Franchisee shall be filed with the County within thirty (30) days of the date they are received by the Franchisee, except that if applicable law permits a response to such materials by the County and sets a deadline of sixty (60) or fewer days for the County's

response, they shall be filed with the County within five (5) days of the date they are received by the Franchisee.

~~(4)D.~~ *Reports.*

~~(1.)~~ Within forty-five (45) days of the end of each calendar quarter, a Franchisee shall submit a report to the County containing the following information:

~~(A)a.~~ ~~The~~ number of service calls (calls requiring a truck roll) received by type during the prior quarter, and the percentage of service calls compared to the Subscriber base by type of complaint; and

~~(B)b.~~ ~~The~~ number and type of System Outages known by the Franchisee for the prior quarter, identifying separately the following:

~~(i)(1)~~ ~~Each~~ planned System Outage, the time it occurred, its duration, and the estimated area and number of Subscribers affected;

~~(i)(2)~~ ~~Each~~ known unplanned System Outage, the time it occurred, its estimated duration and the estimated area and number of Subscribers affected, and if known, the cause; and

~~(ii)(3)~~ ~~The~~ total estimated hours of known System Outages as a percentage of total hours of Cable System operation.

~~(2.)~~ No later than ninety (90) days after the end of its fiscal year, a Franchisee shall submit a written report to the Administrator containing such information as may be required from time to time by the County, and at least the following:

~~(A)a.~~ ~~a~~ summary of the previous year's activities in the development of the Cable System, including descriptions of services begun or discontinued, and the number of Subscribers gained or lost for each category of Cable Service;

~~(B)b.~~ ~~a~~ summary of complaints for which records are required under ~~Section §~~ 41.2-12.E.1~~(e)(1)~~, identifying both the number and nature of the complaints received and an explanation of their dispositions;

~~(C)c.~~ ~~a~~ fully audited revenue report from the previous calendar year for the Cable System prepared according to Generally Accepted Auditing Standards by an independent certified public accountant;

~~(D)d.~~ ~~a~~ statement of the Franchisee's financial operations for the immediately preceding year in such form and in such detail as will show the Franchisee's rate of return on investment, cash flow, and such other information as may be reported by the County;

~~(E)e.~~ ~~a~~n ownership report, indicating all Persons who at the time of filing control or own an interest in the Franchisee of five percent (5%) or more;

~~(F)f.~~ ~~a~~ list of officers and members of the Board of Directors of the Franchisee and any Affiliates directly involved in the operation or the maintenance of the Cable System;

~~(G)g.~~ ~~a~~n organizational chart showing all Persons with more than a five percent (5%)~~percent~~ ownership interest in the Franchisee, and the nature of that ownership interest (whether limited partner, general partner, preferred shareholder, or other Person); and showing the same information for each corporation or partnership that holds such an interest in the corporations or partnerships so identified, and so on, until the ultimate corporate and

partnership interests are identified;

~~(H)h.~~ ~~a~~~~A~~ annual report for each entity identified in ~~Section § 41.2-12.D.2.g(4)(2)(G)~~ which issues an annual report; and

~~(H)i.~~ ~~a~~~~A~~ complete report on the Franchisee's plant. This plant report shall state the physical miles of plant construction and plant in operation during the prior calendar year (categorized as aerial and underground, and as fiber optic, including the fiber count, and coaxial); identify any cases where Subscribers contributed to plant extension; and report the results of appropriate electronic measurements to show conformity with FCC technical standards. Each Franchisee shall annually provide a Countywide map of cable facilities in the Public Rights-of-Way. The map shall be referenced to Virginia State Plane Coordinates, the Alexandria Drafting Company grid system, or any subsequent system adopted by the County, and shall be in both digital and paper formats. The annual map shall have an interlinked data base table of addresses of homes passed, which may be displayed upon the digital map.

~~(3.)~~ Notwithstanding the above, once the information required by ~~Sections § 41.2-12.D.2.c(4)(2)(E)–~~  
~~–through 41.2-12.D.2.g(4)(2)(G)~~ has been filed once, it need only be refiled if it changes.

~~(e)E.~~ *Records Rrequired.* A Franchisee shall at all times maintain:

~~(1.)~~ Records of all complaints received with information sufficient to allow a Franchisee to prepare the reports required in this ~~Section § 41.2-12~~. The term "complaints" as used herein and throughout this ~~C~~chapter refers to written complaints, and written documentation of oral complaints that are not resolved in a Franchisee's initial conversation with a Subscriber, about any aspect of the Cable System or a Franchisee's operations, including, without limitation, complaints requiring service calls, and complaints about employee courtesy, billing, prices, programming, outages and signal quality;

~~(2.)~~ Records of outages known to a Franchisee, with information sufficient to allow a Franchisee to prepare the reports required in this ~~Section § 41.2-12~~;

~~(3.)~~ Records of service calls for repairs and maintenance indicating the date and time service was requested, the date of acknowledgment and date and time service was scheduled (if it was scheduled), and the date and time service was provided, and (if different) the date and time the problem was solved; and

~~(4.)~~ Records of installation/reconnection and requests for service extension, indicating the date of request, the date of acknowledgment, and the date and time service was extended.

~~(f)F.~~ *Additional Rrecords and Rreports.* The County may require Franchisees to maintain records, and to prepare reports relevant to determining a Franchisee's compliance with the terms and conditions of this ~~C~~chapter and a Franchisee.

~~(e)G.~~ *Maps.*

~~(1.)~~ Each Franchisee shall maintain accurate as built maps and improvement plans which show the location, size, and a general description of all facilities installed in the Public Rights-of-Way and any power supply sources (including voltages and connections). Maps shall be based upon post-construction inspection to verify location. Each Franchisee shall provide a map to the County showing the location of its facilities, in such detail and scale as may be directed by the Administrator. New as built maps shall be promptly submitted to the County when a Cable System expands or is relocated. Copies of maps shall be provided in digital format.

~~(2.)~~ During specific project construction, each Franchisee shall submit permit plans in digital format,

along with ~~fifty~~ (50) scale paper copies.

~~(3.)~~ All maps and permit plans shall be submitted in digital format, such as a DXF file, compatible with ESRI ArcInfo 8.0 software or other software as required by the County, and shall be tied to Virginia State Plane Coordinates or the Alexandria Drafting Company grid system.

~~(H.)~~ *Performance Evaluation.*

~~(1.)~~ The County may, at its discretion, hold performance evaluation sessions. All such evaluation sessions shall be open to the public. A Franchisee may be required by the County to notify Subscribers of all such evaluation sessions by announcement on a designated local channel on the System between the hours of 9:00 a.m. and 9:00 p.m. for five (5) consecutive days preceding each session.

~~(2.)~~ Topics that may be discussed at any evaluation session may include, but not be limited to, System performance and construction, a Franchisee's compliance with this ~~C~~chapter and its Certificate, customer service and complaint response, Subscriber privacy, services provided, programming offered, service rate structures, Franchise fees, penalties, free or discounted services, applications of new technologies, judicial and FCC filings, and line extensions.

~~(3.)~~ During the evaluation process, a Franchisee shall fully cooperate with the County and shall provide such information and documents as the County may need to reasonably perform its review, including information which may be deemed proprietary.

~~(I.)~~ *Waiver of Reporting Requirements.* The Board may, at its discretion, waive in writing the requirement of any particular report specified in this ~~Section~~ § 41.2-12.

~~(I.)~~ *Office.* Every Franchisee shall maintain an office in the County at a place to be determined in the Certificate, for as long as the Franchisee continues to operate a System or any portion thereof. (Ord. No. 98-21, 6-20-98)

~~§ 41.2-13. Indemnification of the County and Residents.~~

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~~(A.)~~ *Indemnification and Hold Harmless.*

~~(1.)~~ No Franchise or other authorization to use the Public Rights-of-Way issued to a Franchisee shall be valid or effective until and unless the County obtains adequate indemnity from such Franchisee. The indemnity shall, at a minimum:

~~(A)a.~~ ~~r~~Release, indemnify, hold harmless, and defend the County, its elected and appointed officials, officers, boards, commissions, commissioners, agents, and employees against any and all claims, suits, causes of action (whether frivolous or otherwise), proceedings, and judgments for damages or equitable relief arising out of the construction, maintenance, or operation of a Cable System; copyright infringements or a failure by a Franchisee, or its Affiliates to secure consents from the owners, authorized distributors, or franchisees of programs to be delivered by the Cable System, other than programs delivered on Public, Educational or Governmental Access Channels, Channels leased pursuant to 47 U.S.C. § 532, or an institutional network (excluding programming controlled by the Franchisee); the acts, errors, or omissions of a Franchisee or its agents, employees or independent contractors; the conduct or presence of a Franchisee's business in the County; or in any way arising out of a Franchisee's enjoyment or exercise of the privileges granted by a Franchise, regardless of whether the act or omission complained of is authorized, allowed, or prohibited by this ~~C~~chapter or a Franchise. Each Franchisee agrees not to sue or to seek any monetary damages from the County, including the Persons and entities described in this subparagraph, in connection with the above-mentioned matters. This indemnification does not extend to claims by a Franchisee

against the County for injunctive relief to enforce the terms of a Franchise;

~~(B)~~b. ~~i~~indemnify, defend, and hold harmless the County, and its elected and appointed officials, officers, boards, commissions, commissioners, employees, and agents from and against any and all claims, demands, suits, or causes of action of any kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, orders, decrees, liabilities, and judgments, whether for damages or otherwise, subject to 47 U.S.C. § 558, arising out of or alleged to arise out of any claim against a Franchisee for invasion of the right of privacy, defamation of any Person, or the violation or infringement of any copyright, trade mark, trade name, service mark, or patent, or of any other right of any Person. This indemnity does not apply to programming carried on Public, Educational or Governmental Access Channels, or Channels leased pursuant to 47 U.S.C. § 532, unless a Franchisee was in any respect engaged in determining the editorial content of the program, or adopts a policy of prescreening programming for the purported purpose of banning or regulating indecent or obscene programming;

~~(C)~~c. ~~p~~provide that the County shall give a Franchisee prompt notice of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this § 41.1-13. ~~A~~(a). The Franchisee shall provide the defense of any claims brought against the County under this subsection of the Code or similar provisions in a Franchise, subject to the terms of any applicable insurance policy, by selecting and paying for counsel of the Franchisee's choice to defend the claim, subject to the consent of the County, which consent shall not be unreasonably withheld. Nothing herein shall be deemed to prevent the County from cooperating with a Franchisee and participating in the defense of any litigation by its own counsel at its own cost and expense; provided, however, that after consultation with the County, a Franchisee shall have the right to defend or settle any claim or action arising hereunder, and the Franchisee shall have the authority to decide the appropriateness and the amount of any such settlement. In the event that the County does not consent to the terms of any such settlement or compromise agreed to by the claimant or claimants, then a Franchisee shall not settle the claim or action, but its obligation to indemnify the County shall in no event exceed the amount of such otherwise agreed upon settlement.

~~(D)~~d. ~~p~~provide that the covenants and representations relating to the indemnification and hold harmless provisions shall survive the term of any Franchise for acts of a Franchisee committed while a Franchise was in effect or performed under color of a Franchise after the expiration, revocation, cancellation, termination or forfeiture of the Franchise; and

~~(E)~~e. ~~p~~provide that, to the extent permitted by applicable rules of civil, criminal and appellate procedure, a Franchisee shall not implead or join the Board, the County, its elected and appointed officers, officials, boards, commissions, commissioners, employees, and agents in any cause of action against the Franchisee arising out of the exercise of any rights the Franchisee has under its Franchise, unless a court of competent jurisdiction has determined that the County is a necessary party.

~~(2)~~ Nothing in this Chapter or a Franchise shall be construed to waive the tort or any other immunity or applicable defense of the County, and its elected and appointed officials, officers, Boards, commissions, commissioners, agents, and employees.

~~(3)~~ Neither the provisions of this ~~S~~section nor any damages recovered by the County shall be construed to limit the liability of a Franchisee for damages to the County, its elected and appointed officers, officials, Boards, commissions, employees, and agents under the Franchise.

~~(B)~~B. *Insurance.* No Franchise to use the Public Rights-of-Way issued to a Franchisee shall be valid or effective until and unless the County obtains assurance that the Franchisee (and those acting on its behalf) have adequate insurance. At a minimum, the following insurance requirements shall be satisfied by a Franchisee:

- ~~(1.)~~ A Franchisee shall not commence construction or operation of a Cable System without obtaining all insurance required under this ~~S~~section and approval of such insurance by the County. The required insurance shall be obtained and maintained for the entire term of a Franchise, or any extension(s) thereof. If the Franchisee, its contractors or subcontractors do not have the required insurance, then the County may order such entities to stop operations until the insurance is obtained and approved.
- ~~(2.)~~ Certificates of insurance, reflecting evidence of the required insurance, shall be filed with the County. For entities that are entering the market, the certificates shall be filed prior to the commencement of construction and once a year thereafter, and as provided below in the event of a lapse in coverage. For entities that have facilities in the Public Rights-of-Way as of the effective date of this ~~C~~chapter, the certificate shall be filed within sixty (60) days of the date of this ~~C~~chapter, annually thereafter, and as provided below in the event of a lapse in coverage, unless a pre-existing Certificate provides for filing of certificates in a different manner.
- ~~(3.)~~ These certificates shall contain a provision that coverages afforded under these policies will not be canceled, suspended, or amended until at least sixty (60) days' prior written notice has been delivered to the Administrator. Policies shall be issued by companies authorized to do business under the laws of the Commonwealth of Virginia. Financial ratings shall be no less than "A-1" in the latest edition of "Best's Key Rating Guide," published by A.M. Best Guide.
- ~~(4.)~~ In the event that the insurance certificate provided indicates that the insurance shall terminate or lapse during the term of a Franchise, then in that event, the Franchisee shall furnish, at least thirty (30) days' prior to the expiration of the date of such insurance, a renewed certificate of insurance as evidence that equal and like coverage will be in force for the balance of the period of the Franchise under which the Cable System operates. Certified copies of the required policies will be provided by the Franchisee to the County upon request.
- ~~(5.)~~ A Franchisee and its contractors or subcontractors engaged in work on the Franchisee's behalf in, on, under or over Public Rights-of-Way, shall maintain the following minimum insurance:
- ~~(A)a.~~ Commercial General Liability insurance with respect to the construction, operation, and maintenance of a Cable System, and the conduct of a Franchisee's business in the County, in a minimum amount of five million dollars (\$5,000,000.00) per occurrence, combined single limit for property damage and bodily injury. The policy must include coverage for Contractual Liability, Premises and Operations, Independent Contractors, Broad Form Property Damage, Personal Injury, and Products and Completed Operations. The policy shall also include coverage for explosion, collapse and underground (XCU) hazard. The Completed Operations and Products liability insurance specified above shall cover all occurrences during the term of the policy, including any occurrence discovered within ~~two~~ (2) years after the termination of a Franchise (in the case of a System owner or operator) or completion of work for the System owner (in the case of a contractor or subcontractor).
- ~~(B)b.~~ Automobile Liability Coverage, with a minimum limit of liability of two million dollars (\$2,000,000.00), per occurrence, combined single limit for bodily injury and property damage coverage. The policy must include coverage for owned automobiles, leased or hired automobiles, and non-owned automobiles.
- ~~(C)c.~~ Broadcasters' Liability Coverage, covering errors and omissions and negligent acts and other operations of a Franchisee, committed during the term of a Franchise, with a limit of liability of at least one million dollars (\$1,000,000.00) per claim and aggregate and a maximum deductible of ~~twenty-five thousand~~ (\$25,000.00).
- ~~(D)d.~~ Workers' Compensation Coverage meeting all requirements of Virginia law and

Employers' Liability Coverage, with the following minimum limits: Bodily Injury by Accident — ~~one hundred thousand dollars~~ (\$100,000.00) each accident, Bodily Injury by Disease — ~~five hundred thousand dollars~~ (\$500,000.00) policy limits and Bodily Injury by Disease — ~~one hundred thousand dollars~~ (\$100,000.00) each employee. Each Franchisee shall require its subcontractors similarly to provide workers' compensation insurance for all the latter's employees unless such employees are covered by the protection afforded by each Franchisee.

- (6.) All of the insurance policies providing the coverage required by this Section shall respond to valid claims occurring during the policy term on an occurrence basis. In the event that any of the occurrence policies above are replaced by a claims-made policy, such policy shall provide for a retroactive reporting date which coincides with the effective date of a Franchise, and shall include an extended reporting period of no less than one (1) year after its termination date. Such replacement shall be brought to the attention of the County, in writing, no later than fifteen (15) days before the replacement date.
- (7.) All liability insurance policies, excluding those specified in ~~Sections § 41.2-13.B.5.b(5)(B) and 41.2-13.B.5.d(5)(D)~~, shall name the County, its elected and appointed officers, officials, boards, commissions, employees, and agents as additional insureds. In the event of a claim under any of the above insurance policies, the Franchisee shall pay all deductibles.
- (8.) In every Certificate, the County shall reserve the right to: (i) review the insurance amounts and policy terms specified in paragraph (5) no more than once a year; and (ii) require reasonable adjustments to such amounts and policy terms, consistent with the public interest.
- (9.) Failure to comply with the insurance requirements set forth in this ~~S~~section shall constitute a material violation of a Franchise.

(Ord. No. 98-21, 6-20-98)

**§ 41.2-14. Performance Bond, Security Fund, Revocation and Termination Due to Bankruptcy.**

(a) ~~A.~~ *Performance ~~B~~bond.* Every certificate shall require the Franchisee to post a performance bond in an amount acceptable to the County to secure the performance of the Franchisee's obligations to repair and restore the Public Rights-of-Way in accordance with this Code.

(b) ~~B.~~ *Security ~~F~~fund.*

(1.) Every Franchisee shall establish a Security Fund to secure the payment of fees owed, to secure any other performance promised in a Certificate or required by this Code, and to pay any taxes, fees or liens owed to the County. The Board, or its designee, shall set the amount of the Security Fund in a Certificate. Any letter of credit provided to satisfy this requirement shall be in a form acceptable to the County ~~a~~Attorney and with an institution acceptable to the Administrator. Should the County draw upon the Security Fund, it shall promptly notify the Franchisee, and the Franchisee shall promptly restore the Security Fund to the full required amount. This Security Fund may be reduced by the Board for a Franchisee where the Board determines, in its discretion, that a particular Franchisee's operations are sufficiently limited that a Security Fund is not necessary to secure the required performance. The Board may from time to time increase the amount of the required Security Fund to reflect increased risks to the County and to the public.

(2.) The following procedures shall apply to drawing on the Security Fund:

(A) ~~a.~~ If a Franchisee fails to make timely payment to the County of any amount due under its Certificate, this Chapter, or other applicable law, or fails to compensate the County within ten (10) days of written notification that such compensation is due, for any damages, costs, or expenses the County suffers or incurs by reason of any act or omission of the Franchisee in connection with this Agreement or its enforcement, or fails, after ten

(10) days' written notice, to comply with any provision of its Certificate or this Chapter that the Administrator determines can be remedied by an expenditure of the security, the County may withdraw the amount thereof, with interest and any penalties, from the Security Fund.

~~(B)~~b. Within three (3) days of a withdrawal from the Security Fund, the County shall mail to a Franchisee, by certified mail, return receipt requested, written notification of the amount, date, and purpose of such withdrawal to the Franchisee.

~~(C)~~c. If at the time of a withdrawal from the Security Fund by the County, the amounts available are insufficient to provide the total payment towards which the withdrawal is directed, the balance of such payment shall continue as the obligation of the Franchisee to the County until it is paid.

~~(D)~~d. No later than thirty (30) days after mailing of notification to the Franchisee by certified mail, return receipt requested, of a withdrawal under the Security Fund, the Franchisee shall restore the Security Fund to the total amount specified herein.

~~(E)~~e. Upon termination of the Franchise under conditions other than those stipulating forfeiture of the Security Fund, the balance then remaining in the Security Fund shall be returned to the Franchisee within ninety (90) days of such termination, provided that there is then no outstanding default on the part of the Franchisee.

~~(c)~~C. *Failure ~~C~~onstitutes ~~M~~aterial ~~V~~iolation.* Failure to maintain or restore the Security Fund or a Performance Bond shall constitute a material violation of this ~~C~~hapter and a Certificate.

~~(d)~~D. *Revocation, or ~~R~~eduction of ~~F~~ranchise ~~T~~erm.*

~~(1)~~1. When, after notice and providing a Franchisee with an opportunity to be heard, the Board finds that a System is being maintained or operated in violation of this ~~C~~hapter or in substantial violation of the terms of a Franchise, the Board may make an appropriate reduction in the remaining term of a Franchise or revoke a Franchise. Before a Franchise is revoked or shortened, the Administrator shall establish and conduct a compliance proceeding that comports with the requirements of this ~~Section §~~ 41.2-14.~~C~~~~(e)~~. At the conclusion of the compliance proceeding, the Administrator shall transmit a recommended decision to the Board. A Franchisee may appeal the Administrator's recommendation to the Board, but any such appeal shall be filed within thirty (30) days of the receipt by the Franchisee of the written decision of the Administrator. If no appeal is filed, the Board may immediately determine whether to revoke or shorten the term of a Franchise in accordance with the requirements of this provision. However, if an appeal is filed by a Franchisee, the Board shall not revoke or shorten the term of the Franchise until the appeal has been decided. Notwithstanding the foregoing, a Franchise may not be revoked unless a Franchisee ~~(i)~~ was given notice of the default; ~~(ii)~~ was given thirty (30) days to cure the default; and ~~(iii)~~ the Franchisee failed to cure the default, or to propose a schedule for curing the default that is acceptable to the County. The required notice may be given before the Administrator conducts the proceeding required by this paragraph. No opportunity to cure is required for repeated material violations or any Transfer without the prior consent of the County, and fraud may be deemed incurable.

~~(2)~~2. Upon termination of a Franchise, whether by action of the Board as provided above, or by passage of time, a Franchisee shall be obligated to cease using its System for the purposes authorized by the Franchise. The County may either take possession of some or all of the Franchisee's facilities in the Public Rights-of-Way or require the Franchisee or its surety to remove some or all of the Franchisee's facilities from the Public Rights-of-Way and to restore the Public Rights-of-Way to their proper condition. Notwithstanding anything in this ~~C~~hapter to the contrary, should a Franchisee fail, refuse, or neglect to remove such facility, the County may remove the facility at the expense of the Franchisee. Regardless of the existence or amount of any security fund or

performance bond, the obligation of a Franchisee to remove shall survive the termination of the Franchise. This provision, however, does not authorize the County to take possession of, or require a Franchisee to remove, any facilities that are used to provide another service for which the Franchisee holds a valid Franchise issued by the Board.

~~(e)E.~~ *Termination ~~D~~due to ~~B~~bankruptcy.*

~~(1.)~~ Any Franchise may, at the option of the County following a public hearing, be revoked by the Board one hundred twenty (120) calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the Franchisee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding, unless within that one hundred twenty (120) day period:

~~(A)a.~~ Such assignment, receivership, or trusteeship has been vacated; or

~~(B)b.~~ Such assignee, receiver, or trustee has fully complied with the terms and conditions of this ~~C~~chapter and the applicable Certificate and has executed an agreement, approved by a court of competent jurisdiction, under which it assumes and agrees to be bound by the terms and conditions of this ~~C~~chapter and the applicable Certificate, and such other conditions as may be established or as are required under ~~Section - §~~ 41.2-13 of this ~~C~~chapter.

~~(2.)~~ Notwithstanding the foregoing, in the event of foreclosure or other judicial sale of any of the facilities, equipment, or property of a Franchisee, the Board may revoke the Franchise, following a public hearing, by serving notice on the Franchisee and the successful bidder, in which event the Franchise and all rights and privileges of the Franchise will be revoked and will terminate thirty (30) calendar days after serving such notice, unless:

~~(A)a.~~ The Board has approved the Transfer of the Franchise to the successful bidder; and

~~(B)b.~~ The successful bidder has covenanted and agreed with the County to assume and be bound by the terms and conditions of the Certificate and this ~~C~~chapter, and such other conditions as may be established or as are required pursuant to this ~~C~~chapter or a Certificate.

~~(f)E.~~ *Penalties and ~~F~~forfeitures.* In addition to any other remedies available, a Franchisee may be subject to penalties and forfeitures for any violation of this ~~C~~chapter, unless prohibited by applicable law, including, without limitation:

~~(1.)~~ ~~a~~Any knowing submission of false or fraudulent information to the County;

~~(2.)~~ ~~a~~Any failure to comply with any lawful order of the County or request for information under this ~~C~~chapter; or

~~(3.)~~ ~~a~~An evasion of any lawful order of the County, any provision of this ~~C~~chapter, or other applicable law.

~~(g)G.~~ *Purchase or ~~T~~ransfer of a ~~C~~cable ~~S~~ystem by the County.*

~~(1.)~~ If a Franchise granted under this ~~C~~chapter expires, the County may acquire ownership of the Cable System at Fair Market Value, subject to a Franchisee's rights under 47 U.S.C. § 546.

~~(2.)~~ If the Board revokes or terminates a Franchise for cause, the County may acquire ownership of the Cable System at an Equitable Price.

~~(h)H.~~ *Remedies ~~C~~umulative.* All remedies under this ~~C~~chapter and any Certificate are cumulative

unless otherwise expressly stated. The exercise of one (1) remedy shall not foreclose use of another, nor shall the exercise of a remedy or the payment of liquidated damages or penalties relieve a Franchisee of its obligations to comply with its Franchise. Remedies may be used singly or in combination; in addition, the County may exercise any rights it has at law or equity.

~~(+)I.~~ *Relation to ~~I~~nsurance and ~~I~~ndemnity ~~R~~requirements.* Recovery by the County of any amounts under insurance, a Security Fund, a performance bond, or otherwise does not limit a Franchisee's duty to indemnify and hold harmless the County and its elected and appointed officers, officials, Boards, commission, employees, agents and volunteers in any way; nor shall such recovery relieve a Franchisee of its obligations under a Franchise, limit the amounts owed to the County, or in any respect prevent the County from exercising any other right or remedy it may have. Nothing herein shall be construed to authorize the double-recovery of damages.

~~(+)I.~~ *Effects of ~~L~~itigation.* Pending litigation or any appeal to any regulatory body or court having jurisdiction over a Franchisee shall not excuse the Franchisee from the performance of its obligations under this ~~C~~hapter or its Certificate unless a stay specifically applicable to the performance of the obligation is obtained from a court or regulatory body of competent jurisdiction. Failure of the Franchisee to perform such obligations because of pending litigation or a petition, in the absence of a stay issued by a court or regulatory body of competent jurisdiction, may result in forfeiture or revocation pursuant to the provisions of this ~~C~~hapter and/or a Certificate. (Ord. No. 98-21, 6-20-98)

#### § 41.2-15. Transfers.

~~(+)A.~~ *Board approval ~~R~~required.*

~~(1.)~~ A Franchise shall be a privilege that is in the public trust and personal to the Franchisee. A Franchisee's obligations under its Franchise involve personal services whose performance involves personal credit, trust, and confidence in the Franchisee.

~~(2.)~~ No Transfer (including, but not limited to, Transfer as a result of forced or voluntary sale, merger, consolidation, receivership, or any other means) shall occur unless prior application is made by the Franchisee to the Board and the Board's prior written consent is obtained, pursuant to this ~~C~~hapter and a Certificate, and only then upon such terms and conditions as the Board deems necessary and proper. Any such Transfer without the prior written consent of the Board shall be considered to impair the County's assurance of due performance. The granting of approval for a Transfer in one instance shall not render unnecessary approval of any subsequent Transfer.

~~(3.)~~ Application.

~~(A)a.~~ A Franchisee shall promptly notify the Administrator of any proposed Transfer. If any Transfer should take place without prior notice to the Administrator, the Franchisee will promptly notify the County that such a Transfer has occurred.

~~(B)b.~~ At least one hundred-~~twenty~~ (120) calendar days prior to the contemplated effective date of a Transfer, the Franchisee shall submit to the Administrator an application for approval of the Transfer. Such an application shall provide complete information on the proposed transaction, including details on the legal, financial, technical, and other qualifications of the transferee, and on the potential impact of the Transfer on Subscriber rates and service. At a minimum, the following information shall be included in the application, provided that, a Franchisee is not required to duplicate information that it submits to the Administrator to comply with its obligations under federal or State law:

~~(+)1.~~ ~~a~~All information and forms required under federal law or the equivalent of such forms if no longer required by federal law;

~~(+)2.~~ ~~a~~All information required in ~~Sections §§~~ 41.2-4.~~C.1(e)(1)~~ to 41.2-4.~~C.5(e)(5)~~, 41.2-4.~~C.11(e)(11)~~ and 41.2-4.~~C.14(e)(14)~~ of this ~~C~~hapter, with respect to the

proposed transferee;

~~(iii)~~(3) ~~a~~Any contracts, financing documents, or other documents that relate to the proposed transaction, and all documents, schedules, exhibits, or the like referred to therein;

~~(iv)~~(4) ~~a~~Any documents related to the transaction that have been provided to any entity that has been asked to provide financing (debt, equity, or any other kind) for, or to underwrite any offering made in connection with, the proposed transaction;

~~(v)~~(5) ~~a~~Any shareholder reports or filings with the Securities and Exchange Commission or the Federal Trade Commission that discuss the transaction, and any filings required under federal or State law in connection with the proposed transaction;

~~(vi)~~(6) ~~e~~Complete financial statements for the transferor and the proposed transferee(s) for the last three (3) years, including balance sheets, income statements, profit and loss statements, and documents detailing capital investments and operating costs;

~~(vii)~~(7) ~~a~~A detailed description of the sources and amounts of funds to be used in the proposed transaction, indicating how the debt-to-equity ratio of the Cable System will change in the course of the transaction; what entities will be liable for repayment of any debt incurred; what interest, payment schedule, and other terms or conditions will apply to any debt financing; any debt coverages or financial ratios any potential transferee(s) will be required to maintain over the term of a Franchise if the proposed transaction is approved; what financial resources would be available to the System under the control of the proposed transferee; whether the proposed transferee can meet debt-to-equity or any other required ratios without increasing rates, with any assumptions underlying that conclusion, and if not, what increases would be required, at what specific dates, and why;

~~(viii)~~(8) ~~e~~Complete information regarding any potential impact of the Transfer on Subscriber rates and service;

~~(ix)~~(9) ~~a~~Any representations made to anyone, in connection with the transaction, about the transferor's compliance with its Franchise; and

~~(x)~~(10) ~~a~~A brief summary of the proposed transferee's plans for at least the next five (5) years regarding line extension, plant and equipment upgrades, Channel capacity, expansion or elimination of services, and any other changes affecting or enhancing the performance of the Cable System. This summary shall include the expected dates that specific plans will be implemented, and the projected costs of such plans.

~~(C)~~c. In addition to providing the information specified in § 41.2-15.A.3.b(a)(3)(B), a Franchisee shall, at the request of the County, furnish any other information necessary to provide a complete and accurate understanding of the financial position of the Cable System before and after the proposed Transfer.

~~(D)~~d. For the purposes of determining whether it shall consent to a Transfer, the County or its agents may inquire into all qualifications of the prospective transferee and such other matters as the County may deem necessary and relevant to determine whether the Transfer is in the public interest and should be approved, denied, or conditioned as provided under ~~Section~~ § 41.2-15.B(b). A Franchisee and any prospective transferees

shall assist the County in any such inquiry, and if they fail to do so, the request for a Transfer may be denied.

~~(b)~~**B.** *Determination by County.* In making a determination as to whether to grant, deny, or grant subject to conditions, an application for a Transfer of a Franchise, the County may consider, without limitation, the legal, financial, and technical qualifications of the transferee to operate the Cable System; any potential effects of the Transfer on Subscriber rates or services; whether a Franchisee is in compliance with its Franchise, and this ~~C~~chapter and, if not, the proposed transferee's commitment to cure such noncompliance; whether the transferee owns or controls any other Cable System in the County, and whether operation by the transferee may eliminate or reduce competition in the delivery of Cable Service in the County; and whether operation by the transferee or approval of the Transfer would adversely affect Subscribers, the public, or the County's interest under this ~~C~~chapter, a Franchise, or other applicable law.

~~(c)~~**C.** *Transferee's Agreement.* No application for a Transfer of a Franchise shall be granted unless the transferee agrees in writing that it will abide by and accept all terms of this ~~C~~chapter and the Franchise and that it will assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous Franchisee under this ~~C~~chapter and the Franchise, for all purposes, including renewal.

~~(d)~~**D.** *Approval Does Not Constitute Waiver.* Approval by the Board of a Transfer does not constitute a waiver or release of any of the rights of the County under this ~~C~~chapter or a Certificate, whether arising before or after the date of the Transfer.

~~(e)~~**E.** *Exception for Intra-Company Transfers.* Notwithstanding the foregoing, a Certificate may provide that Transfers to Affiliates of a Franchisee shall be excepted from the requirements of ~~Section §~~ 41.2-15, ~~A(a)~~ where (i) the Affiliate is wholly-owned and managed by an entity that will guarantee the performance under a Franchise; and (ii) the transferee Affiliate:

- ~~(1.)~~ **1.** ~~n~~Notifies the Administrator of the Transfer at least sixty (60) days before it occurs and, at that time provides the agreements and warranties required by this ~~Section §~~ 41.2-15, describes the nature of the Transfer, and submits complete information describing who will have direct and indirect ownership and control of the Cable System after the Transfer;
- ~~(2.)~~ **2.** ~~w~~Warrants that it has read, accepts and agrees to be bound by each and every term of the Certificate and related amendments, regulations, ordinances and resolutions then in effect;
- ~~(3.)~~ **3.** ~~a~~Agrees to assume all responsibility for all liabilities, acts and omissions, known and unknown, of its predecessor Franchisee(s), for all purposes, including renewal;
- ~~(4.)~~ **4.** ~~a~~Agrees that the Transfer shall not permit it to take any position or exercise any right which could not have been exercised by its predecessor Franchisee(s);
- ~~(5.)~~ **5.** ~~w~~Warrants that the Transfer will not substantially increase the financial burdens upon or substantially diminish the financial resources available to the Franchisee (the warranty to be based on comparing the burdens upon and resources that will be available to the transferee compared to its predecessors), or otherwise adversely affect the ability of the Franchisee to perform;
- ~~(6.)~~ **6.** ~~w~~Warrants that the Transfer will not in any way adversely affect the County or Subscribers (including by increasing rates);
- ~~(7.)~~ **7.** ~~n~~Notifies the County that the Transfer is complete within five (5) business days of the date the Transfer is completed; and
- ~~(8.)~~ **8.** ~~a~~Agrees that the Transfer in no way affects any evaluation of its legal, financial or technical qualifications that may occur under the Franchise or applicable law after the Transfer, and does not directly or indirectly authorize any additional Transfers.

(Ord. No. 98-21, 6-20-98)

§ 41.2-16. Open Video Systems.

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~~(a)A.~~ *Applicability of Chapter.*

~~(1.)~~ This Chapter shall apply to open video systems that comply with 47 U.S.C. § 573, to the extent permitted by applicable law, except that the following sections shall not apply: § 41.2-3 ~~A(a) through C(e)~~ (regarding grant of franchise), § 41.2-4 (franchise applications), § 41.2-5 (filing fees), § 41.2-7 ~~A(a)~~ (construction schedule), § 41.2-10 (rate regulation), § 41.2-14 ~~A.1.b(a)(1)(B) through A.1.d(a)(1)(D)~~ and 41.2-14 ~~A.1.h(a)(1)(H)~~ (certain penalties), § 41.2-14 ~~E(e)~~ (franchise termination due to bankruptcy), and § 41.2-15 (Transfers).

~~(2.)~~ In applying this Chapter to an open video system, "Franchisee" shall be taken to refer to the open video system operator, "Cable System" to the open video system, and similar terms shall apply similarly.

~~(b)B.~~ *Fee in Lieu of Franchise Fee.* An open video system operator shall pay to the County a fee in lieu of the Franchise fee required in ~~Section §~~ 41.2-11 of this Chapter, pursuant to the procedures and conditions specified in applicable law, including FCC regulations, ~~Section §~~ 41.2-11, and generally herein.

~~(c)C.~~ *Public, Educational, and Governmental Access Obligations.* An open video system operator shall be subject to obligations pertaining to public, educational, and governmental access pursuant to applicable law and to the requirements herein.

~~(d)D.~~ *Right-of-Way Usage.* An open video system operator shall be subject to all requirements of State and local law regarding authorization to use or occupy the Public Rights-of-Way, except to the extent specifically prohibited by federal law. FCC approval of an open video system operator's certification pursuant to 47 U.S.C. § 573 shall not be taken to confer upon such operator any authority to use or occupy the Public Rights-of-Way that such operator would not otherwise possess. (Ord. No. 98-21, 6-20-98)

§ 41.2-17. Rights of Individuals Protected.

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~~(a)A.~~ *Discriminatory Practices Prohibited.*

~~(1.)~~ A Franchisee shall not deny service, deny access, or otherwise discriminate against Subscribers, Programmers, or residents of the County on the basis of race, color, religion, national origin, sex, age, condition of physical handicap, creed, ethnic background, marital status or sexual orientation.

~~(2.)~~ A Franchisee shall not discriminate among Persons or the County, or take any retaliatory action against a Person or the County because of that entity's exercise of any right it may have under federal, State, or local law, nor may the Franchisee require a Person or the County to waive such rights as a condition of taking service.

~~(3.)~~ Except as federal law prohibits enforcement of this provision, a Franchisee shall not deny access or levy different rates and charges on any group of potential cable subscribers because of the income of the residents of the local area in which such group resides.

~~(4.)~~ Subject to applicable law and except to the extent that a Franchisee is relieved of such a requirement, a Franchisee is prohibited from discriminating in its rates or charges or from granting undue preferences to any Subscriber, potential Subscriber, or group of Subscribers or potential Subscribers; provided, however, that a Franchisee may offer temporary, bona fide promotional discounts in order to attract or maintain Subscribers, so long as such discounts are offered on a non-discriminatory basis to similar classes of Subscribers throughout the County; and a Franchisee may offer discounts for the elderly, the handicapped, non-for-profit Persons or organizations, or the economically disadvantaged, and such other discounts as it is expressly entitled to provide

under federal law, if such discounts are applied in a uniform and consistent manner. A Franchisee shall comply at all times with all applicable federal, State, and County laws, and all executive and administrative orders relating to non-discrimination.

~~(5.)~~ Information Accessibility: Each document required to be maintained, filed or submitted under the provisions of this ~~C~~hapter or a Certificate, except those specifically designated as confidential by a Franchisee and not required to be disclosed by the County under applicable law, is a public document, available for public inspection and copying at the requestor's expense, at the office(s) of the Franchisee or the County during normal business hours.

~~(b)B.~~ *Equal Employment Opportunity.* A Franchisee shall not refuse to employ, discharge from employment, or discriminate against any Person in compensation or in terms, conditions, or privileges of employment because of race, color, religion, national origin, sex, sexual orientation, age, disability, or marital status. A Franchisee shall comply with all federal, State, and local laws and regulations governing equal employment opportunities, as the same may be amended from time to time.

~~(c)C.~~ *Subscriber Privacy.*

~~(1.)~~ A Franchisee shall at all times protect the privacy rights of all Subscribers, including but not limited to those rights secured by the provisions of Section 631 of the Cable Act, 47 U.S.C. § 551.

~~(2.)~~ Neither a Franchisee nor any other Person shall initiate in any form the discovery of any information on or about an individual Subscriber's premises without prior valid authorization from the Subscriber potentially affected. This provision is not intended to prohibit the transmission of signals useful only for the control or measurement of System performance.

~~(3.)~~ A Franchisee shall not permit the installation of any special terminal equipment in any Subscriber's premises that will permit transmission from such Subscriber's premises of two-way services utilizing aural, visual or digital signals without such Subscriber's prior valid authorization.

~~(4.)~~ As used in this ~~Section §~~ 41.2-17, ~~C(e)~~, "valid authorization" shall mean written permission from a Subscriber.

~~(5.)~~ A Franchisee shall strictly observe and protect the privacy rights and property rights of Subscribers and Users at all times. Individual Subscriber preferences of any kind, viewing habits, political, social or economic philosophies, beliefs, creeds, religions, or telephone numbers shall not be revealed to any person, governmental unit, police department or investigating agency unless upon the authority of a court of law or upon prior voluntary valid authorization of a Subscriber.

~~(6.)~~ A Franchisee may release the number of its Subscribers, but only as a total number and as a percentage of the potential Subscribers throughout the County or served by the System. When indicating the number of Subscribers viewing a particular Channel at a particular time, a Franchisee shall indicate only the total number of Subscribers viewing during the relevant time and the percentage of all Subscribers which they represent, but never the identity of a particular Subscriber.

~~(7.)~~ A Franchisee may maintain such information as is necessary to bill Subscribers for any System service.

~~(8.)~~ No monitoring of any Subscriber terminal shall take place without specific prior valid authorization by the Subscriber in question; provided, however, that a franchisee may conduct System-wide or individually addressed "sweeps" for the purpose of verifying System integrity and may take reasonable efforts necessary to prevent signal theft. In no event shall aural or visual monitoring of any kind take place without a clear indication to the Subscriber that such monitoring is taking place.

(9.) A Franchisee shall not disclose any test results that would reveal the commercial product preferences or opinions of individual Subscribers, members or their families or their invitees, licensees or employees, without a Subscriber's prior valid authorization.

(10.) A Subscriber may at any time revoke any authorization to release information by delivering to a Franchisee in writing, by mail or otherwise, the Subscriber's decision to revoke the authorization. Any such revocation shall be effective upon receipt by the Franchisee.

(11.) A Franchisee shall not condition Subscriber service on the Subscriber's valid authorization or denial of permission to collect, maintain or disclose personally identifiable information, except to the extent that such information is necessary for credit check or billing purposes.

(12.) Each compilation, publication, tabulation or other dissemination of information made or permitted to be made in violation of this ~~Section §~~ 41.2-17.C(e) shall be considered a separate violation.

(Ord. No. 98-21, 6-20-98)

§ 41.2-18. ~~Administration.~~

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(a)A. *Duties of the Administrator.* The Administrator, either directly or through a duly appointed designee or designees, shall have the responsibility for overseeing the day-to-day administration of this ~~C~~chapter, Certificate, and related Agreements. The Administrator shall be empowered to take all administrative actions on behalf of the County, except for those actions specified in this ~~C~~chapter that are reserved to the Board. The Administrator may recommend that the Board take certain actions with respect to a Franchise. The Administrator shall keep the Board apprised of developments in cable and provide the Board with assistance, advice and recommendations as appropriate.

(b)B. *Authority of the Board.* The Board shall have the sole authority to regulate rates for Cable Service; grant Franchises; authorize the entering into of Certificates; modify Certificates; renew Franchises; revoke Franchises; and authorize the Transfer of a Franchise.

(c)C. *Transfer of Authority.* If at any time the powers of the Board, or any agency or official of the County or the Board are transferred by law to any other board, agency, authority or official, then such other board, agency, authority or official shall have the powers, rights and duties previously vested under this ~~C~~chapter or by law in the Board, or any agency or official of the County or the Board.  
(Ord. No. 98-21, 6-20-98)

§ 41.2-19. ~~Miscellaneous Provisions.~~

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(a)A. *Compliance ~~W~~with ~~L~~aws.* Each Franchisee shall comply with all federal, State, and local laws and regulations heretofore and hereafter adopted or established during the entire term of the Franchise granted to the Franchisee.

(b)B. *Captions.* The captions and headings of sections throughout this ~~C~~chapter are intended solely to facilitate reading and reference to the sections and provisions of this ~~C~~chapter. Such captions shall not affect the meaning or interpretation of this ~~C~~chapter.

(c)C. *No ~~R~~ecourse ~~A~~gainst the County.* Without limiting such immunities as the County or other Persons may have under applicable law, a Franchisee shall have no recourse against the County, its elected or appointed officials, officers, boards, commissions, commissioners, employees and agents for any loss, cost, expense, claim, liability or damage arising out of any action undertaken or not undertaken by the Franchisee pursuant this ~~C~~chapter or a Franchise, whether or not such action or non-action was required by this ~~C~~chapter or a Franchise, arising out of the enforcement or non-enforcement by the County or the Board of any provision or requirement of this ~~C~~chapter or a Franchise, or otherwise arising out of this ~~C~~chapter or a Franchise. This subsection shall not preclude injunctive relief.

(d)D. *Rights and ~~R~~emedies.*

(1.) The rights and remedies reserved to the Board and the County by this Chapter are cumulative and shall be in addition to and not in derogation of any other rights and remedies which the Board or the County may have with respect to the subject matter of this Chapter.

(2.) The County hereby reserves to itself the right to intervene in any suit, action or proceeding involving any provision of this Chapter or a Certificate.

(3.) Specific mention of the materiality of any of the provisions herein is not intended to be exclusive of any others for the purpose of determining whether any failure of compliance hereunder is material and substantial.

(4.) No Franchisee shall be relieved of its obligation to comply with any of the provisions of this Chapter or a Certificate by reason of any failure of the County, the Board or the Administrator to enforce prompt compliance. No inaction by the County, the Board or the Administrator shall be deemed to waive or void any provision of this Chapter or a Certificate.

(E) *Amendments to this Chapter.* In order to fulfill the public interest goals of this Chapter, to provide additional communications services to the County through the use of Cable Systems, and thereby to ensure the benefits which will result from such services, the Board specifically reserves the right to amend this Chapter to effectuate the public interest in the operation of a Cable System.

(F) *Public Emergency.* In the event of a major public emergency or disaster, as determined by the County or declared by the Governor of Virginia, a Franchisee shall immediately make its entire Cable System, employees, and property, as may be necessary, available for use by the County or any other civil defense or governmental agency designated by the County to operate the System for the term of such emergency or disaster for the emergency purposes. In the event of such use, a Franchisee shall waive any claim that such use by the County constitutes a use of eminent domain, provided that the County shall return use of the entire System, employees, and property to the Franchisee after the emergency or disaster has ended or has been dealt with.

(G) *Connections to System; Use of Antennae.*

(1.) To the extent consistent with federal law, Subscribers shall have the right to attach devices to a Franchisee's System to allow Subscribers to transmit signals or services for which they have paid to VCRs, receivers, and other terminal equipment, so long as such devices do not interfere with the operation of the Cable System, or the reception of any cable Subscriber, nor serve to circumvent a Franchisee's security procedures, nor for any purpose to obtain services illegally. Subscribers also shall have the right to use their own remote control devices and Converters, and other similar equipment, and a Franchisee shall provide information to consumers which will allow them to adjust such devices so that they may be used with the Franchisee's System.

(2.) A Franchisee shall not, as a condition of providing service, require a Subscriber or potential Subscriber to remove any existing antenna or disconnect an antenna, or prohibit or discourage a Subscriber from installing an antenna switch, provided that such equipment and installations are consistent with applicable codes and technically able to shield the Cable System from any interference.

(H) *Calculation of Time.* Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required under this Chapter or any Certificate, and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of duration time.

(I) *Severability.* If any term, condition, or provision of this Chapter shall, to any extent, be held to be invalid or unenforceable by a valid order of any court or regulatory agency, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a subsequent change in applicable law, so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and

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effect without further action by the County or the Board and shall thereafter be binding on the Franchisee and the County.

| ~~§~~ In exercising its powers pursuant to this ~~C~~chapter, the Board may grant Certificates or authorize renewals, extensions, modifications, or transfers of a Franchise that contain terms that vary from the requirements of this ~~C~~chapter, provided that the Board determines that such terms are in the best interests of the County or enhance the public health, safety or welfare.  
| (Ord. No. 98-21, 6-20-98; Ord. No. 06-10, 6-13-06)

**ARLINGTON COUNTY CODE**

**Chapter 42**

**RESERVED\***

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\* **Editors Note:** Ord. No. 98-21, adopted June 20, 1998, repealed Ch. 42, in its entirety, which pertained to CATV certificates. The user is directed to new Ch. 41.2, Cable Television Communications.

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ARLINGTON COUNTY CODE

Chapter 43

REAL ESTATE TAX RELIEF FOR THE ELDERLY

- § 43-1. Definitions.
- § 43-2. Exemption or ~~d~~Deferral or ~~b~~Both ~~a~~Authorized; ~~e~~Effective ~~d~~Date.
- § 43-3. Administration of the ~~e~~Exemption or ~~d~~Deferral or ~~b~~Both.
- § 43-4. Requirements for ~~e~~Exemption or ~~d~~Deferral or ~~b~~Both.
- § 43-5. Claiming of ~~e~~Exemption or ~~d~~Deferral or ~~b~~Both.
- § 43-6. Amount of ~~e~~Exemption; ~~r~~Requirement to ~~r~~Report ~~e~~Changes in ~~i~~Income and ~~e~~Ownership.
- § 43-7. Amount of ~~d~~Deferral; ~~r~~Repayment of ~~d~~Deferral ~~t~~Taxes.
- § 43-8. Reserved.
- § 43-9. Violations.

§ 43-1. Definitions.

~~For the purpose of this chapter, the following words and phrases terms, when used in this chapter, shall have the following meanings respectively ascribed to them by this section unless the context clearly indicates otherwise:~~

~~“Affidavit” shall mean~~ the real estate tax exemption or deferral affidavit.

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~~“County” shall mean~~ Arlington County, Virginia.

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~~“County Board” shall mean~~ the ~~e~~County ~~b~~Board of Arlington County, Virginia.

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~~“County Manager” shall mean~~ the ~~e~~County ~~m~~Manager of Arlington County, Virginia, in his capacity as the constituted local board of welfare of Arlington County, Virginia.

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~~“Deferral” shall mean~~ deferral from the Arlington County real estate tax according to the provisions of this chapter.

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~~“Dwelling” shall mean~~ the full-time residence of the person or persons claiming exemption or deferral.

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~~“Exemption” shall mean~~ exemption from the Arlington County real estate tax according to the provisions of this chapter.

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~~“Head of household” shall mean~~ one who occupies and keeps house either for himself alone without any other person residing in the same dwelling or for himself and others while he supports and maintains the dwelling in which they all reside.

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~~“Owner” shall mean~~ any person who has title or partial title to the property for which exemption or deferral is sought and who has the use, control or occupation of the property, whether this interest in such property is an absolute fee or an estate less than fee.

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~~“Permanently and totally disabled” shall mean~~ unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment or deformity which can be expected to result in death or can be expected to last for the duration of such person's life.

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~~“Property” shall mean~~ real property.

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“Taxable year” ~~shall~~ means the calendar year, from January 1 until December 31, for which the exemption, or deferral or both are claimed.  
 (1-1-72; 1-6-73; 8-5-78; 12-13-80; Ord. No. 87-30, 1-1-88; Ord. No. 88-22, 1-1-89; Ord. No. 89-31, 1-1-90; Ord. No. 93-1, 3-20-93; Ord. No. 01-11, 4-21-01; Ord. No. 08-22, 12-13-08)

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§ 43-2. Exemption or ~~d~~Deferral or ~~b~~Both ~~a~~Authorized; ~~e~~Effective ~~d~~Date.

Real estate tax exemption, or deferral, or both, are provided for qualified property owners who are not less than sixty-five (65) years of age or those qualified property owners who are permanently and totally disabled and who are eligible according to the terms of this chapter. Persons qualifying for exemption, or deferral, or both, are deemed to be bearing an extraordinary real estate tax burden in relation to their income and financial worth. The effective date of this chapter, as amended, shall be January 1, 1990.  
 (1-1-72; Ord. No. 89-31, 1-1-90; Ord. No. 08-22, 12-13-08)

§ 43-3. Administration of the ~~e~~Exemption or ~~d~~Deferral or ~~b~~Both.

The exemption or deferral or both shall be administered by the ~~e~~County ~~m~~Manager according to the provisions of this chapter. The ~~e~~County ~~m~~Manager is hereby authorized and empowered to prescribe, adopt, promulgate and enforce rules and regulations in conformance with the provisions of this chapter, including the requirement of answers under oath as may be reasonably necessary to determine qualifications for exemption or deferral or both as specified by this chapter. The ~~e~~County ~~m~~Manager may require the production of certified tax returns and appraisal reports to establish income or financial worth.  
 (1-1-72; Ord. No. 89-31, 1-1-90; Ord. No. 08-22, 12-13-08)

§ 43-4. Requirements for ~~e~~Exemption or ~~d~~Deferral or ~~b~~Both.

Exemption or deferral or both shall be granted to persons subject to the following provisions:

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(1) ~~\_\_\_\_\_~~ ~~A~~. The title of the property for which exemption or deferral or both are claimed is held, or partially held, on January 1 of the taxable year by the person or persons claiming exemption or deferral or both; or the person or persons claiming exemption or deferral or both are life tenants on the property for which exemption or deferral or both are claimed on January 1 of the taxable year.

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(2) ~~\_\_\_\_\_~~ ~~B~~. Each owner of the property for which exemption or deferral or both are claimed is sixty-five (65) years old during the current taxable year and occupies such property as their sole dwelling, or is permanently and totally disabled. A dwelling jointly held by a husband and wife shall qualify if either spouse is or becomes sixty-five (65) years old or is or becomes permanently and totally disabled during the current taxable year.

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(3) ~~\_\_\_\_\_~~ ~~C~~. The gross combined income of the owner(s) during the year immediately preceding the taxable year shall be determined in an amount not to exceed forty-five ~~percent~~ (45%) ~~percent~~ of the median adjusted gross income of married residents of Arlington County for a taxable year as published by the Weldon Cooper (WC) Center for Public Service of the University of Virginia adjusted for household size for a total exemption; shall be between forty-five ~~percent~~ (45%) ~~percent~~ of the median adjusted gross income of married residents of Arlington County for a taxable year as published by WC adjusted for household size to fifty ~~percent~~ (55%) ~~percent~~ of the median adjusted gross income of married residents of Arlington County for a taxable year as published by WC adjusted for household size for a fifty ~~percent~~ (50%) ~~percent~~ exemption; shall be between fifty five ~~percent~~ (55%) ~~percent~~ of the median adjusted gross income of married residents of Arlington County for a taxable year as published by WC adjusted for household size and eighty ~~percent~~ (80%) ~~percent~~ of the WC for a twenty-five ~~percent~~ (25%) ~~percent~~ exemption. Any amount not exempted may be deferred by the owner. In no event shall the gross combined income of the owner(s) during the year immediately preceding the taxable year exceed eighty ~~percent~~ (80%) ~~percent~~ of the median adjusted gross income of married residents based on the most recent tax returns of the married residents of Arlington County for a taxable year as published by the Weldon Cooper Center for Public Service of the University of Virginia. The ~~I~~ncome limit shall be adjusted annually thereafter. Gross combined income shall include all income from all sources of the owner(s) and/or relatives living in the dwelling for which exemption or deferral or both are claimed.

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~~(4)~~      D. Reserved.

~~(5)~~      E. The total combined financial worth of the owner(s) as of December 31 of the year immediately preceding the taxable year shall be determined in an amount not to exceed three hundred forty thousand dollars (\$340,000.00) for exemption. The total combined financial worth of the owner(s) as of December 31 of the year immediately preceding the taxable year shall be determined in an amount not to exceed five hundred forty thousand dollars (\$540,000) for deferral. Total financial worth shall include the value of all assets including equitable interest, of the owner(s) and the owner's relatives living in the dwelling for which the exemption or deferral or both are claimed, and shall exclude the fair market value of the dwelling and the land upon which it is situated, not exceeding one (1) acre, for which exemption is claimed.

(1-1-72; 1-6-73; 7-1-77; 8-5-78; 12-8-79; 12-13-80; Ord. No. 82-36, § 1, 1-1-83; Ord. No. 87-30, 1-1-88; Ord. No. 88-22, 1-1-89; Ord. No. 89-31, 1-1-90; Ord. No. 00-28, 11-1-00; Ord. No. 01-11, 4-21-01; Ord. No. 02-10, 4-20-02; Ord. No. 05-02, 4-16-05, effective 1-1-05; Ord. No. 06-07, 5-23-06, effective 1-1-06; Ord. No. 08-22, 12-13-08)

§ 43-5. Claiming of ~~e~~Exemption or ~~e~~Deferral or ~~b~~Both.

~~(1)~~A. Notwithstanding any other provisions of this chapter, triennially, and not later than August 15 of the taxable year, the person or persons claiming an exemption or deferral or both must file a real estate tax exemption or deferral or exemption and deferral affidavit, and annually between the triennial affidavit, file an income and asset declaration, with the ~~e~~County ~~m~~Manager.

If the age or disability requirements are met during the current taxable year the portion of a qualifying person's real estate tax eligible for exemption or deferral or both shall be prorated to reflect the portion of the taxable year that the person qualifies for exemption or deferral or both by meeting the stated age or disability requirements of the program, provided that timely application is made.

The ~~e~~County ~~m~~Manager may extend the deadline for filing the affidavit to any date between August 16 and January 31 of the next calendar year, upon his finding that such an extension would promote the purposes of this chapter and not interfere with the efficient administration of provisions of this chapter.

~~(2)~~B. The affidavit shall set forth in a manner prescribed by the ~~e~~County ~~m~~Manager the names of the related persons occupying the dwelling for which exemption or deferral or both are claimed, their gross combined income and their total combined net worth. The affidavit shall also indicate whether the person or persons claim the exemption or the deferral or the combination exemption and deferral option, and if deferral the amount claimed up to one hundred ~~percentum~~ (100%) ~~percentum~~ of the real estate tax liability.

~~(3)~~C. If after audit and investigation the ~~e~~County ~~m~~Manager determines that the person or persons are qualified for exemption or deferral or both, he shall so certify to the ~~t~~Treasurer of Arlington County who shall deduct the amount of the exemption or deferral or both from the claimant's real estate liability.

(1-1-72; 5-6-72; 1-6-73; Ord. No. 87-30, 1-1-88; Ord. No. 88-22, 1-1-89; Ord. No. 89-31, 1-1-90; Ord. No. 99-1, 1-2-99; Ord. No. 99-2, 1-23-99; Ord. No. 01-11, 4-21-01; Ord. No. 08-22, 12-13-08)

§ 43-6. Requirement to ~~r~~Report ~~e~~Changes in ~~i~~Income and ~~e~~Ownership.

~~(1)~~A. Reserved.

~~(2)~~B. Reserved.

~~(3)~~C. Changes in respect to income, financial worth, ownership of property, or other factors occurring during the taxable year for which the affidavit is filed and having the effect of exceeding or violating the limitations and conditions herein shall nullify any exemption for the remainder of the taxable year. Such changes shall be reported to the ~~e~~County ~~m~~Manager by the person or persons receiving the exemption, and the amount of exempted taxes shall be prorated for the eligible period.

(1-1-72; 8-9-75; 7-1-77; 6-3-79; 12-13-80; Ord. No. 88-22, 1-1-89; Ord. No. 89-31, 1-1-90; Ord. No. 01-11, 4-21-01; Ord. No. 05-02, 4-16-05, effective 1-1-05; Ord. No. 06-07, 5-23-06, effective 1-1-06; 08-22, 12-13-08)

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**§ 43-7. Amount of ~~d~~Deferral; ~~r~~Repayment of ~~d~~Deferral ~~t~~Taxes.**

~~(+)A.~~ The person or persons qualifying for and claiming deferral shall be relieved of real estate tax liability levied on the qualifying dwelling and land up to an amount equal to one hundred ~~percentum~~ percentum (100%) ~~percentum~~ of the liability, the amount to be deferred to be elected by the claimant.

~~(2)B.~~ Taxes deferred for tax year 2001 and beyond shall be paid without penalty or interest and shall be paid to the ~~t~~Treasurer of Arlington County by the vendor upon sale of the dwelling, or from the estate of the decedent within one (1) year after the death of the last owner thereof who qualifies for tax deferral by the provisions of this chapter. Such deferred real estate taxes shall constitute a lien upon the said real estate as if they had been assessed without regard to the deferral permitted by this chapter, provided, however, that such liens shall, to the extent that they exceed in the aggregate ten ~~percentum~~ percentum (10%) ~~percentum~~ of the price for which such real estate may be sold, be inferior to all other liens of record. Any interest which has accrued on any deferral prior to January 1, 2001, shall remain due and owing but no interest shall accrue on any deferral after January 1, 2001.  
(1-1-72; 8-9-75; Ord. No. 89-31, 1-1-90; Ord. No. 01-11, 4-21-01)

**§ 43-8. Reserved.**

**Editors Note:** Section 43-8 was repealed Jan. 6, 1973.

**§ 43-9. Violations.**

Any person or persons falsely claiming an exemption or deferral or both shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) for each offense.

(1-1-72; 8-9-75; Ord. No. 89-31, 1-1-90)

ARLINGTON COUNTY CODE

Chapter 44

HOUSING GRANTS FOR NEEDY PERSONS

§ 44-1. Appropriation of ~~b~~Board of ~~s~~Social ~~s~~Services.

§ 44-2. Method of ~~m~~Making ~~a~~Appropriations.

§ 44-3. Eligibility ~~r~~Requirements ~~e~~Established by ~~d~~Director of the ~~d~~Department of ~~h~~Human ~~s~~Services and ~~a~~Approved by the ~~e~~County ~~m~~Manager.

§ 44-4. Administrative ~~r~~Regulations.

§ 44-1. Appropriation of ~~b~~Board of ~~s~~Social ~~s~~Services.

The ~~e~~County ~~b~~Board may, from time to time, make appropriations to the ~~d~~Director of the ~~d~~Department of ~~h~~Human ~~s~~Services in his capacity as the ~~b~~Board of ~~s~~Social ~~s~~Services, pursuant to ~~Section § 63-1-5463.2-314~~ of the Code of Virginia (1950), as amended, for the purpose of providing funds for housing grants for needy persons. (Ord. No. 83-28, 10-15-83; Ord. No. 86-13, § 2, 7-1-86; Ord. No. 92-28, 7-12-92)

§ 44-2. Method of ~~m~~Making ~~a~~Appropriations.

Appropriations shall be made only after the ~~e~~County ~~b~~Board has been advised of the eligibility qualifications which have been established by the ~~d~~Director of the ~~d~~Department of ~~h~~Human ~~s~~Services and approved by the ~~e~~County ~~m~~Manager, and this chapter has been amended by specifically recognizing the income and net worth qualifications for each category of recipient and the method for determining the grant to be made to each category. (Ord. No. 86-13, § 2, 7-1-86; Ord. No. 92-28, 7-12-92)

§ 44-3. Eligibility ~~r~~Requirements ~~e~~Established by ~~d~~Director of the ~~d~~Department of ~~h~~Human ~~s~~Services and ~~a~~Approved by the ~~e~~County ~~m~~Manager.

The ~~d~~Director of the ~~d~~Department of ~~h~~Human ~~s~~Services, in his capacity as the ~~b~~Board of ~~s~~Social ~~s~~Services, has adopted the following income and net worth criteria for qualification for housing grants and the following method of determining the amounts of the grants, to be effective January 1, 2001, which have been approved by the ~~e~~County ~~m~~Manager:

~~(1)A.~~ *Maximum incomes.* The estimated gross annual income of applicants for one (1) year from the date of the first day of their most recent earning period shall not exceed eighty-five ~~percent~~ (85%) ~~percent~~ of the HUD Housing Choice Voucher (Section 8) income level, based on fifty ~~percent~~ (50%) ~~percent~~ of area median income, by household size. The income used in determining eligibility shall be that which best reflects earnings in the current and subsequent months.

~~(2)B.~~ *Annual rent.* Annual rent shall be used for determining the amount of grant for qualified renters. Annual rent will be based upon twelve (12) times the monthly rent as of the date that application is made.

~~(3)C.~~ *Determination of grant.*

~~a.~~ A grant shall be the amount by which a household's annual allowable rent, as set forth in subsections 1. and 2. of this ~~paragraph section~~, exceeds forty ~~percent~~ (40%) ~~percent~~ of its net annual income. Allowable rent shall be determined by using the lesser of a household's actual rent obligation or an amount up to one hundred ~~percent~~ (100%) ~~percent~~ of the HUD Housing Choice Voucher rent maximum as used by the Arlington County Section 8 ~~o~~Office, as determined by the ~~e~~County ~~m~~Manager.

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1. *Elderly or disabled.* In the case of qualifying elderly or disabled persons or families, there shall be allowed a deduction from their household's annual income the greater of (i) seven hundred fifty dollars (\$750.00) for each child or (ii) twenty ~~percent~~ (20%) ~~percent~~ of income earned from employment. The amount of the grant shall be computed on the basis of the resulting net income figure. The amount of the grant shall be determined by using the lesser of the allowable rent based on the HUD Housing Choice Voucher maximum for a one- ~~(1)~~ bedroom dwelling unit or the actual rent obligation for a single person or married couple or, the Housing Choice Voucher maximum for a two- ~~(2)~~ bedroom dwelling unit or actual rent obligation for related household members who are not spouses.
2. *Families with children.* In the case of persons with minor children, there shall be allowed a deduction from their household's annual income the greater of (i) seven hundred fifty dollars (\$750.00) for each child or (ii) twenty ~~percent~~ (20%) ~~percent~~ of income earned from employment. The amount of the grant shall be computed on the basis of the resulting net income figure. For such persons with minor children, the amount of the grant shall be determined by using the lesser of their actual rent or the allowable rent, based on the HUD Housing Choice Voucher maximum, as follows:
  - a. For a two- ~~(2)~~ to four- ~~(4)~~ person family with minor children the HUD Housing Choice Voucher rent maximum for a two- ~~(2)~~ bedroom dwelling shall be used; and
  - b. For a five (5) or more person family with minor children the HUD Housing Choice Voucher rent maximum for a three ~~(3)~~ bedroom dwelling shall be used.
3. An eligible household's grant shall not exceed seventy-five ~~percent~~ (75%) ~~percent~~ of the lesser of its actual rent expense or the rent maximum.
4. The ~~e~~County ~~m~~anager may adjust the rent maximum when periodic adjustments are made to the HUD Housing Choice Voucher rent maximum, up to an amount that does not exceed that standard.

Households receiving general relief, temporary assistance to needy families (formerly aid to families with dependent children) and all others receiving benefits under the refugee resettlement program are excluded from eligibility, except for households which are receiving temporary assistance for needy families in which the head of household is either employed (working a minimum average of sixty (60) hours per month) or is enrolled in and scheduled to complete within four (4) months, a training program approved by the ~~d~~Department of ~~h~~uman ~~s~~ervices that has a placement rate of at least seventy ~~percent~~ (70%) ~~percent~~.

~~(4)D.~~ For determination of grants for households which are receiving a grant in December 2000 and which would no longer be eligible based on subsection ~~C(3)~~ of this section,

~~(a)1.~~ A grant shall be determined by multiplying the amount by which a household's annual allowable rent, as set forth in subsections ~~a1~~ and ~~b2~~ of this ~~paragraph section~~, exceeds thirty ~~percent~~ (30%) ~~percent~~ of its gross annual income by a payment rate factor as set forth in subsection ~~2(b)~~ below.

~~1-a.~~ *Elderly or disabled.* In the case of qualifying elderly or disabled persons or families, the amount of the grant shall be determined by multiplying the payment rate by the amount determined by subtracting thirty ~~percent~~ (30%) ~~percent~~ of the gross annual income from the amount of annual rent paid or the maximum allowable rent of six thousand eight hundred eighty-eight dollars (\$6,888.00) for single persons or married couples or eight

thousand one hundred twelve dollars (\$8,112.00) for related adults who are not spouses, whichever is less. The payment rate will be determined based upon household income and size according to the formula set forth in subsection ~~2(b)~~ below.

~~2-b.~~ *Families with children.* In the case of persons with minor children, a deduction of seven hundred fifty dollars (\$750.00) shall be allowed for each child, and the amount of the grant shall be computed on the basis of the resulting net income figure. For such persons with minor children, the amount of the grant shall be determined by multiplying the payment rate by the amount determined by subtracting thirty ~~percent~~ (30%) ~~percent~~ of the net annual income from the amount of annual rent paid or the maximum allowable rent, whichever is less. The payment rate will be determined based upon household income and size according to the formula as set forth in subsection ~~2(b)~~ below. The maximum allowable rent for:

- a. A two- ~~(2)~~ to four- ~~(4)~~ person family with children is eight thousand one hundred twelve dollars (\$8,112.00); and
- b. A five- ~~(5)~~ or more person family with children is ten thousand one hundred seventy-six dollars (\$10,176.00).

Households receiving general relief, temporary assistance to needy families (formerly aid to dependent children) and all others receiving benefits under the refugee resettlement program are excluded from eligibility, except for households which are receiving temporary assistance to needy families in which the head of household is either employed (working a minimum average of sixty (60) hours per month) or is enrolled in and scheduled to complete within four (4) months, a training program approved by the ~~d~~Department of ~~h~~Human ~~s~~Services that has a placement rate of at least seventy ~~percent~~ (70%) ~~percent~~.

~~(b)2.~~ Payment rate tables will be established to determine grant amounts as follows:

~~1-a.~~ For each household size, up to eight (8) persons, multiply the maximum allowable gross annual income, as defined in ~~section § 44-3.A(4)~~ by 0.35.

~~2-b.~~ The first income range in each table shall be determined by multiplying 0.65 times the maximum allowable gross annual income established for each household size; as defined in ~~section § 44-3.A(4)~~. To determine the amount of each subsequent income range divide the amount determined in ~~paragraph (1) § 44-3.A~~ above by one (1) less than the total number of payment rate ranges for each size household:

Household Size	Number of Ranges
1 to 4	13
5 to 6	14
7 plus	15

~~3-c.~~ Households whose income is 0.65 times the established maximum income level or less shall have a payment rate factor of 0.60. Each range above this income level shall have this factor reduced by 0.03.

~~(e)3.~~ *Supplemental payment.* A rent-income ratio for each applicant shall be computed in the following manner to determine eligibility for the supplemental payments:

~~1-a.~~ Calculate the grant using the formula detailed in ~~section 44-3(4)(a) § 44-3.D.1~~;

~~2-b.~~ Determine the adjusted rent by subtracting the grant from the lesser of the applicant's

maximum allowable rent or actual rent;

~~3-c.~~ Determine the "rent-income ratio" by dividing the applicant's adjusted rent by his gross annual income;

~~4-d.~~ If the applicant's rent-income ratio is 0.43 or lower, the applicant receives no supplemental payment; and

~~5-e.~~ If the applicant's rent-income ratio is above 0.43, the applicant shall receive a supplemental payment equal to the amount by which the adjusted rent exceeds forty-three percent (43%) ~~percent~~ of the applicant's gross annual income; provided, however, that in no event shall a household eligible under this program pay less than thirty percent (30%) ~~percent~~ of its income for rent.

~~(5)E.~~ *Maximum net worth.* For qualifying renters, the total net worth of the applicant and all relatives residing with the applicant shall not exceed thirty-five thousand dollars (\$35,000.00).

~~(6)F.~~ Effective January 1, 2001, any household qualifying under section ~~2(4)~~ and ~~3(e)~~ of subsection ~~D(4)~~ above who loses eligibility shall no longer qualify under these sections.

(7-1-77; 1-1-78; 12-5-78; 6-28-80; 9-13-80; 5-26-81; Ord. No. 82-20, 7-1-82; Ord. No. 83-26, 11-1-83; Ord. No. 83-28, 10-15-83; Ord. No. 84-32, 10-13-84; Ord. No. 85-20, 7-1-85; Ord. No. 86-13, 7-1-86; Ord. No. 87-15, 7-1-87; Ord. No. 87-20, 7-1-87; Ord. No. 88-15, 7-1-88; Ord. No. 89-8, 7-1-89; Ord. No. 92-28, 7-12-92; Ord. No. 00-21, 9-9-00; Ord. No. 02-24, 11-16-02)

**§ 44-4. Administrative ~~r~~Regulations.**

A copy of the detailed administrative regulations adopted by the eCounty mManager shall be kept on file as a matter of public record with a copy of this chapter. Such regulations may, among other things, provide for the establishment of waiting lists and priorities for certain classes of persons (such as, but not limited to, the homeless) where the eCounty mManager or his designee determines that budgetary restraints make it reasonably necessary to limit the number of recipients. Such regulations may also provide for the reduction in the amount of any class or category of grant provided for in this chapter by up to five percent (5%) ~~percent~~, under terms and conditions set forth in the regulations, where the eCounty mManager or his designee determines that budgetary restraints make it reasonably necessary to limit the amount of the grants in order to serve a larger number of recipients. (7-16-74; 10-12-74; 12-20-75; Ord. No. 86-13, 7-1-86; Ord. No. 92-28, 7-12-92; Ord. No. 00-21, 9-9-00; Ord. No. 04-15, 6-12-04)

ARLINGTON COUNTY CODE

Chapter 45

INOPERATIVE STATUTES AND CONDOMINIUM CONVERSION

§ 45-1. Sunday Closing Law Inoperative.

§ 45-2. Extension of Leases for Elderly and Disabled Persons in Conversion Cooperatives and Condominiums.

§ 45-3. Relocation Expenses for Tenants Displaced by Condominium or Cooperative Conversion.

§ 45-1. Sunday Closing Law Inoperative.

The sense of the citizens of Arlington County as established by a referendum held on November 5, 1974, is that the Sunday closing law as provided for by Section § 18.1-363.1 of the Code of Virginia (1950) as amended, is not necessary, and said law shall have no force or effect within Arlington County. (12-21-74)

§ 45-2. Extension of Leases for Elderly and Disabled Persons in Conversion Cooperatives and Condominiums.

(a)A. Definitions. The terms used in this section respecting condominiums shall have the same meaning as those terms have when used in Chapter 4.2 of Title 55 of the Code of Virginia and the terms used respecting cooperatives shall have the same meaning as is given to those in Chapter 24 of Title 55 of the Code of Virginia. The definitions stated therein for "elderly" and "disabled" are as follows:

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(+) "Elderly" means a person not less than sixty-two (62) years of age.

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(+) "Disabled" means a person suffering from a severe, chronic physical or mental impairment which results in substantial functional limitations.

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(+)B. At the time required for notice to tenants of conversion of any apartments or other dwelling units to condominium or cooperative, the developer of such conversion project shall offer leases or extensions of leases to elderly and disabled persons who occupy any units to be converted on the terms and conditions stated in the following paragraph C(+).

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(+)C. The leases or extension shall be offered for up to three (3) years, (composed of one- (1) year terms with extensions up to three (3) years at tenant's option), or such lesser period as the tenant may choose, from the date of the notice for the unit occupied by each of the elderly or disabled persons or a unit of at least the same approximate size, number of bedrooms, and overall quality. Notwithstanding the foregoing, the tenant may vacate upon thirty (30) days notice up to the extent of the term of the lease. The terms and conditions of the leases shall be as agreed upon by the lessor and lessee, provided that the rent for such apartment or unit shall not be in excess of reasonable rent for comparable unrenovated units for the same time period in the same market area as such conversion building.

(+)D. This requirement shall not be imposed so as to require that any more than twenty percent (20%) percent of the apartments or units in a conversion project shall be leased to elderly or disabled persons. Such leases or extensions shall not be required in the case of any apartments or units which will, in the course of conversions, be substantially altered in physical layout, restricted exclusively to nonresidential use, or rendered legally uninhabitable because of renovation or rehabilitation which the declarant intends in good faith to perform.

(+)E. Exemptions: A declarant of a condominium or cooperative conversion shall be exempt from the

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requirements of this section if he is preserving a minimum of twenty ~~percent~~ (20%) ~~percent~~ of the apartments or units in the conversion for occupancy by low and moderate income households for a minimum of ten (10) years. A household shall qualify as a "low and moderate income household" either under the definition of the U.S. Department of Housing and Urban Development or under the following definition:

"A household whose income does not exceed eighty ~~percent~~ (80%) ~~percent~~ of the median income for similarly sized households in the Washington Standard Metropolitan Statistical Area."

~~(f)E.~~ *Effective date.* This section shall apply to condominium or cooperative conversions for which application is made to the Virginia Real Estate Commission for an initial certificate of registration or subsequent registration on or after July 1, 1982. (Ord. No. 82-30, 6-28-82)

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§ 45-3. Relocation ~~e~~Expenses for ~~f~~Tenants ~~d~~Displaced by ~~e~~Condominium or ~~e~~Cooperative ~~e~~Conversion.

~~(a)A.~~ *Definitions.* The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise:

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~~(1.)~~ "Conversion condominium" ~~shall~~ means a condominium containing structures which, before the recording of the condominium declaration, were wholly or partially occupied by persons other than those who have contracted for the purchase of condominium units and those who occupy with the consent of such purchasers.

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~~(2.)~~ "Conversion cooperative" ~~shall~~ means a building that at any time before creation of the cooperative was occupied wholly or partially by persons other than purchasers and persons who occupy with the consent of purchasers.

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~~(3.)~~ "Declarant" ~~shall~~ means any or all person(s) acting in concert who:

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- a. Offer to dispose of his or its interest in a condominium unit not previously disposed of, in the case of a condominium, or who, in the case of a cooperative, as a part of a common promotional plan, offer to dispose of his or its cooperative interest not previously disposed of;
- b. Reserves or succeeds to any special declarant right; or
- c. Applies for registration of the condominium under the Condominium Act or applies for registration of a cooperative under the Virginia Real Estate Cooperative Act, as the case may be.

~~(4.)~~ "Tenant" ~~shall~~ means a person or persons entitled under a rental agreement to occupy a dwelling unit to the exclusion of others. All persons who occupy the same dwelling unit are considered to be a single tenant for purposes of this section.

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~~(5.)~~ "County Manager" ~~shall mean and include means~~ the ~~e~~County ~~m~~Manager of Arlington County, or any of his ~~duly authorized deputies or agents designees~~.

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~~(b)B.~~ The declarant shall reimburse any tenant displaced by a condominium or cooperative conversion for amounts actually expended to relocate as a result of such dislocation. Such reimbursement shall not exceed the amount provided for in ~~Section §~~ 25-239(b) of the Code of Virginia, which as of July, 1982 is five hundred dollars (\$500.00). With the tenant's agreement, a payment may be made based on other than actual expenses.

~~(e)C.~~ The monetary limits provided for in paragraph ~~B(b)~~ above shall be automatically adjusted to conform to future revisions of corresponding monetary benefits under the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646) as provided for in ~~Section §~~ 25-247-125.1-415 of the Code of Virginia.

ARLINGTON COUNTY CODE

INOPERATIVE STATUTES AND  
CONDOMINIUM CONVERSION

~~(D)~~ Reimbursable expenses shall include, by way of illustration but not limitation, items such as the following: deposits and connection fees for telephones and utilities; the cost of packing, transporting and unpacking; insurance coverage on goods transported during the move.

~~(E)~~ For purposes of this section a tenant shall not be deemed to have been "displaced by a condominium or cooperative conversion" within the meaning of subsection B~~(E)~~ above:

~~(1)~~ Unless and until the said tenant has first been given a notice to vacate in accordance with the Virginia Condominium Act or Virginia Real Estate Cooperative Act, and in fact, vacates his unit in accordance with the time set forth in said notice (or subsequent notice);

~~(2)~~ If the declarant, at declarant's expense, relocates said tenant to another apartment or unit with the tenant's consent;

~~(3)~~ If the declarant has, prior to the time of lease execution, notified tenant that the apartment or unit he is about to rent is or is about to be converted and tenant waives relocation assistance benefits. Any such waiver in order to be effective, must be in writing and must be typed or printed in a conspicuous manner on a separate sheet of paper and separately signed or initialed by tenant and appended to the lease or rental agreement. A copy of the waiver and attached lease is to be provided to tenant.

~~(F)~~ The ~~e~~County ~~m~~anager shall be responsible for the administration of this section.

~~(G)~~ *Effective date.* Tenants who receive a notice to vacate issued in accordance with Chapter 4.2 (the Condominium Act) or Chapter 24 (the Virginia Real Estate Cooperative Act) of the Code of Virginia on or after July 1, 1982, shall be entitled to the benefits provided in this section.  
(Ord. No. 82-29, 6-28-82)

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ARLINGTON COUNTY CODE

Chapter 46

ARLINGTON COUNTY EMPLOYEES' SUPPLEMENTAL RETIREMENT SYSTEM--II

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ARTICLE I.  
IN GENERAL

§ 46-1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

(a) "Accumulated contributions" means the sum of all amounts deducted or picked-up from the compensation of a member and credited to his individual account in the members' contribution account, and any other amounts he shall have contributed, or transferred thereto, including any amount credited as provided in section § 46-35.C(e).

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(b) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such actuarial tables as are adopted by the Board.

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(c) "Actuary" means a person who is a member of the American Academy of Actuaries who is enrolled by the Joint Board for the Enrollment of Actuaries established pursuant to 29 U.S.C.A. Section § 1242, Employee Retirement Income Security Act of 1974.

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(d) "Average final compensation" means average annual creditable compensation of a member during the three (3) highest twelve- (12) month periods of compensation paid to a member.

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(e) "Base compensation" means the hourly wage as specified in the County pay schedule multiplied by the hours worked in the employees normal work schedule. Base compensation includes acting pay but excludes overtime, special pay, pay in lieu of sick leave, bonus pay and other similar special pay.

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(f) "Beneficiary" means any person in receipt of a pension or other benefits as provided by the System.

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(g) "Board" means the Board of Trustees of the System.

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"County Manager" means the County Manager or his designee.

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(h) "Creditable compensation" means the full compensation, including pickup contributions and any elective employer contributions under the flexible benefits plan, payable annually to an employee in his capacity as such, excluding accumulated sick leave paid to the member at his termination from County service. Effective January 4, 2009 creditable compensation means full compensation excluding all premium pays (except holiday premium) as defined in Administrative Regulation 2.12, all overtime pays (except the portion of overtime paid at the employee's base hourly rate as defined in Administrative Regulation 2.12 for hours worked to complete their regular annual work schedule.), imputed earnings, benefit subsidies and/or stipends, severance and settlement pay, and clothing allowances. Other provisions notwithstanding, except in the case of an employee who first became a member before July 1, 1996, annual creditable compensation shall not exceed the amount established pursuant to Internal Revenue Code § 401(a)(17) as indexed annually.

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(i) "Creditable service" means membership service plus prior service credit.

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"Deferred Retirement Option Program" (DROP) means the Program described in § 46-64.

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(k) "Deputy Sheriff" means the person holding the office of Sheriff, if they elect to participate, and all Deputy Sheriffs.

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(l) "Defined benefit plan" means the plan described in Article VIII.

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(m) "Defined contribution plan" means the plan described in Article IX.

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~~(a)~~ "Employee" means any person regularly employed on or after February 8, 1981, in rendering service to the ~~e~~County ~~b~~Board, ~~s~~School ~~b~~Board, or an official elected by the people whose compensation is fully or partially paid directly or indirectly by the ~~e~~County except any person on a part-time, seasonal, or temporary employment status, and except, those persons working less than thirty (30) hours per week; however, a member whose hours are reduced below the minimum (thirty (30) hours) by the employer may continue to earn pro rata membership credit.

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~~(b)~~ "Employer" means the ~~e~~County ~~b~~Board, the ~~e~~County ~~s~~School ~~b~~Board, and any authority in the ~~e~~County having the power to appoint an employee to office or employment paid directly or indirectly by the ~~e~~County, and the ~~b~~Board of ~~t~~rustees of the ~~s~~System.

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~~(c)~~ "Expense rate" means the expected administrative costs to administer the plan expressed as a percentage of payroll.

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~~(d)~~ "Fiscal year" means each twelve- ~~(12)~~ month period ending June thirtieth.

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"General Member" means a member who is employed by the ~~E~~mployer not as a Public Safety Member.

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"Medical advisor": ~~means T~~he physician provided for by ~~Section-§~~ 46-21.

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"Member": ~~means A~~ny person included in the membership of the System as provided in ~~Section-§~~ 46-27 who has not ceased to be a member as provided in ~~Section-§~~ 46-28.

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"Membership service": ~~means S~~ervice as a member for which credit is allowable as provided in ~~Section-§~~ 46-29.

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"Normal cost": ~~means T~~he actuarially determined amount under the aggregate accrual modification of the entry age normal funding method needed to fund for one (1) plan year the retirement benefits of the plan.

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"Normal retirement date": ~~means T~~he date of attainment of age sixty-two (62) with the completion of five (5) years of service of a member who is not a police officer, firefighter, or deputy sheriff, and the date of attainment of age fifty-two (52) with the completion of five (5) years of service of a member who is a police officer, firefighter, or deputy sheriff.

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"Part-time employee": ~~means A~~ny person working less than forty (40) hours per week, having permanent status or in a probationary period for such status, who is:

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- (1) Rendering service to the County Board in a budgeted position;
- (2) An employee of a constitutional officer in a budgeted position; or
- (3) A trades and maintenance employee of the School Board paid from a regular position controlled account.

"Party in interest" ~~means:~~

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- (1) A fiduciary (including, but not limited to, any administrator, officer, trustee, or custodian), counsel, or employee of the System);
- (2) A person, partnership, joint venture, corporation, mutual company, joint-stock company, trust, estate, unincorporated organization, association, or employee organization providing services to the System;
- (3) An employer, any of whose employees are covered by the System;
- (4) An employee organization, any of whose members are covered by the System;

(5) A spouse, ancestor, lineal descendant or spouse of a lineal descendant of any individual described in Subparagraphs (1), (2), or (3).

"Public Safety Member" means a member who is employed by the Employer as a police officer, firefighter, deputy sheriff or sheriff.

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"Retiree" means Any prior member or beneficiary who is receiving a retirement payment, or has elected to receive a deferred vested retirement allowance.

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"Retirement allowance" means The retirement payments to which a member is entitled.

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"Service" means Service as an employee for which compensation is paid by the employer, periods of time while on military leave, not to exceed five (5) cumulative years, or an approved leave of absence.

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"Statement of retirement policies and principles" means Aa statement adopted by the County Board which contains a description of the objectives and policies of the System concerning retirement benefits, benefit levels, funding and investments.

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"System" means The Arlington County Employees' Supplemental Retirement System--II.

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"V.R.S." means The Virginia Retirement System established pursuant to Section § 51.1-124.1 et seq., Code of Virginia, 1950, as amended. (2-8-81; Ord. No. 84-38, 12-23-84; Ord. No. 86-14, 6-14-86; Ord. No. 87-24, 9-26-87; Ord. No. 96-13, 6-29-96; Ord. No. 00-34, 11-1-00; Ord. No. 01-20, 11-17-01; Ord. No. 04-26, 11-16-04, effective 12-12-04; Ord. No. 05-10, 7-12-05; Ord. No. 08-17, 9-13-08, effective 1-4-09; Ord. No. 09-27, 11-17-09)

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§ 46-2. Arlington County Employees' Supplemental Retirement System--II established.

There is hereby established the Arlington County Employees' Supplemental Retirement System--II which is hereby established for all employees hired on or after February 8, 1981. The System may transact business as the Arlington County Employees Retirement System. (2-8-81; Ord. No. 00-34, 11-1-00; Ord. No. 02-15, 6-22-02)

§ 46-3. Duties of Employers.

Employers shall keep such records and furnish such information as the Board or County Manager may require in the discharge of their duties. Upon employment of a member, the employer shall inform the member of his duties and obligations in connection with the System as a condition of employment. (2-8-81; Ord. No. 04-26, 11-16-04, effective 12-12-04)

§ 46-4. Effect of Acceptance of Employment.

Upon acceptance of employment, every employee who qualifies to be a member shall be deemed to consent and agree to any deductions or employer pick-up of amounts from his compensation required by this chapter, and to all other provisions thereof. (2-8-81; Ord. No. 84-38, 12-23-84)

§ 46-5. Fraud and Deceit.

Any person who shall knowingly make any false statement or shall falsify or permit to be falsified any record of the System, in any attempt to defraud the System shall be guilty of a misdemeanor, and shall be punished accordingly. (2-8-81)

§ 46-6. Assignments.

The right of any member to a retirement allowance, to the return of accumulated contributions, or any other right or moneys accrued or accruing to any person under the provisions of this chapter shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency law or any other process of law whatsoever, and shall be unassignable except that a member may, upon leaving employment and withdrawal of accumulated contributions, assign and make payable his contributions, or any portion thereof, to the eCounty, or its units and organizations operated for the benefit of the employees.  
(2-8-81; Ord. No. 84-38, 12-23-84)

**§ 46-7. Correction of eErrors in pPayments.**

Should any member or beneficiary receiving benefits from the sSystem receive more or less than he would have been entitled to receive had the records been correct, the County Manager shall correct such error and shall, as far as practicable, authorize adjustment of the payments including future payments in such a manner that the benefit to which the member or beneficiary was correctly entitled shall be paid. When any member or beneficiary receives less than he or she was entitled to receive, the bBoard may pay interest on the unpaid balance owed to the member or beneficiary at a rate to be determined by the bBoard provided that any error in payment was discovered after January 1, 2001.  
(2-8-81; Ord. No. 00-34, 11-1-00; Ord. No. 00-33, 12-18-00; Ord. No. 04-26, 11-16-04, effective 12-12-04)

**§ 46-8. Rights of pParticipating mMembers.**

Membership in the sSystem does not convey the right to be retained in service, nor any right or claim to any assets of the sSystem unless such right has specifically accrued under the provisions of this sSystem.  
(2-8-81)

**§ 46-9. Amendments.**

The eCounty bBoard may amend this chapter at any time. No amendment may be adopted by the eCounty bBoard unless and until it is accompanied by an actuarial report prepared by an actuary selected by the bBoard of tTrustees which report shall describe the effect of the amendment on the sSystem. No amendment which requires an additional contribution to the sSystem shall be adopted unless the additional contribution is provided. Any changes adopted on or after February 8, 1981, shall be accompanied by appropriate changes in the "Statement of Retirement Policies and Principles" adopted by the eCounty bBoard.  
(2-8-81; Ord. No. 00-34, 11-1-00)

## ARTICLE II.

### ADMINISTRATION

**§ 46-10. Board of tTrustees and County Board--Powers and dDuties.**

The responsibilities regarding sound management and investment of the System's funds are hereby vested in the bBoard of tTrustees of the sSystem. The responsibility for setting the size and type of benefits rests with the Arlington County Board, which shall be responsible for paying the costs of any actuarial studies relating to the size and type of benefits.  
(2-8-81; Ord. No. 04-26, 11-16-04, effective 12-12-04)

**§ 46-11. Same--Accountability.**

The bBoard of tTrustees shall be accountable to the eCounty bBoard.  
(2-8-81)

**§ 46-12. Same--Composition; eOrganization and tTerms of eOffice.**

~~(a)A.~~ The ~~b~~Board shall consist of seven (7) trustees as follows: Three (3) trustees appointed by the ~~e~~County ~~b~~Board; one (1) trustee appointed by the ~~e~~County ~~m~~Manager; one (1) trustee who is an active employee and member of the Arlington County Retirement System elected by police officers, firefighters and deputy sheriffs; one (1) trustee who is currently receiving retirement benefits from the Arlington County Retirement System elected by the retired members.; and one (1) trustee who is an active employee and member of the Arlington County Retirement System elected by employees not represented by another elected trustee. The election of the trustees by the employees of the County and retirees shall be conducted under procedural rules approved by the ~~e~~County ~~m~~Manager. Notwithstanding the above, the ~~e~~County ~~m~~Manager may forego an election of trustee or substitute if only one (1) eligible person is nominated by the employees for an office pursuant to procedures adopted by the ~~e~~County ~~m~~Manager. The person nominated shall be deemed elected. If no eligible employee or retiree is nominated, the County Manager shall appoint an eligible employee or retiree to serve as a trustee, as applicable.

~~(a)B.~~ The term of office of the trustees shall be four (4) years, except that when the ~~b~~Board of ~~t~~Trustees shall be so created and constituted, the trustee to be appointed by the ~~e~~County ~~m~~Manager and the trustee to be elected by police officers, firefighters and deputy sheriffs shall be appointed or elected for an initial two-~~y~~ear term. Subsequent terms of such trustees shall be for four (4) years. Terms shall date from the effective date of this article. If an elected trustee or a substitute trustee elected after November 1, 2000 to represent police officers, firefighters, deputy sheriffs or other employees ceases to be an active employee and member of the Arlington County Retirement System, that trustee shall forfeit the office.

~~(a)C.~~ When such ~~b~~Board shall be so created and constituted it shall at its first meeting, and annually thereafter, elect one (1) of its members as president, one (1) as vice-president, one (1) as secretary, and appoint a treasurer, who may or may not be a trustee.

~~(a)D.~~ There shall be elected one (1) substitute trustee, who is an active employee and member of the Arlington County Retirement System, for each trustee who is elected by the police officers, firefighters and deputy sheriffs; and one (1) substitute trustee elected by other employees; and one ~~(1)~~ substitute trustee who is currently receiving retirement benefits from the Arlington County Retirement System elected by retirees of the System. Each person so elected must be a member of the group the person is elected to represent. Each substitute trustee shall serve in the absence of the trustee and shall be authorized to act on all matters in which the trustee may act. Each substitute trustee's term of office shall coincide with the term of office of the trustee for whom he is a substitute. If the trustee for whom he is a substitute resigns or otherwise vacates the position, the substitute trustee shall become a trustee and an election shall be conducted for a new substitute trustee. No eligible person can be nominated for both a trustee and a substitute trustee simultaneously.

~~(a)E.~~ The successors to the trustees and the substitute trustees shall be selected thirty (30) days before the expiration of the term of office. For trustees or substitute trustees elected or appointed after February 2009, their terms of office will end on January 31. The successors shall take office during the regularly scheduled February ~~b~~Board meeting.

~~(a)F.~~ Each member of the ~~b~~Board shall be entitled to one (1) vote. Four (4) trustees shall constitute a quorum provided that no decision of the trustees shall be effective unless four (4) trustees have voted in favor of such decision.

~~(a)G.~~ If it is determined by an affirmative vote of six ~~(6)~~ ~~b~~Board members that a member of the ~~b~~Board or substitute trustee is guilty of malfeasance or misfeasance in office or of being absent from monthly ~~b~~Board meetings more than three ~~(3)~~ times in a calendar year, the ~~b~~Board of ~~t~~Trustees may recommend to the County Board that a trustee be removed from the ~~b~~Board. If removal of the ~~b~~Board member is approved by the County Board, the position will be filled pursuant to ~~section §~~ 46-12. (2-8-81; Ord. No. 82-2, 2-1-82; Ord. No. 00-33, 12-18-00; Ord. No. 00-34, 11-1-00; Ord. No. 04-26, 11-16-04, effective 12-12-04; Ord. No. 07-17, 12-15-07)

#### § 46-13. Same--Vacancies.

If a vacancy occurs in the office of a trustee of the ~~b~~Board or a substitute trustee, the vacancy shall be filled for the unexpired term in the same manner as the office was previously filled.

(2-8-81)

**§ 46-14. Same--Compensation.**

Members of the **bB**oard of **tT**rustees shall serve without compensation.  
(2-8-81)

**§ 46-15. Same--Rules and rR**egulations.

Subject to the limitations of this chapter, the **bB**oard may from time to time establish such rules and regulations for the transaction of its business, copies of which shall be made available to anyone upon request. A copy of the rules and regulations shall be available for inspection at the Central Public Library.  
(2-8-81; Ord. No. 04-26, 11-16-04, effective 12-12-04)

**§ 46-16. Same--Employment of aA**ssistants.

The **bB**oard may employ assistants and pay out of the **sS**ystem fund for all services as shall be required.  
(2-8-81)

**§ 46-17. Same--Data.**

The **bB**oard and the County Manager shall keep in convenient form such data as shall be necessary to perform the actuarial evaluations required by this chapter.  
(2-8-81; Ord. No. 04-26, 11-16-04, effective 12-12-04)

**§ 46-18. Same--Proceedings; fF**inancial **eC**ondition of **sS**ystem.

The **bB**oard shall keep minutes of all its proceedings, which shall be open to public inspection. It shall submit annually to the **eC**ounty **bB**oard and **sS**chool **bB**oard an independent audit report prepared in accordance with generally accepted accounting principles showing the fiscal transactions of the **sS**ystem for the preceding fiscal year and the amount of accumulated cash and securities of the **sS**ystem, and a report to disclose the financial and latest actuarial status of the **sS**ystem. Such report shall include an analysis of the investment return of the **sS**ystem and any investment transaction made in connection with a party in interest, the number and type of benefit entitlements, the composition and payroll of active and required participants, and at least once in each three-~~(3)~~ year period, a projection of benefit disbursements and resources available to meet such disbursement. A copy of this report shall be available for inspection at the **eO**ffice of the **bB**oard of **tT**rustees and at the Central Public Library and a summary of this report shall be distributed to the members of the **sS**ystem.  
(2-8-81)

**§ 46-19. Same--Actuarial iI**nvestigation and **vV**aluation.

At least once each five-~~(5)~~ year period, the **bB**oard shall cause an actuarial study to be made of all the experience of the **sS**ystem. At least once in each two-~~(2)~~ year period, the **bB**oard shall cause an actuarial valuation to be made. After an actuarial valuation is completed, the **eC**ounty **bB**oard shall revise the rates of employee contributions, including pickup contributions and employer contributions, to the extent necessary to maintain the soundness of the **sS**ystem.  
(2-8-81; Ord. No. 84-38, 12-23-84; Ord. No. 87-29, 12-12-87)

**§ 46-20. Same--Legal aA**dvisor.

The **eC**ounty **aA**ttorney shall be the legal advisor of the **bB**oard.  
(2-8-81)

**§ 46-21. Medical aA**dvisor.

The County Manager shall designate a physician who shall be known as the "medical advisor." The medical advisor shall conduct medical examinations required under the provisions of this chapter and shall investigate all medically relevant statements and certificates by or on behalf of a member in connection with application for disability retirement. The medical advisor shall report in writing to the County Manager his or her conclusions and recommendations upon all matters referred to the medical advisor. The medical advisor may have other physicians conduct any medical examinations under this chapter or consult with any other physician he or she deems appropriate. It shall be the responsibility of each applicant to provide the medical advisor with all records and releases the medical advisor deems appropriate to carry out the advisor's responsibilities under this chapter.

In the event of an application for any disability retirement, the applicant must provide all relevant medical records for submission to the medical advisor.  
(2-8-81; Ord. No. 00-34, 11-1-00; Ord. No. 04-26, 11-16-04, effective 12-12-04)

### ARTICLE III.

#### MANAGEMENT OF FUNDS

##### § 46-22. Investment and ~~r~~Reinvestment of ~~a~~Assets.

Except as otherwise provided under § 46-60 and any trusts or plans established thereto, the members of the ~~b~~Board shall be the trustees of all assets of the ~~s~~System. The assets to be administered by the ~~b~~Board shall include all cash securities and other property which shall have been heretofore accumulated by the predecessor trustees on behalf of members of the Arlington County Employees' Supplemental Retirement System--I (Chapter 21) and the Arlington County School Board Employees' Supplemental Retirement System (Chapter 35) and all assets that accumulate to the ~~s~~System. All assets shall be administered as a common fund to meet the obligations of the Arlington County Employees' Supplemental Retirement System--I (Chapter 21), the Arlington County School Board Employees' Supplemental Retirement System (Chapter 35) and those of the ~~s~~System.

The ~~b~~Board, in its discretion, may take the necessary steps to establish a trust for the administration of the assets of the ~~s~~System. The ~~b~~Board shall invest the assets of the ~~s~~System with care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. The ~~b~~Board may employ an investment advisor or advisors to invest and reinvest assets of the ~~s~~System in accordance with the provisions of this chapter and regulations established by the ~~b~~Board.  
(2-8-81; 2-21-81; 4-25-81; Ord. No. 00-34, 11-1-00; Ord. No. 01-10, 11-17-01; Ord. No. 05-10, 7-12-05)

##### § 46-23. Types of ~~i~~Investments.

The assets of the ~~s~~System shall be invested and reinvested pursuant to a statement of investment policy adopted by the ~~b~~Board and in accordance with § 21-23. The ~~b~~Board shall diversify such investments so as to minimize the risk of large losses unless under the circumstances it is clearly not prudent to do so.  
(2-8-81; Ord. No. 92-8, 4-6-92; Ord. No. 05-10, 7-12-05)

##### § 46-24. Cash ~~d~~Deposits.

For the purpose of meeting disbursements for retirement allowances and other payments, there may be kept available such minimum cash balances as are necessary.  
(2-8-81)

##### § 46-25. Powers and ~~d~~Duties of ~~t~~Treasurer of ~~b~~Board; ~~b~~Bond; ~~w~~Warrants.

(~~a~~)~~A~~. Except as provided in paragraph ~~B~~(~~b~~), the ~~t~~Treasurer of the ~~b~~Board shall be the custodian of all of its funds and securities. He shall give bond, payable to the ~~b~~Board, in such amounts and with such surety as the ~~b~~Board requires, conditioned upon the faithful performance of his duties and the proper accounting of all funds and securities coming into his hands, the cost of the bond to be paid out of funds of the ~~s~~System. He shall deposit all moneys in the name of the ~~b~~Board and disburse the same only on warrants signed by such person as is designated

for the purpose by the ~~b~~Board or the County Manager, as appropriate. No warrant shall be signed unless it has previously been authorized by the ~~b~~Board, on either blanket approval by class of expenditure or approval by specific item, which authorization shall be recorded on the records of the ~~b~~Board.

~~(b)~~B. The Board may designate one (1) or more banks or trust companies to act as custodian of its funds and securities. In such event, registered securities in the custody of such custodian may be registered in the name of the nominee of such custodian, or a nominee of Depository Trust Company in the case of securities eligible for such registration. In the event a bank or trust company is designated to act as custodian for all or part of its funds and securities, the Treasurer shall have no further powers, duties, or responsibilities for the funds or securities so designated.

(2-8-81; Ord. No. 00-34, 11-1-00; Ord. No. 04-26, 11-16-04, effective 12-12-04)

**§ 46-26. Personal ~~i~~Interest of ~~b~~Board ~~m~~Members and ~~e~~Employees.**

No ~~b~~Board member or ~~b~~Board employee shall have any direct or indirect personal interest in the gains or profits of any investments made by the ~~b~~Board other than as a member of the ~~s~~System. No member or employee of the ~~b~~Board shall, directly or indirectly, for himself or as an agent in any manner use the funds of the ~~s~~System, except to make disbursements as are authorized by the ~~b~~Board, or the payment of benefits.

(Ord. No. 04-26, 11-16-04, effective 12-12-04)

**ARTICLE IV.**

**MEMBERSHIP IN THE SYSTEM**

**§ 46-27. Eligibility ~~r~~Requirements.**

~~(a)~~A. Except for employees who are covered by ~~section §~~ 46-44.H~~(h)~~ and persons appointed as ~~e~~County ~~m~~Manager who elect not to become members within sixty (60) days after appointment, employees of the ~~e~~County ~~b~~Board hired after February 8, 1981, who have not reached normal retirement age (age sixty-two (62)), or in the case of police officers, firefighters, and deputy sheriffs, age fifty-two (52) as of the first day of employment, and all employees of the ~~s~~School ~~b~~Board hired after February 8, 1981, and before July 1, 2001, who have not reached normal retirement age (age sixty-two (62)) are members of the ~~s~~System. Notwithstanding the foregoing, retirement benefits under this ~~C~~chapter shall not be provided to employees in the Management Accountability Program, as defined in Administrative Regulation 2.7, who have entered into an agreement for inclusion in a deferred compensation plan when the agreement prohibits inclusion in any other retirement system established by the ~~e~~County, pursuant Virginia Code 51.1-800~~(d)~~D. Notwithstanding the foregoing, there shall be no age restrictions on membership for persons hired on or after January 1, 1991. Employees who did not meet the eligibility requirements related to age at the time of hire shall have the option to join the ~~s~~System and elect to purchase service credit for service back to January 1, 1991. Such election must be made by December, 1991.

~~(b)~~B. Subsection ~~A~~(a) includes all officials elected by the people who are paid directly or indirectly by the County, provided they elect to become members within sixty (60) days after assuming office. Notwithstanding the foregoing, any such official otherwise eligible for membership may elect to become a member and may buy service credit for any part of the period under which they held office.

~~(c)~~C. All applicants for employment in a uniformed public safety position, a position that has a high degree of physical and/or psychological demands, or other position as determined by the County Manager, or designee, must consent to a pre-employment physical examination by the ~~e~~County physician or some other clinician authorized by the ~~b~~Board of ~~t~~rustees before such employee may be accepted into membership. Any such employee with a specific disability at the time of his employment shall be advised, in writing, that he waives his right to any claim for accumulated service-connected disability based upon such pre-employment disability or aggravation thereof, upon his entrance into the ~~r~~etirement ~~s~~System. Any such employee with a pre-employment disability shall be eligible for a service-connected disability allowance only if the ~~b~~Board finds that such employee would have been entitled to a service-connected disability allowance notwithstanding the pre-employment disability. For purposes of this section, disability shall mean any medical or psychological condition which may increase the likelihood of injury, illness or disability related to or arising out of the condition.

(2-8-81; Ord. No. 82-34, § 1, 8-7-82; Ord. No. 90-36, 1-1-91; Ord. No. 91-13, 4-30-91; Ord. No. 00-33, 12-18-00;

Ord. No. 00-34, 11-1-00; Ord. No. 01-10, 4-21-01; Ord. No. 04-26, 11-16-04, effective 12-12-04; Ord. No. 05-10, 7-12-05; Ord. No. 09-27, 11-17-09; Ord. No. 10-23, 12-11-10)

§ 46-28. Cessation of ~~m~~Membership.

The membership of any person in the ~~s~~System shall cease:

~~(a)A.~~ If he ceases to be an employee for a period of five (5) years, unless he has elected to receive a deferred vested retirement allowance as provided in ~~section § 46-44.B(b).~~

~~(b)B.~~ Upon separation and withdrawal of his accumulated contributions.

~~(c)C.~~ Upon retirement.

~~(d)D.~~ Upon death.  
(2-8-81)

ARTICLE V.

CREDITABLE SERVICE

§ 46-29. Creditable ~~s~~Service.

Creditable service at retirement on which the retirement allowance is based shall consist of:

~~(a)A.~~ Membership service credit.

~~(b)B.~~ Prior service credit.  
(2-8-81)

§ 46-30. Year of ~~s~~Service.

The County Manager shall determine by appropriate rules and regulations what periods of service in any year qualify as periods of creditable service, but in no case shall it allow credit for more than one (1) year of service rendered in any period of twelve (12) consecutive months.  
(2-8-81; Ord. No. 04-26, 11-16-04, effective 12-12-04)

§ 46-31. Membership ~~s~~Service ~~e~~Credit.

~~(a)A.~~ Each member shall receive membership service credit for all service rendered while a member of the ~~s~~System after he becomes a member, or after he last became a member in the event of a break in his membership, and for the period he is on service-connected disability retirement. Each member shall receive membership service credit for military leave, provided that he returns to work in accordance with the Uniformed Services Employment and Reemployment Rights Act (USERRA) under conditions other than dishonorable discharge. This membership service credit will be applicable to any active duty military absences for reasons other than training and will not exceed a cumulative total of five (5) years. Notwithstanding any other provision in this chapter to the contrary, contributions, benefits and creditable service with respect to qualified military service will be provided in accordance with Internal Revenue Code § 414(u), effective October 13, 1996 or any other applicable law.

~~(b)B.~~ An employee who becomes a member after re-employment and after having withdrawn the accumulated contributions contributed during his prior membership may re-establish his membership service credit for the period of his prior membership as follows:

~~(1.)~~ If such employee were a former member of this System, by repayment to the System of the amount of his withdrawn accumulated contributions, with interest at the rate of six ~~percent~~ (6%)

~~percent~~ per annum from the date of withdrawal, which shall be a lump sum payment.

~~(2.)~~ If such employee were a former member of the Arlington County Employees' Supplemental Retirement System (Chapter 21) or the Arlington County School Board Employees' Supplemental Retirement System (Chapter 35), by contributing to this System the applicable employee contribution based upon the employee's compensation during the credit period sought and the contribution rate in effect for this System, with interest at the rate of six ~~percent~~ (6%) ~~percent~~ per annum from the date of withdrawal, which shall be a lump sum payment.

~~(3.)~~ An official purchasing service pursuant to § 46-27 ~~B-(b)~~ shall pay their contributions plus interest at the rate of six percent (6%) per annum for each full calendar year in which the contributions were not assets of the fund. The payment shall be made in a lump sum.

~~(c)C.~~ At the time of retirement, an employee hired prior to January 1, 2001, may elect to convert an unlimited amount of unused sick leave to service credit, in lieu of any cash payment provided by the County for accumulated sick leave. This conversion is not available when retirement is deferred pursuant to § 46-44 ~~B(b)~~. Employees hired after January 1, 2001, may only receive service credit for accumulated sick leave.

~~(d)D.~~ No ~~s~~School ~~b~~Board employee, except for employees who elected to remain in the System beyond September 1, 2001, shall accrue membership service beyond September 1, 2001. (2-8-81; Ord. No. 84-38, 12-23-84; Ord. No. 00-34, 11-1-00; Ord. No. 01-10, 4-21-01; Ord. No. 02-26, 12-7-02; Ord. No. 04-16, 6-26-04, effective 7-1-04; Ord. No. 09-27, 11-17-09)

## ARTICLE VI.

### CONTRIBUTIONS

#### § 46-32. Member ~~e~~CContributions.

~~(a)A.~~ Each member, who is not a member of the Virginia Retirement System (V.R.S.) and who is not a police officer, firefighter or deputy sheriff shall contribute for each pay period for which he receives compensation) four ~~percent~~ (4%) ~~percent~~ of his creditable compensation until such time as the ~~e~~County ~~b~~Board, pursuant to ~~section~~ § 46-19, shall revise the rate of member contributions. Each member who is a police officer, firefighter or deputy sheriff, during years of service until the pay period ending January 3, 2009 shall contribute for each pay period for which he receives compensation five ~~percent~~ (5%) ~~percent~~ of his creditable compensation, as then defined, and for all years of service commencing with the first pay period beginning January 4, 2009 shall contribute for each pay period for which he receives creditable compensation, seven and a half ~~percent~~ (7.5%) ~~percent~~ of his creditable compensation until such time as the ~~e~~County ~~b~~Board, pursuant to ~~section~~ § 46-19, shall revise the rate of member contributions subsequent to December 23, 1984, employers who have elected to participate in the employer pick-up program shall pick-up all employee contributions required herein.

All employee contributions will cease upon attainment of thirty (30) years of creditable service.

~~(b)B.~~ There shall be deducted or picked-up from the salary of each member for each payroll period, the contribution payable to each member as provided in this section. Such deduction or pick-up shall be transmitted to the ~~s~~System each month.

~~(c)C.~~ The County Manager shall certify to the proper authority or officer responsible for preparing the payroll and he shall cause to be deducted or picked-up from the compensation of each member the proper contribution rate as determined by the ~~e~~County ~~b~~Board for each such member. All changes in creditable compensation shall be effective as of the date such change is made by the employer.

~~(d)D.~~ The ~~e~~County ~~b~~Board may change the rate of the contributions of a member or classification of members provided in ~~section~~ § 46-32 ~~A(a)~~, as a part of a compensation plan.

~~(e)E.~~ Each employer shall be responsible for the employer contribution to V.R.S. and each employee

who is a member of the V.R.S. shall be responsible for the employee contribution to the V.R.S.

~~(F)~~ E. The contributions required to be made under the provisions of ~~section §~~ 46-32, ~~A(a)~~ and ~~section §~~ 46-32, ~~B(b)~~ with respect to services rendered by an active member on or after December 23, 1984, shall be picked-up by the employer, in lieu of contributions by the employee, provided the employer has elected to participate in the employer pick-up program. The employee shall not have the option of choosing to receive pick-up contributions amounts directly instead of having them paid by the employer to the ~~s~~System. Pick-up contributions shall be treated as the employer's contribution in determining tax treatment under the United States Internal Revenue Code for federal tax purposes, pursuant to 26 U.S.C. ~~Section §~~ 414(h)(2). For all other purposes, under this chapter and otherwise, such pick-up contributions shall be treated in the same manner and to the same extent as contributions made by a member prior to December 23, 1984.

~~(G)~~ G. A member, who is a member of the V.R.S., may purchase membership credit for leave, provided he is receiving credit for such leave under the V.R.S., by contributing the employer's normal cost in effect as of the date of purchase multiplied by the employee's current compensation multiplied by the years of service credit sought. (2-8-81; 8-22-81; Ord. No. 84-38, 12-23-84; Ord. No. 89-15, 7-1-89; Ord. No. 00-34, 11-1-00; Ord. No. 03-14, 6-14-03; Ord. No. 04-26, 11-16-04, effective 12-12-04; Ord. No. 08-17, 9-13-08, effective 1-4-09)

#### § 46-33. Employer ~~e~~Contributions.

~~(A)~~ A. Each employer shall contribute a percentage of the creditable compensation of the members as determined by the ~~e~~County ~~b~~Board. In the event that an employer does not pay the established contribution, the ~~b~~Board shall take appropriate action to secure payment.

~~(B)~~ B. The annual employer contribution rate for this ~~C~~chapter, Chapter 21, and Chapter 35 shall be fixed as equal to the employer normal cost plus an expense rate plus any amortization charges from ~~subsection C(e)~~ below, if the System's funding ratio (actuarial value of assets divided by actuarial accrued liability) remains within a corridor, the lower measurement of which is one hundred percent (100%) and the upper measurement of which is one hundred and twenty percent (120%). The employer normal cost and actuarial accrued liability are to be measured using the method recommended by an actuary and approved by the Retirement Board.

In the fiscal year commencing June 30, 1986, the employer shall transmit to the ~~s~~System on January 15, 1987, a sum equal to one-half (1/2) the actual annual contribution for the first six (6) months of the fiscal year. On May 15, 1987, the employer shall transmit to the system a sum equal to one-quarter (1/4) the actual annual contribution for the third quarter of the fiscal year. On August 15, 1987, the employer shall transmit to the ~~s~~System a sum equal to one-quarter ~~(1/4)~~ the actual annual contribution for the fourth quarter of the fiscal year commencing June 30, 1986. The August 15 transmittal shall be adjusted to reflect the full annual contribution due based on actual payroll and any actuarial estimate of loss of income by reason of timing of payments.

On October 15 of each subsequent fiscal year, the employer shall transmit to the ~~s~~System a sum equal to one-quarter (1/4) the actual annual contribution for the first quarter of the fiscal year. On January 15 of each fiscal year, the employer shall transmit to the ~~s~~System a sum equal to one-quarter (1/4) the actual annual contribution for the second quarter of the fiscal year. On May 15 of each fiscal year, the employer shall transmit to the ~~s~~System a sum equal to one-quarter (1/4) the actual annual contribution for the third quarter of the fiscal year. On August 15 of the succeeding fiscal year, the employer shall transmit to the ~~s~~System a sum equal to one-quarter (1/4) the actual annual contribution for the fourth quarter of the previous fiscal year. The August 15 transmittal shall be adjusted to reflect the full annual contribution due based on actual payroll.

~~(C)~~ C. In the event of an ordinance change that affects benefits, the employer contribution rate shall be changed effective with the July 1 coincident with or next following the date of adoption of the ordinance change. The employer normal cost component shall be adjusted to the level required by the ordinance change. If the ordinance change increases benefits, the employer contribution rate shall also be increased effective with the July 1 coincident with or next following the date of adoption of the ordinance change by a twenty (20)- year amortization of any increase in actuarial liability as a result of the change; however, should the funding ratio exceed one hundred and twenty percent (120%) at any point after the effective date of the benefit change, this amortization payment will cease.

~~(d)~~D. To the extent that the System's funding ratio exceeds one hundred and twenty percent (120%), a credit shall be established equal to the amount of assets in excess of one hundred and twenty (120%) of the actuarial accrued liability. The employer contribution shall be reduced by a fifteen (15) year amortization of this credit, to be paid until the funding ratio re-enters the corridor at which time it will cease.

~~(e)~~E. To the extent that the System's funding ratio is lower than one hundred percent (100%), a charge shall be established equal to the difference (not less than zero (0)) between the actuarial accrued liability less the assets less the present value of any remaining amortization from subsection C(e) above. The employer contribution shall be increased by a fifteen (15) year amortization of this charge, to be paid until the funding ratio re-enters the corridor at which time it will cease.

~~(f)~~F. The contribution rate shall not increase nor decrease by more than two percent (2%) of payroll, plus any change due to subsection C(e) above, over the previous years' contribution rate.

~~(g)~~G. The employer contribution rate will not be less than three and one-half percent (3.5%) of payroll.

~~(h)~~H. The eCounty, being entitled to reimbursement from the Commonwealth of Virginia of a portion of the employer contributions on account of the eCounty tTreasurer, aAttorney for the eCommonwealth, eCommissioner of the rRevenue, eClerk of the eCourt, sSheriff and their employees, as provided under Section-§ 51-114.251.1-806 of the Code of Virginia, shall submit to the Virginia Retirement System Board, biennially, actuarial information as required, which shall provide the basis for such reimbursement.

~~(i)~~I. Any forfeiture arising from severance of employment or death shall be used to reduce the employer contribution under the plan.

~~(j)~~J. Notwithstanding anything in this chapter to the contrary, the amount of annual additions of a member for any limitation year for purposes of Internal Revenue Code § 415 shall not exceed the maximum permissible amount determined pursuant to the provisions of such section applicable to governmental plans, as defined for purposes of such section. If the member's annual additions for any limitation year (as defined for purposes of such section) would exceed such maximum permissible amount, the amount contributed or allocated shall be reduced so that the annual additions for such limitation year will equal such maximum permissible amount. (2-8-81; Ord. No. 84-38, 12-23-84; Ord. No. 86-33, 1-1-87; Ord. No. 00-34, 11-1-00; Ord. No. 05-10, 7-12-05)

## ARTICLE VII.

### ASSETS OF SYSTEM

#### § 46-34. Assets to be eCredited to one of two accounts.

All assets of the defined benefit sSystem shall be credited, according to the purpose for which they are held, to one (1) of two (2) accounts, namely, "tThe mMembers' eContribution aAccount," and "tThe rRetirement aAllowance aAccount." (2-8-81; Ord. No. 00-34, 11-1-00)

#### § 46-35. Members' eContribution account.

~~(a)~~A. The members' contribution account shall be the account to which all members' contributions, pick-up contributions, and interest thereon shall be credited. From this account shall be paid the accumulated contributions of a member required to be returned to him upon withdrawal, or paid in the event of his death before retirement.

~~(b)~~B. Each member's contributions and pick-up contributions to the sSystem provided for in section-§ 46-32 shall be credited to the individual account of that member.

~~(c)~~C. Notwithstanding anything in this chapter to the contrary, the amount of annual additions of a

member for any limitation year for purposes of Internal Revenue Code § 415 shall not exceed the maximum permissible amount determined pursuant to the provisions of such section applicable to governmental plans, as defined for purposes of such section. If the member's annual additions for any limitation year (as defined for purposes of such section) would exceed such maximum permissible amount, the amount contributed or allocated shall be reduced so that the annual additions for such limitation year will equal such maximum permissible amount.

~~(d)~~D. Upon the retirement of a member, his accumulated contributions shall be transferred from the ~~m~~Members' ~~e~~Contribution ~~a~~Account to the ~~r~~Retirement ~~a~~Allowance ~~a~~Account. A member retiring under provisions of ~~section §~~ 46-39 or ~~section §~~ 46-41 whose contributions have been transferred to the retirement allowance account and who subsequently becomes an employee of the ~~e~~County shall contribute to his ~~m~~Members' ~~e~~Contribution ~~a~~Account on the same basis as any other member as provided in ~~section §~~ 46-47 ~~A(a)~~.  
(2-8-81; Ord. No. 84-38, 12-23-84; Ord. No. 00-34, 11-1-00)

§ 46-36. Retirement ~~a~~Allowance ~~a~~Account.

~~(a)~~A. The ~~r~~Retirement ~~a~~Allowance ~~a~~Account shall be the account in which all employer contributions shall be accumulated, in which amounts transferred from the ~~m~~Members' ~~e~~Contribution ~~a~~Account shall be placed, and to which all income from the invested assets of the ~~s~~System shall be credited. This account shall pay retirement allowances, other benefits payable after a member's retirement, and necessary expenses of the ~~s~~System.

~~(b)~~B. The amount of interest allowances provided for in ~~section §~~ 46-35 ~~C(e)~~ shall be transferred each year from the ~~r~~Retirement ~~a~~Allowance ~~a~~Account to the ~~m~~Members' ~~e~~Contribution ~~a~~Account.

~~(c)~~C. Notwithstanding anything in this chapter to the contrary, the amount of annual additions of a member for any limitation year for purposes of Internal Revenue Code § 415 shall not exceed the maximum permissible amount determined pursuant to the provisions of such section applicable to governmental plans, as defined for purposes of such section. If the member's annual additions for any limitation year (as defined for purpose of such section) would exceed such maximum permissible amount, the amount contributed or allocated shall be reduced so that the annual additions for such limitation year will equal such maximum permissible amount.  
(2-8-81)

## ARTICLE VIII.

### RETIREMENT BENEFITS

§ 46-37. Service ~~r~~Retirement.

~~(a)~~A. *Normal retirement.* Any member who has attained the minimum age and completed the years of service for each member's job classification described in ~~subsection (1)~~ or ~~(2)~~ below may retire or elect to participate in the DROP upon written notification to the County Manager setting forth at what date the retirement or DROP election is to be effective provided that such effective date shall be after the member's last day of service but shall not be more than ninety (90) days subsequent to the filing of the notice.

~~(1)~~ A police officer, firefighter or deputy sheriff may retire or elect to participate in the DROP at the earlier of:

- a. Age fifty-two (52) with five (5) years of completed service;
- b. After twenty-five (25) years of completed service.

~~(2)~~ Any member who is not a police officer, firefighter or deputy sheriff may retire or elect to participate in the DROP at the earlier of either:

- a. Age sixty-two (62) with five (5) years of completed service;
- b. Any time where years of service, when added to age, equal at least eighty (80);

c. After thirty ~~(30)~~ years of completed creditable service.

~~(b)B.~~ *Early retirement.* Any member in service who has attained the minimum age and completed the years of service for such member's job classification as provided in subsection (1) or ~~(2)~~ below may retire upon written notification to the County Manager setting forth at what date the retirement is to be effective provided that such effective date shall be after the member's last day of service but shall not be more than ninety (90) days subsequent to the filing of the notice.

~~(1.)~~ A police officer, firefighter or deputy sheriff may retire at age forty-two (42) if he has completed five (5) years of service.

~~(2.)~~ A member who is not a police officer, firefighter or deputy sheriff may retire at the earlier of either:

- a. Age fifty-five (55) with five (5) years of completed service;
- b. Age fifty-four (54) with seventeen (17) years of completed service;
- c. Age fifty-three (53) with nineteen (19) years of completed service;
- d. Age fifty-two (52) with twenty-one (21) years of completed service;
- e. Age fifty-one (51) with twenty-three (23) years of completed service;
- f. Age fifty (50) with twenty-five (25) years of completed service.

~~(c)C.~~ *Service retirement – special conditions.* The County Manager may, once every fiscal year for a period of time not to exceed sixty (60) days, offer to: ~~(i1)~~ general employees whose age plus service equals or exceeds seventy-eight (78), and ~~(ii2)~~ public safety employees who are fifty (50) or more years old and have completed five (5) years of service or have completed twenty-three (23) years of service, regardless of age, service credit for an additional one (1) year of service and/or an additional one (1) year of age, provided the employee submits an application for retirement within the timeframe prescribed by the County Manager. ~~;~~

The County Manager may do so only after the Manager determines that there is a business necessity to reduce the workforce for budgetary reasons.

(2-8-81; Ord. No. 00-34, 11-1-00; Ord. No. 01-20, 11-17-01; Ord. No. 02-15, 6-22-02; Ord. No. 03-14, 6-14-03; Ord. No. 04-16, 6-26-04; Ord. No. 04-26, 11-16-04, effective 12-12-04; Ord. No. 09-27, 11-17-09)

**§ 46-38. Service ~~r~~Retirement ~~a~~Allowance; ~~b~~Bridge ~~a~~Allowance.**

~~(a)A.~~ Upon service retirement prior to January 4, 2009, a member who is a General Member shall receive an annual retirement allowance payable monthly to him for life which shall be equal to one and one-half ~~percent (1.5%)~~ ~~(1 1/2) percent~~ of the member's average final compensation using creditable compensation as defined prior to January 4, 2009, multiplied by the number of years of his creditable service, not to exceed thirty (30) years.

Upon service retirement or upon entering the DROP on or after January 4, 2009, a member who is a General Member shall irrevocably elect to receive an annual retirement allowance payable monthly to him for life which shall be equal to either:

- (1) one and seven-tenths ~~percent (1.7%)~~ ~~percent~~ of the member's average final compensation using creditable compensation as defined effective January 4, 2009 multiplied by the number of years of his creditable service; or
- (2) their retirement allowance calculated as if they had ceased employment on January 3, 2009 for all years of creditable service up to January 3, 2009 plus a retirement allowance calculated by years

of creditable service attained after January 4, 2009 multiplied by one and seven-tenths ~~percent~~ (1.7%) ~~percent~~ of average final compensation using creditable compensation as defined as of January 4, 2009.

Upon service retirement after January 3, 2009, General Members who are vested as of April 19, 2008 may irrevocably elect to receive an annual retirement allowance payable monthly to him for life which shall be calculated by one of the above two formulas or equal to one and one-half ~~percent~~ (1.5%) ~~percent~~ of the member's average final compensation calculated on January 3, 2009 multiplied by the total number of years of his creditable service.

Upon service retirement prior to January 4, 2009, a member who is a Public Safety Member shall receive an annual retirement allowance payable monthly to him for life which shall be equal to one and one-half ~~percent~~ (1.5%) ~~(1-1/2) percent~~ of the member's average final compensation multiplied by the number of years of his creditable service from the first through the tenth year of service plus one and seven-tenths ~~percent~~ (1.7%) ~~percent~~ of the member's average final compensation multiplied by the number of years of his creditable service from the eleventh through the twentieth year of service plus two ~~percent~~ (2%) ~~percent~~ of the member's average final compensation multiplied by the number of years of his creditable service from the twenty-first through the thirtieth year of service. Average final compensation shall be calculated using compensation as defined prior to January 4, 2009.

Upon service retirement or upon entering the DROP on or after January 4, 2009, a member who is a Public Safety Member, shall irrevocably elect to receive an annual retirement allowance payable monthly to him for life which shall be equal to either:

- (1) two and one-half ~~percent~~ (2.5%) ~~percent~~ of the member's average final compensation using creditable compensation as defined effective January 4, 2009 multiplied by the number of years of his creditable service up to the pay period ending January 3, 2009, plus two and seven-tenths ~~percent~~ (2.7%) ~~percent~~ of the member's average final compensation and using creditable compensation as defined effective January 4, 2009 multiplied by the number of years of his creditable service commencing after January 3, 2009; or
- (2) their retirement allowance calculated as if they had ceased employment on January 3, 2009 for all years of creditable service up to January 3, 2009 plus a retirement allowance as calculated for years of creditable service attained on or after January 4, 2009 using two and seven-tenths ~~percent~~ (2.7%) ~~percent~~ of final average compensation and using creditable compensation as defined as of January 4, 2009. The retirement allowance calculated as if they had ceased employment on January 3, 2009 shall include the annual bridge allowance defined in the paragraph below, while eligible to receive the bridge allowance.

Upon service retirement after January 3, 2009, Public Safety Members who are vested as of April 19, 2008 may irrevocably elect to receive an annual retirement allowance payable monthly to him for life which shall be calculated by one of the above two formulas or equal to one and one-half ~~percent~~ (1.5%) ~~percent~~ of the member's average final compensation as calculated on January 3, 2009 multiplied by the number of years of his creditable service from the ~~first-1<sup>st</sup>~~ through the ~~tenth-10<sup>th</sup>~~ year of service plus one and seven-tenths ~~percent~~ (1.7%) ~~percent~~ of the member's average final compensation as calculated on January 3, 2009 multiplied by the number of years of his creditable service from the ~~eleventh-11<sup>th</sup>~~ through the ~~twentieth-20<sup>th</sup>~~ year of service plus two percent (2%) ~~(2.0)~~ of the member's average final compensation as calculated on January 3, 2009 multiplied by the number of years of his creditable service from the ~~twenty-first-21<sup>st</sup>~~ through the ~~thirtieth-30<sup>th</sup>~~ year of service. If utilizing the latter monthly allowance calculation, the bridge benefit described below will be the difference in annual retirement allowance between that above formula and two percent (2%) of the member's average final compensation as of January 3, 2009 multiplied by the total number of years of service, not to exceed thirty (30) years.

Upon service retirement, a member who is a Public Safety Member shall receive an annual bridge allowance, payable monthly to him until his Social Security normal retirement age as defined as of January 1, 2001 or at the early Social Security reduced benefit age if the member elects to receive Social Security at an early age. The bridge amount will be the difference between the allowance as calculated using the retirement allowance calculation in effect prior to January 4, 2009 and an allowance which shall be equal to two ~~percent~~ (2%) ~~percent~~ of

the member's average final compensation using creditable compensation as defined prior to January 4, 2009 multiplied by the number of years of his creditable service prior to January 4, 2009, not to exceed thirty (30) years. On or before May 1 of any year which follows the year a retiree receiving a bridge benefit attains the age of sixty-two (62), the retiree shall report any Social Security benefits received in such detail, including any and all income tax returns as may be required by the County Manager.

Upon service retirement on or after January 1, 2010, a member who has been both a General Member and a Public Safety Member of the System during their creditable service, shall have a retirement allowance payable monthly to him for life which shall be equal to the sum of the retirement allowance as calculated for Public Safety Members using their years of creditable service as a Public Safety Member plus the retirement allowance as calculated for General Members using their years of creditable service as a General Member.

The maximum amount of creditable service a member can accrue for use in calculating their retirement allowance is thirty (30) years.

~~(b)~~**B.** Upon service retirement of a member prior to his normal retirement age as provided in ~~section §~~ 46-37, ~~B(b)~~, the member shall receive an annual retirement allowance, payable monthly to him for life, which shall be equal to the amount calculated under ~~Section §~~ 46-38, ~~A(a)~~ and shall be payable, at the option of the member: ~~(i)~~ commencing on his early retirement date but reduced by one-half of one ~~percent (0.5%)~~ ~~(1/2 of 1) percent~~ for each full month by which his actual retirement date precedes the earlier of (a) his normal retirement date, or (b) the first date on which his number of years of service and his attained age would have equaled the minimum age and completed years of service requirement provided in ~~section §~~ 46-37, ~~A(a)~~ had he been continuously in service from his date of retirement until such first date; or ~~(ii)~~ commencing at his normal retirement date without such reduction.

~~(c)~~**C.** The retirement allowance for service retirement under the provisions of ~~section §~~ 46-38 shall be reduced by any compensation awarded to the member or retiree under the Virginia Workers' Compensation Act ("the Act"), whether such award is paid to the member or retiree in a lump sum or otherwise. Such reduction shall be made only for compensation awarded to cover any period of time for which the member or retiree is or will be receiving benefits under ~~section §~~ 46-38. No such reduction shall be made for compensation awarded for permanent partial or permanent total loss or disfigurement, where payments are made from the schedule of payments provided for such under the Act. For purposes of this section, compensation awarded does not include reimbursement for medical expenses.

~~(d)~~**D.** Any member electing a normal, early or a deferred benefit may, at the time the member chooses to begin receiving retirement benefits, elect to receive a lump sum payment equal to the lesser of ~~ten percent (10%)~~ of the actuarial value equivalent to that of the annual retirement allowance, including expected post-retirement supplements which may be payable pursuant to ~~section §~~ 46-49, to which he could otherwise be entitled, as determined by the actuary, of the benefits to be paid over the member's lifetime or ~~twenty thousand dollars (\$20,000.00)~~. If the then current actuarial value of the benefits is less than ~~five thousand dollars (\$5,000.00)~~, the entire benefit may be selected as a lump sum. Should the member elect such a lump sum payment, the monthly benefit due the retiree will be reduced by an amount calculated to be equal to the actuarial equivalent of the lump sum payment. The lump sum distribution will be issued at the time of the first benefit payment.

Nothing herein shall be construed to require any person to pay back into the ~~s~~System any money received before the effective date of this section. No person who has begun to receive an allowance under ~~section §~~ 46-38 before June 23, 1990, shall be subject to this reduction.

~~(e)~~**E.** Nothing in the Code amendments effective January 4, 2009 will apply to or affect retirement allowance calculations pursuant to § 21-59 and § 35-43 for persons ceasing employment prior to April 19, 2008 nor shall such Code amendments affect any person receiving a retirement allowance before April 19, 2008. (2-8-81; Ord. No. 90-12, 7-1-90; Ord. No. 93-17, 7-27-93; Ord. No. 00-34, 11-1-00; Ord. No. 04-26, 11-16-04, effective 12-12-04; Ord. No. 08-17, 9-13-08, effective 1-4-09; Ord. No. 09-27, 11-17-09)

**Editors Note:** The provisions adopted in Ord. No. 93-17, adopted July 27, 1993, are effective retroactive to Jan. 1, 1989.

§ 46-38.1 Special Rules for the Period between April 19, 2008 and January 3, 2009.

(a)A. When retiring pursuant to § 46-37 or exiting the DROP between April 19, 2008 and January 3, 2009, the employee will receive their retirement allowance calculated using the retirement allowance formula in effect at the time of their retirement until the January 2009 payment. In January 2009, their retirement allowance will be calculated using the formula effective January 4, 2009 using the same years of creditable service as was used at retirement or DROP entry and the retired member shall irrevocably elect, to receive an annual retirement allowance payable monthly to him for life which shall be equal to either:

- 1.) their allowance as calculated under the formula effective on January 3, 2009; or
- 2.) the formula effective January 4, 2009.

A change in the retirement allowance, as elected, will apply to payments January 2009 and thereafter.

(b)B. Those retiring pursuant to § 21-42.B(b) or ceasing employment pursuant to § 21-48.B(b) between April 19, 2008 and January 3, 2009 and receiving a deferred allowance, shall, after January 4, 2009, irrevocably elect, to receive an annual retirement allowance payable monthly to him for life which shall be equal to either:

- 1.) The allowance determined in accordance with the provisions of § 21-42.B(b); or
- 2.) The allowance determined in accordance with the provisions of sections §§ 46-38.B(b) and 46-49.B(b) effective January 4, 2009.

(c)C. Those ceasing employment pursuant to § 46-44.B(b) between April 19, 2008 and January 3, 2009 will have their retirement allowance calculated using the retirement allowance formula in effect at the time of their withdrawal from employment until the January 2009 payment, if eligible to receive their allowance prior to January 2009 as outlined in § 46-44.B(b). In January 2009, their retirement allowance will be calculated using the formula effective January 4, 2009 using the same years of creditable service as was used at the time of their withdrawal from employment and the retired member shall irrevocably elect, to receive an annual retirement allowance payable monthly to him for life which shall be equal to either:

- 1.) their allowance as calculated under the formula effective on January 3, 2009; or
- 2.) the formula effective January 4, 2009.

A change in the retirement allowance, as elected, will apply to payments upon the latter of reaching eligibility to receive their allowance as outlined in § 46-44.B(b) or January 2009 and thereafter.

(d)D. Should any member who has completed two (2) or more years of creditable service die while in service between April 19, 2008 and January 3, 2009, the designated beneficiary as defined in § 46-44.C(e) will receive their retirement allowance calculated as described in § 46-44.C(e) using the retirement allowance formula in effect at the time of the employee's death until the January 2009 payment. In January 2009, their retirement allowance will be calculated using the formula effective January 4, 2009 using the same years of creditable service as was used at the time of death and the beneficiary shall irrevocably elect, to receive an annual retirement allowance payable monthly to him for life which shall be equal to either:

- 1.) the allowance as calculated under the formula effective on January 3, 2009; or
- 2.) the formula effective January 4, 2009.

Either allowance will be reduced pursuant to § 46-44.C(-e).

(e)E. For any person who is receiving a retirement allowance as of April 18, 2009, and then begins new employment with an employer between April 19, 2008 and January 3, 2009, only service after the date of new employment shall earn the multiplier effective as of January 4, 2009 and creditable service between April 19, 2008

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and January 3, 2009 will earn the multiplier effective as of January 3, 2009.  
(Ord. No. 08-17, 9-13-08, 1-4-09)

§ 46-39. Ordinary ~~d~~Disability ~~r~~Retirement.

~~(a)~~A. Any member in service or on authorized leave without pay who has two (2) or more years of service and qualifies for Social Security disability retirement may, at any time before his normal retirement date, retire on account of disability as herein defined upon written application to the County Manager, made by the member or his appointing authority, setting forth the date the retirement is to become effective. Such effective date shall be after the last day of service, and provided that the medical advisor, after a medical examination of such member, has certified that ~~(i)~~ the member has suffered a disability, ~~(ii)~~ the disability has so severely disabled the member that he is mentally or physically incapacitated from performing any substantial, gainful employment, and ~~(iii)~~ such disability is likely to be permanent and such member should be retired. Every member granted an ordinary disability retirement shall, as a condition of receiving any benefits pursuant to ~~section §~~ 46-40, be required to apply for and receive Social Security disability benefits.

~~(b)~~B. *Temporary ordinary disability.* If, after receiving the member's application for ordinary disability retirement, the County Manager determines that all the requirements for ordinary disability retirement are met except that it has not been determined whether the member qualifies for Social Security disability benefits, the County Manager shall grant to the member a temporary ordinary disability retirement for either a period of time not to exceed six (6) months or until the member receives a determination from the Social Security Administration, whichever, event occurs sooner. If after this six (6) month period, the County Manager finds that the failure to receive a determination from the Social Security Administration was not in any way the fault of the member, the County Manager shall extend such member's temporary ordinary disability retirement. The case of each member retired pursuant to this subsection ~~B~~(~~b~~) shall then be reviewed by the County Manager at such time as is determined by the County Manager.

(2-8-81; Ord. No. 83-6, 2-26-83; Ord. No. 00-34, 11-1-00; Ord. No. 04-26, 11-16-04, effective 12-12-04)

§ 46-39.1. Application of ~~s~~State ~~L~~aw.

The rules and regulations required by Chapter 272 of the 1975 Acts of Assembly and the applicable sections of the Code of Virginia relating to respiratory disease, hypertension or heart disease of firefighters and the hypertension or heart disease of police officers and deputy sheriffs are incorporated herein by reference; provided, however, such incorporation by reference shall continue only so long as the enabling legislation requires such rules and regulations.

(Ord. No. 00-34, 11-1-00)

§ 46-40. Ordinary ~~d~~Disability ~~a~~Allowance.

Upon retirement as provided in ~~section §~~ 46-39, a member shall receive an annual retirement allowance equal to the amount calculated in the appropriate sections of § 46-38, ~~A~~(~~a~~) and ~~D~~(~~d~~) with no reduction for early retirement.

(2-8-81; Ord. No. 00-34, 11-1-00)

§ 46-41. Service-~~e~~Connected ~~d~~Disability ~~r~~Retirement.

~~(a)~~A. *Permanent disability.* Any member in service or on authorized leave without pay may retire on account of service-connected disability that is not due to the employee's willful misconduct if he is permanently disabled for duty, upon written application to the County Manager made by the member or his appointing authority, setting forth the date the retirement is to become effective. Such effective date shall be after the last day of service.

In the case of a member who is a member of the V.R.S., the County Manager shall accept the determination of the ~~m~~Medical ~~e~~Examining ~~b~~Board of the V.R.S. In all other cases, no allowance for retirement may be awarded until after the medical advisor has examined the applicant and has certified that ~~(i)~~ the member has suffered a permanent disability resulting from an injury or occupational disease; ~~(ii)~~ the disability has rendered the member mentally or physically incapacitated for the further performance of the significant duties of the classification which

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he held at the time of his disability; and ~~(iii)~~ such disability is the natural and proximate result of an accident or injury which occurred while in the actual performance of duty at some definite time or place, or such disability was the natural and proximate result of an occupational disease that was contracted as a result of exposure occasioned by employment. The medical advisor shall consider all medical information provided by the ~~w~~Worker's ~~e~~Compensation ~~o~~Office of the ~~e~~County and the ~~w~~Worker's ~~e~~Compensation treating physician and will consult the treating physician as necessary. No ordinary disease of life to which the general public is exposed outside of employment shall be the basis for retirement unless such disease is found to be compensable under workers' compensation and the County Manager finds beyond a reasonable doubt that the ordinary disease of life ~~(i)~~ did not result from any cause outside of employment and ~~(ii)~~ either:

- ~~(a)~~1. Followed as an incident of an occupational disease; or
- ~~(b)~~2. Resulted solely, naturally, and unavoidably from an injury which occurred while in the actual performance of the member's occupational duties ~~at~~ some definite time and place.

No allowance shall be awarded unless the County Manager finds that the accident or injury upon which the medical advisor based its medical certification occurred, in fact, while the applicant was in the actual performance of duty at some definite time or place or the County Manager finds that the exposure upon which the medical advisor based its medical certification was occasioned, in fact, by employment.

If the medical advisor's opinion disagrees with that of the worker's compensation treating physician opinion, the County Manager may appoint a substitute medical advisor.

The phrase "permanent disability" shall not be construed to include a medical condition which may be corrected if the member follows a reasonable medical treatment plan or reasonable medical advice.

~~(b)~~B. *Temporary disability.* If, after conducting the examination, the medical advisor certifies that the requirements for permanent disability are met, except that it has not been determined if the disability is permanent, or if in the opinion of the physician the disability may be alleviated or eliminated if the applicant follows a reasonable medical treatment plan or reasonable medical advice, the physician shall notify the County Manager in writing of his findings, stating his reasons and recommendations. The County Manager shall direct the member to follow such a plan or advice unless it determines that the risk to the member of the plan or advice is too high or the possibility of success too low, given all the facts and circumstances, and the member shall be temporarily retired.

The case of each member retired pursuant to this subsection ~~B~~(~~b~~) shall be reviewed by the County Manager at such time as is determined by the County Manager, and if no specific time for review is determined, the member's case shall be reviewed by the County Manager within twelve (12) months from the date the temporary retirement was granted. Any person whose disability application is denied or whose temporary disability benefit is terminated, may appeal to the board pursuant to § 46-52.

Any employee with a pre-employment disability shall be eligible for a service-connected disability allowance only if the County Manager finds that such employee would have been entitled to a service-connected disability allowance notwithstanding the pre-employment disability.  
(2-8-81; Ord. No. 83-6, 2-26-83; Ord. No. 94-14, 5-7-94; Ord. No. 00-34, 11-1-00; Ord. No. 03-14, 6-14-03; Ord. No. 04-26, 11-16-04, effective 12-12-04)

**§ 46-42. Service-~~e~~Connected ~~d~~Disability ~~a~~Allowance.**

~~(a)~~A. Upon retirement as provided in ~~section §~~ 46-41, a member shall receive an annual amount equal to sixty-six and two-thirds ~~percent (66.67%)~~ ~~(66 2/3) percent~~ of the member's average final compensation.

~~(b)~~B. Upon attaining normal retirement age, the retiree's service-connected disability allowance shall be equal to sixty ~~percent (60%)~~ ~~percent~~ of the member's average final compensation, as used in ~~subsection A~~(~~a~~) above, for police officers, firefighters or deputy sheriffs or forty-five ~~percent (45%)~~ ~~percent~~ of the member's average final compensation for a member who is not a police officer, firefighter or deputy sheriff. Upon receiving Social Security

benefits, but no later than age sixty-five (65), this allowance reduces to fifty-two percent (52%)~~percent~~ of the member's final average compensation for member's who are police officers, firefighters or deputy sheriffs.

~~(c)C.~~ In no event shall the service-connected disability allowance of a firefighter be an amount less than sixty-six and two-thirds percent (66.67%)~~(66 2/3) percent~~ of the member's average final compensation at the time of his retirement.

~~(d)D.~~ Any retirement allowance received by a member pursuant to this section shall be subject to ~~section~~ § 46-46. (Ord. No. 90-36, 1-1-91; Ord. No. 00-34, 11-1-00; Ord. No. 02-26, 12-7-02; Ord. No. 03-14, 6-14-03; Ord. No. 06-08, 6-10-06, effective 7-1-06)

§ 46-43. Line of ~~d~~Duty ~~d~~Death ~~b~~Benefit.

~~(a)A.~~ *Definitions:* The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise:

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"Base salary"~~shall~~ means an employee's base rate of pay according to the ~~e~~County ~~b~~Board adopted pay plan, including any market adjustments under the pay plan.

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"Beneficiary" means, for purposes of ~~section~~ § 46-43, that person or persons designated by the member to receive life insurance proceeds from the life insurance policy provided or made available by the employer.

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"Direct and proximate result" means that result which is the natural and probable consequence of the antecedent events.

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"Line of duty" means on the job in the service of the member's employers. Line of duty does not mean going to or from work (including between any parking lot or transportation terminal and the employee's work place), going to or from meals or breaks, or time spent while "on call" or on stand-by status unless the employee is involved in a specific work-related duty during such period.

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"Personal injury" means any traumatic injury as well as diseases which are caused by or result from such an injury, excluding occupational diseases and diseases of ordinary life. The term personal injury excludes any personal injury caused or contributed to by the intentional misconduct or negligence of the member or beneficiary as well as suicide. The term personal injury also excludes any injury caused or contributed to by the member's consumption of alcohol or illegal drugs.

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"Traumatic injury" means a wound or other condition of the body caused by external force, including injuries inflicted by bullets, explosives, smoke inhalation, sharp or blunt instruments or objects, physical blows, chemicals, electricity, climatic conditions, infectious diseases, radiation, and bacteria, but excluding stress and strain. Death from heart attacks, strokes and similar diseases resulting from chronic, congenital or progressive cardiac and/or pulmonary conditions are not compensable unless a traumatic injury was a substantial factor in the death. Heart attacks and stroke shall be presumed to be caused by a traumatic injury where such heart attacks and stroke were substantially caused by arduous and strenuous physical work-related activity.

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~~(b)B.~~ The beneficiary of any member who dies in the line of duty shall receive a payment of two (2) times the member's base salary at the time of death, up to a maximum of one hundred fifty thousand dollars (\$150,000.00). Such payment may be received by the beneficiary only after the payment is approved by the County Manager as set forth below. Following approval by the County Manager, the beneficiary may elect to receive the payment either in one (1) lump sum or in four (4) equal installments; the first installment to be made after approval of the application for payment by the County Manager and the remaining three (3) installments annually thereafter. In the event that there is more than one (1) beneficiary no election by beneficiaries is allowed and payment shall be of the full payment only, divided between or among the beneficiaries in the same manner which the member has designated for the life insurance policy provided by or made available by the employer.

In addition, the member's beneficiary shall receive a benefit equal to the service retirement benefit payable

under § 46-38 to the member as if the member had worked thirty ~~(30)~~ years for the County. This benefit is payable to the member's beneficiary until the member would have reached normal retirement age. Upon reaching normal retirement age, the benefit is equal to the benefit that would be paid to the survivor had the member worked until normal retirement, retired and elected a one hundred percent (100%) joint and survivor benefit, and died immediately.

Additionally, any surviving children, or their legal guardian, shall receive undergraduate tuition assistance equal to in-state tuition, room and board at the University of Virginia until the child reaches age twenty-three (23), plus thirty-three ~~percent~~ (33%) ~~percent~~. This benefit is payable in an exact amount as determined by the County Manager on a semester by semester basis by submitting the appropriate documentation as determined by the County Manager.

The beneficiary(ies) may apply for payment within one hundred eighty (180) days of the member's death by making application to the County Manager. The County Manager may adopt procedures for making and evaluating applications for this benefit. The County Manager shall approve payment under this section only after finding that the member has died as the direct and proximate result of a personal injury sustained in the line of duty.

Before approving any application, the County Manager must receive a written certification from the medical advisor that the member has died as the direct and proximate result of a personal injury identified by the medical advisor and the ~~e~~County's legal advisor certifies that all the requirements of this section have been met.

The one hundred fifty thousand dollar (\$150,000.00) maximum established under this section shall be increased by the same amount as the annual cost of living adjustment made by the Arlington County Board for the Arlington County Employees' Pay Plan, beginning with the adjustment made effective July 1, 2004.\*

The lump sum benefit payable under this section shall be reduced by any amount awarded for an accidental death occurring in the line of duty by the V.R.S., whether by an insurance policy or otherwise.

Notwithstanding any of the foregoing, where the County Manager finds that an employee's death, as the direct and proximate result of a personal injury, was intentionally caused by a third party because the third party was motivated to cause the employee's death because the employee performed a particular duty within the employee's scope of employment, such death shall be considered to have occurred in the line of duty whether or not it occurred on the job.

\*Effective July 1, 2004.

(Ord. No. 90-12, 7-1-90; Ord. No. 90-36, 1-1-91; Ord. No. 00-34, 11-1-00; Ord. No. 02-26, 12-7-02; Ord. No. 04-26, 11-16-04, 12-12-04)

**§ 46-44. Benefits upon ~~w~~Withdrawal from ~~e~~Employment or ~~d~~Death.**

~~(a)A.~~ If a member has ceased to be an employee, otherwise than by death or by retirement under the provisions of this chapter prior to the completion of five (5) years of service, or if he has completed five (5) or more years of service and has not made the election provided in subsection ~~B(b)~~, he shall be paid, after demand, as soon as practicable, the total amount of his contribution account.

~~(b)B.~~ If a member has ceased to be an employee, other than by death or by retirement, after completion of five (5) or more years of service and has not elected in writing as prescribed by the County Manager to withdraw the total amount of his contribution account, he will be eligible to receive a deferred vested retirement allowance commencing on his normal retirement date. The allowance will be the amount determined as provided in ~~section-§~~ 46-38 as of the date of his withdrawal from employment. For persons ceasing employment between April 19, 2008 and January 2, 2009, the allowance shall be calculated as provided in § 46-38.1. The allowances provided for under this ~~section-§~~ 46-44 ~~B(b)~~ shall be payable for life commencing on the first day of the month coincident with or next following the later of ~~(i)~~ the date on which such member attains his normal retirement date, or ~~(ii)~~ the date on which the County Manager receives written application from such former member. This written application should be filed with the County Manager not earlier than sixty (60) days prior to the former member's normal retirement date. If a member who has elected to remain a member pursuant to this subsection thereafter:

~~(1.)~~ Elects to withdraw his accumulated contributions, he shall be paid the amount of his accumulated contributions.

~~(2.)~~ Dies prior to retirement, his beneficiary shall be paid the amount of his accumulated contributions to the date of the member's death.

~~(3.)~~ Is reemployed by any employer subject to this chapter and becomes a member of the ~~s~~System, he shall have reinstated his service and compensation records in effect when his service was broken.

~~(c)~~C. Should any member who has completed two (2) or more years of creditable service die while in service, a retirement allowance shall be payable to his designated beneficiary provided such beneficiary is his spouse so long as unmarried, dependent parents or children under the age of eighteen (18). The retirement allowance shall be fifty ~~percent~~ (50%) ~~percent~~ of the amount determined as provided in ~~section § 46-38.A(a)~~ based upon the member's number of years of creditable service and average final compensation taken as of the date of his death. For any member who dies while in service between April 19, 2008 and January 3, 2009, their beneficiary's allowance will be calculated as provided in § 46-38.1. In the case of a member who dies in the line of duty and whose beneficiary(ies) receive a line of duty death benefit pursuant to ~~section § 46-43~~, the above service qualifications shall be waived and the retirement allowance shall be one hundred ~~percent~~ (100%) ~~percent~~ of the amount determined as provided in ~~section § 46-38.A(a)~~ as of the date of their death. In no event shall the allowance be less than five ~~percent~~ (5%) ~~percent~~ of the member's average final compensation. The allowance shall be payable monthly to the dependent parents or unmarried spouse for life or to the children until they reach age eighteen (18). A designated beneficiary who is entitled to a retirement allowance under provisions of this section as a result of the death of a member shall be entitled to waive his rights to such allowance by written notification to the board within ninety (90) days after the death of such member and elect to receive the amounts provided in ~~section § 46-44.D(d)~~. All beneficiaries must agree to such waiver in the event that there is more than one (1) designated beneficiary. Should a designated beneficiary die, the amount of the member's accumulated contributions reduced by the amount of any retirement allowance received by the designated beneficiary pursuant to this section, shall be payable in a lump sum to a person nominated by the designated beneficiary or, in the absence thereof, to the estate of the designated beneficiary.

~~(d)~~D. Should a member die whose beneficiary, if any, is not eligible for a retirement allowance pursuant to ~~section § 46-44.C(e)~~, the amount of his accumulated contributions shall be paid in a lump sum to the designated beneficiary, or in the absence of a designated beneficiary, to his estate.

~~(e)~~E. Should a person on retirement die, the amount of his accumulated contributions, reduced by the amount of any retirement allowance previously received by him under any of the provisions of this chapter, shall be payable in a lump sum to a designated beneficiary or, in the absence of a designated beneficiary, to his estate.

~~(f)~~F. Any designated beneficiary may be changed from time to time by written notice by the member, or person, signed and filed with the County Manager.

~~(g)~~G. Should a beneficiary of a disability retirement allowance cease to receive the allowance any time prior to his normal retirement date, he will be eligible to receive a deferred vested retirement allowance commencing on his normal retirement date, as provided in ~~section § 46-44.B(b)~~.

~~(h)~~H. Should a former employee who elected to receive a deferred vested retirement allowance pursuant to ~~section § 21-48.B(b)~~ or ~~section § 35-40.E(e)~~ be reemployed, such former employee shall become a member of the ~~R~~etirement ~~s~~System to which he was a member when he made his election and the member's service and compensation records in effect at the time service was ended shall be reinstated.

~~(i)~~I. This section applies to distributions other than the ~~L~~ine of ~~D~~uty death benefit in ~~section § 46-43~~ herein made on or after January 1, 1993.

~~(1.)~~ Notwithstanding any provision of this chapter to the contrary that would otherwise limit a distributee's election under this part, a distributee may elect, at the time and in the manner

prescribed by the ~~b~~Board, to have any portion of an eligible rollover distribution that is equal to at least ~~five hundred dollars~~ (\$500.00) paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

(2.) Definitions. The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise:

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"Eligible rollover distribution" means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one (1) of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten (10) years or more; any distribution to the extent such distribution is required under Internal Revenue Code § 401(a)(9); and the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities); and any other distribution(s) that is reasonably expected to total less than ~~two hundred dollars~~ (\$200.00) during a year.

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"Eligible retirement plan" means an individual retirement account described in Internal Revenue Code § 408(a), an individual retirement annuity described in Internal Revenue Code § 408(b), an annuity plan described in Internal Revenue Code § 403(a), or a qualified plan described in Internal Revenue Code § 401(a), that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to the surviving spouse, an eligible retirement plan is an individual retirement account or individual retirement annuity.

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"Distributee" includes an employee or former employee. In addition, the employee's or former employee's surviving spouse and the employee's or former employee's spouse who is the alternate payee under a qualified domestic relations order, as defined in Internal Revenue Code § 414(p), are distributees with regard to the interest of the spouse or former spouse.

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"Direct rollover" means a direct rollover or payment by this chapter to the eligible retirement plan specified by the distributee.

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(2-8-81; Ord. No. 84-18, 6-2-84; Ord. No. 84-38, 12-23-84; Ord. No. 00-34, 11-1-00; Ord. No. 04-26, 11-16-04, effective 12-12-04; Ord. No. 08-17, 9-13-08, effective 1-4-09; Ord. No. 10-23, 12-11-10)

§ 46-45. Medical ~~e~~Examination of ~~b~~Beneficiary of ~~d~~Disability ~~r~~Retirement ~~a~~Allowance.

The County Manager shall require a permanent disability retiree, prior to his normal retirement date for an ordinary disability retiree, and both prior to and after his normal retirement date for a service-connected disability retiree, to undergo a medical examination by the medical advisor, or the County Manager's medical appointee in the case of any such retiree residing outside the area serviced by the medical advisor--once each year during the first three (3) years following retirement and once in every three (3) years thereafter for so long as the retiree continues to receive a disability retirement allowance, provided that when it appears in a particular case that the nature of the disability warrants the conclusion that it will continue substantially beyond the time of the next regular examination, the County Manager may waive the requirements that the retiree undergo the next regular examination. The County Manager shall have the authority to order, for stated reasons, a disability retiree to undergo a physical examination at any time.

(2-8-81; Ord. No. 00-34, 11-1-00; Ord. No. 04-26, 11-16-04, effective 12-12-04)

§ 46-46. Reduction of ~~d~~Disability ~~a~~Allowance.

(a)A. Whenever the County Manager ascertains that any retiree who has retired on ordinary disability pursuant to ~~section~~ § 46-39 is, prior to his normal retirement date, engaged in a gainful occupation or work paying more than the difference between his disability allowance and his average final compensation, the County Manager shall reduce such allowance to an amount which, together with the amount earned by him, equals the amount of his average final compensation.

~~(b)~~B. Should the medical advisor report and certify to the County Manager that any retiree who is retired on ordinary disability pursuant to ~~section §~~ 46-39 is able to engage in a gainful occupation or work paying more than the difference between his retirement allowance and his average final compensation at retirement, and should the County Manager find that such retiree shall have refused any employment considered by the County Manager suitable to his capacity, he shall not be entitled to any such allowance during the continuance of such refusal, unless in the opinion of the County Manager such refusal was justified.

~~(c)~~C. On or before May 1 of any year which follows a year in which ordinary disability benefits were paid, every ordinary disability retiree prior to the retiree's normal retirement date, shall report, in such detail, including any and all income tax returns as may be required by the County Manager, all income from wages or self-employment or both earned in the preceding year.

~~(d)~~D. Should the medical advisor report and certify to the County Manager that any retiree who has retired on service-connected disability pursuant to ~~section §~~ 46-41 is able to perform the significant duties of the classification held at the time of his disability, the County Manager shall terminate the disability allowance.

~~(e)~~E. Except for an allowance received by a retiree pursuant to ~~section §~~ 46-42 ~~B(b)~~, the retirement allowance for service-connected disability determined under the provisions of ~~section §~~ 46-42 shall be reduced by:

~~(1.)~~ Any compensation awarded to the retiree under the Virginia Workers' Compensation Act (for purposes of this section, compensation awarded does not include reimbursement for medical expenses) whether such award is paid to the member in a lump sum or otherwise, except compensation awarded to cover any period of time for which the member or retiree is not receiving benefits under ~~section §~~ 46-42 or compensation awarded for permanent partial or permanent total loss or disfigurement, where payments are made from the schedule of payments provided for such under the Act; and

~~(2.)~~ An amount equal to any benefits paid to the member by the Virginia Retirement System.

~~(f)~~F. Whenever the County Manager determines that a retiree's disability retirement allowance should be reduced, the amount of reduction shall be prorated over a period of twelve (12) consecutive months. Such reduction shall commence with the allowance payment for July of the year following the year in which the earnings were made.

~~(g)~~G. Should a disability retiree fail or refuse to undergo the medical examination required by ~~section §~~ 46-45 or refuse to submit the reports required by ~~section §~~ 46-46 ~~C(e)~~ or fail to follow the directive of the County Manager made pursuant to ~~section §~~ 46-41 ~~B(b)~~, the retiree's retirement allowance shall be discontinued until withdrawal of such refusal. Should an ordinary disability retiree willfully file a report required by ~~section §~~ 46-46 ~~C(e)~~ which contains false information which is substantial, the County Manager shall discontinue the retiree's retirement allowance for one (1) year.

(2-8-81; Ord. No. 90-36, 1-1-91; Ord. No. 93-17, 7-27-93; Ord. No. 00-34, 11-1-00; Ord. No. 04-26, 11-16-04, effective 12-12-04; Ord. No. 05-10, 7-12-05; Ord. No. 06-08, 6-10-06, effective 7-1-06)

**Editors Note:** The provisions adopted in Ord. No. 93-17, adopted July 27, 1993, are effective retroactive to Jan. 1, 1989.

**§ 46-47. Effect on ~~r~~Retirement ~~a~~Allowance of ~~r~~Returning to ~~w~~Work.**

~~(a)~~A. Should a beneficiary retired pursuant to ~~section §~~ 46-37 ~~A(a)~~ or ~~B(b)~~ return to service, he shall become a member of the retirement system of which he was a member when he retired and shall thereafter contribute to such retirement system. Any service on the basis of which his retirement allowance was computed shall thereafter be counted as creditable service. Upon return to service, such member's retirement allowance shall cease.

For any person who is receiving a retirement allowance as of April 18, 2009, and then begins new employment with an employer subsequent to January 3, 2009, only service after the date of new employment shall

earn the multiplier effective as of January 4, 2009.

~~(b)~~B. Should a beneficiary of a disability retirement allowance return to service at any time prior to his normal retirement date, he shall become a member of the retirement system of which he was a member when retired and contributions, in accordance with ~~section §~~ 46-32, shall resume. Any service on the basis of which his disability retirement allowance was computed shall thereafter be counted as creditable service and, in addition, the period of disability retirement shall be counted as creditable service for those on service-connected disability retirement. Upon return to service, such member's disability allowance shall cease.

~~(c)~~C. Any excess accumulated contributions of such beneficiary over the retirement allowances received by him shall be transferred from the retirement allowance account to the member's contribution account.

~~(d)~~D. If the amount of retirement allowances received by him exceeds his accumulated contributions, the excess allowances over accumulated contributions shall not be transferred to the contribution account. (2-8-81; Ord. No. 82-33, 8-7-82; Ord. No. 84-38, 12-23-84; Ord. No. 08-17, 9-13-08, effective 1-4-09)

**§ 46-48. Joint and ~~s~~Survivorship ~~o~~Options.**

A member may nominate a beneficiary and may elect, by written application filed with the County Manager any time prior to his normal, early, ordinary or service-connected disability retirement, a joint life and survivorship pension of actuarial value equivalent to that of the annual retirement allowance, including expected post-retirement supplements which may be payable pursuant to ~~section §~~ 46-49, to which he could otherwise be entitled, as determined by the actuary. If a married member elects a beneficiary other than the member's spouse, then this election must have the consent, in a notarized writing, of the member's spouse at the time of application. Such joint life and survivorship benefits shall be on the basis of a lifetime annual retirement allowance to the retired member with either a like amount of pension, two-thirds (2/3) or one-half (1/2) thereof being continued to his beneficiary if said beneficiary survives him. The annual retirement allowance payable monthly shall be determined on a basis of equivalent actuarial values according to the ages, at the member's actual retirement date, of the member and his beneficiary, and shall be payable as long as either lives. Notwithstanding the foregoing, a non-spouse beneficiary will be subject to the appropriate benefit adjustments as outlined by regulation 6T of the Internal Revenue Code or any successor applicable regulation.

If so elected, the allowance shall be paid as long as:

~~(a)~~A. The retired member lives, with either a like amount of pension, two-thirds (2/3) or one-half (1/2) thereof continued for as long as the beneficiary lives after the death of the retired member. The election shall become payable in accordance with the above provisions if the member dies subsequent to his normal retirement date even though prior to his actual retirement date.

~~(b)~~B. The beneficiary lives, but upon the death of the beneficiary prior to the death of the member, the option will be canceled and the amount of the unreduced pension will become payable. No retirement allowance shall be paid to a member unless the member has stated whether or not he elects the joint and survivorship option.

~~(c)~~C. Notwithstanding any other provision to the contrary, any retired member who elects the joint and survivorship pension option may, with the consent of the person nominated to receive the option, cancel such option. Such option may also be canceled pursuant to court order in a case in which the person nominated is a party. In the event of either cancellation, the retirement allowance paid to the member in the period after the effective date of the cancellation will be the same as if the member had not elected a joint life and survivorship pension option. (2-8-81; Ord. No. 90-12, 7-1-90; Ord. No. 00-34, 11-1-00; Ord. No. 02-26, 12-7-02; Ord. No. 04-26, 11-16-04, effective 12-12-04)

**§ 46-49. Post-~~r~~Retirement ~~s~~Supplements.**

~~(a)~~A. In addition to the allowances payable pursuant to this chapter, post-retirement supplements shall be payable in accordance with this section to the recipients of such allowances. Such supplements shall be subject to the same conditions of payment as are the basic allowances being supplemented. Such supplements shall be treated

as retirement allowances for the purposes of ~~sections §§~~ 46-44, ~~E(e)~~ and 46-47, ~~B(b)~~.

~~(b)B.~~ The amounts of the post-retirement supplements provided hereby shall be determined as percentages of the allowances which are provided pursuant to this chapter and the V.R.S. and which are supplemented hereby. Said percentages shall be determined by reference to the increase, if any, in the United States Average Consumer Price Index (C.P.I.) for all items, as published by the Bureau of Labor Statistics of the United States Department of Labor, from its monthly average for the calendar year immediately prior to the year in which the post-retirement supplement is to be paid in accordance with the following:

For the first <del>three percent (3%)</del> increase in CPI	Retirement Allowance Adjustment = the increase in CPI
For CPI increases between <del>three percent (3%)</del> and <del>twelve percent (12%)</del>	Retirement Allowance Adjustment = <del>three percent (3%)</del> + <del>one half (1/2)</del> of the increase greater than <del>three percent (3%)</del>
For CPI increase greater than <del>twelve percent (12%)</del>	Retirement Allowance Adjustment = <del>seven and one-half percent (7.5%)</del>

~~(e)C.~~ The amount of any post-retirement supplement shall be adjusted, after its initial determination, only in July of each year beginning with the July next following the anniversary of the actual retirement date of the retiree. (2-8-81; Ord. No. 90-36, 1-1-91; Ord. No. 91-12, 7-1-92; Ord. No. 94-15, 5-7-94; Ord. No. 00-34, 11-1-00; Ord. No. 02-26, 12-7-02)

**§ 46-50. Vesting on ~~t~~ermination of ~~s~~ystem; ~~n~~onreversion of ~~f~~unds.**

Upon termination of the ~~s~~ystem or upon complete discontinuance of contributions to the ~~s~~ystem, the rights of all members to benefits accrued to the date of such termination or discontinuance, to the extent then funded, are nonforfeitable. No portion of the assets of the ~~s~~ystem shall be used for, or diverted to, purposes other than for the exclusive benefit of the members and their beneficiaries prior to the satisfaction of all liabilities with respect to members and their beneficiaries. (2-8-81)

**§ 46-51. Legal ~~e~~Construction of Chapter 46.**

The law of the State of Virginia shall govern the interpretation of Chapter 46 and the legal significance of all transactions of the ~~b~~oard. (2-8-81)

**§ 46-52. Hearing ~~r~~Requirement-Benefit ~~r~~eductions, ~~d~~iscontinuances and ~~d~~isability ~~d~~enial ~~a~~ppeals.**

Whenever any provision of this chapter permits or requires the County to reduce or discontinue a retiree's retirement allowance or a member appeals the denial of their application for disability benefits, the ~~b~~oard shall hold a hearing on the appeal. The retiree or applicant, or his representative, shall have the right to be present and heard at such hearing. When hearing an appeal for denied disability benefits, the ~~b~~oard may obtain an independent medical opinion. In the event that the ~~b~~oard's independent medical opinion disagrees with the medical advisor's opinion, the medical opinion of the ~~bb~~oard's physician will prevail. (2-8-81; Ord. No. 04-26, 11-16-04, effective 12-12-04)

**§ 46-53. Reduction of ~~d~~iscontinuance of ~~a~~llowance.**

~~(a)A.~~ If, after conducting the hearing required by ~~section §~~ 46-52, the ~~b~~B~~o~~ard determines that a retiree's retirement allowance should have been reduced prior to the date of such hearing, the County Manager shall reduce the retiree's future retirement allowance in an amount equal to the difference between the amount the retiree received and the amount the retiree should have received had the allowance been reduced prior to the date of the hearing until such time as the additional amount paid to the retiree has been repaid.

~~(b)B.~~ If, after conducting the hearing required by ~~section §~~ 46-52, the ~~b~~B~~o~~ard determines that a retiree's retirement allowance should have been discontinued prior to the date of such hearing, the County Manager shall discontinue the retiree's retirement allowance and shall seek repayment from the retiree of an amount equal to the amount that was paid to the retiree from the date his allowance should have been discontinued until the date his allowance was discontinued.

~~(c)C.~~ The County Manager is authorized to enter into agreements with retirees whose retirement allowance has been reduced or discontinued pursuant to this section whereby the County Manager agrees to installment payments if in the opinion of the County Manager the facts and circumstances of the retiree's case justify such an agreement. In determining whether the facts and circumstances of a retiree's case justify such an agreement, the County Manager shall consider the amount owed, the retiree's age, ability to earn, and assets and prior experience of the member in meeting the requirements of this chapter.

Whenever the County Manager agrees to enter into such an agreement, the County Manager shall collect ~~six percent (6%) percent~~ interest per annum on the unpaid balance owed by the retiree. (2-8-81; Ord. No. 04-26, 11-16-04, effective 12-12-04)

**§ 46-54. Reduction of ~~a~~Allowance for ~~m~~Members of the V.R.S.**

Members who are also members of the V.R.S. shall have the benefits they or their beneficiaries would otherwise have received from this ~~s~~System reduced by the member's entitlement benefit under the V.R.S. provisions. (2-8-81; Ord. No. 00-34, 11-1-00)

**§ 46-55. Social Security ~~e~~Option.**

A member who has retired from service pursuant to ~~Section §~~ 46-37 (service retirement) may elect to receive an increased retirement allowance until his Social Security full retirement age as defined as of January 1, 2001 or at the early Social Security reduced benefit age if the member elects to receive Social Security at an early age and a decreased retirement thereafter, so that a member will receive a uniform or nearly uniform retirement allowance when the member's retirement allowance is added to the member's anticipated federal Social Security primary benefits. (2-8-81; Ord. No 10-23, 12-11-10)

**§ 46-56. Part-~~t~~Time ~~e~~Employees.**

~~(a)A.~~ Part-time employees hired on or after June 22, 1986, who have not reached normal retirement age shall be members of the ~~s~~System.

~~(b)B.~~ Part-time employees hired prior to June 22, 1986, who have not reached normal retirement age may elect to become members of the ~~s~~System. The election to be considered as members shall be delivered to the retirement office by the close of business on Friday, August 29, 1986. Notwithstanding the foregoing, any such part-time employee otherwise eligible for membership may elect to become a member between January 3, 2001 and January 31, 2001. No service credit shall be allowed for any service prior to such employees' election to become a member, whether purchased or not.

~~(c)C.~~ Part-time employees shall participate in the ~~s~~System on the same basis as other employees except for the following:

~~(1.)~~ Credited service shall be determined by dividing the total hours credited to an employee by 2080.

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(2.) Creditable compensation for a given year shall be determined by multiplying the full compensation payable annually to an employee by a fraction, not less than one (1), the numerator of which is 2080 and the denominator of which is the number of hours credited during such year.

(3.) Upon retirement as provided in section § 46-41, a member shall receive an annual amount equal to fifty percent (50%) ~~percent~~ of the member's average final compensation multiplied by the member's average annual credited service.

(4.) Membership service credit for military leave shall be prorated based on the member's average annual credited service prior to entry into the military.

(5.) A part-time employee may elect to purchase membership service credit for his service after July 1, 1985.

(Ord. No. 86-14, 6-14-86; Ord. No. 90-36, 1-1-91; Ord. No. 00-33, 12-18-00; Ord. No. 00-34, 11-1-00)

§ 46-57. Continuation of ~~b~~Benefits for ~~m~~Members ~~w~~Who ~~w~~Worked ~~a~~At ~~l~~Least ~~t~~Thirty ~~h~~Hours ~~p~~Per ~~w~~Week ~~p~~Prior to June 22, 1986.

Notwithstanding any other provisions of this chapter, employees who worked at least thirty (30) hours per week and were members of the ~~s~~System prior to June 22, 1986, shall continue to receive one (1) year of creditable service for each year of service rendered and creditable compensation equal to actual compensation.

(Ord. No. 86-14, 6-14-86)

§ 46-58. Reduction of ~~b~~Bridge ~~a~~Allowance.

If a retiree who is receiving a bridge allowance as defined under § 46-38 is employed by the County in any temporary, part time or permanent capacity, the bridge allowance shall be reduced by one dollar (\$1.00) for each dollar (\$1.00) earned.

(Ord. No. 00-34, 11-1-00)

§ 46-59. Maximum Permissible Benefit.

Notwithstanding anything in this chapter to the contrary, the annual benefit otherwise payable at any time to a member under this chapter shall not exceed the maximum permissible amount determined pursuant to the provisions of Internal Revenue Code § 415 applicable to governmental plans, as defined for purposes of such section. If the benefit the member would otherwise accrue in a limitation year (as defined for purposes of such section) would produce an annual benefit in excess of such maximum permissible amount, the rate of accrual shall be reduced so that the annual benefit will equal such maximum permissible amount.

(Ord. No. 00-34, 11-1-00)

ARTICLE IX.

DEFINED CONTRIBUTION PROGRAM

§ 46-60. Defined ~~e~~Contribution ~~p~~Program--County ~~e~~Employees and ~~o~~Officers.

There is hereby established a ~~D~~efined ~~C~~ontribution retirement program for each employee who is a member of a retirement system established under either Chapter 21 or Chapter 46 of the Arlington County Code, who is an active employee on or after January 1, 2000 and who is not a member of ~~V~~.~~R~~.~~S~~. or is a member of ~~V~~.~~R~~.~~S~~. by virtue of having formerly served as a ~~s~~State health employee. The County Manager is authorized to execute all documents necessary or appropriate to establish and operate such a program including but not limited to documents establishing the plan, documents establishing applicable trusts and documents for the retention of contracted program administrators. Any documents executed by the County Manager shall be approved as to form by the County Attorney prior to execution.

The County Manager is authorized to take all actions the Manager deems necessary or appropriate to insure

that the establishment and operation of the program is consistent with the applicable requirements of Internal Revenue Code § 401(a), as amended, and other applicable law including but not limited to restrictions on withdrawals from accounts established herein and establishment of rules and regulations to operate such a program.

The Retirement Board shall on September 1, 2001, or as soon as reasonably practicable thereafter, transfer additional contributions to a defined contribution retirement program established by, and administered under terms and conditions approved by designated ~~s~~School ~~b~~B~~o~~ard officials, for start-up accounts of all member ~~s~~School ~~b~~B~~o~~ard employees who are not members of the V~~\_~~R~~\_~~S~~\_~~, or who have not elected to become members of V~~\_~~R~~\_~~S~~\_~~ under Article X, as of the day of this transfer, amounts as follows:

For the first ~~five (5)~~ years of service, ~~\$500~~-per year of service or prorated for a fraction thereof ~~.....~~  
~~\$500.00~~

Plus, for the next ~~five (5)~~ years of service, ~~\$900~~-per additional year of service or prorated for a fraction thereof ~~.....~~ ~~\$900.00~~

Plus, for the next ~~ten (10)~~ years of service, ~~\$700~~-per additional year of service or prorated for a fraction thereof ~~.....~~ ~~\$700.00~~

Notwithstanding the above, the Retirement Board shall, in December of 2000 or as soon as reasonably practicable thereafter, transfer to the ~~D~~defined ~~C~~ontribution retirement program for the start up accounts of Chapter 46 employees who are members of V~~\_~~R~~\_~~S~~\_~~ by virtue of having formerly served as ~~s~~State health employees, as follows:

For the first ~~ten (10)~~ years of service, ~~\$100~~-per year of service or prorated for a fraction thereof ~~.....~~  
~~\$100.00~~

Plus for the next ~~ten (10)~~ years of service ~~\$500~~-per additional year of service or prorated for a fraction thereof ~~.....~~ ~~\$500.00~~

In addition to these startup contributions, the employer shall, effective January 1, 2001, at the end of each pay period, deposit an amount equal to amounts defined in the County's 401(a) Plan Document.

For all persons who are members of the retirement ~~s~~Systems established under Chapters 21 and 46, who are not members of V~~\_~~R~~\_~~S~~\_~~ or are members of V~~\_~~R~~\_~~S~~\_~~ by virtue of having formerly served as a ~~s~~State health employee and who are actively employed in service to the County, the program may provide for after-tax employee contributions to employee accounts under rules established by the County Manager.  
 (Ord. No. 00-34, 11-1-00; Ord. No. 01-10, 4-21-01; Ord. No. 08-17, 9-13-08, effective 1-4-09)

**§ 46-61. School Board Defined Contribution Start-up Accounts.**

The Retirement Board shall, in December of 2000 or as soon as reasonably practicable thereafter, transfer to a ~~D~~defined ~~C~~ontribution retirement program established by, and administered under terms and conditions approved by, the designated School officials for the start up accounts of all Chapter 46 School Board employees, amounts as follows:

For the first ~~ten (10)~~ years of service, ~~\$100~~-per year of service or prorated for a fraction thereof ~~.....~~  
~~\$100.00~~

Plus for the next ~~ten (10)~~ years of service, ~~\$500~~-per additional year of service or prorated for a fraction thereof ~~.....~~ ~~\$500.00~~

(Ord. No. 00-33, 12-18-00)

**§ 46-62. Benefits for V~~\_~~R~~\_~~S~~\_~~ Members.**

The Retirement Board shall on September 1, 2001, or as soon as reasonably practicable thereafter, transfer

to a defined contribution retirement program established by and administered under terms and conditions approved by the School Board, funding for accounts of School Board employees as determined by the School Board. The funding will be equal to the present value of accrued benefits due these employees under the System, less necessary funds to preserve the rights of employees to receive any benefits accrued as of September 1, 2001, under the System. Such transfer amount shall not exceed \$3.3 million dollars and shall be determined by actuaries retained by the Retirement ~~b~~Board.  
(Ord. No. 01-10, 4-21-01)

#### ARTICLE X.

##### ELECTION BY SCHOOL BOARD EMPLOYEES

###### § 46-63. Transfer of Assets to the V.R.S.

Persons employed by the School Board as of June 1, 2001, who are not members of the V.R.S. on June 1, 2001, may elect to become members of the V.R.S. and have their membership service transferred to the V.R.S. on September 1, 2001. Such election must be made by August 1, 2001. Notwithstanding any provision to the contrary, upon election to become members of the V.R.S. and transfer of membership service to the V.R.S., such employees shall cease to be members of the System.

The Retirement Board shall, on September 1, 2001, or as soon as reasonably practicable thereafter, transfer to the V.R.S. an amount not to exceed the actuarial liability as of September 1, 2001, as determined by the Retirement Board actuary, for all ~~s~~School ~~b~~Board employees not covered by V.R.S. as of June 1, 2001, but who have elected to become members by executing and returning to the ~~s~~School ~~b~~Board an irrevocable election to do so by August 1, 2001. If an elected is not executed and returned by August 1, 2001, the participant will remain a member of Chapter 46.  
(Ord. No. 01-10, 4-21-01)

#### ARTICLE XI.

##### DEFERRED RETIREMENT OPTION PLAN (DROP)

###### § 46-64. Deferred ~~r~~Retirement ~~o~~Option ~~p~~Plan (DROP).

~~(a)~~A. Effective January 1, 2002 there is hereby established a deferred retirement option plan for each employee who is a member of the ~~r~~Retirement ~~s~~System and an active employee of the ~~e~~County ~~b~~Board on or after January 1, 2002 or an active employee of the ~~s~~School ~~b~~Board on or after January 1, 2003. The provisions of this section are available to members who elect to participate pursuant to ~~section § 46-37.A(a)~~ or ~~section 21-42 § 21-41.A~~. Effective November 1, 2003, an active employee who is a member of the retirement system pursuant to ~~section § 35-25.A(a)~~ may elect to participate in the provisions of this section pursuant to ~~section § 35-36.A(a)~~ or 35-36.C.2(e)(2).

~~(b)~~B. An eligible member may participate in the DROP only once. An eligible member must elect to participate in the DROP by filing an application with the ~~r~~Retirement ~~o~~Office not less than ~~thirty (30)~~ days prior to the date of intended participation.

~~(c)~~C. The duration of an eligible member's participation in the DROP may not exceed three ~~(3)~~ years.

~~(d)~~D. If a participating DROP member's participation in the DROP is interrupted by military service there shall be no interruption of membership in the DROP. Such a participating DROP member's retirement allowance shall continue to be paid into the participating member's DROP account while in the military for the balance of the elected term, unless the participant elects to terminate employment with Arlington County .

~~(e)~~E. Except as set forth specifically herein, election to participate in the DROP shall be deemed to be service retirement for purposes of this ~~C~~hapter. Upon commencement of participation in the DROP, the electing member's retirement allowance shall be paid into the member's DROP account. Contributions by the County and the

participating DROP member into the Retirement System for the participating DROP member shall cease. Contributions into the County's 457 or the ~~s~~School ~~b~~BBoard's 403(b) plan may continue. Contributions to the 401(a) plans shall continue.

Amounts transferred to a participating DROP member's DROP account shall not constitute annual additions under Internal Revenue Code ~~Section §~~ 415.

~~(f)~~F. Participating DROP members may direct their DROP money into any of the investment options offered under the County's 401(a) Plan. Distributions from the DROP account shall be consistent with applicable tax rules and regulations. Any losses, charges or expenses incurred by the participating DROP member in such member's DROP account by virtue of the options elected by the participating DROP member shall not be made up by the County, the Retirement Board nor the plan, but shall be borne by the participating DROP member.

~~(g)~~G. The County Manager is authorized to adopt rules and regulations governing the DROP plan. Any documents executed by the County Manager shall be approved, in form, by the County Attorney prior to execution.

~~(h)~~H. If a participating DROP member dies during the three-~~(3)~~ year DROP participation period, the participating DROP member's designated 401(a) beneficiary shall receive payment under the terms of the 401(a) Plan.

~~(i)~~I. If a participating DROP member becomes disabled during the period of participation in the DROP the participating DROP member will receive:

For a service-connected disability, either:

~~(1.)~~ ~~f~~The disability retirement benefit as if the member had never participated in the DROP, forfeiting the member's DROP account, or

~~(2.)~~ ~~f~~The regular retirement benefit (calculated with years of service up to the member's DROP participation date) along with the member's DROP account balance.

For non-service-connected disability, the regular retirement benefit (calculated with years of service up to the member's DROP participation date) along with the member's DROP account balance.

~~(j)~~J. Employees participating in the DROP remain eligible for the benefits provided under ~~Section §~~ 46-43.

~~(k)~~K. An employee who is participating in the DROP automatically terminates active employment when participation in the DROP terminates.

~~(l)~~L. Notwithstanding any provision of the County Code to the contrary, Constitutional Officers and their employees may participate in the DROP. Such participation shall be on the same terms and conditions as those applicable to the employees of the County Board, except that if the participating Constitutional Officer or employee fails to terminate employment by the end of the three-~~(3)~~ year DROP period, as required by this ~~S~~section, such person shall forfeit allocations to the DROP account and any earnings thereto. In the event of such forfeiture, the ~~C~~onstitutional ~~O~~fficer or employee shall be treated as if there was never any participation in the DROP.

~~(m)~~M. When exiting the DROP on or after January 4, 2009, whichever is later, the employee shall have a choice of either their allowance as calculated under the formula effective until January 3, 2009 or the formula effective January 4, 2009.  
(Ord. No. 01-20, 11-17-01; Ord. No. 02-26, 12-7-02; Ord. No. 03-23, 10-18-03; Ord. No. 05-10, 7-12-05; Ord. No. 08-17, 9-13-08, effective 1-4-09)