

ARLINGTON COUNTY CODE

Chapter 38

RESERVED*

* **Editors Note:** Former Ch. 38, in its entirety, was repealed by Ord.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 The repealed provisions pertained to water supply emergency.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.

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 No. 02-5, adopted April 20, 2002, repealed Ch. 38, in its entirety, which pertained to the water supply emergency and enacted provisions designated as Ch. 38.1 to read as herein set out.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

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- § 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:

~~(1)~~A. Watering of shrubbery, trees, lawns, grass, plants, or other vegetation;

~~(2)~~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;

~~(3)~~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;

~~(4)~~D. Operation of any ornamental fountain or other structure making similar use of water;

~~(5)~~E. Filling (from an empty or less than three-quarters (3/4) full condition) of swimming and/or wading pools;

~~(6)~~F. Service of drinking water in restaurants, except upon request;

~~(7)~~G. Use of water from fire hydrants, except for health and safety purposes;

~~(8)H.~~ Use of water for outdoor recreation;

~~(9)L.~~ 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:

~~(1)A.~~ Watering of shrubbery, trees, lawns, grass, plants, or other vegetation;

~~(1)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 eChapter.

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 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 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 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 Echapter 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 Echapter. 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 Echapter 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, ~~proeess~~ **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. ~~n~~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:

~~(+)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

~~(f)~~**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 ~~C~~chapter 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 ~~e~~Commissioner 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 ~~e~~Commissioner 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 ~~C~~chapter 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~~ax ~~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, ~~o~~Other ~~p~~Powers and ~~d~~Duties.
- § 40-10. Penalty.

§ 40-1. Definitions.

~~For the purposes 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:~~

~~(a) "County mManager" shall mean the eCounty mManager of Arlington County, Virginia, or any of his duly authorized deputies or agents designees.~~

~~(b) "Hotel" shall mean 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 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 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 no 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 ~~€~~Tax ~~d~~Due 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 ~~b~~Business; ~~r~~Report and ~~€~~Tax ~~d~~Due ~~i~~mmmediately.

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 ~~m~~Manager, ~~e~~Other ~~p~~Powers and ~~d~~Duties.

It shall be the duty of the ~~e~~CCounty ~~m~~Manager to ascertain the name of every person operating a hotel in the ~~e~~CCounty, liable for the collection of the tax levied by ~~section-§~~ 40-2 of this chapter. The ~~e~~CCounty ~~m~~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 ~~e~~CCounty ~~m~~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*

* **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.

ARLINGTON COUNTY CODE

Chapter 41.2

CABLE TELEVISION COMMUNICATIONS

- § 41.2-1. General ~~p~~Provisions.
- § 41.2-2. Definitions.
- § 41.2-3. Grant of ~~f~~Franchise.
- § 41.2-4. Applications for ~~i~~nitial ~~g~~Grant, ~~r~~Renewal, ~~e~~Extension, or ~~m~~Modification of a ~~f~~Franchise.
- § 41.2-5. Filing ~~f~~Fees.
- § 41.2-6. Provision of ~~e~~Cable ~~s~~Service, ~~q~~Quality of ~~e~~Cable ~~s~~Service.
- § 41.2-7. Design and ~~e~~Construction.
- § 41.2-8. Channels and ~~f~~Facilities for ~~p~~Public, ~~e~~Educational and ~~g~~Governmental ~~u~~Use, ~~l~~Leased ~~a~~Access.
- § 41.2-9. Consumer ~~p~~Protection.
- § 41.2-10. Rate ~~r~~Regulation.
- § 41.2-11. Franchise ~~f~~Fee.
- § 41.2-12. Reports and ~~r~~Records.
- § 41.2-13. Indemnification of the ~~e~~County and ~~r~~Residents.
- § 41.2-14. Performance ~~b~~Bond, ~~s~~Security ~~f~~Fund, ~~r~~Revocation and ~~t~~Termination ~~a~~Due to ~~b~~Bankruptcy.
- § 41.2-15. Transfers.
- § 41.2-16. Open ~~v~~Video ~~s~~Systems.
- § 41.2-17. Rights of ~~i~~ndividuals ~~p~~Protected.
- § 41.2-18. Administration.
- § 41.2-19. Miscellaneous ~~p~~Provisions.

§ 41.2-1. ~~A~~General Provisions.

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~~(a)~~A. *Title.* This ~~C~~hapter shall be known and may be cited as the "County Cable Television Ordinance."

~~(b)~~B. *Purpose.*

~~(1)~~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 ~~C~~hapter:

~~(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 ~~C~~chapter be construed to serve the public interest and the foregoing public purposes, and that any Franchise issued pursuant to this ~~C~~chapter be construed to include the foregoing public purposes as integral parts thereof.

~~(c)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 ~~C~~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 ~~C~~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* A 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

does not include (i1) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations; (ii2) a facility that serves Subscribers without using any Public Rights-of-Way; (iii3) 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; (iv4) an open video system that complies with 47 U.S.C. § 573; or (v5) 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 Aa 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 Aa 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 Aa 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 Fthe administrative head of the County government or his designee.

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(vi) "Customer" means Ssame as "Subscriber".

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(vii) "Educational Access Channel" or "Educational Channel" means Aany 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 Fthe 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 Fthe Federal Communications Commission, its designee, or any successor governmental entity thereto.

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(xi) "Franchise" means Aa 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 Fthe area of the County that a Franchisee is authorized to serve by its Certificate.

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~~(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 franchise fee is not such a tax.

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~~(z)~~ "Installation"; means ~~T~~ the 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~~ not 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.

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~~(cc)~~ "Normal Business Hours"; means ~~T~~ the 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~~ those 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~~ an 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 ~~A~~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 ~~A~~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 ~~T~~he 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 ~~A~~a 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 ~~L~~oss 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 ~~T~~he Commonwealth of Virginia, its agencies and departments.

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~~(ll)~~ "Subscriber"; means ~~A~~any Person who legally receives any service delivered over a Cable System.

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~~(mm)~~ "System Outage"; means ~~A~~a Service Interruption affecting more than ten (10) Subscribers.

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~~(nn)~~ "Transfer"; means ~~A~~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 ~~A~~a 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 ~~C~~chapter 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 ~~C~~chapter.

~~(3.)~~ This ~~E~~chapter may be amended from time to time, and in no event shall this ~~E~~chapter be considered a contract between the ~~C~~ounty 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 ~~E~~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~~haracteristics.*

~~(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 ~~E~~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~~ubject 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 ~~C~~chapter.

~~(E)~~ *Interpretation of ~~F~~franchise ~~T~~erms.*

~~(1.)~~ The provisions of this ~~C~~chapter and any Certificate or Franchise shall be liberally construed to effectuate the purposes and objectives of this ~~C~~chapter and the Franchise or Certificate, consistent with the public interest.

~~(2.)~~ The terms of a Franchise or Certificate shall be subject to this ~~C~~chapter. In the event of a clear conflict between this ~~C~~chapter and a Certificate or Franchise, the terms of this ~~C~~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 ~~C~~cable ~~S~~ystem ~~W~~without a ~~F~~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 ~~C~~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 thereof; 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 ~~F~~franchisee's ~~E~~xpense.* Any act that a Franchisee is or may be required to perform under this ~~C~~chapter, a Certificate, or applicable law shall be performed at the Franchisee's expense, unless expressly provided to the contrary in this ~~C~~chapter, a Certificate, or applicable law.

~~(H)~~ *Eminent ~~D~~omain.* 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 ~~R~~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 ~~S~~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 ~~G~~grant of an ~~I~~initial ~~F~~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)~~ After evaluating a fully-completed application, including all additional information requested by the County, the Administrator shall transmit recommendations to the Board.

~~(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(e)~~. 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.

~~(C)~~*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)~~ 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 five 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)~~ A demonstration of the applicant's technical ability to construct and/or operate the proposed Cable System, including identification of key personnel.

~~(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 §§ ~~2-1-639-12-2-3100~~ 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(g)~~, 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 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)F.~~ *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) The specific modification requested;
 - (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) 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) Any other information that the applicant believes is necessary for the County to make an informed determination on the application for modification; and
 - (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 Hearings.* 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 Franchise.* Following approval by the Board, any Franchise granted pursuant to this Chapter, 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 Fees.

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 Franchise, 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 S*~~s~~*ervice.* 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)~~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)~~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)~~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. ~~a~~A~~t~~ least one (1) service drop and outlet;

~~(B)~~b. ~~a~~A~~t~~ 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. ~~a~~A~~t~~ activated Basic Service and Cable Programming Service.

~~(b)~~B. *Quality of S*~~s~~*ervice.*

~~(1)~~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)~~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.

~~(c)~~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.~~ *System Maintenance.* Scheduled maintenance shall be performed by a Franchisee so as to minimize the effect of any necessary interruptions of Cable Service.
- (4)E. ~~Continuity of Service.~~ *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 Schedule.~~ 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 Procedures.~~

~~(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~~chapter, 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.
- | ~~(e)C.~~ *Use of ~~P~~ublic and ~~P~~rivate ~~P~~roperty.*
- | ~~(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~~public ~~P~~projects; ~~R~~relocation of ~~F~~facilities.*

~~(1.)~~ Nothing in this ~~C~~chapter 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~~channels.* 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~~To manage any necessary scheduling or allocation of capacity on the institutional network; and/or

~~(2.)~~ ~~O~~On 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. *i*nstructions on how to use the Cable Service;
- (B)b. *b*illing 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. *p*rices and options for programming services and conditions of subscription to programming and other services; and

~~(F)~~ ~~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~~(~~F~~). 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~~(~~F~~) in formats accessible to disabled persons.

~~(E)~~ ~~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~~(~~F~~)(~~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)~~ ~~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.

~~(b)L.~~ *Exclusive ~~C~~contracts and ~~A~~anticompetitive ~~A~~acts ~~P~~prohibited.*

~~(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. Rate ~~r~~Regulation.

~~(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:
- ~~(1)~~ Whether the rate filing justifies existing rates, or proposes an increase in rates;
- ~~(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)~~1. *Form.* Orders relating to rate regulation ("rate orders") shall be written and may be issued in any lawful form.

~~(2)~~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)~~1 rate orders that establish maximum permitted rates for basic cable service, equipment or installation, or require refunds to cable subscribers ("final rate orders"); ~~(ii)~~2 orders that toll deadlines for review and (2) review; and ~~(iii)~~3 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)~~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)~~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)~~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)~~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.
- (E)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 ~~C~~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 ~~C~~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 ~~R~~records; ~~R~~elation to ~~P~~privacy ~~R~~ights.* 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 ~~C~~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 ~~S~~section shall be read to require Franchisee to violate State or federal law protecting Subscriber privacy.
- ~~(c)C.~~ *Communications with ~~R~~egulatory ~~A~~gencies.*
- ~~(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 ~~S~~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.

~~(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.~~ ~~(1)~~ 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.~~ ~~(1)~~ The number and type of System Outages known by the Franchisee for the prior quarter, identifying separately the following:

~~(i)(1)~~ ~~(1)~~ Each planned System Outage, the time it occurred, its duration, and the estimated area and number of Subscribers affected;

~~(ii)(2)~~ ~~(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

~~(iii)(3)~~ ~~(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.~~ ~~(1)~~ 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.~~ ~~(1)~~ 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.~~ ~~(1)~~ 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.~~ ~~(1)~~ 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.~~ ~~(1)~~ 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.~~ ~~(1)~~ 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.~~ ~~(1)~~ 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~~~~Δ~~ An 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~~~~Δ~~ 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).~~ ~~R~~~~e~~~~c~~~~o~~~~r~~~~d~~~~s~~ ~~R~~~~e~~~~q~~~~u~~~~i~~~~r~~~~e~~~~d~~. 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~~~~h~~~~a~~~~p~~~~t~~~~e~~~~r~~ 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).~~ ~~A~~~~d~~~~d~~~~i~~~~t~~~~i~~~~o~~~~n~~~~a~~~~l~~ ~~R~~~~e~~~~c~~~~o~~~~r~~~~d~~~~s~~ ~~a~~~~n~~~~d~~ ~~R~~~~e~~~~p~~~~o~~~~r~~~~t~~~~s~~. 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~~~~h~~~~a~~~~p~~~~t~~~~e~~~~r~~ and a Franchisee.

~~(G).~~ ~~M~~~~a~~~~p~~~~s~~.

~~(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.

~~(L.)~~ *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~~elease, 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~~ection 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(b)(5)(B) and 41.2-13.B.5.d(b)(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.

~~(E)~~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 Constitutes Material Violation.* Failure to maintain or restore the Security Fund or a Performance Bond shall constitute a material violation of this Chapter and a Certificate.

~~(D)~~d. *Revocation, or Reduction of Franchise Term.*

~~(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 Chapter 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)~~ 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 Chapter 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)~~ *Termination ~~D~~ue to ~~B~~ankruptcy.*

~~(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)~~ *Penalties and ~~F~~orfeitures.* 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)~~ *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)~~ *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.

~~(1)~~ *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.

~~(1)~~ *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:

~~(i)~~(1) ~~a~~All information and forms required under federal law or the equivalent of such forms if no longer required by federal law;

~~(ii)~~(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) ~~#C~~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~~ 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) ~~#C~~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~~ 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~~ 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.) ~~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.) ~~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.) ~~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.) ~~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.) ~~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.) ~~w~~Warrants that the Transfer will not in any way adversely affect the County or Subscribers (including by increasing rates);
- (7.) ~~n~~Notifies the County that the Transfer is complete within five (5) business days of the date the Transfer is completed; and
- (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)~~ *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)-(B) through A.1.d(a)-(D)~~ and 41.2-14, ~~A.1.h(a)-(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)~~ *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)~~ *Public, Educational, and Governmental Access Obligations.* An open video system operator shall be subject to obligations pursuant to public, educational, and governmental access pursuant to applicable law and to the requirements herein.

~~(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)~~ *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~~chapter 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.)~~ *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.)~~ *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(4) shall be considered a separate violation.

(Ord. No. 98-21, 6-20-98)

§ 41.2-18. Administration.

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(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 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 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) *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) *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 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) *Compliance with Laws.* 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) *Captions.* The captions and headings of sections throughout this Chapter are intended solely to facilitate reading and reference to the sections and provisions of this Chapter. Such captions shall not affect the meaning or interpretation of this Chapter.

(C) *No Recourse Against 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 to this Chapter or a Franchise, whether or not such action or non-action was required by this 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 Chapter or a Franchise, or otherwise arising out of this Chapter or a Franchise. This subsection shall not preclude injunctive relief.

(D) *Rights and Remedies.*

(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.

~~§1.~~ In exercising its powers pursuant to this ~~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 ~~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)

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Chapter 42

RESERVED*

* **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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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-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 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.

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(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.

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(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 ~~d~~Deferral or ~~b~~Both.

(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 eCounty 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 eCounty 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.

(B) The affidavit shall set forth in a manner prescribed by the eCounty 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.

(C) If after audit and investigation the eCounty manager determines that the person or persons are qualified for exemption or deferral or both, he shall so certify to the 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 ~~o~~Ownership.

(A) Reserved.

(B) Reserved.

(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 eCounty 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)

§ 43-7. Amount of ~~d~~Deferral; ~~r~~Repayment of ~~d~~Deferral ~~t~~Taxes.

~~(A)~~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 (100%) ~~percentum~~ of the liability, the amount to be deferred to be elected by the claimant.

~~(B)~~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 (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 § 63-1-54~~63.2-314 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~~Human ~~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 ~~a+~~ 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~~uman ~~s~~ervices 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(1)~~ 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(1)~~. 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(b)~~ 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 ~~e~~County ~~m~~Manager 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 ~~e~~County ~~m~~Manager 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 ~~e~~County ~~m~~Manager 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 eClosing HLaw iInoperative.

§ 45-2. Extension of HLeases for eElderly and dDisabled pPersons in eConversion eCooperatives and eCondominiums.

§ 45-3. Relocation eExpenses for tTenants dDisplaced by eCondominium or eCooperative eConversion.

§ 45-1. Sunday eClosing HLaw iInoperative.

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 HLeases for eElderly and dDisabled pPersons in eConversion eCooperatives and eCondominiums.

(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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(2) "Disabled" means a person suffering from a severe, chronic physical or mental impairment which results in substantial functional limitations.

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(b)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(e).

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(c)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)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)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)~~ 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 expenses for ftenants displaced by econdominium or ecooperative econversion.

~~(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 mean~~ 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 mean~~ 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 mean~~ 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 mean~~ 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 eCounty 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.

~~(c)~~ 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.

~~(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~~ 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 ~~b~~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 ~~e~~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 ~~s~~System.

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~~(g)~~ “Board” means the ~~b~~Board of ~~t~~Trustees of the ~~s~~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 ~~e~~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 ~~s~~Sheriff” means the person holding the office of ~~s~~Sheriff, if they elect to participate, and all ~~d~~Deputy ~~s~~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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~~(n)~~ "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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~~(o)~~ "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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~~(p)~~ "Expense rate" means the expected administrative costs to administer the plan expressed as a percentage of payroll.

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~~(q)~~ "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 ~~S~~subparagraphs (1), (2), or (3).

~~"Public Safety Member"~~ means a member who is employed by the ~~E~~employer as a police officer, firefighter, deputy sheriff or sheriff.

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~~"Retiree"~~: means ~~A~~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 ~~T~~the retirement payments to which a member is entitled.

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~~"Service"~~: means ~~S~~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 ~~A~~a 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 ~~T~~the Arlington County Employees' Supplemental Retirement System--II.

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~~"V.R.S."~~: means ~~T~~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 ~~e~~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 ~~e~~Employers.

Employers shall keep such records and furnish such information as the ~~b~~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 ~~s~~System as a condition of employment.
(2-8-81; Ord. No. 04-26, 11-16-04, effective 12-12-04)

§ 46-4. Effect of ~~a~~Acceptance of ~~e~~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 ~~d~~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.
(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; oOrganization and tTerms of oOffice.

(a)A. The bBoard shall consist of seven (7) trustees as follows: Three (3) trustees appointed by the eCounty bBoard; one (1) trustee appointed by the eCounty mManager; 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 eCounty mManager. Notwithstanding the above, the eCounty mManager 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 eCounty mManager. 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.

(b)B. The term of office of the trustees shall be four (4) years, except that when the bBoard of tTrustees shall be so created and constituted, the trustee to be appointed by the eCounty mManager and the trustee to be elected by police officers, firefighters and deputy sheriffs shall be appointed or elected for an initial two--year 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.

(c)C. When such bBoard 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.

(d)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.

(e)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 bBoard meeting.

(f)F. Each member of the bBoard 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.

(g)G. If it is determined by an affirmative vote of six (6) bBoard members that a member of the bBoard or substitute trustee is guilty of malfeasance or misfeasance in office or of being absent from monthly bBoard meetings more than three (3) times in a calendar year, the bBoard of tTrustees may recommend to the County Board that a trustee be removed from the bBoard. If removal of the bBoard 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 bBoard 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 rRegulations.

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 aAssistants.

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; fFinancial **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 iInvestigation 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 aAdvisor.

The **eC**ounty **aA**ttorney shall be the legal advisor of the **bB**oard.
(2-8-81)

§ 46-21. Medical aAdvisor.

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~~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 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~~nterest of ~~b~~B~~o~~ard ~~m~~embers and ~~e~~mployees.

No ~~b~~B~~o~~ard member or ~~b~~B~~o~~ard employee shall have any direct or indirect personal interest in the gains or profits of any investments made by the ~~b~~B~~o~~ard other than as a member of the ~~s~~System. No member or employee of the ~~b~~B~~o~~ard 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~~B~~o~~ard, 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~~anager who elect not to become members within sixty (60) days after appointment, employees of the ~~e~~County ~~b~~B~~o~~ard 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~~B~~o~~ard 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~~hapter 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~~B~~o~~ard 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~~B~~o~~ard 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~~ six percent (6%) 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)~~ 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)~~ 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~~Contributions.

~~(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%)~~ four percent (4%) 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 (5%) 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 (7.5%) 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)~~**F.** 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 ~~E~~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 ~~e~~County, being entitled to reimbursement from the Commonwealth of Virginia of a portion of the employer contributions on account of the ~~e~~County ~~t~~Treasurer, ~~a~~Attorney for the ~~e~~Commonwealth, ~~e~~Commissioner of the ~~r~~Revenue, ~~e~~Clerk of the ~~e~~Court, ~~s~~Sheriff 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 ~~e~~Credited to ~~o~~One of ~~t~~Two ~~a~~Accounts.

All assets of the defined benefit ~~s~~System shall be credited, according to the purpose for which they are held, to one (1) of two (2) accounts, namely, "~~t~~The ~~m~~Members' ~~e~~Contribution ~~a~~Account," and "~~t~~The ~~r~~Retirement ~~a~~Allowance ~~a~~Account." (2-8-81; Ord. No. 00-34, 11-1-00)

§ 46-35. Members' ~~e~~Contribution ~~a~~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 ~~s~~System 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)~~ 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)~~ ~~C~~ 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)~~ ~~C~~ 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: ~~(i) general employees whose age plus service equals or exceeds seventy-eight (78), and (ii) 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

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RETIREMENT SYSTEM--II

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-1st~~ through the ~~tenth-10th~~ 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-11th~~ through the ~~twentieth-20th~~ 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-21st~~ through the ~~thirtieth-30th~~ 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 ~~R~~Rules for the ~~p~~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:

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- 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.

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~~(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:

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- 1.) their allowance as calculated under the formula effective on January 3, 2009; or
- 2.) the formula effective January 4, 2009.

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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.

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~~(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

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 ~~H~~Law.

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(a)~~ 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 ~~(j)~~ 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~~3~~) 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~~~~4~~) did not result from any cause outside of employment and (~~ii~~~~2~~) 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~~~~s~~ 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 ~~#~~Retirement ~~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~~duty 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 three percent (3%) increase in CPI	Retirement Allowance Adjustment = the increase in CPI
For CPI increases between three percent (3%) and twelve percent (12%)	Retirement Allowance Adjustment = three percent (3%) + one half (1/2) of the increase greater than three percent (3%).
For CPI increase greater than twelve percent (12%)	Retirement Allowance Adjustment = seven and one-half percent (7.5%)

~~(c)~~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~~Termination of ~~s~~System; ~~n~~Nonreversion of ~~f~~Funds.

Upon termination of the ~~s~~System or upon complete discontinuance of contributions to the ~~s~~System, 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~~System 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~~Board. (2-8-81)

§ 46-52. Hearing ~~r~~Requirement-Benefit ~~r~~Reductions, ~~d~~Discontinuances and ~~d~~Disability ~~d~~Denial ~~a~~Appeals.

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~~Board 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~~Board may obtain an independent medical opinion. In the event that the ~~b~~Board's independent medical opinion disagrees with the medical advisor's opinion, the medical opinion of the ~~b~~Board's physician will prevail. (2-8-81; Ord. No. 04-26, 11-16-04, effective 12-12-04)

§ 46-53. Reduction of ~~d~~Discontinuance of ~~a~~Allowance.

~~(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~~A~~l~~lowance for ~~m~~M~~e~~mbers 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~~S~~y~~stem 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~~O~~p~~tion.

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~~T~~i~~me ~~e~~E~~m~~ployees.

~~(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~~S~~y~~stem.

~~(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~~S~~y~~stem. 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~~S~~y~~stem 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 benefits for members who worked at least thirty hours per week 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 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 bridge 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 eContribution program--County employees and officers.

There is hereby established a Defined Contribution 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 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-~~u~~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~~B~~o~~ard.
(Ord. No. 01-10, 4-21-01)

ARTICLE X.

ELECTION BY SCHOOL BOARD EMPLOYEES

§ 46-63. Transfer of Assets to the V~~r~~R~~s~~.

Persons employed by the School Board as of June 1, 2001, who are not members of the V~~r~~R~~s~~ on June 1, 2001, may elect to become members of the V~~r~~R~~s~~ and have their membership service transferred to the V~~r~~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~~R~~s~~, and transfer of membership service to the V~~r~~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~~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~~S~~chool~~ ~~b~~B~~oard~~ employees not covered by V~~r~~R~~s~~ as of June 1, 2001, but who have elected to become members by executing and returning to the ~~s~~S~~chool~~ ~~b~~B~~oard~~ an irrevocable election to do so by August 1, 2001. If an elected is not executed~~d~~ 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~~R~~etirement~~ ~~o~~O~~ption~~ ~~p~~P~~lan~~ (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~~R~~etirement~~ ~~s~~S~~ystem~~ and an active employee of the ~~e~~C~~ounty~~ ~~b~~B~~oard~~ on or after January 1, 2002 or an active employee of the ~~s~~S~~chool~~ ~~b~~B~~oard~~ 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~~R~~etirement~~ ~~O~~O~~ffice~~ 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~~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~~chool ~~B~~oard'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)~~ 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)~~ 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)~~ 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)~~ 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.)~~ ~~(I)~~The disability retirement benefit as if the member had never participated in the DROP, forfeiting the member's DROP account, or

~~(2.)~~ ~~(I)~~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)~~ Employees participating in the DROP remain eligible for the benefits provided under ~~Section §~~ 46-43.

~~(K)~~ An employee who is participating in the DROP automatically terminates active employment when participation in the DROP terminates.

~~(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~~ection, 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)~~ 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)

ARLINGTON COUNTY CODE

Chapter 47

DEFERRED COMPENSATION PLAN*

* **Editors Note:** Ordinance No. 97-17, adopted July 19, 1997, repealed chapter 47 and added a new chapter 47 as herein set out. Formerly, such chapter pertained to similar provisions and derived from 12-9-80; 6-20-81; Ord. No. 82-28, § 1, 7-1-82; Ord. No. 86-20, 6-28-86; Ord. No. 88-21, 1-1-89.

Article I. Establishment and Execution of Plan

- § 47-1.1. Establishment of pPlan.
- § 47-1.2. Persons pProviding sServices dDefined.
- § 47-1.3. Execution and dDelivery of pPlan.

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- § 47-42.1. Establishment of tTrust.
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- § 47-143.6. Controlling lLaw.

ARTICLE I.

ESTABLISHMENT AND EXECUTION OF PLAN

§ 47-1.1. Establishment of pPlan.

Pursuant to the Government Employees Deferred Compensation Plan Act, ~~Section-§§~~ 51.1-600 et seq., of the Code of Virginia (1950), as amended, Arlington County hereby adopts and establishes a plan of deferred compensation for persons providing services, as defined in ~~Section-§~~ 47-1.2 below, to Arlington County. The purpose of the plan shall be to provide for the deferral of compensation of the participants. The plan shall exist in addition to all other retirement, pension or other benefit systems available to the participants, and shall not supersede, make inoperative or reduce any benefits provided by any other retirement, pension, or benefit program established by law.

(Ord. No. 97-17, 7-19-97)

§ 47-1.2. Persons pProviding sServices dDefined.

For purposes of this eChapter, persons providing services to Arlington County shall mean any person regularly employed in the competitive service of Arlington County and also includes eCounty bBoard mMembers, the eClerk to the eCounty bBoard and the eClerk's employees, the Virginia Constitutional Offices of the eCommissioner of the rRevenue, tTreasurer, sSheriff, eClerk of the eCircuit eCourt, and eCommonwealth's

~~a~~Attorney for Arlington County, and their employees, the Office of the County Attorney and its employees, the County Manager, the ~~e~~Office of the ~~r~~Registrar of ~~v~~Voters and its employees, the employees of the Arlington County Employees' Supplemental Retirement System, and persons employed in or by the Circuit Court of Arlington County, the General District Court of Arlington County, and the Juvenile and Domestic Relations Court of Arlington County, but shall not include seasonal or temporary employees, or state employees.
(Ord. No. 97-17, 7-19-97)

§ 47-~~1~~-3. Execution and ~~d~~Delivery of ~~p~~Plan.

On behalf of the County Board, the County Manager is hereby authorized and directed to execute and deliver the plan to the Deferred Compensation Committee, as defined in ~~Sections 47-2.4 §§ 47-7 and 47-2.5 47-8~~ below, for administration in accordance with this ~~C~~hapter. The plan shall contain such terms and amendments as the County Manager may from time to time approve, such approval to be conclusively evidenced by his execution thereof. No plan shall be implemented which does not meet all of the requirements and standards set forth in the Government Employees Deferred Compensation Plan Act. The County Manager, on behalf of the County Board, may contract for services in connection with a plan of deferred compensation.
(Ord. No. 97-17, 7-19-97)

ARTICLE II.

OPERATION OF PLAN

§ 47-~~42~~-1. Establishment of ~~f~~Trust.

The assets resulting from compensation deferred at the request of persons providing services to Arlington County for the implementation of such plan shall be held in trust (as defined in ~~Section-§~~ 457(g) of the Internal Revenue Code) for the exclusive benefit of participants and beneficiaries. The County Manager or his designee(s) shall be the trustee(s) of any such trust.
(Ord. No. 97-17, 7-19-97)

§ 47-~~52~~-2. Loan ~~p~~Provisions.

The County Manager may institute a program permitting loans to participants in the plan from the participants' own plan accounts, under terms and conditions established by the County Manager and consistent with the Internal Revenue Code.
(Ord. No. 97-17, 7-19-97)

§ 47-~~62~~-3. No ~~a~~Affect on ~~p~~Prior ~~e~~Contract.

Any plan, participation agreement, or contract providing for deferred compensation for persons providing services to Arlington County in existence as of the date of this ordinance shall be effective unless amended or changed in accordance with this ~~C~~hapter.
(Ord. No. 97-17, 7-19-97)

§ 47-~~72~~-4. Creation of Deferred Compensation Committee to ~~a~~Administer ~~p~~Plan.

There is hereby created a Deferred Compensation Committee of not fewer than five (5) members to hold office for an indefinite term, to be appointed by the County Manager and to serve at his pleasure. Any persons serving on such Committee as of the date of this ordinance shall continue to serve under the terms and conditions contained in this ~~C~~hapter.
(Ord. No. 97-17, 7-19-97)

§ 47-~~82~~-5. Powers of Deferred Compensation Committee.

The Deferred Compensation Committee is hereby granted the power to do all things by way of supervision, administration and implementation of a plan of deferred compensation, provided however, that nothing contained in

this section shall be construed to authorize the Deferred Compensation Committee to act beyond the limits of the plan or act contrary to law.
(Ord. No. 97-17, 7-19-97)

ARTICLE III.

MISCELLANEOUS

| § 47-~~93~~-1. Retirement ~~s~~System ~~i~~Integration.

Benefits payable by, and deductions for employee contributions to, any retirement system of the employer shall be computed without reference to amounts deferred pursuant to this deferred compensation plan and shall instead be based upon the compensation the participant would receive if he or she had not elected to defer compensation under this plan or to make contributions under any Internal Revenue Service Code ~~Section §~~ 403(b) tax deferred annuity.
(Ord. No. 97-17, 7-19-97)

| § 47-~~103~~-2. Amendment.

This plan and any contracts or plans entered into pursuant to this ~~C~~chapter may be amended or terminated by the employer at any time. No amendment or termination of the plan shall reduce or impair the rights of any participant or beneficiary which have already vested.
(Ord. No. 97-17, 7-19-97)

| § 47-~~113~~-3. Assignment.

A participant may not assign, transfer, sell, hypothecate or otherwise dispose of any or all of his or her participation account or any right which he or she may have under the plan, and any attempt to do so shall be null and void, except as permitted by any plan entered into pursuant to this ~~A~~article.
(Ord. No. 97-17, 7-19-97)

| § 47-~~123~~-4. Employment.

Participation in the plan shall not be construed as giving any participant any right to continue his or her employment with the employer.
(Ord. No. 97-17, 7-19-97)

| § 47-~~133~~-5. Successors and ~~a~~Assigns.

The plan shall be binding upon and shall inure to the benefit of the employer, its successors and assigns, all participants and beneficiaries and their heirs and legal representatives.
(Ord. No. 97-17, 7-19-97)

| § 47-~~143~~-6. Controlling ~~H~~Law.

This plan is created and shall be interpreted under the laws of the Commonwealth of Virginia and any ordinance of Arlington County which shall exist at the time any dispute or issue is raised.
(Ord. No. 97-17, 7-19-97)

ARLINGTON COUNTY CODE

Chapter 48

FLOODPLAIN MANAGEMENT

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- § 48-~~92~~.4. Director of ~~e~~Environmental ~~s~~Services.
- § 48-~~102~~.5. Elevation ~~e~~Certificate.
- § 48-~~112~~.6. Five ~~h~~Hundred-~~y~~Year ~~f~~Flood.
- § 48-~~122~~.7. Flood or ~~f~~Flooding.
- § 48-~~132~~.8. Floodplain.
- § 48-~~142~~.9. Floodproofing.
- § 48-~~152~~.10. Floodproofing ~~e~~Certificate.
- § 48-~~162~~.11. Floodway.
- § 48-~~172~~.12. Historic ~~s~~Structure.
- § 48-~~182~~.13. Manufactured ~~h~~Home.
- § 48-~~192~~.14. Mobile ~~h~~Home.
- § 48-~~202~~.15. New ~~e~~Construction.
- § 48-~~21~~.16. One ~~h~~Hundred-~~y~~Year ~~f~~Flood.
- § 48-~~22~~.17. Principally ~~a~~Above ~~g~~Ground.
- § 48-~~23~~.18. Recreational ~~v~~Vehicle.
- § 48-~~24~~.19. Start of ~~e~~Construction.
- § 48-~~25~~.20. Structure.
- § 48-~~26~~.21. Substantial ~~d~~Damage.
- § 48-~~27~~.22. Substantial ~~i~~Improvement.
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ARTICLE I.

IN GENERAL

§ 48-~~1~~.1. Title.

This chapter shall be known as the "Floodplain Ordinance of Arlington County, Virginia."
 (9-24-77; Ord. No. 91-43, 12-7-91)

§ 48-~~1~~.2. Purpose.

The specific purpose of these provisions are:

~~(a)A.~~ ~~The~~To regulate the subdivision and/or development of flood-prone areas in order to promote the general health, welfare, and safety of the community;

~~(b)B.~~ To encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future;

~~(c)C.~~ To minimize danger to public health and safety by protecting public utilities and the natural drainage; and,

~~(d)D.~~ To reduce financial burdens imposed on the community, its governmental units and its residents, by preventing the inadequate design and construction of development in areas subject to flooding.
 (9-24-77)

§ 48-~~1~~.3. Regulations ~~r~~Required.

The floodplain management regulations in this section are hereby adopted with the intention of meeting the requirements of ~~Section~~§ 60.3D of the National Flood Insurance Program Regulations (44 Federal Register 31177, May 31, 1979).
 (9-24-77; Ord. No. 82-10, 4-24-82; Ord. No. 91-43, 12-7-91)

§ 48-1.4. Conflict of ~~e~~Chapter.

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. 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 which established a less stringent standard for the promotion and protection of the health and safety of the people, the provisions of this chapter shall be deemed to prevail; and such other provisions are hereby declared to be repealed to the extent that they may be found in conflict with this chapter. (9-24-77)

§ 48-1.5. Application of Chapter.

~~(a)~~A. Any development in the floodplain district shall adhere to the provisions of this ~~E~~chapter.

~~(b)~~B. All structures for which a building permit has been issued and all site plans and subdivisions of land which have been approved before the effective date of this ~~E~~chapter and which have not expired may be completed without the necessity of complying with this ~~E~~chapter, but after completion, any building or structure and the land on which it is situated shall be subject to all the provisions of this ~~E~~chapter. (9-24-77; Ord. No. 91-43, 12-7-91)

ARTICLE II.

DEFINITIONS*

* **Editors Note:** Ord. No. 91-43, adopted Dec. 7, 1991, amended former Art. II, §§ 48-2.1--48-2.15, in its entirety to read as herein set out. The provisions of former Art. II pertained to definitions and derived from an ordinance adopted Sept. 24, 1977 and Ord. No. 82-10, enacted April 24, 1982.

§ 48-~~62~~-1. Base ~~f~~Flood.

"Base flood" means ~~F~~the flood which has been selected to serve as a basis upon which the floodplain management provisions of this ~~E~~chapter and other ordinances shall apply/shall be the one hundred-year flood as defined below. (Ord. No. 91-43, 12-7-91)

§ 48-~~72~~-2. Base ~~f~~Flood ~~e~~Elevation.

~~The "~~b~~Base flood elevation" is that means the~~ elevation associated with the one hundred-year flood as indicated in the Federal Emergency Management Agency (FEMA) Flood Insurance Study. For sites within the approximated floodplain, the base flood elevation shall be established as a point on the boundary of the approximated floodplain which is nearest to the site in question. (Ord. No. 91-43, 12-7-91)

§ 48-~~82~~-3. Development.

"Development" means ~~A~~any manmade change to improved or unimproved land, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of materials and equipment. (Ord. No. 91-43, 12-7-91)

§ 48-~~92~~-4. Director of ~~e~~Environmental ~~s~~Services.

"Director of Environmental Services" means ~~F~~the ~~d~~Director of the ~~d~~Department of ~~e~~Environmental ~~s~~Services, Arlington County, Virginia.

(Ord. No. 91-43, 12-7-91; Ord. No. 04-25, 10-2-04)

§ 48-~~102~~.5. Elevation ~~e~~Certificate.

“Elevation certificate” means ~~A~~a certificate which shall be on a form prescribed by FEMA which includes elevation information necessary to document compliance with the Floodplain Ordinance. This certificate is required for each new or substantially improved residential structure. It may also be used for new or substantially improved nonresidential structures in situations where elevation rather than floodproofing is used to meet the requirements of the ~~f~~Floodplain ~~e~~Ordinance. The certificate is maintained as a public record by the ~~d~~Department of ~~e~~Environmental ~~s~~Services. Blank forms are available from the ~~d~~Department of ~~e~~Environmental ~~s~~Services.

(Ord. No. 91-43, 12-7-91; Ord. No. 04-25, 10-2-04)

§ 48-~~112~~.6. Five ~~h~~Hundred-~~y~~Year ~~f~~Flood.

“Five hundred-year flood” means ~~A~~a flood that has one (1) chance in five hundred (500) or a ~~0.2~~ one-fifth percent (~~0.2~~%) chance of being equalled or exceeded in any year.

(Ord. No. 91-43, 12-7-91)

§ 48-~~122~~.7. Flood or ~~f~~Flooding.

“Flood” or “flooding” means ~~A~~a general and temporary condition of partial or complete inundation of normally dry land areas from:

~~(a)~~~~A~~. The overflow of inland or tidal waters; or

~~(b)~~~~B~~. The unusual and rapid accumulation of runoff of surface water from any source.

(Ord. No. 91-43, 12-7-91)

§ 48-~~132~~.8. Floodplain.

“Floodplain” means:

~~(1)~~~~A~~. A relatively flat or low-land area adjoining a river, stream, or watercourse which is subject to partial or complete inundation; or

~~(2)~~~~B~~. An area subject to the unusual and rapid accumulation of runoff of surface waters from any source.

(Ord. No. 91-43, 12-7-91)

§ 48-~~142~~.9. Floodproofing.

“Floodproofing” means ~~A~~any combination of structural and nonstructural additions, changes, or adjustments to properties and structures which reduce or eliminate flood damage to lands, public and private utilities, structures, and contents of buildings.

(Ord. No. 91-43, 12-7-91)

§ 48-~~152~~.10. Floodproofing ~~e~~Certificate.

“Floodproofing certificate” means ~~A~~a certification on a form provided by FEMA which includes information necessary to document compliance with the floodproofing provisions of the ~~f~~Floodplain ~~e~~Ordinance. The certification is required for each new or substantially improved nonresidential structure in the floodplain district, except in cases where elevation rather than floodproofing is used to meet the requirements of the ~~f~~Floodplain ~~e~~Ordinance. This certificate is maintained as a public record by the ~~d~~Department of ~~e~~Environmental ~~s~~Services.

(Ord. No. 91-43, 12-7-91; Ord. No. 04-25, 10-2-04)

§ 48-~~162~~-11. Floodway.

"Floodway" means ~~F~~the designated area of the floodplain required to carry and discharge flood waters of a given magnitude. For the purposes of this ~~Ordinance chapter~~, the floodway shall be capable of accommodating the magnitude of the one hundred-year flood.
(Ord. No. 91-43, 12-7-91)

§ 48-~~172~~-12. Historic ~~s~~Structure.

"Historic structure" means ~~A~~any structure that is:

~~(a)~~A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

~~(b)~~B. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

~~(c)~~C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior.
(Ord. No. 91-43, 12-7-91)

§ 48-~~182~~-13. Manufactured ~~h~~Home.

"Manufactured home" means ~~A~~a structure subject to ~~F~~federal regulations which is transportable in one (1) or more sections; has a body eight (8) feet or more in width and forty (40) feet or more in length in the traveling mode, or is three hundred twenty (320) or more square feet when erected on-site; is built on a permanent chassis; is designed to be used as a single-family dwelling, with or without a permanent foundation when connected to the required facilities; and includes the plumbing, heating, air conditioning, and electrical systems contained in the structure.
(Ord. No. 91-43, 12-7-91)

§ 48-~~192~~-14. Mobile ~~h~~Home.

"Mobile home" means ~~A~~a transportable dwelling intended for permanent occupancy which is built on a permanent chassis and is constructed so it may be used without a permanent foundation, whether or not attached to a permanent foundation.
(Ord. No. 91-43, 12-7-91)

§ 48-~~20~~-15. New ~~e~~Construction.

"New construction" means ~~S~~structures for which "start of construction" as herein defined commenced on or after the effective date of this ~~C~~chapter. This term does not apply to any work on a structure existing before the effective date of this ~~C~~chapter.
(Ord. No. 91-43, 12-7-91)

§ 48-~~21~~-16. One ~~h~~Hundred-~~y~~Year ~~f~~Flood.

"One hundred-year flood" means ~~A~~a flood that has one (1) chance in one hundred (100) or a one percent (~~1%~~ ~~percent~~) chance of being equalled or exceeded in any year.
(Ord. No. 91-43, 12-7-91)

§ 48-~~22~~-17. Principally ~~a~~Above ~~g~~Ground.

"Principally above ground" means ~~Where~~ fifty percent (~~50%~~ ~~percent~~) or more of the actual cash value of a

structure, less land value, is above ground.
(Ord. No. 91-43, 12-7-91)

§ 48-~~23~~-18. Recreational ~~v~~Vehicle.

“Recreational vehicle” means ~~A~~any self-propelled vehicle or vehicle without motive power designed for recreational camping, travel, or seasonal use and not for use as a mobile home which is built on a single chassis and contains four hundred (400) feet or less in surface area when measured at its largest horizontal projection.
(Ord. No. 91-43, 12-7-91)

§ 48-~~24~~-19. Start of ~~e~~Construction.

“Start of construction” means ~~F~~the first placement of any part of a permanent structure on a site, such as the pouring of slabs or footings or any work beyond the stage of excavation.
(Ord. No. 91-43, 12-7-91)

§ 48-~~25~~-20. Structure.

“Structure” means, ~~F~~for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground and affixed to a permanent site.
(Ord. No. 91-43, 12-7-91)

§ 48-~~26~~-21. Substantial ~~d~~Damage.

“Substantial damage” means ~~D~~damage of any origin sustained by a structure where the cost of restoring the structure to its before damaged condition would equal or exceed fifty percent (~~50%~~ ~~percent~~) of the market value of the structure before the damage occurred.
(Ord. No. 91-43, 12-7-91)

§ 48-~~27~~-22. Substantial ~~i~~Improvement.

“Substantial improvement” means ~~A~~any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds fifty percent (~~50%~~ ~~percent~~) of the market value of the structure before the start of construction of the improvement. The term substantial improvement shall refer to structures which have incurred substantial damage regardless of the value or actual cost of the actual repair work performed. The term does not, however, include either:

(~~1~~)A. ~~a~~Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

(~~2~~)B. ~~a~~Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued status as a historic structure.
(Ord. No. 91-43, 12-7-91)

§ 48-~~28~~-23. Zone ~~d~~Designations.

A flood insurance map displays the zone designations for a community according to areas of designated flood hazards. The zone designations are:

Zone A--Areas of one hundred-year flood; base flood elevations and flood hazard factors not determined.

Zone A1-A30--Areas of one hundred-year flood; base flood elevations and flood hazard factors determined.

Zone B--Areas between limits of the one hundred-year flood and the five hundred-year flood or certain areas subject to one hundred-year flooding with average depths less than one (1) foot or where the contributing

drainage area is less than one (1) square mile, or areas protected by levees from the base flood.

Zone C--Areas of minimal flooding.

Zone D--Areas of undetermined, but possible, flood hazards.
(Ord. No. 91-43, 12-7-91)

ARTICLE III.

FLOODPLAIN DISTRICT

§ 48-~~293~~-1. Establishment of the ~~f~~Floodplain ~~d~~District.

The floodplain district shall include all areas subject to inundation by the waters of the one hundred-year flood. The source of this delineation shall be the Flood Insurance Study for Arlington County, Virginia, as prepared by the Federal Emergency Management Agency (FEMA), Federal Insurance Administration (FIA), Flood Boundary and Floodway Map 515520 0001-0025, Flood Insurance Rate Map (FIRM) 515520 0001-002, May 3, 1982, or the latest revision.

The floodway area shall be those areas within the floodplain which are capable of carrying the waters of the one hundred-year flood without increasing the water surface elevation of that flood more than one (1) foot at any point. The areas included in the floodway district are specifically defined in Table 2 of the above-referenced flood insurance study and shown on the accompanying ~~F~~flood ~~B~~oundary and ~~F~~floodway ~~M~~ap. A copy of the map delineating the floodplain district shall be on file in the office of the Department of ~~e~~Environmental ~~s~~Services of Arlington County.
(9-24-77; Ord. No. 82-10, 4-24-82; Ord. No. 91-43, 12-7-91; Ord. No. 04-25, 10-2-04)

§ 48-~~30~~-2. Subdistricts.

The floodplain district shall be comprised of two (2) subdistricts.

~~(+)~~A. *Mapped floodplain:* Those portions of land within the floodplain district subject to inundation by the one hundred-year flood, where study data and profiles are available.

~~(+)~~B. *Approximated floodplain:* Those portions of land within the floodplain district subject to inundation by the one hundred-year flood, where a detailed study has not been performed but where a one-hundred year floodplain boundary has been approximated by the Flood Insurance Study, as shown on the Flood Insurance Rate Map (FIRM); this area is designated as Zone A.
(9-24-77; Ord. No. 82-10, 4-24-82; Ord. No. 91-43, 12-7-91)

§ 48-~~31~~-3. Revisions, ~~a~~A~~m~~endments, and ~~m~~M~~o~~difications.

The delineation of the floodplain district may be revised, amended, and modified by the Arlington County Board in compliance with the National Flood Insurance Program (NFIP) when:

~~(+)~~A. There are changes in the boundary of the floodplain district through natural or other causes;

~~(+)~~B. Changes in the boundary of the floodplain district are indicated by future detailed hydrological and hydraulic studies; or

~~(+)~~C. When the health, safety, and welfare of the community would be promoted by a realignment of the boundary of the floodplain district.

All such changes shall be submitted to the Federal Insurance Administration (FIA) prior to amendments by the Arlington County Board in order that the Arlington County Board may have the benefit of any comments its officials may make.

(9-24-77; Ord. No. 91-43, 12-7-91)

§ 48-32.4. Utilization.

(a)A. No mobile homes or manufactured homes shall be permitted in the floodplain.

(b)B. Recreational vehicles placed on sites within the floodplain shall be on the site for fewer than one hundred eighty (180) consecutive days, be fully licensed and ready for highway use, be on wheels or a jacking system, be attached to the site only by quick-disconnect type utilities and security devices, and have no permanently attached additions.

(c)C. Mapped floodplain and approximated floodplain: In the mapped floodplain and approximated floodplain, any development or use of land not prohibited above shall be permitted provided that all such uses, activities and development shall be undertaken in strict compliance with the floodproofing and related provisions contained herein and in all other applicable codes, ordinances, and regulations. All such development shall be undertaken only upon the issuance of a building permit and a Floodplain Development Permit which is to be submitted to the Department of Environmental Services of Arlington County, Virginia.

(d)D. An elevation certificate for new construction or a floodproofing certificate for substantial improvement or commercial construction is to be completed by the applicant and submitted to the Department of Environmental Services of Arlington County, Virginia.

(e)E. In the floodway area of the floodplain no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in the one hundred-year flood elevation.

(f)F. Within the approximated floodplain district, the applicant shall also delineate a floodway area, which will include base flow elevation data based on the requirement that all existing and future development not increase the one hundred-year flood elevation more than one (1) foot at any one (1) point. The engineering principle -- equal reduction of conveyance -- shall be used to make the determination of increased flood heights. Within the floodway area delineated by the applicant, the provisions of § 48-32.E3.4(e) shall apply.

(g)G. Whenever a developer proposes to offset the effects of development in the floodplain district by construction of stream improvements, he shall submit an engineering study prepared by a duly registered professional engineer which fully evaluates the effects of such construction. All adjacent communities, the Virginia Division of Soil and Water Conservation, and the Federal Insurance Administration (FIA) shall be notified by the developer in writing of all such intended activities at least thirty (30) days prior to commencing work. In addition, the developer shall assure in writing to the Director of Environmental Services or his or her designee that the flood-carrying capacity within any such altered or relocated watercourse is maintained. All uses, activities, and development shall be undertaken in strict compliance with the floodproofing and related provisions contained herein, and in all other applicable codes, ordinances, and regulations.

(h)H. Stream channel improvements and stormwater detention facilities are permitted in the floodplain district.

(9-24-77; Ord. No. 82-10, 4-24-82; Ord. No. 91-43, 12-7-91; Ord. No. 04-25, 10-2-04)

§ 48-33.5. Boundary Disputes, Appeals, and Waivers.

(a)A. *Boundary disputes.* Any uncertainty with respect to the boundary of any floodplain district shall be determined by the Director of Environmental Services or his or her designee by scaling and computation from the flood insurance study.

(b)B. *Appeals.* Whenever any person is aggrieved by a decision of the Director of Environmental Services or his or her designee with respect to the interpretation of the provisions of this chapter (except part A(a) of this section), that person shall be entitled to appeal for a waiver of that decision. Such appeal must be made in

writing to the ~~e~~County ~~m~~Manager of Arlington County or his ~~or her~~ designee within thirty (30) days after the decision as set forth below.

~~(c)~~C. *Waivers.* In reviewing applications for waivers, the County Manager of Arlington County or his ~~or her~~ designee shall examine all relevant factors and procedures specified in other ordinances and consider the following applicable factors:

- ~~(1.)~~ The danger to life and property due to increased flood heights or velocities caused by encroachments. No waiver shall be granted for any proposed use, development, or activity within any floodway district that will cause any increase in the one hundred-year flood elevation.
- ~~(2.)~~ The danger that materials may be swept on to other lands or downstream to the injury of others.
- ~~(3.)~~ The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions.
- ~~(4.)~~ The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
- ~~(5.)~~ The importance of the services provided by the proposed facility to the community.
- ~~(6.)~~ The requirements of the facility for a waterfront location.
- ~~(7.)~~ The availability of alternative locations not subject to flooding for the proposed use.
- ~~(8.)~~ The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
- ~~(9.)~~ The relationship of the proposed use to the Arlington County Comprehensive Plan and Floodplain Management Program for the area.
- ~~(10.)~~ The safety of access by ordinary and emergency vehicles to the property in time of flood.
- ~~(11.)~~ The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site.
- ~~(12.)~~ The repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- ~~(13.)~~ Such other factors which are relevant to the purposes of this ~~Ordinance chapter~~.

The County Manager of Arlington County or his ~~or her~~ designee may refer any application and accompanying documentation pertaining to any request for a waiver to any engineer or other qualified person or agency for technical assistance in evaluating the proposed project in relation to flood heights and velocities and the adequacy of the plans for flood protection and other related matters.

Waivers may be issued only after the County Manager of Arlington County or his ~~or her~~ designee has determined that the granting of the waiver will not result in (a) unacceptable or prohibited increases in flood heights, (b) additional threats to public safety, or (c) extraordinary public expense; and will not (d) create nuisances, (e) cause fraud or victimization of the public, or (f) conflict with local laws or ordinances.

Waivers may be issued only after the County Manager of Arlington County or his ~~or her~~ designee has determined that the waiver will be the minimum deviation, as determined by the County Manager of Arlington County or his ~~or her~~ designee, from the requirements necessary to provide relief from any hardship to the applicant.

The County Manager of Arlington County or his ~~or her~~ designee shall notify the applicant in writing that the issuance of the waiver to construct a structure below the one hundred-year flood elevation (a) increases the risks to life and property and (b) will result in increased premium rates for flood insurance. A record shall be maintained by the Director of ~~Public Works~~ Environmental Services of the above notification as well as all waiver actions, including justification for the issuance of the waivers. Any waivers which are issued shall be noted in the annual or biennial report submitted to the Federal Insurance Administrator.
(9-24-77; Ord. No. 91-43, 12-7-91; Ord. No. 04-25, 10-2-04)

ARTICLE IV.

FLOOD DAMAGE CONTROL REGULATIONS

In order to prevent excessive damage to buildings and structures due to conditions of flooding, the following restrictions shall apply to all new construction and substantial improvements to existing structures and other development occurring in the floodplain district.
(Ord. No. 91-43, 12-7-91)

§ 48-~~34~~.1. Basement and Howest Floors.

~~(a)~~A. All new construction and substantial improvements of residential structures must have the lowest floor (including basement) elevated at one (1) foot or more above the base flood elevation.

~~(b)~~B. All new construction and substantial improvements of nonresidential structures must have the lowest floor (including basement) elevated at one (1) foot or more above the base flood elevation; or, together with attendant utility and sanitary facilities, be floodproofed at one (1) foot or more above the base flood elevation in accordance with § 48-4.3.
(9-24-77; Ord. No. 91-43, 12-7-91)

§ 48-~~35~~.2. Utility and system ¶Requirements.

~~(a)~~A. All new or replacement public and private utilities located in the floodplain district shall be elevated or floodproofed to a point at one (1) foot or more above the base flood elevation.

~~(b)~~B. All new or replacement water supply systems and sanitary sewer systems within the floodplain district shall be elevated or floodproofed to a point at or above the base flood elevation to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into the flood waters.

~~(c)~~C. All new or replacement on-site waste disposal systems shall be located so as to avoid impairment of them or contamination from them during or subsequent to flooding.

~~(d)~~D. All storm drainage facilities shall be designed, as determined by the Director of ~~Public Works~~ Environmental Services, to convey the flow of surface waters without damage to persons or property. The systems shall ensure drainage away from buildings and on-site waste disposal sites. The Director of ~~Public Works~~ Environmental Services may require a primary underground system to accommodate frequent floods and a secondary surface system to accommodate larger, less frequent floods. Drainage plans shall be consistent with local and regional drainage plans. The facilities shall be designed to prevent the discharge of excess runoff onto adjacent properties.

~~(e)~~E. Streets and sidewalks shall be designed to minimize their potential for increasing and aggravating the levels of flood flow. Drainage openings shall be required to sufficiently discharge flood flows without unduly increasing flood heights.
(9-24-77; Ord. No. 91-43, 12-7-91)

§ 48-~~36~~.3. Floodproofing.

Whenever floodproofing is utilized within the scope of the Floodplain Ordinance, such floodproofing shall

be done by approved methods. A duly registered professional engineer or architect shall certify that the floodproofing design is reasonably adequate to withstand the flood depths, pressures, velocities, impact, and uplift forces, and other factors associated with the one hundred-year flood, and shall cite the elevation to which the structure is floodproofed. Designs meeting the requirements of the W1 and W2 techniques in the "Floodproofing Regulations" of the Office of the Chief of Engineers, U.S. Army, June, 1972, shall be deemed to comply with this requirement.

(9-24-77; Ord. No. 91-43, 12-7-91)

§ 48-~~374~~.4. Fill.

If fill is used to raise the finished surface of the lowest floor at or above the base flood elevation:

(~~a~~)A. Fill shall consist of soil or rock materials only. Sanitary landfills shall not be permitted.

(~~b~~)B. Fill material shall be compacted to provide the necessary stability and resistance to erosion, scouring or settling.

(~~c~~)C. Fill slopes shall be no steeper than one (1) vertical on two (2) horizontal, unless substantiating data justifying steeper slopes are submitted to and approved by the ~~d~~Director of ~~e~~Environmental ~~s~~Services or his ~~or her~~ designee.

(~~d~~)D. Fill shall be used only to the extent to which it does not adversely affect adjacent properties.
(9-24-77; Ord. No. 91-43, 12-7-91; Ord. No. 04-25, 10-2-04)

§ 48-~~384~~.5. Placement of ~~b~~Buildings and ~~s~~Structures.

All buildings and structures shall be constructed and placed on the lot so as to offer the minimum obstruction to the flow of water and shall be designed to have a minimum effect upon the flow and height of flood waters.

Setbacks shall be required as follows:

(~~a~~)A. All new construction of and substantial improvements to residential structures shall be set back fifteen (15) feet horizontally from the location of the base flood elevation.

(~~b~~)B. All new construction of and substantial improvements to nonresidential structures shall be set back fifteen (15) feet horizontally from the location of the base flood elevation, unless such structures are floodproofed.
(9-24-77; Ord. No. 91-43, 12-7-91)

§ 48-~~394~~.6. Storage.

No new construction which stores materials that are buoyant, flammable, explosive, or in times of flooding could be injurious to human, animal, or plant life shall be stored below the base flood elevation.
(9-24-77; Ord. No. 91-43, 12-7-91)

Editors Note: Ord. No. 91-43, adopted Dec. 7, 1991, deleted former § 48-4.6, relative to streets, and renumbered § 48-4.7 as § 48-4.6. Former § 48-4.6 derived from an ordinance enacted Sept. 24, 1977.

ARTICLE V.

PLAN REQUIREMENTS

§ 48-~~405~~.1. Building ~~p~~Permit ~~e~~Criteria.

Applicants for a building permit within the floodplain district shall first submit a floodplain development permit application to the ~~d~~Department of ~~e~~Environmental ~~s~~Services. The application shall be prepared by a duly registered professional engineer or architect at the applicant's expense, shall include either an elevation certificate,

which may be prepared by a land surveyor, or a floodproofing certificate, and shall certify that the proposed construction:

~~(A)~~ A. Is protected against flood damage;

~~(B)~~ B. Is designed or modified and adequately anchored to prevent flotation, collapse or lateral movement of the structure;

~~(C)~~ C. Uses construction materials and utility equipment that are resistant to flood damage;

~~(D)~~ D. Uses construction methods and practices that will minimize flood damage;

~~(E)~~ E. Has its lowest floor elevation at one (1) foot or more above the base flood elevation and has its lowest floor elevation so noted on the building plan;

~~(F)~~ F. Is in full compliance with the provisions of this ~~C~~chapter; and,

~~(G)~~ G. Conforms to the provisions of the Arlington County Ordinance enacted pursuant to the Chesapeake Bay Preservation Act. (9-24-77; Ord. No. 82-0, 4-24-82; Ord. No. 91-43, 12-7-91; Ord. No. 04-25, 10-2-04)

§ 48-~~415~~.2. Additional ~~i~~nformation.

In addition to the information normally required for review and approval of preliminary plans, the following information, prepared by a duly registered professional engineer or surveyor, shall be required when any part of the proposed subdivision or other development is within the area of the floodplain district:

~~(A)~~ A. Name of engineer, surveyor, or other qualified person responsible for providing the information required in this section.

~~(B)~~ B. A map showing the location of the proposed subdivision or development with respect to the County floodplain district including, without limitation, the following information: the base flood elevations, boundaries of floodprone areas, proposed lots and sites, fills, flood or erosion-protective facilities, and areas subject to special deed restrictions.

~~(C)~~ C. Where the subdivision or development lies partially or completely in the floodplain district, or where the subdivision or development borders on the floodplain district, the preliminary plan map shall include detailed information giving the location and elevation of proposed roads, public utilities, and building sites. All such maps shall also show contours at intervals of two (2) or five (5) feet depending upon the slope of the land and identify accurately the boundaries of the floodplain district. (9-24-77; Ord. No. 91-43, 12-7-91)

ARTICLE VI.

ADMINISTRATION

§ 48-~~426~~.1 Review.

The ~~d~~Director of ~~e~~Environmental ~~s~~Services or his ~~or her~~ designee shall review all applications for subdivisions or permits to construct or make substantial improvements in the floodplain district and shall determine whether the proposed building site is reasonably safe from flooding. The ~~d~~Director of ~~e~~Environmental ~~s~~Services or his ~~or her~~ designee shall review the application to verify that all other required permits from state or federal government agencies have been obtained. (9-24-77; Ord. No. 91-43, 12-7-91; Ord. No. 04-25, 10-2-04)

§ 48-~~436~~.2. Reserved.

Editors Note: Ord. No. 91-43, adopted Dec. 7, 1991, deleted former § 48-6.2, relative to an annual report, which derived from an ordinance of Sept. 24, 1977 and Ord. No. 82-10, enacted April 24, 1982.

ARTICLE VII.

PENALTIES

§ 48-~~447.1~~. Penalties.

Any person who fails to comply with any of the requirements or provisions of this Chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than ten dollars (\$10.00) nor more than two thousand five hundred dollars (\$2,500.00) or thirty (30) days in jail or both, for each violation. Each day during which any violation of this Chapter continues shall constitute a separate offense.

The imposition of a fine or penalty for any violation of, or noncompliance with, this chapter shall not excuse the violation or noncompliance or permit it to continue; and all such persons shall be required to correct or remedy such violations and non-compliances within a reasonable time. Any structure constructed, reconstructed, enlarged, altered, or relocated, in noncompliance with this chapter may be declared a public nuisance and abated as such.

(9-24-77; Ord. No. 91-34, 9-18-91)

ARTICLE VIII.

SEVERABILITY AND COUNTY LIABILITY

§ 48-~~458.1~~. Severability.

If any section, paragraph, sentence, clause, or phrase of this chapter shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this chapter which shall remain in full force and effect, and for this purpose, the provisions of this chapter are hereby declared to be severable.

(9-24-77)

§ 48-~~468.2~~. County Liability.

The grant of permit or approval of a subdivision or development plan shall not constitute a representation, a guarantee, or warranty of any kind by the County or by any official or employee thereof of the practicability or safety of the proposed use and shall create no liability upon Arlington County, its officials, or employees.

(9-24-77; Ord. No. 91-43, 12-7-91)

§ 48-~~478.3~~. Warning.

The degree of flood protection sought by the provisions of this Chapter is considered reasonable for regulatory purposes and is based on acceptable engineering methods of study. Larger floods may occur on rare occasions. Flood heights may be increased by manmade or natural causes such as ice jams and bridge openings restricted by debris. This Chapter does not imply that areas outside the floodplain districts or that land uses permitted within such districts will be free from flooding or flood damages. This Chapter shall not create liability on the part of Arlington County or any officer or employee thereof for any flood damages that result from reliance on this Chapter or any administrative decision lawfully made thereunder.

(9-24-77; Ord. No. 91-43, 12-7-91)

ARLINGTON COUNTY CODE

Chapter 49

MESSAGE REGULATION

- § 49-1. General ~~p~~Policy.
- § 49-2. Definitions.
- § 49-3. Permit ~~r~~Required for ~~m~~Message ~~t~~Technician or ~~m~~Message ~~t~~Therapist.
- § 49-4. Issuance of ~~p~~Permit.
- § 49-5. Investigation of ~~a~~Applicant for ~~m~~Message ~~t~~Technician ~~p~~Permit; ~~g~~Grounds for ~~d~~Denial of ~~a~~Application.
- § 49-6. Revocation of ~~m~~Message ~~t~~Technician and ~~m~~Message ~~t~~Therapist ~~p~~Permits.
- § 49-7. Unlawful ~~a~~Acts of ~~m~~Message ~~t~~Technician or ~~m~~Message ~~t~~Therapist.
- § 49-7.1. Requirements for ~~m~~Message ~~e~~Establishments.
- § 49-8. Posting a ~~e~~Copy of this ~~e~~Chapter and a ~~s~~Summary of its ~~k~~Key ~~p~~Provisions ~~p~~Prepared by the ~~e~~County ~~m~~Manager.
- § 49-9. Display of ~~p~~Permit.
- § 49-10. Inspections.
- § 49-11. Penalties.
- § 49-12. Severability.

§ 49-1. General ~~p~~Policy.

It is hereby declared to be the policy of the County of Arlington, in the exercise of its police power for the protection of the safety, health and welfare of its citizens to provide for the licensing and regulation of message establishments, message technicians, message therapists, and outcall message services. (6-14-75; 5-31-80; Ord. No. 83-27, 9-24-83)

§ 49-2. Definitions.

~~For the purpose of this chapter, the following phrases and words, when used in this chapter, shall have the following meanings assigned below, except in those instances when the context clearly indicates a different meaning. Unless the context clearly indicates otherwise:~~

Exemptions: This chapter shall not apply to the following individuals while engaged in the personal performance of the duties of their respective professions:

- ~~(a)~~A. Physicians, surgeons, chiropractors, osteopaths, or physical therapists who are duly licensed to practice their respective professions in the Commonwealth of Virginia;
- ~~(b)~~B. Any person who holds a license to practice professional nursing, issued by the Commonwealth of Virginia;
- ~~(c)~~C. Barbers and beauticians who are duly licensed under the laws of the commonwealth except that this exemption shall apply solely to the massaging of the neck, face, scalp, shoulders or hair;

~~“Message” means A~~ method of treating the external parts of the human body for comfort or the general well-being of the body, consisting of rubbing, stroking, kneading, tapping or vibrating with the hand or any instrument for pay.

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~~“Message establishment” means A~~any establishment having a fixed place of business where massages are administered for pay.

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~~“Massage technician” means~~ ~~Any~~ person who administers a massage to another person for pay, and who holds a permit as a massage technician, and who has not made a study of the underlying principle of anatomy and physiology as generally included to a regular course of study by a recognized and approved school of massage.

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~~“Massage therapist” means~~ ~~Any~~ person who practices or administers a massage to another person for pay and applies the underlying principles of anatomy and physiology as generally included in a regular course of study by a recognized and approved school of massage to wit: the art of body massage, either by hands or with a mechanical or vibratory apparatus, for the purpose of body massaging, reducing or contouring; the use of oil rubs, heat lamps, salt glows, hot and cold packs, tub, shower or cabinet baths. Variations of the following procedures are employed: touch, stroking, friction, kneading, vibrations, percussion and medical gymnastics. Massage therapists shall not diagnose or treat diseases, nor practice spinal or other joint manipulations, nor prescribed medicine or drugs.

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~~“Outcall massage service” means~~ ~~Any~~ business, a function of which is to engage in or carry on massages at a location designated by the customer, client, massage technician, or some other person rather than at a massage establishment as defined herein.

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~~“Sexual or genital part(s)” means~~ ~~The~~ penis, genitals, pubic area, anus, perineum or vulva of any person.

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Nor shall this ~~C~~chapter apply to persons employed at a hospital, nursing home or medical clinic while such persons are engaged in the personal performance of their employment. (6-14-75; 5-31-80; Ord. No. 83-27, 9-24-83; Ord. No. 88-4, 2-20-88)

§ 49-3. Permit ~~R~~Required for ~~m~~Massage ~~t~~Technician or ~~m~~Massage ~~t~~Therapist.

~~(a)~~A. It shall be unlawful for any massage technician or massage therapist to administer or to offer to administer a massage without a valid nonsuspended permit as either a massage technician or as a massage therapist issued pursuant to this chapter.

~~(b)~~B. It shall be unlawful for any person to establish, maintain or operate a massage establishment or outcall massage service in which a massage technician or massage therapist, who does not have a valid nonsuspended permit issued pursuant to this chapter, administers massages. (6-14-75; 5-31-80; Ord. No. 83-27, 9-24-83)

§ 49-4. Issuance of ~~p~~Permit.

Any person desiring a permit to perform the services of a massage technician or massage therapist shall make application to the ~~e~~County ~~m~~Manager or his designee. Each such application shall be accompanied by an investigation fee of fifty dollars (\$50.00), payable to the ~~t~~Treasurer of Arlington County. Each such application shall contain the name, address, telephone number, last previous address, date of birth, place of birth, height, weight, current and last previous employment of the applicant. In addition, such application shall include a sworn statement as to whether or not the applicant has been convicted, pleaded nolo contendere, or suffered a forfeiture within the last five (5) years on a charge of violating any provision included in ~~Sections-§§~~ 18.2-344 through 18.2-361, 18.2-365 through 18.2-387, 18.2-390, or 18.2-391, Code of Virginia (1950), as amended, which laws relate to sexual offenses or on a charge of violating a similar law of any jurisdiction. All applicants must present a certificate from a medical doctor stating that the applicant within thirty (30) days before the application has been examined and found free of any identifiable disease which would create a substantial medical risk for the massage subject.

Each applicant for a permit as a massage therapist must furnish a diploma or certificate of graduation from a recognized school or other recognized institution of learning wherein the method, occupation and work of massage therapists is taught. A school or institution is considered recognized if it has for its purpose in respect to massage therapy the teaching of the theory, method, profession, or work of massage therapists and requires a resident course of study of five hundred (500) or more hours before the student is granted a diploma or certificate of graduation from the school or institution showing the successful completion of the course of study. To be considered recognized, a school must impose standards for the granting of a diploma or certificate that are reasonably calculated to demonstrate that a student of its course meets the minimum standards of skill and knowledge required to perform

the work of a massage therapist. The County Manager or his designee shall maintain a list of massage schools in the United States which meet the minimum standards of this section. Upon the request of any person, the County Manager shall investigate schools not on the list to determine whether they should be added to it. The programs of schools and institutions not requiring actual class attendance shall not be considered "recognized." The County Manager shall have the right to confirm the fact that an applicant has actually attended required classes at and received a diploma or certificate from a school or institution which meets these standards.

The application shall state thereon that "it is unlawful for any person to make a false statement on this application and discovery of a false statement shall constitute grounds for denial of any application or revocation of a permit."

Each applicant shall be photographed and have his or her fingerprints taken, which fingerprints and photographs shall constitute part of the application.

The permits shall be valid for a period of two (2) years, and they may be renewed for additional two-~~(2)~~ year periods upon the filing of a new application and payment of a twenty-dollar (\$20.00) investigation fee. All provisions of this chapter shall apply to renewals in the same manner as they apply to applications. (6-14-75; 5-31-80; Ord. No. 83-27, 9-24-83; Ord. No. 94-3, 3-12-94; Ord. No. 04-01, 1-10-04)

§ 49-5. Investigation of ~~a~~Applicant for ~~m~~Message ~~t~~Technician ~~p~~Permit; ~~g~~Grounds for ~~d~~Denial of ~~a~~Application.

Upon receipt of the application fee as provided for in the preceding section, the ~~e~~Chief of ~~p~~Police shall make, or cause to be made, a thorough investigation of the criminal record of the applicant.

The Chief shall deny any application for a permit under this ~~C~~chapter after notice and hearing if the Chief finds that the applicant is less than eighteen (18) years of age; has been convicted, pleaded nolo contendere, or suffered a forfeiture within the last five (5) years on a charge of any provision included in ~~Sections-§§~~ 18.2-344 through 18.2-361, 18.2-365 through 18.2-387, 18.2-390 or 18.2-391, Code of Virginia (1950), as amended, which laws relate to sexual offenses or on a charge of violating a similar law of any other jurisdiction.

The making of a false statement on the application as provided for in ~~section-§~~ 49-3 of this Code shall also be grounds for denial of this permit.

Notice of the hearing before the ~~e~~Chief of ~~p~~Police for denial of this application shall be given in writing setting forth the grounds of the proposed denial of permit and the time and place of the hearing. Such notice shall be mailed by certified mail to the applicant's last known address at least five (5) days prior to the date set for the hearing.

The ~~e~~Chief of ~~p~~Police shall submit his decision to the applicant within five (5) days of his decision or within thirty (30) days of the hearing whichever is sooner. (6-14-75; 5-31-80)

§ 49-6. Revocation of ~~m~~Message ~~t~~Technician and ~~m~~Message ~~t~~Therapist ~~p~~Permits.

The ~~e~~County ~~m~~Manager or his designee shall revoke the permit of any person after notice and hearing if the ~~m~~Manager finds that such person is less than eighteen (18) years of age, has within the last five (5) years been convicted, pleaded nolo contendere, or suffered a forfeiture on a charge of violating any provision included in ~~Sections-§§~~ 18.2-344 through 18.2-361, 18.2-365 through 18.2-387, 18.2-390 or 18.2-391, Code of Virginia (1950), as amended, which laws relate to sexual offenses, or on a charge of violating any provision of this chapter. The permit shall also be revoked by the ~~m~~Manager if he finds after notice and hearing that any permit holder has made a false statement on the application provided for in ~~section-§~~ 49-3 hereof.

Notice of the hearing before the ~~m~~Manager for revocation of the permit shall be given in writing to the permit holder at the last known address of the permit holder which shall be mailed by certified mail to the permit holder at least eight (8) days prior to the hearing and no more than thirty (30) days prior to the hearing. Said notice

shall set forth the grounds of the proposed revocation and the time and place of the meeting.

At the hearing, the permit holder may be represented by counsel, may cross-examine witnesses, and may present evidence in his or her favor.

The ~~m~~Manager shall submit his decision to the permit holder within thirty (30) days of the hearing. (6-14-75; 5-31-80; Ord. No. 83-27, 9-24-83)

§ 49-7. Unlawful ~~a~~Acts of ~~m~~Message ~~t~~Technician or ~~m~~Message ~~t~~Therapist.

~~(+)A.~~ It shall be unlawful for a massage technician or massage therapist to willfully perform any of the following acts:

~~(+)1.~~ Placing of hand or hands upon, touching with any part of the body, fondling in any manner, or massaging a sexual or genital part, or any portion thereof, of any other person.

~~(+)2.~~ Exposing of a sexual or genital part, or any portion thereof, to any other person.

~~(+)3.~~ Failing to conceal, with a fully opaque covering in the presence of any other person, the sexual or genital parts of such massage technician.

~~(+)B.~~ It shall be unlawful for any massage technician to massage a person of another sex or to offer to massage a person of another sex. It shall be lawful for a massage therapist to massage a person of another sex or to offer to massage a person of another sex.

~~(+)C.~~ It shall be unlawful for any person owning, operating or managing a massage establishment or outcall massage service knowingly to cause, allow, or permit any agent, employee, or any other person under his or her control or supervision, to perform such acts prohibited in subsections A.1, A.2, A.3 or B.1(a), 1(b), or 1(c) ~~or (2)~~ of this section.

(6-14-75; 5-22-76; 5-31-80; Ord. No. 83-27, 9-24-83; Ord. No. 88-4, 2-21-88)

§ 49-7.1. Requirements for ~~m~~Message ~~e~~Establishments.

~~(+)A.~~ Minimum lighting shall be provided in accordance with the ~~u~~Uniform ~~b~~Building ~~e~~Code, and, additionally, at least one (1) working artificial light of not less than seventy-five (75) watts shall be provided in each enclosed room or booth where massage services are being rendered.

~~(+)B.~~ Minimum ventilation shall be provided in accordance with the ~~u~~Uniform ~~b~~Building ~~e~~Code.

~~(+)C.~~ Adequate equipment for disinfecting and sterilizing any instruments used for massage shall be provided.

~~(+)D.~~ Hot and cold running water shall be provided.

~~(+)E.~~ Adequate dressing, bathing, and toilet facilities shall be provided for patrons of each gender.

~~(+)F.~~ All walls, ceilings, floors, steam rooms, and all other physical facilities for the establishment shall be kept in good repair and maintained in a sanitary condition.

~~(+)G.~~ Clean towels and linens shall be provided for patrons receiving massage services. No common use of towels or linens shall be permitted. (Ord. No. 83-27, 9-24-83)

§ 49-8. Posting a ~~e~~Copy of this ~~e~~Chapter and a ~~s~~Summary of its ~~k~~Key ~~p~~Provisions ~~p~~Prepared by the ~~e~~County ~~m~~Manager.

Every person owning, operating or managing a massage establishment shall post a copy of this chapter and a summary of its key provisions, prepared by the eCounty mManager, in a conspicuous place in the massage establishment so that it may readily be seen by persons entering the premises.
(6-14-75; Ord. No. 83-27, 9-24-83)

§ 49-9. Display of pPermit.

Every massage technician shall display the massage technician permit, on which the technician's photograph shall be attached, in a prominent place in the immediate area in which the technician operates so that it is clearly visible to the technician's customers or clients.
(6-14-75; 5-31-80)

§ 49-10. Inspections.

Inspections of massage establishments shall be made at periodic intervals by plainclothes police officers, who shall display their badges, to determine if all massage technicians have valid permits.
(6-14-75; Ord. No. 83-27, 9-24-83)

§ 49-11. Penalties.

Any person violating the provisions in this chapter shall, upon conviction, be punished as provided in ~~section §~~ 1-6 of this Code.
(6-14-75)

§ 49-12. Severability.

Should any clause, sentence, paragraph or part of this chapter or the application thereof to any person or circumstance, be adjudged by a court of competent jurisdiction to be unconstitutional or invalid, said judgment shall not affect, impair, or invalidate the remainder of this chapter or the application of such provisions to other persons or circumstances, but shall be confined in its application to the clause, sentence, paragraph or part thereof directly involved in the controversy in which said judgment shall have been rendered and the person or circumstances involved.
(6-14-75)

ARLINGTON COUNTY CODE

Chapter 50

CONSUMER PROTECTION

§ 50-1. General **p**Policy.

§ 50-2. Powers of the **e**Office of **e**Consumer **p**Protection.

§ 50-3. Referral of **e**Complaints.

§ 50-1. General **p**Policy.

There is hereby created the **e**Office of **e**Consumer **a**Affairs of Arlington County. The staffing and organizational structure of such **e**Office shall be as determined by the **e**County **m**Manager.
(10-26-74)

§ 50-2. Powers of the **e**Office of **e**Consumer **p**Protection.

The **e**Office shall have such powers as may be necessary to perform the following duties.

(e)A. To serve as a central coordinating agency and clearing house for receiving and investigating complaints of illegal, fraudulent, deceptive or dangerous practices, and referring such complaints to the local departments or agencies charged with enforcement of consumer laws. The processing of complaints involving statutes or regulations administered by state agencies shall be coordinated, where applicable, with the **s**State **e**Office of **e**Consumer **a**Affairs;

(e)B. To attempt to resolve complaints received pursuant to subsection **A(e)** hereof by means of voluntary mediation or arbitration;

(e)C. To develop programs of community consumer education and information;

(e)D. To maintain records of consumer complaints and their eventual disposition provided that records disclosing the business interests of any person, trade secrets, or the names of customers shall be held confidential except to the extent that disclosures of such matters may be necessary for the enforcement of laws. A copy of all periodic reports compiled by the **e**Office shall be filed with the **s**State **e**Office of **e**Consumer **a**Affairs;

(e)E. To provide staff support for the Arlington County Consumer Protection Commission.
(10-26-74)

§ 50-3. Referral of **e**Complaints.

The **e**Office may refer complaints which appear to violate any provision of Article 8, Chapter 6 of Title 18.2 of the Code of Virginia of 1950, as amended, of Chapter 2.1 of Title 59.1 of the Code of Virginia of 1950, as amended, to the Commonwealth's Attorney or to the County Attorney for investigation. If the official to whom a complaint is referred determines that a violation is, in fact, occurring, he shall bring an action pursuant to § 59.1-68.4 of the Code of Virginia to enjoin such violation. The **e**Office will report any such action in summary form on a monthly basis to the Consumer Protection Commission.
(10-26-74; Ord. No. 91-24, 6-22-91)

ARLINGTON COUNTY CODE

Chapter 51

HOME IMPROVEMENT

- § 51-1. Short ~~f~~Title.
- § 51-2. Definitions.
- § 51-3. Licenses.
- § 51-4. Bond ~~r~~Requirement.
- § 51-5. Penalties.
- § 51-6. Salesmen.
- § 51-7. Contract ~~r~~Requirements.
- § 51-8. Miscellaneous ~~p~~Provisions.

§ 51-1. Short ~~f~~Title.

This chapter shall be known and may be cited as the "Home Improvement ~~e~~Chapter of Arlington County, Virginia."
(7-1-75)

§ 51-2. Definitions.

For the purpose of this chapter, words used in the present tense include the future; words in the singular number include the plural number and vice-versa; the word "shall" is mandatory and not directory; the following phrases and ~~words 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 mean and include means the eCounty mManager of Arlington County, or any of his duly authorized deputies or agents designees.~~

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(2) ~~_____ "Contract" shall means any written agreement executed after May 1, 1975, to perform home improvement work in return for payment.~~

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(3) ~~_____ "Contract buyer" shall means any person who offers payment in return for a promise to perform home improvement work; provided that such person is not himself a home improvement contractor.~~

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(4) ~~_____ "Contractor" shall means any person who engages or offers to engage in the home improvement business in Arlington County, whether full-time or part-time.~~

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(5) ~~_____ "Home Hmprovement Bbusiness" shall means the contracting for and/or providing material and labor for repairs, improvements and additions to and construction of residential buildings and structures accessory thereto, where any payment of money or other thing of value is required. This shall not include installation of any appliance, material or equipment not made a part of the real property and shall not include wallpaper or landscaping work or the application of paint; except that it shall include the application of paint or spray material when applied to roofing or asphalt paving; nor shall it include work done by contractors defined as electrical, plumbing, or HVAC contractors under the Virginia Board for Contractors Rules and Regulations (Section § 18 VAC 50-22-20 Definition of license/certificate classification) as they may be amended from time to time who are duly licensed as such under Code of Virginia Title 54.1 Chapter 11.~~

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(6) ~~_____ "Licensing authority" shall means that eCounty agency designated by the eCounty mManager as the duly authorized administrative and enforcement officer of this chapter.~~

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(7) ~~_____ "Person" shall mean and include means any individual, firm, corporation, association or~~

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partnership.

~~(8)~~ ~~_____~~ "Thing of value" ~~shall~~ means any valuable consideration and shall include, but not be limited to, cash, promissory notes, installment contracts, or other written promises to pay, chattel mortgages or deeds of trust; provided that the term "payment of money or other thing of value" shall not include the promise to pay embodied in the contract itself.
(7-1-75; 12-8-79; Ord. No. 99-3, 1-23-99; Ord. No. 99-4, 2-20-99)

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§ 51-3. Licenses.

~~(1)A.~~ *Requirement for a license.* No person shall engage in business as a home improvement contractor unless he has a license issued in accordance with this chapter.

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~~(2)B.~~ *Application for a license.*

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~~(2-1)1.~~ An application for a license to engage in business as a home improvement contractor shall be made in such form and detail as the licensing authority shall prescribe and which will enable the licensing authority to make a determination as to the qualifications of the applicant. Every application shall be affirmed as true by the applicant, and shall specify the individual and the address of the individual on whom notices may be served pursuant to this chapter.

~~(2-1-1)~~ An applicant, officer or employee of an applicant for a home improvement contractor's license shall submit to an examination designed to test his knowledge of the requirements of the home improvement ordinance and qualifications to engage in work as a home improvement contractor in the area of his specialty. Every licensee shall, at all times, have a person who has successfully passed the examination, in direct charge of supervising all of its home improvement contracting business. The licensing authority may recognize on a reciprocal basis jurisdictions whose competence examination requirements are equivalent. The building contractor's exam given as part of the licensing requirements for the state Class B license shall be deemed equivalent to the Arlington County structural exam.

~~(2-2)2.~~ Licenses shall be granted unless one ~~(1)~~ or more of the following facts are found to exist and, even if facts No. ~~a~~, ~~b~~ and ~~c~~ exist, the license shall be granted if the applicant produces satisfactory evidence that the applicant will perform its home improvement contracts notwithstanding the existence of such facts:

~~(2-2-1)a.~~ That the applicant has failed to pay financial obligations, that were outstanding during the two-~~(2)~~ year period prior to filing of the application, or that the applicant is financially insolvent.

~~(2-2-2)b.~~ That the applicant has had a license similar to the license provided for by this ~~C~~chapter suspended or revoked by the State of Maryland, the State of Virginia, or any political subdivision of either, or the District of Columbia within the three (3) year period prior to the filing of the application.

~~(2-2-3)c.~~ That the applicant has in the three (3) year period prior to filing of the application been found guilty of fraudulent or dishonest dealing in the home improvement business in the State of Maryland, the State of Virginia, or any political subdivision of either, or in the District of Columbia.

~~(2-2-4)d.~~ That the applicant has made a material misstatement in the application for a license.

~~(2-2-5)e.~~ That the applicant has failed to make available to the licensing authority such information as is requested for the purpose of determining if the applicant is entitled to a license.

~~(2-2-6)f.~~ Neither the applicant nor an officer or employee has successfully passed an examination to determine the qualifications to engage in work as a home improvement contractor.

~~(3)C.~~ *Documents in support of application.* Application for a license shall be accompanied by:

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~~(3-1)1.~~ A copy of the contract forms to be used by the contractor, which shall be in accordance with the provisions of ~~section §~~ 51-7 below, and which shall be approved by the licensing authority. Such contract shall comply in all respects with this ~~C~~chapter and any other applicable law. The applicant may also submit for "approval" by the licensing authority a form to be used as an "emergency waiver" of the three-~~(3)~~ day waiting period established in ~~section §~~ 51-7, ~~B(2)~~ of this Code.

~~(3-2)2.~~ If the applicant is a nonresident of the Commonwealth of Virginia, a designation by name and address of a person who is a resident of the Commonwealth of Virginia, and who, by a signed and notarized statement, agrees to be the statutory agent of the applicant, to accept service of process, notices, summons or other legal notices upon said statutory agent, which, when duly made, shall constitute sufficient foundation for a personal judgment against the applicant, when the other requisites therefore exist. Said statutory agent shall notify the licensing authority in writing of any change in his address or any change in the conditions of his agreement to act as agent for the applicant.

~~(3-3)3.~~ A nonrefundable twenty-five dollar (\$25.00) investigation and processing fee.

~~(3-4)4.~~ Evidence satisfactory to the licensing authority that the operations proposed to be conducted by such applicant under the authority of the license for which application is made will be covered by public liability and property damage insurance for the full period of the license. Such insurance shall be cancellable only after thirty (30) days notice to the licensing authority, and shall provide a minimum limit of liability of fifty thousand dollars (\$50,000.00) in the aggregate for death of any one ~~(1)~~ person in any one ~~(1)~~ occurrence, one hundred thousand dollars (\$100,000.00) in the aggregate for more than one ~~(1)~~ person in one ~~(1)~~ occurrence, and ten thousand dollars (\$10,000.00) property damage in any one ~~(1)~~ occurrence.

~~(4)D.~~ *Denial of application.* When a license is denied, the applicant shall be entitled to a written statement setting forth the reasons for denial, and shall be entitled to appeal the decision of the licensing authority under the procedure set out in ~~section §~~ 51-5(3) below.

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~~(5)E.~~ *License term and issuance; identification card.*

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~~(5-1)1.~~ Upon approval of the application for a license, or renewal of a license, the licensing authority shall issue a license in such form and size as he deems appropriate, and said license shall show on its face that it is valid for one (1) year from date of issuance.

~~(5-2)2.~~ The licensing authority shall prepare and issue to each licensee an identification card which shall certify that the person whose name appears thereon is a licensed home county of any work performed by a licensee under this improvement contractor. Each license shall carry on his person his identification card, and shall display such card upon the request of any contract buyer, prospective contract buyer, or other person with whom such licensee may deal in connection with carrying on his activities as a contractor.

~~(5-3)3.~~ The fee for issuance of a license, or a renewal, shall be fifty dollars (\$50.00).

~~(5-4)4.~~ The license and identification card shall bear a warning in the nature of a disclaimer of any implied warranty by the ~~e~~Ccounty of any work performed by a licensee under this chapter.

~~(5-5)5.~~ The licensing authority shall keep records of all licenses issued, suspended or revoked. These records shall be open to the public for inspection during regular business hours.

~~(5-6)6.~~ Upon request by a bona fide licensee and upon the receipt of a fee of one dollar (\$1.00) for each duplicate, the licensing authority shall issue to such licensee duplicate copies of the identification

card. It shall be unlawful and constitute a misdemeanor for anyone in possession of such a duplicate identification card to represent that he or she is a licensee or representative of a licensee if such permission to use the identification card has not been granted by the licensee.

(7-1-75; 12-8-79; Ord. No. 99-3, 1-23-99; Ord. No. 99-4, 2-20-99)

§ 51-4. Bond Requirement.

~~(A)~~ Each applicant for a home improvement contractor's license shall file with the licensing authority a surety bond or other security as approved by the ~~e~~County ~~a~~Attorney in the sum of ten thousand dollars (\$10,000.00) payable to the County of Arlington. Each such bond shall be in a form approved by the ~~e~~County ~~a~~Attorney and shall be from a bonding company licensed to do business in the Commonwealth of Virginia, and shall be kept in force during the entire license period or the license shall be invalid.

~~(B)~~ Bonds shall be conditioned upon the observance by the licensee of all statutes, ordinances or regulations in force in Arlington County which relate, directly or indirectly, to the conduct of the licensee's home improvement business.

~~(C)~~ Bonds shall also be conditioned to indemnify and save harmless any contract buyer from any expense or damage that may result to him from:

~~(1)~~ Licensee's violation of any statute, ordinance or regulation in force in Arlington County which relates, directly or indirectly, to the conduct of the licensee's home improvement business; or

~~(2)~~ Licensee's performance of any home improvement work in a negligent or otherwise defective manner; or

~~(3)~~ Licensee's default, or other material breach in the conduct of the home improvement work.

~~(D)~~ Any person aggrieved by any act of the licensee in violation of the conditions of the bond shall have, in addition to his right of action against the licensee, a right to bring suit against the surety on the bond, and to recover, in an amount not exceeding the amount of the bond, any damages sustained by reason of any act of the licensee which is in violation of the conditions of the bond.

~~(E)~~ Any security deposited pursuant to this section shall be retained by the licensing authority for one (1) year after the expiration of the license in connection with which such security was deposited and if the licensing authority is notified in writing that a suit has been filed against any such licensee as a result of which a judgment may be payable out of such security, until such time as such suit has been reduced to judgment and the period for filing an appeal from such judgment has expired until the suit is otherwise disposed of.

~~(F)~~ Nothing in this section shall be construed to impose upon the surety on any such bond a greater liability than the total amount thereof, or the amount remaining unextinguished after any prior recovery or recoveries.

(7-1-75; Ord. No. 82-6, 2-27-82)

§ 51-5. Penalties.

~~(A)~~ *License suspension or revocation; denial of application for renewal of a license.* No licensee, nor any agent of any licensee, shall engage in any of the following acts or practices, the commission or which shall be cause for suspension or revocation of a home improvement license, or for denial of an application for renewal thereof, in addition to any other penalties provided at law.

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~~(1)~~ Willful failure or refusal to comply with the provisions of any statute, ordinance or regulation in force in Arlington County which relates, directly or indirectly, to the conduct of the licensee's home improvement business.

~~(2)~~ Use of any substantial willful misrepresentation in the procurement of a contract for home

improvement work, or making any false promise likely to influence, persuade or induce any person to enter into such a contract.

~~(1.3)~~3. Use of any fraud in the execution of, or in the material alteration of any contract, trust deed, mortgage, promissory note or other document incident to a home improvement contract.

~~(1.4)~~4. Use of false, misleading or deceptive advertising as an inducement to enter into any home improvement contract.

~~(1.5)~~5. Failure to pay judgments, or failure to pay just debts which may result in liens against the homeowner's property.

~~(1.6)~~6. Failure to use, or to complete all relevant parts of the contract forms approved by the licensing authority in connection with the license application.

~~(1.7)~~7. Failure to complete contract work as provided for in contract or contracts.

~~(1.8)~~8. Failure to provide information or records requested by the licensing authority or person or body hearing any appeals pursuant to this chapter when such information or records are being requested for the purpose of determining if a license should be revoked.

~~(1.9)~~9. Use or provision of goods or services which the contractor knows, or reasonably should know, will be ineffective to produce the benefits contracted for; or provision of goods or services the value of which, as measured by the price at which similar goods or services are readily obtainable elsewhere, is grossly inflated.

~~(1.10)~~10. Failure to have all work directly supervised by a person who has successfully completed examination required by ~~section § 51-3.B.1(2.1.1)~~.

~~(2)B.~~ *Notice of suspension, revocation or denial of application for renewal of a license.*

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~~(2.1)~~1. Whenever the licensing authority receives information that a licensee may be guilty of acts which constitute grounds for suspension or revocation of a license or for denial of an application for renewal of a license, he shall investigate such matter. If the licensing authority determines that probable grounds exist for suspension or revocation of a home improvement contractor's license or for denial of an application for renewal, he shall cause written notice of the impending action to be served on the licensee, which shall include the following:

~~(2.1.1)~~a. *Statement of facts.* It shall state generally the facts which constitute the basis for the possible action.

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~~(2.1.2)~~b. *Designation of violation.* It shall specify, where applicable, each of the sections of this chapter or other laws which are alleged to have been violated or not complied with.

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~~(2.1.3)~~c. *Hearing procedure.* It shall recite the procedure which the licensee may follow in order to have a hearing prior to the action's taking effect, the time within which such request for a hearing may be filed, which in no event may be later than fifteen (15) days of the mailing of the notice, and the effective date of the denial, suspension or revocation in the event no hearing is requested.

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~~(2.1.4)~~d. Such notice shall be deemed properly served when a copy is personally served on the licensee or when a copy is sent by certified mail, postage prepaid, to the address on the license application.

~~(3)C.~~ *Hearing procedure.* The licensee shall, if he requests a hearing, appear at the time and place specified in the notice for a hearing which shall in no event be later than thirty (30) days of the actual receipt by the

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licensing authority. The licensee shall be advised of the evidence which tends to establish the grounds for suspension, revocation or denial of a renewal, and the licensee shall be given the right to question any person giving information, and shall have the right to present such information or records as it desires. The hearing shall be conducted by the licensing authority, and the procedure shall be informal.

~~(4)D.~~ If the licensing authority determines from the information and records available that satisfactory evidence exists of one or more of the facts specified in subsections 51-5.A.1~~(4.1)~~ through 51-5.A.9~~(4.9)~~, it shall suspend, revoke or refuse to renew the license. The decision as between revocation and suspension shall be based upon the facts and circumstances surrounding the violation. The period of suspension shall be for such time from ten (10) to one hundred eighty (180) days, as the licensing authority, in its discretion, determines.

~~(5)E.~~ When a license is revoked or suspended or renewal of a license is not granted, the reasons for such action shall be stated in writing and a written notification of such action shall be personally served on the licensee or sent by certified mail, postage prepaid, to the address on the license application. The action of suspension or revocation shall be effective at 12:01 p.m. on the third business day following the day when the written statement provided for herein is signed by the licensing authority or at such time as the licensee is personally served with a copy of the statement provided for herein, whichever is earlier.

~~(5.1)1.~~ Personal service of notices pursuant to this section may be served by delivery to the individual named by the licensee in its application, and if the individual is not at the address specified in the application, the notice may be posted on the front door of the structure located at the address for the individual which is listed in the licensee's application.

~~(5.2)2.~~ Appeals. Appeal from denial, suspension or revocation of a license, after a hearing provided for in ~~section § 51-5.C(3)~~, shall be to the ~~b~~Building ~~e~~Code ~~b~~Board of ~~a~~Appeals which may affirm, modify or reverse the decision of the licensing authority. A party making such appeal must file his appeal within ten (10) days of the denial, suspension or revocation.

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~~(6)F.~~ Penalties for violations. It shall be unlawful and constitute a misdemeanor for any person to conduct a home improvement business without first having a valid and nonsuspended license as required by this chapter. Each day any person shall continue to violate the provisions of this chapter shall constitute a separate offense.
(7-1-75)

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§ 51-6. Salesmen.

~~(4)A.~~ Act of salesman considered act of contractor. For the purposes of this chapter, the act or omission by any salesman or other agent of a home improvement contractor, while acting or purportedly acting on behalf of the contractor, which act or omission is in violation of this chapter or is cause for denial, suspension, or revocation of the contractor's license, shall be considered the act of the contractor by whom such salesman or agent is employed, or for whom he purported to act, if such contractor approves the act, or, after actual notice of the act or omission, retains the benefit, proceeds, profit or advantage accruing from the act or omission or otherwise ratifies it.
(7-1-75)

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§ 51-7. Contract Requirements.

~~(4)A.~~ Contract to be in writing. All agreements to perform home improvement work involving a payment greater than fifty dollars (\$50.00) shall be in writing, and executed in triplicate using the contract form submitted by the home improvement contractor in connection with his application for a license, which form shall set forth fully and completely the agreement between the parties, and shall be signed by the contractor or his agent. In lieu thereof, the contractor may use a contract form substantially in compliance with a form prescribed by the licensing authority.

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It shall be unlawful for a home improvement contractor to cause or permit any contract or other document relating to the performance of home improvement work to be signed by the contract buyer before all blank spaces are filled in with easily legible writing, and such contractor or agent has submitted to the contract buyer the

completed contract and other documentation and given him a reasonable opportunity to examine it. The contract buyer shall be given a copy of the contract when both parties have signed all copies of the complete contract, and a copy shall accompany the building permit application when such permit is required for the work involved.

~~(2)B.~~ *Cooling-off period for certain transactions.*

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~~(2-1)1.~~ When a contract is made which involves total cost to the contract buyer greater than fifty dollars (\$50.00), or involving an extension of credit to the contract buyer, the contract buyer shall have a right to cancel the contract without penalty until midnight of the third business day after the day on which the contract buyer signs the contract unless the contract buyer waives this right in accordance with ~~section § 51-7.B.3(2-3)~~. Cancellation shall be effected by the buyer giving or mailing written notice of cancellation to the seller at the seller's address which shall be stated in the contract.

~~(2-2)2.~~ No contract subject to cancellation by the contract buyer under the terms of ~~section § 51-7.B.1(2-1)~~ shall be assigned until after midnight of the third business day after the day on which the contract buyer signs the contract.

~~(2-3)3.~~ The contract buyer may waive his right to cancel under ~~section § 51-7.B.1(2-1)~~ if he desires immediate performance of the contracted-for home improvement work, and if the contract buyer makes a written request in a dated writing, personally signed by him, which expressly states that the buyer understands that he is waiving his right to cancel the contract under ~~section § 51-7.B.1(2-1)~~. Such a waiver may be on a form supplied by the contractor if that form has been approved by the licensing authority as provided in ~~section § 51-3.C(3)~~.

~~(3)C.~~ *Required contract terms. All home improvement contracts shall include the following:*

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~~(3-1)1.~~ Name, address and license number of the contractor, and the name of any agent who solicited or negotiated the contract.

~~(3-2)2.~~ The approximate dates when the work will begin and be substantially completed.

~~(3-3)3.~~ A description of the work to be done, and description of the materials to be used and the agreed consideration for the work.

~~(3-4)4.~~ The number and due date of all payments and amount of each payment stated as a sum in dollars which shall include all finance charges. In the alternative, the contract may include a statement of terms which meet the standards of the Federal Truth in Lending Act (Consumer Credit Protection Act).

~~(3-5)5.~~ A description of any collateral security taken or to be taken for the contract buyer's obligation under the contract.

~~(3-6)6.~~ The following statement, in boldface type, no smaller than ten (10) point:

“WARNING

The contract hereby expressly warrants that all home improvement work done pursuant to this contract shall be of workmanlike quality, and shall be in accordance with all applicable building codes.

The contractor further warrants that all materials and supplied equipment shall be of merchantable quality, and shall be fit for the particular use for which they are intended.”

~~(3-7)7.~~ Final payment shall not be required until final approval is obtained from the ~~h~~inspection ~~s~~Services ~~d~~Department if the work involved required a building permit.

(7-1-75)

§ 51-8. Miscellaneous Provisions.

(A) Administration and enforcement. The administration and enforcement of this chapter shall be the duty of the licensing authority who is hereby authorized to take such actions, including the promulgation of rules and regulations, as may be reasonably necessary to enforce its provisions. Such persons may be appointed and authorized as assistants, or agents of the licensing authority as may be necessary to carry out the provisions of this chapter. The licensing authority is hereby authorized, whenever he may have reason to suspect that violations of this chapter have taken or are taking place, to require the production of books of accounts, contract agreements, financial statement or other records which relate to the home improvement business.

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(B) Compliance with County Code. Nothing in this chapter shall be construed to exempt any licensee from compliance with all other applicable provisions of the County Code. Home improvement contractors shall be responsible that required permits are obtained, that the laws of the County and state are complied with, and that all work is performed in accordance with the conditions and terms of such permits.

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The Inspection Services Department shall not issue a building permit for home improvement work to a contractor who does not have a current home improvement contractor's license issued in accordance with the requirements of this chapter.

(C) Inapplicability of chapter to certain persons. Nothing in this chapter shall apply to any person performing home improvement work on a building of which he is the bona fide owner to the extent such person is exempted from licensing requirements by Section 54.1-1101 of the Code of Virginia or to contractors licensed by the Commonwealth of Virginia in accordance with Title 54.1 Chapter 11 of the Code of Virginia and exempted from local licensing by Title 54.1, Chapter 11, as it may be amended from time to time.

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(D) Severability. Should any clause, sentence, paragraph or part of this chapter or the application thereof to any person or circumstance, be adjudged by a court of competent jurisdiction to be unconstitutional or invalid, said judgment shall not affect, impair or invalidate the remainder of this chapter or the application of such provisions to other persons or circumstances, but shall be confined in its application to the clause, sentence, paragraph or part thereof, directly involved in the controversy in which said judgment shall have been rendered, and to the person or circumstance involved.

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(E) Conflict of chapter. 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 in the effective date of this article, the provision which establishes the higher standard for the promotion and protection of the health and safety of the people shall prevail 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 which establishes a lower standard for the promotion and protection of the health and safety of the people, the provisions of this chapter shall be deemed to prevail, and such other provisions are hereby declared to be repealed to the extent that they may be found in conflict with this chapter.

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(7-1-75; Ord. No. 99-3, 1-23-99; Ord. No. 99-4, 2-20-99)

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Chapter 52

CHILD CARE CENTERS, PRESCHOOLS, NURSERY SCHOOLS, PARENT'S-DAY-OUT PROGRAMS,
AND COOPERATIVE PLAYGROUP PROGRAMS

- § 52-1. General Provisions - Policy.
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- § 52-29. Child ~~e~~Care ~~e~~Centers.
- § 52-30. Preschools and ~~n~~Nursery ~~s~~Schools.
- § 52-31. Parent's-~~d~~Day-~~e~~Out ~~p~~Program.
- § 52-32. Cooperative Playgroups.

§ 52-1. General Provisions - Policy.

It is hereby declared to be the policy of the County of Arlington in the exercise of its police power for the protection of the public safety, public health and general welfare to provide for the licensing and regulation of child care centers, preschools, nursery schools, and parent's-day-out programs, and cooperative playgroup programs in order to adequately protect the children of Arlington County.
(4-25-81)

§ 52-2. Definitions.

The following ~~definitions shall apply to these~~ words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

(a) "Child care center" means any facility operated for the purpose of providing care, protection and

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guidance to a group of children separated from their parents or guardian during a part of the day only except:

- (1) A facility licensed by the State of Virginia as a summer camp.
(2) A public school or private school comprised of first through twelfth grade or any portion thereof unless the eCounty mManager determines that such private school is operating a child care center outside the scope of regular classes.
(3) A school operated primarily for the educational instruction of children from three (3) to five (5) years of age at which children of three (3) or four (4) years of age do not attend in excess of four (4) hours per day and children five (5) years of age do not attend in excess of six and one-half (6 1/2) hours per day.
(4) A facility which provides child care on an hourly basis which is contracted for only occasionally by a parent.
(5) A Sunday School conducted by a religious institution or a facility operated by a religious organization where children are cared for during short periods of time while persons responsible for such children are attending religious services.
(6) A facility operated by a hospital on the hospital's premises, which provides care to the children of the hospital's employees while such employees are engaged in performing work at the hospital.
(7) Any private school regulated under Chapter 16 of this Code operated for the purpose of providing specialized training courses for more than four (4) children, such as beauty schools, dance schools and karate and self-defense schools.

This definition shall not include a private family home in which children are received for care, protection and guidance.

(b) "Preschool" or "nursery school" means any agency operating for the purpose of providing care, maintenance or training for more than four (4) children of less than school age on a regular basis during any part of the day where two (2), three (3), and four (4) year old children are in attendance for less than four (4) hours a day and five (5) year old children for less than six and one-half (6 1/2) hours a day.

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(e) "Parent's-day-out program" means any facility operating for the purpose of providing care, maintenance or training for more than four (4) children of less than school age during any part of the day where children from infancy to five (5) years old are in attendance not more than six and one-half (6 1/2) hours a day.

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(d) "County mManager" means the eCounty mManager of Arlington County in his role as the local board of public welfare or any of his duly authorized deputies or agents/designees acting in his-their role as the local board of public welfare.

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(e) "Child" means any person less than eighteen (18) years old.

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(f) "Cooperative playgroup" means any facility for the purpose of providing care, maintenance and training activities for more than four (4) but not more than fifteen (15) children of less than school age for less than three (3) hours per day, where supervision of children is provided by a parent on a cooperative basis. (4-25-81)

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§ 52-3. License rRequired; pPosting of lLicense.

It shall be unlawful to operate a child care center, preschool or nursery school or parent's-day-out program as defined herein without a valid, nonsuspended license issued pursuant to this chapter. Such license shall be posted

in a conspicuous location within the licensed premises.

§ 52-4. Application for Hlicense.

Any person who operates or maintains a child care center, preschool, nursery school or parent's-day-out program shall make application to the eCounty mManager, or his ~~designated agent designee~~, for a license in the name of the person for the specified structure to which the application relates. No license issued pursuant to this chapter shall be transferable.

§ 52-5. Investigation or ~~r~~Receipt of ~~a~~Application.

Upon receipt of the application, the eCounty mManager shall cause an investigation to be made of the activities, services and facilities of the applicant; of the applicant's financial responsibility and of his character and reputation or, if the applicant be an association, partnership or corporation, the character and reputation of its officers and agent as they relate to the applicant's ability to maintain the facility and work with children. The applicant shall afford the representative of the eCounty mManager required to make the investigation reasonable opportunity to inspect all of the applicant's facilities, books and records and to interview the applicant or his agent's and employees.

§ 52-6. Issuance of the Hlicense.

Upon completion of the investigation, the eCounty mManager shall grant a license in writing required by this chapter to any applicant thereof upon production of evidence satisfactory to him that the applicant, his facilities, services and activities are in compliance with the provisions of this chapter, the Arlington County Code, the Code of Virginia and the standards and policies prescribed hereunder.

§ 52-7. Denial of ~~a~~Application.

~~(a)~~A. The eCounty mManager shall deny a license to any applicant upon a finding by him that activities, services and facilities of the applicant are in violation of any provision of this chapter, the Arlington County Code, the Code of Virginia or the standards and policies prescribed hereunder.

~~(b)~~B. Upon the denial of the application for a license or renewal under this chapter, or upon revocation of a permit as described in ~~section §~~ 52-10, the eCounty mManager shall notify the applicant that the application is denied or revoked, stating:

~~(1)~~ The reason for the denial;

~~(2)~~ That the applicant has the right to request a hearing if written request is made within thirty (30) days after receipt of the notice of denial. Unless written request is made within the thirty-~~(30)~~ day period, the applicant's right to a hearing is waived.

§ 52-8. Renewal of Hlicense.

Every license shall be renewed annually on or before thirty (30) days prior to the expiration of the license. The facilities and records of each applicant for a renewal of a license may be inspected or examined by the eCounty mManager or his designee to determine whether the applicant is in compliance with the standards of this chapter.

§ 52-9. Suspension of Hlicense.

~~(a)~~A. Whenever the eCounty mManager finds by complaint, investigation or otherwise that any condition exists, within a facility required to be licensed by this chapter, which is a violation of the ordinance but does not endanger the life, health or safety of the children, he shall order that the necessary corrective action be taken within a specified period of time as determined by the eCounty mManager.

~~(b)~~B. Whenever the eCounty mManager finds by complaint, investigation or otherwise that any condition exists that endangers the life, health or safety of the children, within a facility required to be licensed by this chapter, he shall order that the license to operate the facility be temporarily suspended. Whenever a license has been so temporarily suspended, a hearing shall be held before the eCounty mManager to determine whether the license to operate the facility should be permanently suspended. If the temporary suspension occurs during normal business hours, the hearing shall be held prior to 5:00 p.m. of that day. Should the temporary suspension occur after business hours, the hearing shall be held on the next regular business day. At the hearing, a representative of the facility shall have the right to answer personally or in writing or both personally and in writing. The right to answer personally includes the right to answer orally in person to being given a reasonable opportunity to make any representations which the representative believes might affect the final decision of the eCounty mManager.

The eCounty mManager shall send a written statement of the findings of the hearing to the facility within twenty-four (24) hours after the hearing is terminated. In the event the eCounty mManager finds that the conditions at the facility do not endanger the life, health or safety of the children, he shall order that the license of that facility be reinstated immediately. In the event that the eCounty mManager finds that there exist conditions which endanger the life, health or safety of the children, he shall order that the license of that facility be permanently suspended until such time as the conditions which caused said suspension are eliminated.

§ 52-10. Revocation of ~~H~~License.

The eCounty mManager shall revoke the license of any establishment ~~of if~~ the corrective action specified under ~~section § 52-9.A(a)~~ of this chapter is not taken. Procedure for revocation of a license shall be the same as described in ~~section § 52-7~~ of this chapter. Nothing in this section shall be construed to deny the right of any facility so affected to reapply for a license in accordance with the procedures established by this chapter.

§ 52-11. Deferred eCompliance.

The owner or operators of any facility required to be licensed by this chapter, operating in the eCounty as of the effective date of this chapter, may apply for and be granted a time period not to exceed twelve (12) months in order to comply with the standards and policies prescribed hereunder which were not in effect on the date of enactment of this chapter. All other provisions of this chapter become effective upon the effective date of the chapter.

§ 52-12. Inspection ~~p~~Period.

Each facility required to be licensed by this chapter shall be subject to inspection by health authorities and by the eCounty mManager or his ~~designated agent designee~~ at least once a year and as often as deemed necessary for the purpose of determining that there is compliance with the provisions of this chapter.

§ 52-13. Records and ~~r~~Reports.

Each child care center, preschool and nursery school shall provide each prospective applicant for enrollment information concerning the education and training of the director and teacher.

The following records shall be maintained and be made available for eCounty and ~~s~~State inspection and shall be kept accurate and kept current:

- ~~(A)~~ *Types.*
- ~~(1)~~ An up-to-date register of all children admitted.
- ~~(2)~~ Individual child records.

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- (3.) Individual employee records including appointment, promotion or withdrawal notification.
- (4.) Any records required to be kept by sState or local law.
- (B.) *Content.* As a minimum, each record shall contain the following information:
 - (1.) Child register.
 - (a.) Child's name in full (and nickname, if any);
 - (b.) Home address;
 - (c.) Home telephone number;
 - (d.) Date of admission;
 - (e.) Sex;
 - (f.) Birth date;
 - (g.) Father's name in full;
 - (h.) Father's business address;
 - (i.) Father's business telephone number;
 - (j.) Mother's name in full;
 - (k.) Mother's business address;
 - (l.) Mother's business telephone number;
 - (m.) Designation of person authorized to receive child at end of session;
 - (n.) Name and telephone number of person to be contacted in an emergency when parent is not available;
 - (o.) Name and telephone number of the child's physician;
 - (p.) Hospital preferred by parents in case of emergency;
 - (q.) Date of child's withdrawal;
 - (r.) Reason(s) for withdrawal (child care centers only).
 - (2.) Child's health record.
 - (a.) Name in full;
 - (b.) Address;
 - (c.) Sex;
 - (d.) Date of birth;

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- | ~~(e.)~~ Date of examination;
- | ~~(f.)~~ Physician's report concerning general physical condition of child;
- | ~~(g.)~~ History of illnesses and diseases including allergy and specific communicable diseases;
- | ~~(h.)~~ Recent exposure to communicable disease;
- | ~~(i.)~~ Specific immunizations received (give dates);
- | ~~(j.)~~ Result of tuberculin testing;
- | ~~(k.)~~ Corrective defects recommendations and other remarks of examining physician;
- | ~~(l.)~~ Physician's signature;
- | ~~(m.)~~ Physician's address and telephone number;
- | ~~(n.)~~ Parents' health insurance information;
- | ~~(o.)~~ Parents' signed authorization for treatment of child in an emergency;
- | ~~(p.)~~ Name and telephone number of person to be contacted in an emergency.
- | ~~(3.)~~ Employee's teacher's and participating parent's record.
 - | ~~(a.)~~ Name and address of employing facility;
 - | ~~(b.)~~ Employee's name in full;
 - | ~~(c.)~~ Home address;
 - | ~~(d.)~~ Home telephone number;
 - | ~~(e.)~~ Sex;
 - | ~~(f.)~~ Birthdate;
 - | ~~(g.)~~ Title of position;
 - | ~~(h.)~~ Duties;
 - | ~~(i.)~~ Date of health examination;
 - | ~~(j.)~~ Employee's health record:
 - | ~~(1.)~~ Physician's signed statement concerning employee's general physical condition, freedom from disease in a communicable form and physical ability to work closely with or care for children without danger to such children;
 - | ~~(2.)~~ Date of chest X-ray or negative TB skin test;
 - | ~~(3.)~~ Date of laboratory tests for syphilis, gonorrhea or other communicable disease

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when such tests are required by the ~~e~~Commonwealth;

~~(4)~~ Physician's signature, address and telephone number;

~~(k)~~ Employee's educational background;

~~(l)~~ Name and telephone number of person to be contacted in an emergency;

~~(m)~~ Signature of employee;

~~(n)~~ Signature of employer.

§ 52-14. Emergency ~~p~~Provisions.

A plan for emergency situations and for illness of staff shall be maintained and made available for ~~e~~County and ~~s~~tate inspections.

§ 52-15. Conflict of ~~e~~Chapter.

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 higher standard for the promotion and protection of the health and safety of the people shall prevail. 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, which establishes a lower standard for the promotion and the protection of the health and safety of the people, the provisions of this chapter shall be deemed to prevail; and such other provisions are hereby declared to be repealed to the extent that they may be found in conflict with this chapter.

§ 52-16. Penalties.

The person, firm or corporation who operates a child care center, preschool, nursery school or parent's-day out program without a valid license issued pursuant to this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not to exceed three hundred dollars (\$300.00), or by imprisonment in jail not exceeding thirty (30) days, or both. Each day of violation shall constitute a separate offense.

§ 52-17. Severability.

Should any clause, sentence, paragraph or part of this chapter or the application thereof to any person or circumstances be adjudged by a court of competent jurisdiction to be unconstitutional or invalid, said judgment shall not affect, impair or invalidate the remainder of this chapter, or the application of such provisions to other persons or circumstances, but shall be confined in its application to the clause, sentence, paragraph or part thereof, directly involved in the controversy in which said judgment shall have been rendered, and the person or circumstances involved.

§ 52-18. Building ~~s~~Structure and ~~f~~Facilities.

~~(A)~~ No child care center, preschool, nursery school or parent's-day-out program shall begin operation until the premises to be occupied shall have been approved by the ~~e~~County ~~m~~Manager, who shall establish procedures for investigation and report by the administrative officers of the building, plumbing, electrical, health, and fire prevention codes.

~~(B)~~ An applicant for a permit to operate a child care center, preschool, nursery school or parent's-day out program shall submit to the ~~e~~County ~~m~~Manager plans and specifications of the quarters proposed to be occupied. Such plans shall show details of entrances, partitions, windows, openings, ventilation, plumbing fixtures, food service equipment, playground equipment and related facilities. The food preparation area shall conform ~~to~~ the

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requirements of the ~~f~~Food and ~~f~~Food-establishments Handling Code-ordinance of Arlington County, Virginia (Chapter 9.2) and Chapter 3 of the Code of Virginia State Board of Health, where applicable. The premises shall meet the requirements of the Arlington County-~~Housing Building Maintenance Standards-Ordinance Chapter~~ (Chapter 29).

§ 52-19. Safety.

(a)A. Care shall be exercised in the transportation of children to and from the facility. In any vehicle used for the transportation of children, there shall be a seat for each child. The vehicle shall be operated at a safe speed.

(b)B. The interior of the facility shall be finished in light or bright colors, the walls and ceilings finished with washable paint or similar washable finish. The floor shall be smooth and free of splinters. All equipment, toys and furnishings shall be selected with prime consideration to the safety of the children. No highly flammable fabrics or other materials shall be used or be present in or about the premises.

(c)C. The location of the building shall be safe from traffic hazards. No facility may be in a location where unusual conditions exist that would be hazardous to the welfare of the children.

§ 52-20. Sanitation and ~~h~~Hygiene.

(a)A. All walls, ceilings, floors, toilet facilities, food serving facilities, and all other physical facilities for the establishment must be in good repair and maintained in a clean and sanitary manner.

(b)B. Soap safe for use by children, sanitary towels and toilet tissue shall be provided at all times.

(c)C. Linen shall be clean and laundered, handled and stored in an approved manner.

(d)D. Adequate refuse receptacles shall be provided and emptied and cleaned as required. Refuse receptacles must have lids.

§ 52-21. Indoor ~~f~~Facilities.

(a)A. A minimum of thirty-five (35) square feet of play area per child and three hundred (300) cubic feet of air space per child shall be provided.

(b)B. Adequate ventilation as prescribed by the building code shall be provided.

(c)C. Drinking water shall be accessible to the children at all times.

(d)D. A room or available space for isolation of sick children shall be provided in each facility.

(e)E. Adequate space for each child's clothing must be provided so that it may be hung separately.

(f)F. In child care centers and parent's-day-out programs, a separate crib, which meets the federal standard of safety, cot or plastic mat shall be provided for each child resting at any given time, and kept in a sanitary condition. When in use, there shall be at least two (2) feet of space between cots.

(g)G. In child care centers and parent's-day-out programs, pillows shall not be used and mattresses used only if covered with a moisture proof material, which shall not be polyethylene film or similar material, and should be covered by an under sheet. Crib bedsides are always to be up, and the fastenings are to be secured. Under sheets shall be provided and be sufficient in number to provide at least one (1) change a week. Sufficient blankets shall be provided to assure adequate warmth. Sheets and blankets shall be assigned to individual use and shall not be used by other children without first being properly laundered.

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~~(h)~~H. A minimum of one (1) toilet and one (1) hand basin shall be provided for each fifteen (15) children or major fraction thereof.

~~(l)~~L. There shall be adequate separation between kitchen and toilet space.

~~(j)~~J. Adequate lighting and ventilation shall be provided in each room at all times in conformity with ~~s~~State and local building codes.

~~(k)~~K. All parts of the building used by the children shall be adequately heated. The heat must be evenly distributed at a temperature of between sixty-eight (68) degrees and seventy-two (72) degrees Fahrenheit to be maintained in the children's room. Temperature should be taken at one (1) or two (2) feet from the floor.

~~(l)~~L. If an electric heater is used to supplement heat of any room, it must be placed out of the reach of the children. Gas stoves, if used, must be approved by the fire official responsible for inspecting fire hazards.

~~(m)~~M. When a fan is used for cooling, it must be out of reach of children or screened for the protection of the children.

~~(n)~~N. Electrical outlets in all rooms used by children should have protective caps and, if possible, should be placed above child height. If the building is an old one, electrical wiring in the walls as well as the outlets must be checked periodically to eliminate fire hazards.

~~(o)~~O. Where children under two (2) years of age are cared for, adequate daylight is the preferable lighting. If artificial light is necessary, the lighting should be equal to ten (10) footcandles of light. All working space and examining tables must be provided with one hundred (100) footcandles of light.

~~(p)~~P. Whenever the ~~e~~County ~~m~~Manager shall determine and declare that an energy shortage exists, the minimum thermal standards set forth in this chapter shall be superseded by thermal standards established by the ~~e~~County ~~m~~Manager. Such standards shall be consistent with the nature and extent of the energy shortage and the health and safety of the occupants. These standards shall remain in effect until the ~~e~~County ~~m~~Manager shall declare the emergency is ended.
(4-2-77)

§ 52-22. Outdoor ~~f~~Facilities.

~~(a)~~A. A safe fenced play area shall be available with an allowance of seventy-five (75) square feet per child, provided that in C-O and R-A Zoning Districts such area shall be available and safely accessible. Fencing shall not be required if the applicant can show that the play area provides proper protection from traffic and other hazards. Individual group play times can be staggered to meet area size requirements.

~~(b)~~B. Equipment that is sturdy and so constructed and maintained as to be safe to use shall be provided.

~~(c)~~C. The play area shall be kept free of all debris.
(9-27-76)

§ 52-23. Fire ~~s~~Safety.

Fire drills shall be conducted in accordance with the provisions of ~~section §~~ 8-F106.2, of the Arlington County Fire Code. Each facility shall be inspected by local fire officials at least once a year.

§ 52-24. Inspections.

Each facility shall be subject to inspection by health authorities at least once a month and by the Arlington

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County Manager or his ~~representatives~~ designees as often as deemed necessary.

§ 52-25. Director, ~~a~~AAdministrator or ~~a~~AAdministrative ~~b~~BBody.

~~(a)~~A. A director, administrator or administrative body shall be legally responsible for the operation of the facility.

~~(b)~~B. The director, administrator or administrative body shall have sufficient time, training and ability to carry out effectively the duties involved.

~~(c)~~C. The director, administrator, administrative body or coordinator, if so designated, shall be responsible for the day-to-day operations of the facility.

§ 52-26. Staff ~~m~~Medical ~~r~~Requirements.

Each employee who comes into contact with the children and each staff person responsible for preparation and serving of food must have a current medical certificate certifying freedom from chronic communicable or incapacitating disease, based on an examination by a licensed physician, including a negative chest X-ray or TB skin test. Volunteers must provide a current medical certificate certifying a negative chest X-ray or TB skin test before coming in contact with the children. Employees and volunteers shall provide certification of a negative chest X-ray or TB skin test annually thereafter. Records of examinations must be presented upon request. In the event of serious illness or hospitalization of the licensee or director, the director of human resources must be informed immediately of the nature of the illness or hospitalization and the arrangements that have been made for delegation of responsibility for operation of the program in the licensee's absence.

§ 52-27. Children's ~~m~~Medical ~~r~~Requirements.

Medical certificates and immunizations:

~~(a)~~A. Before admission and annually, each child must have a physical examination and shall present a physician's certificate of freedom from communicable diseases. A written record of such examinations shall be on file at the facility. If any chronic conditions or defects are present, the record shall include recommended diet and/or treatment.

~~(b)~~B. Each child, prior to admission, shall have had a TB test and shall have been immunized (as appropriate for age) against diphtheria, whooping cough, tetanus, polio, measles (rubeola) and German measles (rubella). Copies of the immunization records shall be kept at the program's location.

~~(c)~~C. At the discretion of the director, a doctor's certificate must be presented before a child is readmitted after absence of more than five (5) days due to illness. With respect to the common childhood diseases such as measles, mumps, chicken pox and related diseases, the recommendations for exclusion from school as contained in the communicable disease chart issued by the Virginia State Department of Health must be followed. A copy of this chart must be posted in the facility.

§ 52-28. Health ~~p~~Procedures.

The program, through its health policies and practices, shall provide for the health development of the children under care.

~~(a)~~A. *Morning inspection.* There shall be a morning inspection of each child as he arrives and before he has mingled with the other children. If a trained nurse is not available, the inspection shall be made by a person, familiar with the children, who has been instructed as to how the inspection should be made. If there are indications

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of illness, the director or person in charge is responsible for taking the necessary action in accordance with ~~section §~~ 52-28.C(e).

~~(b.)~~ *First aid kit.* A first aid kit shall be provided and kept in an accessible place to adults but out-of reach of the children, and at least one (1) member of the staff trained in first aid shall be present whenever the program is in operation. This certificate shall be renewed periodically so as to be current. The telephone numbers of a hospital, rescue squad ambulance, and fire and police departments shall be posted in a conspicuous place for use in case of a serious accident, illness or emergency.

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~~(c.)~~ In case of illness of a child, the parents or adult specified by the parents shall be notified, and arrangements shall be made to take the child home or to a place specified by the parent.

§ 52-29. Child eCare eCenters.

The provisions of this section pertain only to the regulation of child care centers.

~~(A.)~~ *Director.* Each child care center shall have a director who shall have the necessary qualifications and experience for the planning, conduct and supervision of the operation of a child care center.

~~(1.)~~ Qualifications:

~~(a.)~~ Master's degree from an accredited college in child development or early childhood education; or

~~(b.)~~ Master's degree from an accredited college in a related field including, but not limited to, education, social work, home economics, psychology, and one (1) year of experience as a teacher or director in a child care center or preschool run on child development principles; or

~~(c.)~~ Bachelor's degree from an accredited college in child development, early childhood education or a related field including, but not limited to education, social work, home economics, psychology, plus at least twelve (12) college semester hours, or the equivalent quarter hours of advanced study in child development or early childhood education and one (1) year of experience as a teacher or director in a child care center, preschool or kindergarten run on child development principles; or

~~(d.)~~ Bachelor's degree from an accredited college in child development, early childhood education or a related field including, but not limited to, education, social work, home economics, psychology, and two (2) years of experience as a teacher or director in a child care center, preschool or kindergarten run on child development principles; or

~~(e.)~~ Two (2) or more years of college with twelve (12) college semester hours, or the equivalent quarter hours, in child development or early childhood education and five (5) years of experience as a teacher or director in a child care center, preschool or kindergarten run on child development principles; or

~~(f.)~~ Directors operating licensed centers as of the effective date of this chapter who do not meet the above educational requirements shall have, or acquire within three (3) years, twelve (12) college semester hours, or the equivalent quarter hours, in child development or early childhood education or equivalent training.

~~(2.)~~ Duties: The director shall be responsible for the overall operation of the facility. Responsibilities shall include, but not be limited to, the following:

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- | ~~(a.)~~ Program planning and evaluation.
- | ~~(b.)~~ Provision of necessary professional supportive staff to ensure that required child-staff ratios are maintained and a child development program is provided.
- | ~~(c.)~~ Direction and supervision of staff.
- | ~~(d.)~~ Provision of in-service staff development and education program.
- | ~~(e.)~~ Designation of an assistant director or head teacher to assume administrative responsibilities in the director's absence.
- | ~~(f.)~~ Maintenance of up-to-date records, including personnel records.
- | ~~(g.)~~ Securing proper maintenance of center to ensure fulfilling all aspects of Commonwealth of Virginia and Arlington County codes and regulations.
- | ~~(h.)~~ Shall make a reasonable attempt to involve parents in the program.
- | ~~(i.)~~ Representation of the center to the community.
- | ~~(j.)~~ Responsibility for orientation of volunteers.
- | ~~(B.)~~ *Teacher.* Teacher shall mean a person qualified to initiate and maintain activities acceptable to a good daily program based on the principles of child development.
- | ~~(1.)~~ Qualifications:
 - | ~~(a.)~~ Bachelor's degree in child development, early childhood education or a related field including, but not limited to education, social work, home economics, psychology, which includes nine (9) college semester hours, or the equivalent quarter hours, in child development and/or early childhood education; or
 - | ~~(b.)~~ Two (2) years or more of college which includes at least fifteen (15) college semester hours, or the equivalent quarter hours, of child development and/or early childhood education courses; or
 - | ~~(c.)~~ Shall possess a high school diploma or its equivalency. This applies only to teachers serving in facilities at the time of adoption of this chapter. Persons falling within this category shall acquire, within two (2) years, nine (9) college semester hours, or the equivalent quarter hours, in early childhood education and/or child development or equivalent training; or
 - | ~~(d.)~~ In a child care center which has as part of its program a Montessori component, the Montessori teacher must, in the alternative, hold Montessori diploma for the level being taught from an institution approved by the American Montessori Society or the Association Montessori International. If a Montessori teacher is to be employed as a teacher in that part of the day which is non-Montessori, the teacher shall meet child care center teacher qualifications.
- | ~~(2.)~~ Duties: Shall be responsible for, but not limited to:
 - | ~~(a.)~~ Initiating and maintaining activities acceptable to a good daily program based on the principles of child development.

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- | ~~(b.)~~ The health, welfare and safety of the children.
- | ~~(c.)~~ The supervision of the assistant teacher, aide or volunteer assigned to the teacher's group.
- | ~~(d.)~~ Maintaining an attractive, orderly and clean room.
- | ~~(e.)~~ Attending in-service programs.
- | ~~(C.)~~ *Assistant teacher.*
- | ~~(1.)~~ Qualifications: Shall possess a high school diploma and certificate in child development from an accredited high school or high school diploma or equivalency certificate and two (2) years of in-service training in a preschool or child care center run on child development principles.
- | ~~(2.)~~ Duties: Shall assist the teacher in providing for the health, welfare and safety of a group of children. In the absence of the teacher, shall assume responsibility for the group. Shall assist the teacher in the classroom. Shall participate in the planning of the daily program for children. Shall perform such other duties in the classroom as are assigned.
- | ~~(D.)~~ *Teacher's aide.* Teacher's aide shall mean a person qualified to assist a teacher or teacher's assistant in the planning of the daily curriculum and the supervision of the children.
- | ~~(1.)~~ Qualifications: Shall complete an eight-week training course in child development or complete eight (8) weeks of in-service training, approved by the ~~e~~CCounty ~~m~~Manager, under the supervision of a qualified teacher; and shall have ability to work well with children and adults.
- | ~~(2.)~~ Duties: Shall assist the teacher in the planning of the daily curriculum; shall attend in-service training when offered; shall help keep classroom orderly, clean and attractive; prepare materials for activities; and assist in the care of equipment and supplies. When needed, shall assist in food preparation, serving and clearing up for mealtimes. When necessary, shall pick up and deliver children. Shall perform such other duties in the classroom as are assigned.
- | ~~(E.)~~ *Food and maintenance employees.* Child care centers shall provide sufficient personnel to maintain required Arlington County standards of cleanliness, safety, comfort and nutrition without depriving the children of proper supervision.
- | ~~(F.)~~ *Volunteers.* Volunteers shall show willingness and ability to work with children. Volunteers shall be under the supervision of the director, assistant director or teacher.
- | ~~(G.)~~ *Physical presence of staff*
- | ~~(1.)~~ The child care center shall have a director who is physically present during the week for at least one-half (1/2) of the time the children are present. In the director's absence, there must be a specifically designated assistant to function in the director's stead.
- | ~~(2.)~~ Regardless of the number of children under care, a minimum of two (2) responsible adults must be present at all times.
- | ~~(3.)~~ No child shall be left unattended at any time.
- | ~~(H.)~~ *Group size, child-adult ratio.*
- | ~~(1.)~~ The size of any one group of children in child care centers, shall not exceed that specified below

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for each particular age, and there shall be a teacher for each group with adequate staff or volunteer assistance to meet the applicable child-adult ratio. Child-adult ratios shall be maintained throughout the day.

Age	Maximum Size of Group	Child-Adult Ratio
Under 2	9	3--1
2	10	5--1
3	16	8--1
4 through 5	20	10--1
6 through 14	25	15--1

Where children of different ages are placed in groups, the ratio shall be adjusted by the director with the welfare of the youngest children in mind. A minimum of two (2) adults shall be required at the center during its hours of operation.

~~(2.)~~ In a child care center with a Montessori component, Montessori approved group sizes, as established by the American Montessori Society or the Association Montessori International, may be applied for the Montessori instruction period, providing sState-required child-adult ratios are maintained.

~~(1.)~~ *Program.* A child development program, as a program responsive to the progressive stages of physical, emotional, social and intellectual growth of the young child, shall be the focus of child care centers.

~~(1.)~~ The program shall be under the supervision and direction of a staff member trained or experienced in child development, early childhood education and/or related field including, but not limited to education, social work, home economics, psychology.

~~(2.)~~ The daily program shall be planned to:

~~(a.)~~ Reflect knowledge and understanding of the fundamental needs, growth and development of children.

~~(b.)~~ Have continuity and flexibility so the needs of individual children as well as the needs of the group are met.

~~(c.)~~ Provide a balance between periods of active play and quiet activities. Child care programs shall provide for rest during the day, the length of which will vary with the age of the child and the length of the program, but shall not exceed a total of three (3) hours.

~~(d.)~~ Include a schedule of planned events for each day. Routine such as snacks, meals, naps and play shall occur daily at approximately the same time. Within the schedule there shall be flexibility to allow for individual differences.

~~(e.)~~ Provide daily activities, for each child, designed to:

~~(1.)-~~ Influence a positive concept of self.

~~(2.)-~~ Stimulate motivation.

~~(3.)-~~ Enhance his physical, social, cognitive and communication skills by giving him opportunities to learn about himself and others, about social relationships and about the world around him.

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- | ~~(4)~~ Help him to deal with reality through tackling real tasks and learning to master them.
- | ~~(5)~~ Help him to develop skills in both large and small muscle activities.
- | ~~(6)~~ Help him to take responsibility for his bodily needs and encourage good health habits.
- | ~~(7)~~ Include at least two (2) hours of outdoor play, divided between morning and afternoon, when the weather is suitable.
- | ~~(f)~~ At no time shall the director use or permit corporal punishment or any humiliating or frightening methods of discipline.
- | ~~(g)~~ Children shall not be punished for refusing food nor shall they be deprived of meals or parts of meals or snacks as disciplinary measures.
- | ~~(h)~~ A weekly schedule of events shall be posted in a location readily visible to the staff and visitors.
- | ~~(j)~~ *Nutrition and food services.*
- | ~~(1)~~ The food for children shall be adequate for nutritional needs for wholesome growth and development. Special diets are to be provided as prescribed by a physician for individual children.
- | ~~(2)~~ Provision shall be made for the children's comfort during mealtime.
- | ~~(3)~~ Eating utensils and dishes shall be appropriate in size to be handled by the child. If disposable dishes and utensils are used, they shall be sturdy enough to prevent them from being a safety hazard.
- | ~~(4)~~ Disposable dishes and utensils shall be used only once and discarded.
- | ~~(5)~~ Meals and snacks:
 - | ~~(a)~~ Meals shall include a morning snack, an afternoon snack and a hot lunch. If the child arrives before 8:00 a.m., breakfast or a snack shall also be served soon after arrival.
 - | ~~(b)~~ The meals shall be planned to provide the opportunity for the child to learn to eat and enjoy a variety of nutritious foods.
 - | ~~(c)~~ Meals shall be served in a pleasant, clean atmosphere.
 - | ~~(d)~~ Children shall be served small size portions and shall be permitted to have additional servings.
 - | ~~(e)~~ Snacks shall be selected and planned to provide for nutritional needs of the child. Portions served shall be small in amount and served not less than one and one-half (1 1/2) hours prior to the meal.
 - | ~~(f)~~ Menus should either be provided on a weekly basis to parents or posted in a prominent place for their inspection.

§ 52-30. Preschools and ~~n~~Nursery ~~s~~Schools.

The provisions of this section pertain only to the regulation of preschools and nursery schools.

- ~~(A.)~~ *Director.* There shall be a director, administrator or administrative body for each preschool and nursery school.
- ~~(1.)~~ The director, administrator or administrative body shall be legally responsible for the operation of the facility.
- ~~(2.)~~ The director, administrator or administrative body shall have sufficient time, training and ability to carry out effectively the duties involved.
- ~~(3.)~~ The director, administrator, administrative body or head teacher, if so designated, shall be responsible for the day-to-day operation of the facility.
- ~~(B.)~~ *Director or head teacher, if any.* The director or head teacher shall have the necessary qualifications and experience for the planning, conduct and supervision of the operation of such a facility.
 - ~~(1.)~~ Qualifications:
 - ~~(a.)~~ Master's degree from an accredited college in child development or early childhood education; or
 - ~~(b.)~~ Master's degree from an accredited college in a related field including, but not limited to, education, social work, home economics, psychology, and one (1) year of experience as a teacher or director in a child care center, preschool or kindergarten run on child development principles; or
 - ~~(c.)~~ Bachelor's degree from an accredited college in child development, early childhood education or a related field including, but not limited to, education, social work, home economics, psychology, plus at least twelve (12) college semester hours, or the equivalent quarter hours, of advanced study in child development and/or early childhood education and one (1) year of experience as a teacher or director in a child care center, preschool or kindergarten run on child development principles; or
 - ~~(d.)~~ Bachelor's degree from an accredited college in child development, early childhood education or a related field including, but not limited to, education, social work, home economics, psychology, and two (2) years of experience as a teacher or director in a child care center, preschool or kindergarten run on child development principles; or
 - ~~(e.)~~ Two (2) or more years of college with twelve (12) college semester hours, or the equivalent quarter hours, in child development and/or early childhood education and five (5) years of experience as a teacher or director in a child care center, preschool or kindergarten run on child development principles; or
 - ~~(f.)~~ Directors or head teachers operating licensed schools as of the effective date of these regulations who do not meet the above educational requirements shall have or acquire, within three (3) years, twelve (12) college semester hours, or the equivalent quarter hours, in child development, early childhood education or equivalent training.
 - ~~(2.)~~ Duties: The director, administrator, administrative body or head teacher, if so designated, shall be responsible for the operation of the facility. Responsibilities shall include, but not be limited to, the following:

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- | ~~(a.)~~ Program planning and evaluation.
- | ~~(b.)~~ Provision of necessary professional supportive staff to ensure that required child-staff ratios are maintained and a child development program is provided.
- | ~~(c.)~~ Direction and supervision of staff.
- | ~~(d.)~~ Provision of in-service staff development and education program.
- | ~~(e.)~~ Designation of an assistant to assume administrative responsibilities when necessary.
- | ~~(f.)~~ Maintenance of up-to-date records including personnel records.
- | ~~(g.)~~ Securing proper maintenance of center to ensure fulfillment of all aspects of Commonwealth of Virginia and Arlington County codes and regulations.
- | ~~(h.)~~ Shall make a reasonable attempt to involve parents in the program.
- | ~~(i.)~~ Representation of the preschool to the community.
- | ~~(j.)~~ Responsibility for orientation of volunteers.
- | ~~(C.)~~ *Teacher.* Teacher shall mean a person qualified to initiate and maintain activities acceptable to a good daily program based on the principles of child development.
- | ~~(1.)~~ Qualifications:
 - | ~~(a.)~~ Bachelor's degree in child development, early childhood education or a related field including, but not limited to, education, social work, home economics, psychology, which includes nine (9) college semester hours, or the equivalent quarter hours, in early childhood education and/or child development; or
 - | ~~(b.)~~ Two (2) years or more of college which includes at least fifteen (15) college semester hours, or the equivalent quarter hours, in early childhood education and/or child development courses; or
 - | ~~(c.)~~ Shall possess as high school diploma or its equivalency. This applies only to teachers serving in facilities at the time of adoption of this chapter. Persons falling in this category shall have, or acquire within two (2) years, nine (9) college semester hours, or the equivalent quarter hours, in child development and/or early childhood education or equivalent training; or
 - | ~~(d.)~~ In a school which represents itself as a Montessori school, the teachers must, in the alternative, hold a Montessori diploma for the level they are teaching from an institution approved by the American Montessori Society or the Association Montessori International.
- | ~~(2.)~~ Duties: Shall be responsible for but not limited to:
 - | ~~(a.)~~ Initiating and maintaining activities acceptable to a good daily program based on the principles of child development.
 - | ~~(b.)~~ The health, welfare and safety of the children.

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- | ~~(c.)~~ The supervision of the assistant teacher, aide or volunteer assigned to the teacher's group.
- | ~~(d.)~~ Maintaining an attractive, orderly and clean room.
- | ~~(e.)~~ Attending in-service programs.
- | ~~(D.)~~ *Assistant teacher.*
- | ~~(1.)~~ Qualifications: Shall possess a high school diploma and certificate in child development from an accredited high school or high school diploma or equivalency certificate and two (2) years of in-service training in a preschool or child care center run on child development principles.
- | ~~(2.)~~ Duties: Shall assist the teacher in providing for the health, welfare and safety of a group of children. In the absence of the teacher, shall assume responsibility for the group. Shall assist the teacher in the classroom. Shall participate in the planning of the daily program for children. Shall perform such other duties in the classroom as are assigned.
- | ~~(E.)~~ *Teacher's aide.* Teacher's aide shall mean a person qualified to assist a teacher or teacher's assistant in the planning of the daily curriculum and the supervision of the children.
- | ~~(1.)~~ Qualifications:
 - | ~~(a.)~~ Shall complete an eight- ~~(8)~~ week training course in child development or complete eight (8) weeks of in-service training, approved by the ~~e~~County ~~m~~Manager, under the supervision of a qualified teacher; and
 - | ~~(b.)~~ Shall have the ability to work well with children and adults.
- | ~~(2.)~~ Duties:
 - | ~~(a.)~~ Shall assist the teacher in the planning of the daily curriculum.
 - | ~~(b.)~~ Shall attend in-service training when offered.
 - | ~~(c.)~~ Shall help keep classroom orderly, clean and attractive, shall prepare materials for activities and assist in the care of equipment and supplies. When needed, shall assist in food preparation, serving and cleaning up for meal times.
 - | ~~(d.)~~ Shall perform such other duties in the classroom as are assigned.
- | ~~(F.)~~ *Food and maintenance employees.* Preschools shall provide sufficient personnel to maintain required Arlington County standards of cleanliness, safety, comfort nutrition without depriving the children of proper supervision.
- | ~~(G.)~~ *Volunteers.* Volunteers shall be under the supervision of the director, assistant director or a teacher.
- | ~~(H.)~~ *Group and staff requirements.*
 - | ~~(1.)~~ A responsible adult shall be present and in charge at all times.
 - | ~~(2.)~~ In the director's absence, there must be present a specifically designated assistant to function in the director's stead.

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~~(3.)~~ The child-staff ratio required by this chapter shall be maintained throughout the day.

~~(4.)~~ No child shall be left unattended at any time.

~~(L.)~~ *Groups.*

~~(1.)~~ *Preschool.* The size of any one group of children in a preschool shall not exceed that specified below for each particular age, and there shall be a teacher for each such group with adequate staff or volunteer assistance to meet the applicable adult-child ratio.

Age	Maximum Size of Group	Child-Adult Ratio
2	15	5--1
3	16	8--1
4 to 5	20	10--1

Where children of different ages are placed in groups, the ratio shall be adjusted by the director with the welfare of the youngest children in mind. A minimum of two (2) adults shall be required at the school during its hours of operation.

~~(2.)~~ *Montessori.* In a school which represents itself as a Montessori school, staffing and class size must be consistent with standards established by either the American Montessori Society or the Association Montessori International. Each school must clearly state the standards on which its operation is primarily based.

~~(J.)~~ *Program.* A child development program, as a program responsive to the progressive stages of physical, emotional, social, and intellectual growth of the young child shall be the focus of preschool programs.

~~(1.)~~ The program shall be under the supervision and direction of a staff member trained or experienced in child development, early childhood education and/or a related field.

~~(2.)~~ The daily program shall be planned to:

~~(a.)~~ Reflect knowledge and understanding of the fundamental needs, growth and development of children.

~~(b.)~~ Have continuity and flexibility so the needs of individual children as well as the needs of the group are met.

~~(c.)~~ Provide a balance between periods of active play and quiet activities. Preschool programs of more than two and one-half (2 1/2) hours per day shall provide for rest during the day, the length of which will vary with the age of the child and length of the program.

~~(d.)~~ Include a schedule of planned events for each day. Routine such as snacks, rest and play shall occur daily at approximately the same time. Within the schedule, there shall be flexibility to allow for individual differences.

~~(e.)~~ Provide daily activities for each child designed to:

~~(1.)~~ Influence a positive concept of self.

~~(2.)~~ Stimulate motivation.

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~~(3)~~ Enhance his physical, social, cognitive and communication skills by giving him opportunities to learn about himself and others, about social relationships, and about the world around him.

~~(4)~~ Help him to deal with reality through tackling real tasks and learning to master them.

~~(5)~~ Help him to develop skills in both large and small muscle activities.

~~(6)~~ Help him to take responsibility for his bodily needs and encourage good health habits.

~~(7)~~ Include at least twenty (20) minutes of outdoor play in half-day program during suitable weather conditions.

~~(f)~~ At no time shall the director use or permit corporal punishment or any humiliating or frightening methods of discipline.

~~(g)~~ Children shall not be punished for refusing food nor shall they be deprived of meals or parts of meals or snacks as disciplinary measures.

~~(h)~~ A weekly schedule of events shall be posted in a location readily visible to the staff and visitors.

~~(K)~~ *Nutrition and food services.*

~~(1)~~ Snacks:

~~(a)~~ Provision shall be made for the children's comfort during snack time.

~~(b)~~ Eating utensils and dishes shall be appropriate in size to be handled by the child. If disposable dishes and utensils are used, they shall be sturdy enough to prevent them from being a safety hazard.

~~(c)~~ Disposable dishes and utensils shall be used only once and discarded.

~~(d)~~ The snacks shall be planned to provide the opportunity for the child to learn to eat and enjoy a variety of nutritious foods.

~~(e)~~ Snacks shall be served in a pleasant, clean atmosphere.

~~(f)~~ Snacks shall be selected and planned to provide nutritional needs of the child.

§ 52-31. ~~Parent's-d~~ay-~~o~~ut ~~p~~rogram.

The provisions of this section pertain only to the regulation of parent's-day-out programs.

~~(A)~~ *Coordinator, director or head teacher, if any.* There shall be a coordinator, director or head teacher having the necessary qualifications and experience for the planning, conduct and supervision of the operation of such a facility.

~~(1)~~ Qualifications:

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- | ~~(a.)~~ Bachelor's degree from an accredited college in child development, early childhood education or a related field including, but not limited to, education, social work, home economics, psychology, and one (1) year of experience as a teacher or director in a preschool or related agency; or
- | ~~(b.)~~ Two (2) or more years of college with nine (9) college semester hours, or equivalent quarter hours, of course work in child development or early childhood education and two (2) years of experience as a teacher or director in a preschool or related agency; or
- | ~~(c.)~~ Coordinators or directors without at least nine (9) college semester hours, or equivalent quarter hours, of credit in child development or early childhood education who are operating or propose to operate licensed programs, who do not meet the above educational requirements, shall acquire, within two (2) years, nine (9) college semester hours, or equivalent quarter hours, in child development, early childhood education or equivalent training.
- | ~~(2.)~~ Duties: The administrator, administrative body, director, coordinator or head teacher, if so designated, shall be responsible for the overall operation of the facility. Responsibilities shall include, but not be limited to, the following:
 - | ~~(a.)~~ Program planning and evaluation.
 - | ~~(b.)~~ Provision of necessary professional supportive staff to ensure that required child-staff ratios are maintained and a child development program is provided.
 - | ~~(c.)~~ Direction and supervision of staff.
 - | ~~(d.)~~ Provision of in-service staff development and education programs.
 - | ~~(e.)~~ Designation of an assistant to assume administrative responsibilities when necessary.
 - | ~~(f.)~~ Maintenance of up-to-date records including personnel records.
 - | ~~(g.)~~ Proper maintenance to facility to ensure fulfilling all aspects of Commonwealth of Virginia and Arlington County Codes and regulations.
 - | ~~(h.)~~ Shall make a reasonable attempt to involve parents in the programs.
 - | ~~(i.)~~ Representation of the program to the community.
 - | ~~(j.)~~ Responsibility for orientation of volunteers.
- | ~~(B.)~~ *Teacher.* This person shall have ability to work well with children and adults, shall possess a high school diploma or its equivalency and shall be willing to improve himself or herself by attending workshops or in-service training programs.
 - | ~~(1.)~~ Duties: Shall be responsible for, but not limited to:
 - | ~~(a.)~~ Initiating and maintaining activities acceptable to a good daily program based on the principles of child development.
 - | ~~(b.)~~ The health, welfare and safety of the children.
 - | ~~(c.)~~ The supervision of the assistant teacher, aide or volunteer assigned to the group.

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- | ~~(d.)~~ Maintaining an attractive, orderly and clean room.
- | ~~(e.)~~ Performing related work as required.
- | ~~(C.)~~ *Cooperating parent.* This person shall be willing to improve himself or herself by attending workshops or in-service programs.
- | ~~(1.)~~ Duties: Shall assist the teacher in providing for the health, welfare and safety of a group of children. In the absence of the teacher, shall assume responsibility for the group. Shall assist the teacher in the classroom. Shall participate in the planning of the daily program for children. Shall perform such other duties in the classroom as are assigned.
- | ~~(D.)~~ *Food and maintenance employees.* Parent's-day-out programs shall provide sufficient personnel to maintain required Arlington County standards of cleanliness, safety, comfort and nutrition without depriving the children of proper supervision.
- | ~~(E.)~~ *Group staff requirements.*
- | ~~(1.)~~ Staff. Parent's-day-out programs shall have a director or coordinator who is physically present during the week for at least one-half (1/2) of the time that the children are present. In the director's or coordinator's absence, there must be present a person designated to act in the director's or coordinator's stead. The size of any one (1) group of children, age two (2) and over, shall not exceed fifteen (15); and there shall be one (1) teacher and one (1) parent for each group.
- | ~~(2.)~~ Where children under two (2) receive care, the size of any group shall not exceed twelve (12); and the ratio of adults to children shall be one (1) to three (3).
- | ~~(3.)~~ Separate area shall be provided for those children learning to walk from those children who have not yet reached this stage of development.
- | ~~(4.)~~ No child shall be left unattended at any time.
- | ~~(F.)~~ *Program.*
- | ~~(1.)~~ The program shall be under the supervision and direction of a staff member trained or experienced in early childhood education, child development and/or a related field.
- | ~~(2.)~~ The program shall be planned to:
 - | ~~(a.)~~ Reflect knowledge and understanding of the fundamental needs, growth and development of children.
 - | ~~(b.)~~ Have continuity and flexibility so the needs of individual children as well as the needs of the group are met.
 - | ~~(c.)~~ Provide a balance between periods of active play and quiet activities. Parent's-day-out programs shall provide for rest during the day, length of which will vary with the age of the child and the length of the program.
 - | ~~(d.)~~ Include a schedule of planned events for each day. Routine such as snacks, meals, nap and play shall occur daily at approximately the same time. Within the schedule there shall be flexibility to allow for individual differences.

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~~(e.)~~ At no time shall the coordinator or director use or permit corporal punishment or any humiliating or frightening methods of discipline.

~~(f.)~~ Children shall not be punished for refusing food nor shall they be deprived of meals or parts of meals or snacks as disciplinary measures.

~~(g.)~~ A weekly schedule of events shall be posted in a location readily visible to the staff and visitors.

~~(G.)~~ *Nutrition and food services.*

~~(1.)~~ Provision shall be made for the children's comfort during mealtime.

~~(2.)~~ Eating utensils and dishes shall be appropriate in size to be handled by the child. If disposable dishes and utensils are used, they shall be sturdy enough to prevent them from being a safety hazard.

~~(3.)~~ Disposable dishes and utensils shall be used only once and discarded.

~~(4.)~~ The snacks shall be planned to provide the opportunity for the child to learn to eat and enjoy a variety of nutritious foods.

~~(5.)~~ Snacks shall be served in a pleasant, clean atmosphere.

~~(6.)~~ Snacks shall be selected and planned to meet nutritional needs of the child.

(12-6-75)

§ 52-32. Cooperative Playgroups.

The following provisions of this Chapter 52 shall apply to cooperative playgroups only:

~~(a)A.~~ Sections §§ 52-3- through 52-10, Section § 52-12, Sections §§ 52-14- through 52-25, Section § 52-28, B(b) and C(e).

~~(b)B.~~ Each cooperative playgroup shall have a chairman, coordinator or administrator whose responsibilities shall include, but not be limited to, the following:

~~(1.)~~ Assurance that required child-adult ratios are maintained.

~~(2.)~~ Maintenance of up-to-date records, including children's and supervising parent's health records.

~~(3.)~~ Proper maintenance of facility to insure fulfilling all aspects of Commonwealth of Virginia and Arlington County Codes and regulations.

~~(c)C.~~ Cooperating parents of the cooperative playgroup shall provide supervision of children on a cooperative basis.

~~(d)D.~~ Group staff requirements.

~~(1.)~~ Cooperative playgroups shall maintain the following child-adult ratios:

a. In hereWhere children under two (2) receive care, the size of any group shall not exceed

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- | _____ twelve (12); and the ratio of adults to children shall be one (1) to three (3).
- | ~~(2)~~ b. _____ The size of any one (1) group of children, age two (2) and over, shall not exceed fifteen
| _____ (15); and the ratio of adults to children shall be one (1) to five (5).
- | ~~(2)~~ Where children of different ages are placed in groups, the ratio shall be adjusted by the chairman
| with the welfare of the youngest children in mind. A minimum of two (2) adults shall be required
| at the school during its hours of operation.
- | ~~(3)~~ No child shall be left unattended at any time.
(4-25-81)